

SUMMONS ON CROSS COMPLAINT  
(CITACION JUDICIAL)



NOTICE TO DEFENDANT: (Aviso a Acusado)

PEOPLE OF THE STATE OF CALIFORNIA IN THE  
RELATION OF JOHN B. LINDEN, HELIX WATER DISTRICT,  
SALLY MCPHERSON, sued solely in her capacity as  
the San Diego County Registrar of Voters, and  
DOES 1 through 50

REAL PARTIES IN INTEREST: HAROLD BALL, H.  
WARREN BUCKNER, BARBARA BARBER, JIM LEWANSKI

YOU ARE BEING SUED BY PLAINTIFF:  
(A Ud. le está demandando)

JOEL SCALZITTI

You have 30 CALENDAR DAYS after this  
summons is served on you to file a typewritten  
response at this court.

A letter or phone call will not protect you; your  
typewritten response must be in proper legal form  
if you want the court to hear your case.

If you do not file your response on time, you may  
lose the case, and your wages, money and  
property may be taken without further warning  
from the court.

There are other legal requirements. You may want  
to call an attorney right away. If you do not know  
an attorney, you may call an attorney referral  
service or a legal aid office (listed in the phone  
book).

Después de que le entreguen esta citación judicial usted  
tiene un plazo de 30 DÍAS CALENDARIOS para presentar  
una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá  
protección; su respuesta escrita a máquina tiene que  
cumplir con las formalidades legales apropiadas si usted  
quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder  
el caso, y le pueden quitar su salario, su dinero y otras  
cosas de su propiedad sin aviso adicional por parte de la  
corte.

Existen otros requisitos legales. Puede que usted quiera  
llamar a un abogado inmediatamente. Si no conoce a un  
abogado, puede llamar a un servicio de referencia de  
abogados o a una oficina de ayuda legal (vea el directorio  
telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)

Robert P. Ottilie  
550 West "C" St., Suite 1600  
San Diego, CA 92101  
619-231-4841

CASE NUMBER: (Número del Caso)

GIE 012239

SBN 95845

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

DATE:  
(Fecha)

JUN 07 2002

Clerk, by  
(Actuario)

R. S. Barber, Deputy

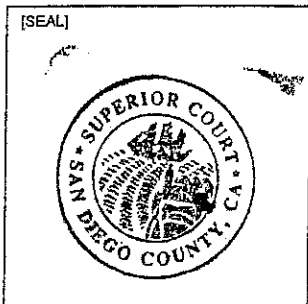
Deputy  
(Delegado)

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)  
☒ other: IRACUNATION (WATER DISTRICT)

4. ☒ by personal delivery on (date): 6/10/02



**PROOF OF SERVICE — SUMMONS**  
(Use separate proof of service for each person served)

1. I served the

- a. ☐ summons ☐ complaint ☐ amended summons ☐ amended complaint  
☐ completed and blank Case Questionnaires ☐ Other (specify):

b. on defendant (name):

c. by serving ☐ defendant ☐ other (name and title or relationship to person served):

d. ☐ by delivery: ☐ at home ☐ at business  
(1) date:  
(2) time:  
(3) address:

e. ☐ by mailing  
(1) date:  
(2) place:

2. Manner of service (check proper box):

- a. ☐ **Personal service.** By personally delivering copies. (CCP 415.10)
- b. ☐ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
- c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)
- d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)
- e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)
- f. ☐ Other (specify code section):  
☐ additional page is attached.

3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (individual)

☐ other:

d. ☐ by personal delivery on (date):

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

- a. ☐ California sheriff, marshal, or constable.
- b. ☐ Registered California process server.
- c. ☐ Employee or independent contractor of a registered California process server.
- d. ☐ Not a registered California process server.
- e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>Robert P. Ottilie, Esq.</b> SBN 95845 550 West "C" St., Suite 1600 San Diego, CA 92101		FOR COURT USE ONLY  2002 JUN -7 PM 4:01  CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA
TELEPHONE NO.: 619-231-4841 FAX NO.: 619-231-3293 ATTORNEY FOR (Name): <b>Joel Scalzitti</b>		
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF          SAN DIEGO, EAST COUNTY DIVISION</b>		
CASE NAME: <b>SCALZITTI v. PEOPLE, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input type="checkbox"/> Limited <input type="checkbox"/> Unlimited	<b>Complex Case Designation</b> <input checked="" type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER: <b>GIE 012239</b>  ASSIGNED JUDGE: <b>Howatt</b>

Please complete all five (5) items below.

1. Check one box below for the case type that best describes this case: <b>Auto Tort</b> <input type="checkbox"/> Auto (22) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (e.g., discrimination, false arrest) (08) <input type="checkbox"/> Defamation (e.g., slander, libel) (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (e.g., legal malpractice) (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36)			<input type="checkbox"/> Other employment (15) <b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (e.g., money owed, open book accounts) (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (e.g., quiet title) (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11)	<input checked="" type="checkbox"/> Writ of mandate (02) <input checked="" type="checkbox"/> Other judicial review (39) <b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Claims involving mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Toxic tort/Environmental (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (e.g., sister state, foreign, out-of-county abstracts) (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial post-disposition judicial disposition  |

3. Type of remedies sought (check all that apply):

- |                                      |  |                                      |
|--------------------------------------|--|--------------------------------------|
| a. <input type="checkbox"/> monetary | b. <input checked="" type="checkbox"/> nonmonetary; declaratory or injunctive relief | c. <input type="checkbox"/> punitive |
|--------------------------------------|--|--------------------------------------|

4. Number of causes of action (specify): **3**

5. This case ☐ is ☒ is not a class action suit.

Date: **June 7, 2002**

**Robert P. Ottilie**

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 982.2.)
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.

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4 Telephone: 619/231-4841  
5 Facsimile: 619/231-3293

6 BOB GLASER (Bar No. 102976)  
7 The La Jolla Group  
8 8304 Clairemont Mesa Blvd., Suite 213  
9 San Diego, CA 92111  
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12 Attorneys for Plaintiff/Petitioner  
13 JOEL SCALZITTI

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**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN DIEGO-EAST COUNTY DIVISION**

13 JOEL SCALZITTI,

14 Plaintiff/Petitioner

15 v.

16 PEOPLE OF THE STATE OF  
17 CALIFORNIA IN THE RELATION OF  
18 JOHN B. LINDEN, HELIX WATER  
19 DISTRICT, SALLY MCPHERSON,  
20 sued solely in her capacity as the San  
21 Diego County Registrar of Voters, and  
22 DOES 1 through 50,

23 Defendants/Respondents

CASE NO. GIE 012239

**VERIFIED CROSS-COMPLAINT FOR:**

1. **DECLARATORY RELIEF**
2. **MANDAMUS**
3. **INJUNCTIVE RELIEF**

Judge: William J. Howatt  
Dept: 17  
Trial date: May 24, 2002

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**REAL PARTIES IN INTEREST:**

HAROLD BALL;  
H. WARREN BUCKNER;  
BARBARA BARBER;  
JIM LEWANSKI

## COMMON ALLEGATIONS

1. Plaintiff/Petitioner, JOEL SCALZITTI (hereinafter referred to as "Petitioner" or "Scalzitti"), is a resident of San Diego County, currently residing at 1063-1/2 Sumner Avenue, El Cajon, California 92021, a residence located within Division 1 of the Helix Water District. Petitioner is the elected Director of Division 1 of the Helix Water District, having been elected to that position in the election conducted by the Helix Water District in November 2000.

2. Respondent People of the State of California in the Relation of John B. Linden, have filed a lawsuit against Joel Scalzitti, petitioner herein, in the San Diego Superior Court Case No. GIE 012239. Mr. Linden was the unsuccessful candidate for the position of Director in Division 1 of the Helix Water Board and he has petitioned the People of the State of California for permission to sue Mr. Scalzitti on the argument that non-landowners should not be allowed to participate in the decisions of the Helix Water District. He is an important party to this action because he is the one who has attempted to restrict the participation of non-landowners from the decision making process of the Helix Water District, and the People of the State of California, on their relation to Mr. Linden, at least at this time, are supporting him in that regard.

3. Respondent Helix Water District claims it is an irrigation district, but does not refer to itself as an irrigation district, instead referring to itself as a water district. It is a public entity doing business at 7811 University Avenue, La Mesa, California. The Helix Water District, directly and through its agent, San Diego Registrar of Voters, conducted an election in November of 2000 to fill three seats on the Helix Water Board, Divisions 1, 3 and 5, now held by Directors Scalzitti, Buckner and Barber, respectively.

4. Defendant and Respondent Sally McPherson, sued solely in her capacity as the San Diego Registrar of Voters, is the Registrar of San Diego County, and conducted majority of the elections in which voters elected the Directors to the Helix Water Board for Divisions 1, 3 and 5.

1           5. Petitioner is informed and believes and thereon alleges, that McPherson conducted the  
2 election as the agent of the Helix Water District which, by law, is assigned the responsibility of  
3 conducting the election.

4           6. Defendants and Respondents identified as real parties in interest, Harold Ball, H. Warren  
5 Buckner, Barbara Barber and Jim Lewanski, are all Directors of the Helix Water District, along with  
6 Petitioner, and are named as real parties to this cross-complaint because of the possibility that the  
7 elections in which they were elected to the Board of Directors of the Helix Water District may be  
8 determined to be illegal and void and their seat vacated as a result.

9           7. Petitioner is ignorant of the true names and capacities of respondents/defendants sued  
10 herein as Does 1 through 50, inclusive, and therefore sues these respondents/defendants by such  
11 fictitious names. Petitioner will amend this complaint to allege their true names and capacities when  
12 ascertained. Petitioner is informed and believes and thereon alleges that each of said fictitiously  
13 named respondents/defendants are responsible in some manner for the occurrences herein alleged,  
14 and that the injuries herein alleged were proximately caused by their acts or omissions.

15           8. All of the respondents/defendants were the agents of each other at all times set forth  
16 herein, and were acting within the course and scope of their agency at all times described herein.

17           9. At many of the times herein mentioned, the Helix Water District has contended that it is  
18 an irrigation district formed and operating under Water Code §20500, et seq., in the County of San  
19 Diego, although it has dropped "irrigation" from its name, does little irrigation, and simply holds  
20 itself out as the "Helix Water District."

21           10. The Helix Water District operates through a board of directors with five separate  
22 directors, each representing a different division, Divisions 1 through 5.

23           11. Positions of Director are filled by elections conducted by the District. Elections are  
24 every two years. Three directors are elected in one election cycle and two directors are elected two  
25 years later in the next election cycle. Terms are for four years.

1           12. By law, this District is required to conduct its own elections. It may retain the services  
2 of the local Registrar of Voters to assist it in conducting the election and this District has done so  
3 by retaining the services of the San Diego County Registrar of Voters, Sally McPherson, to perform  
4 part of the District's responsibilities.

5           13. Prior to August 10, 2000, petitioner went to the offices of the Helix Water District. He  
6 said he wanted to run for the position of Director of the Helix Water Board. Petitioner was asked  
7 his address. The employee of the Helix Water District handling his request left him briefly and then  
8 returned to say that he could run for the office.

9           14. On or about August 10, 2000 petitioner submitted a Declaration of Candidacy for the  
10 position of Director of the District. He filled out every blank on the form and answered every  
11 question truthfully. He signed the form under penalty of perjury.

12           15. Acting through its agent, the San Diego County Registrar of Voters, petitioner was  
13 informed on or about August 18, 2000 of the following:

14                   "You have qualified and your name will appear on the ballot."

15           16. Petitioner campaigned for office and spent a considerable amount of money in this  
16 pursuit. He did so on the representations of the Helix Water District that he was qualified to run  
17 based on the information that they had sought and received from him.

18           17. At no time did the Helix Water District advise the petitioner that he had to be a  
19 "freeholder" or "landowner" to run for office, although he did own property within the division  
20 which he sought to represent on the Helix Water Board.

21           18. At no time did the Helix Water Board or anyone for that matter, communicate to voters  
22 that they needed to be a "freeholder" or "landowner" to vote in the election for the Helix Water  
23 District.

24           19. Petitioner is informed and believes and thereon alleges, at no time did the Helix Water  
25 Board prepare a list of "freeholders" or "landowners" within the boundaries of the Helix Water  
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1 District who were qualified to run for office or vote in the election for Directors of the Helix Water  
2 Board.

3 20. Helix Water District conducted the election for the Helix Water Board in November of  
4 2000. It was held on the same day as the general election at which time voters elected the President  
5 of the United States, the Governor of the State of California and individuals to a multitude of other  
6 offices in a multitude of other jurisdictions. The election for positions of Director of the Helix Water  
7 Board were not conducted in a separate election, in a separate place, on a separate ballot or with any  
8 limitations on who could vote. The election itself was in the same ballot that was given to everybody  
9 who was voting for president or any of those other positions that were on the general election ballot  
10 in November of 2000. A similar election was held in November 1998 to fill the positions of  
11 Directors in Divisions 2 and 4.

12 21. Mr. Linden, in the underlying complaint, has taken the position that the Helix Water  
13 District is, in fact, an irrigation district and not a water district. If this is accurate, it would impose  
14 upon the Helix Water District certain obligations imposed upon irrigation districts under the law.

15 22. Mr. Linden, in the underlying complaint, has contended that the Helix Water District is  
16 a "landowner" district, meaning that only landowners can run for positions on the Board of Directors  
17 of the Helix Water Board, and that only landowners can vote in said election.

18 23. If Mr. Linden is correct, and this is a "landowner" district, petitioner has asserted in the  
19 underlying complaint, and asserts herein, that such limitations would be unconstitutional and that  
20 it would deny equal protection of the law under the circumstances of this case, to individuals who  
21 would want to run for positions on the Board of Directors of the Helix Water District, and for people  
22 who want to vote in this district. Nevertheless, if the Mr. Linden is right that this is a "landowner"  
23 district and petitioner is wrong in his assertion that in such a case there would be a violation of the  
24 Constitution of the United States and of the State of California, then, and under those circumstances,  
25 petitioner is informed and believes and thereon alleges, that all five positions on the Board of  
26 Directors of the Helix Water District have been filled with illegal elections.



24. The Helix Water District has not made any effort to determine whether candidates for office are landowners. The Helix Water District has not prevented non-landowners from voting in elections for positions on the Board of Directors of the Helix Water District. The Helix Water District has not conducted separate elections for this position, as would be required by law. Petitioner is informed and believes and thereon alleges, that the Helix Water District has not published a list of landowners, nor has it communicated to anyone that non-landowners cannot vote or run for office.

**FIRST CAUSE OF ACTION**  
**(Declaratory Relief as against all Defendants)**

25. Petitioner incorporates herein paragraphs 1 through 24 of the Common Allegations as though set forth fully herein.

26. An actual controversy has arisen and now exists between petitioner on the one hand, and respondents and the real parties in interest, concerning their respective rights and duties, and the legality of the elections in which real parties in interest were elected to the positions of Director of the Helix Water District. Mr. Linden contends, on the one hand, that this is a "landowner" district and that it is an "irrigation" district and that candidates for office must be landowners and voters for office must be landowners. If so, then the election for this district would have to be held at a date different than the general election and the district would have to distribute a list of all qualified landowners, conduct the election consistent with the obligations and requirements of a landowner election, and preclude individuals who were not landowners from voting or running for office. On the other hand, the Helix Water District and the San Diego County Registrar of Voters, have not conducted elections for the positions of Director of the Helix Water District as though it were an irrigation district or a "landowner" district.

27. Mr. Linden seeks to vacate the office of Director for Division 1 of the Helix Water District, contending that petitioner is illegally holding that office. Yet, Mr. Linden does not seek to

1 vacate any other offices, or have this court declare the process by which elections have been  
2 conducted by the Helix Water District illegal. He has singled out petitioner.

3 28. Petitioner desires a judicial determination as to whether or not the Helix Water District  
4 is an irrigation district, whether or not it is a "landowner" district and on what terms it conducts its  
5 elections. If Mr. Linden is correct, then petitioner is informed and believes that all of the elections  
6 for all of the director positions at the Helix Water District have been conducted illegally and the  
7 court should so declare.

8 29. Judicial declaration is necessary and appropriate at this time under the circumstances in  
9 order that petitioner may ascertain his rights and protect the rights of all the residents of the Helix  
10 Water District, which exceed 200,000 people. Without a judicial determination on these issues,  
11 petitioner's rights and the rights of all voters and all those affected by the actions of the Helix Water  
12 District, will be detrimentally impacted.

13 30. There are no administrative remedies to correct the deficiency and the rulings of this  
14 court are necessary to protect the residents of this district.

15  
16 **SECOND CAUSE OF ACTION**  
17 **(Peremptory Writ of Mandate as against all Respondents)**

18 31. Petitioner incorporates herein paragraphs 1 through 24 of the Common Allegations as  
19 though set forth fully herein.

20 32. If, based on the declaration of rights, this court determines that the elections for Director  
21 of the Helix Water District have been conducted illegally, and in violation of state election laws and  
22 state water laws, then this court should issue a peremptory writ of mandate from this court  
23 compelling the following:  
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- a. Compelling the respondents, and each of them, to void all elections so conducted;
- b. To vacate the Directors position with respect to each position filled by an illegal election or election in violation of state law;
- c. Order the Helix Water District to immediately conduct a new election to fill each Director position that has heretofore been held by an individual elected at an illegal election or an election in violation of state law.

**THIRD CAUSE OF ACTION**  
**(Injunctive Relief as Against All Respondents)**

33. Petitioner incorporates herein paragraphs 1 through 24 of the Common Allegations as though set forth fully herein

34. In the event this court determines that the Helix Water District has conducted elections in violation of state law, or illegally, and has granted the relief requested in the second cause of action, then this court is requested to grant injunctive relief by way of restraining order, preliminary injunction or permanent injunction to accomplish the following:

Directing the Helix Water District, its Directors and all employees and agents, from removing petitioner from office unless, pursuant to order of this court, all offices are vacated.

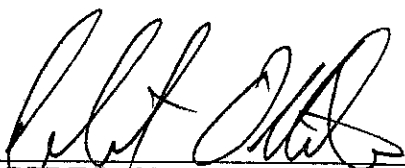
WHEREFORE, Plaintiff/Petitioner JOEL SCALZITTI, prays judgment as follows:

1. For declaratory relief as requested in the First Cause of Action;
2. For the issuance of a peremptory writ of mandate as requested in the Second Cause of Action;
3. For issuance of a temporary restraining order, preliminary injunction and permanent injunction as requested in the Third Cause of Action;
4. For costs of suit incurred herein;

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5. For attorneys' fees as may be permitted in the Water Code, Elections Code or California Code of Civil Procedure §1017.5;
6. For such other and further relief as the court may deem just and proper.


Dated: 6-7-02

  
\_\_\_\_\_  
ROBERT P. OTILIE  
Attorney for Plaintiff/Petitioner  
JOEL SCALZITTI

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of June, 2002 at San Diego, California.

  
\_\_\_\_\_  
JOEL SCALZITTI

1 PROOF OF SERVICE

2 People of the State of California on the Relation of John B. Linden v. Scalzitti  
3 San Diego Superior Court Case No. GIE 012239

4 I am, and was at the time of service of the papers herein referred to, over the age of eighteen  
5 years and not a party to this action; I am employed in the County of San Diego, CA, in which county  
6 the within-mentioned mailing occurred. My business address is 550 West "C" Street, Suite 1600,  
7 San Diego, California 92101. On June 7, 2002 I served the foregoing document described as

8 **Verified Cross-Complaint for declaratory relief, mandamus, and injunctive relief**

9 on interested parties in this action by placing \_\_\_ the original; X a true copy thereof enclosed in  
10 a sealed envelope addressed as follows:

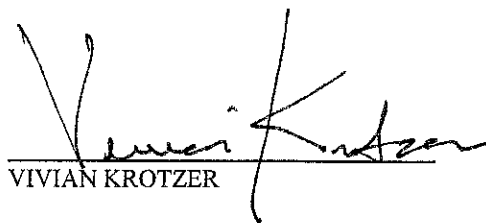
11 Kenneth S. Klein  
12 Gregory V. Moser  
13 John C. Lemmo  
14 Foley & Lardner  
15 402 W. Broadway, 23<sup>rd</sup> Floor  
16 San Diego, CA 92101  
17 619-234-6655  
18 619-234-3510 (fax)

16 x **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope addressed as above, with postage thereon  
17 fully prepaid in the United States mail, at San Diego, California. I am readily familiar with the firm's practice of  
18 collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal  
19 service on the same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of  
20 business.

19 x **BY FAX:** I transmitted a copy of the foregoing document(s) this date via facsimile to the fax numbers shown  
20 herein pursuant to Rule 2003(3)

21 **BY PERSONAL SERVICE/KNOX ATTORNEY SERVICE** Delivered during business hours to  
22 receptionist

23 Executed on June 7, 2002 at San Diego, California .

24   
25 VIVIAN KROTZER  
26  
27  
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Robert P. Otilie SBN 95845 550 West C St., Suite 1600 San Diego, CA 92101		FOR COURT USE ONLY
TELEPHONE NO.: 619-231-4841 FAX NO.: 619-231-3293 ATTORNEY FOR (Name): Joel Scalzitti		
NAME OF COURT: SAN DIEGO SUPERIOR STREET ADDRESS: 250 E. Main Street MAILING ADDRESS: CITY AND ZIP CODE: El Cajon, CA 92020 BRANCH NAME: East County		
PLAINTIFF/PETITIONER: PEOPLE OF the STATE OF CALIFORNIA ON THE RELATION OF JOHN B. LINDEN DEFENDANT/RESPONDENT: JOEL SCALZITTI		
CIVIL SUBPOENA For Personal Appearance at Trial or Hearing		CASE NUMBER: GIE 0122398

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):

LYNN YOUNG, HELIX WATER DISTRICT, 7811 University Avenue, La Mesa, CA 91941

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make an agreement with the person named in item 2:

a. Date: June 24, 2002 Time: 9:00 a.m. ☒ Dept.: 17 ☐ Div.: ☐ Room:  
b. Address: 250 East Main Street, El Cajon, CA 92020

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name of subpoenaing party or attorney:

Robert P. Otilie

b. Telephone number:

619-231-4841

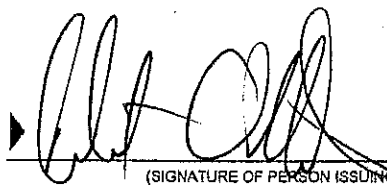
3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: June 17, 2002

Robert P. Otilie

(TYPE OR PRINT NAME)

  
(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney for Joel Scalzitti

(TITLE)

(Proof of service on reverse)

PLAINTIFF/PETITIONER: People	CASE NUMBER: GIE 0122398
DEFENDANT/RESPONDENT: Scalzitti	

**PROOF OF SERVICE OF CIVIL SUBPOENA  
FOR PERSONAL APPEARANCE AT TRIAL OR HEARING**

1. I served this *Civil Subpoena for Personal Appearance at Trial or Hearing* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees (check one):

(1) ☐ were offered or demanded  
and paid. Amount: ..... \$ \_\_\_\_\_

(2) ☐ were not demanded or paid.

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (date): June 17, 2002

3. Person serving:

a. ☐ Not a registered California process server.

b. ☐ California sheriff or marshal.

c. ☐ Registered California process server.

d. ☐ Employee or independent contractor of a registered California process server.

e. ☒ Exempt from registration under Business and Professions Code section 22350(b).

f. ☐ Registered professional copier.

g. ☐ Exempt from registration under Business and Professions Code section 22451.

h. Name, address, telephone number, and, if applicable, county of registration and number:

Peter DeLuke, Jr.  
110 West "C" St., #1013  
San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 17, 2002

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:



(SIGNATURE)



(SIGNATURE)



JAMES B. GILPIN, Bar No. 151466  
MELISSA W. WOO, Bar No. 192056  
LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
402 WEST BROADWAY, 13<sup>TH</sup> FLOOR  
SAN DIEGO, CALIFORNIA 92101-3542  
TELEPHONE: (619) 525-1300  
TELECOPIER: (619) 233-6118

Attorneys for Cross-Defendant  
HELIX WATER DISTRICT, and REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF  
CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

Plaintiff,

v.

JOEL SCALZITTI,

Defendant.

JOEL SCALZITTI,

Cross-Complainant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA IN THE RELATION OF  
JOHN B. LINDEN, HELIX WATER  
DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,

Cross-Defendants.

REAL PARTIES IN INTEREST:

HAROLD BALL;  
H. WARREN BUCKNER;  
BARBARA BARBER;  
JIM LEWANSKI

Case No. GIE 012239

Judge: William J. Howatt  
Dept. 17

PROOF OF SERVICE

Trial Date: June 24, 2002

**PROOF OF SERVICE**

I, Lori L. Ford, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 402 West Broadway, 13<sup>th</sup> Floor, San Diego, California 92101-3542. On October 30, 2002, I served the within documents:

**EX PARTE APPLICATION BY CROSS-DEFENDANT HELIX WATER DISTRICT FOR RESTRAINING ORDER;**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION BY CROSS-DEFENDANT HELIX WATER DISTRICT FOR RESTRAINING ORDER;**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF EX PARTE APPLICATION BY CROSS-DEFENDANT HELIX WATER DISTRICT FOR RESTRAINING ORDER;**

**DECLARATION OF JULIE CRAVEN IN SUPPORT OF EX PARTE APPLICATION BY CROSS-DEFENDANT HELIX WATER DISTRICT FOR RESTRAINING ORDER;**

**DECLARATION OF LORI L. FORD OF TELEPHONIC NOTICE OF EX PARTE HEARING;**

**[PROPOSED] ORDER GRANTING EX PARTE APPLICATION BY CROSS-DEFENDANT HELIX WATER DISTRICT FOR RESTRAINING ORDER.**

- ☒ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.
- ☐ by causing personal delivery by of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by {**Overnight Delivery Name Inserted Here**} following the firm's ordinary business practices.

Robert Otilie  
550 West "C" Street, Suite 1600  
San Diego, CA 92101  
Fax: 619-231-3293

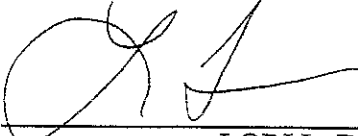
Kenneth Klein  
Foley & Lardner  
402 W. Broadway, 23<sup>rd</sup> Floor  
San Diego, CA 92101  
Fax: 619-234-3510

1 Timothy M. Barry  
2 Office of the County Counsel  
3 1600 Pacific Highway, Room 355  
4 San Diego, CA 92101  
5 Fax: (619) 531-6005

6 I am readily familiar with the firm's practice of collection and processing  
7 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service  
8 on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware  
9 that on motion of the party served, service is presumed invalid if postal cancellation date or postage  
10 meter date is more than one day after date of deposit for mailing in affidavit.

11 I declare under penalty of perjury under the laws of the State of California that the  
12 above is true and correct.

13 Executed on October 30, 2002, at San Diego, California.

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15 \_\_\_\_\_

16 LORI L. FORD  
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RECEIVED

FEB 24 2003

BEST, BEST & KRIEGER

ROBERT P. OTTILIE (Bar No. 95845)  
550 West "C" Street, Suite 1600  
San Diego, CA 92101  
Telephone: 619/231-4841  
Facsimile: 619/231-3293

BOB GLASER (Bar No. 102976)  
The La Jolla Group  
8304 Clairemont Mesa Blvd., Suite 213  
San Diego, CA 92111  
Telephone: 858/496-8896  
Facsimile: 858/496-3980

Attorneys for Defendant  
JOEL SCALZITTI

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO-EAST COUNTY DIVISION

PEOPLE OF THE STATE OF  
CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

Plaintiffs,

v.

JOEL SCALZITTI,

Defendant.

JOEL SCALZITTI,

Cross-Complainant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA IN THE RELATION OF  
JOHN B. LINDEN, HELIX WATER  
DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,

Cross-Defendants.

CASE NO. GIE 0122398

NOTICE OF APPEAL

Judge: William J. Howatt

Dept: 17

Trial date: June 24, 2002

1 REAL PARTIES INTEREST: )

2 HAROLD BALL; )  
3 H. WARREN BUCKNER; )  
4 BARBAR BARBER; )  
JIM LEWANKSI )

5 TO: THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
6 FOR THE COUNTY OF SAN DIEGO AND ALL PARTIES HERETO:  
7

8 PLEASE TAKE NOTICE that defendant JOEL SCALZITTI hereby appeals from the  
9 decision/judgment entered on or about January 8, 2003 in favor of Plaintiff PEOPLE OF THE  
10 STATE OF CALIFORNIA ON THE RELATION OF JOHN B. LINDEN, the related order entered  
11 on or about January 8, 2003 denying the motions to tax costs and the court's decision on the award  
12 of attorney's fees. The basis for this appeal includes, but will not be limited to, the following specific  
13 rulings and actions of the trial court:  
14

15 1. Appeal from the court's decision awarding costs in the sum of \$1,964.47 for the cost  
16 of trial transcripts. The trial transcripts were both an unnecessary expense, and an expense not  
17 incurred by Plaintiff;

18 2. Appeal from the court's decision on the motion to award attorney's fees in the sum  
19 of \$75,000.00 for the following reasons:

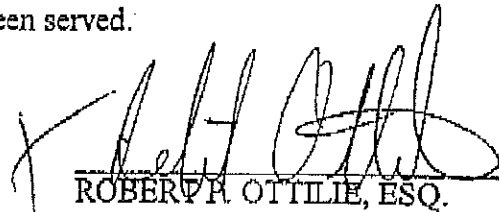
20 a. There is insufficient evidence that the work was performed; if the work was  
21 performed, it was an unreasonable amount of time to be expended in support  
22 of this litigation;

23 b. A public entity was the plaintiff in this case; public entities cannot recover  
24 attorney's fees under CCP §1021.5;

25 c. CCP §809 does not contemplate the award of attorney's fees in a quo  
26 warranto action;

- 1 d. To the extent that the trial judge has determined that the plaintiff, State of  
2 California, is not a public entity, which is inherent in his ruling, then the cost  
3 of pursuing this litigation was not such that it substantially exceeded the  
4 personal interest of the plaintiff;  
5 e. No public benefit has been served.

6 Dated: February 21, 2003



ROBERT A. OTILIE, ESQ.  
Attorney for Defendant Joel Scalzitti

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PROOF OF SERVICE

People of the State of California on the Relation of John B. Linden v. Scalzitti, etc.  
San Diego Superior Court Case No. GIE 012239

I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to this action; I am employed in the County of San Diego, CA, in which county the within-mentioned mailing occurred. My business address is 550 West "C" Street, Suite 1600, San Diego, California 92101. On February 21, 2003 I served the foregoing document(s) described as follows:

Notice of Appeal

on interested parties in this action by placing \_\_\_\_ the original; X a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

X BY MAIL: By placing a true copy thereof enclosed in a sealed envelope addressed as above, with postage thereon fully prepaid in the United States mail, at San Diego, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on the same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business.

\_\_\_\_ BY FAX: I transmitted a copy of the foregoing document(s) this date via facsimile to the fax numbers shown herein pursuant to Rule 2003(3)

\_\_\_\_ BY PERSONAL SERVICE/KNOX ATTORNEY SERVICE Delivered during normal business hours to receptionist

Executed on February 21, 2003 at San Diego, California.

  
Vivian Krotzer

1 People of the State of California on the Relation of John B. Linden v. Scalzitti  
2 San Diego Superior Court Case No. GIE 012239

3  
4 **SERVICE LIST**

5 Plfs/Cross-Defts. People, John B. Linden, etc.

6 Kenneth S. Klein  
7 Gregory V. Moser  
8 John C. Lemmo  
9 Foley & Lardner  
402 W. Broadway, 23<sup>rd</sup> Floor  
San Diego, CA 92101  
619-234-6655  
10 619-234-3510 (fax)

11  
12 Cross-Defts. Helix Water District & Real Parties in Interest, Harold Ball; H. Warren  
13 Buckner; Barbar Barber & Jim Lewanski

14 James B. Gilpin  
15 Melissa W. Woo  
Best, Best & Krieger  
402 West Broadway, 13<sup>th</sup> Floor  
San Diego, CA 92101  
16 619/525-1300  
17 619/233-6118 (fax)

18 San Diego Superior Court Clerk  
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JAMES B. GILPIN, Bar No. 151466  
MELISSA W. WOO, Bar No. 192056  
LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
402 WEST BROADWAY, 13<sup>TH</sup> FLOOR  
SAN DIEGO, CALIFORNIA 92101-3542  
TELEPHONE: (619) 525-1300  
TELECOPIER: (619) 233-6118

Attorneys for Cross-Defendant  
HELIX WATER DISTRICT, and REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF  
CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

Plaintiff,

v.

JOEL SCALZITTI,

Defendant.

JOEL SCALZITTI,

Cross-Complainant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA IN THE RELATION OF  
JOHN B. LINDEN, HELIX WATER  
DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,

Cross-Defendants.

REAL PARTIES IN INTEREST:

HAROLD BALL;  
H. WARREN BUCKNER;  
BARBARA BARBER;  
JIM LEWANSKI

Case No. GIE 012239

Judge: William J. Howatt  
Dept. 17

STIPULATION FOR SEVERANCE OF  
CROSS-COMPLAINT AND ORDER  
THEREON

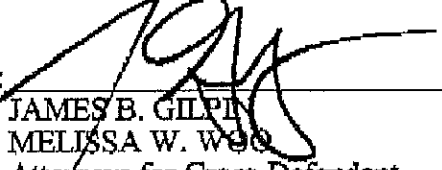
Trial Date: June 24, 2002

1 It is hereby stipulated by and between Defendant/Cross-Complainant Joel Scalzitti and Cross-  
2 Defendants/Respondents People of the State of California in the Relation of John B. Linden, Helix  
3 Water District, Sally McPherson, and Real Parties in Interest Harold Ball, H. Warren Buckner,  
4 Barbara Barber and Jim Lewanski, by and through their attorneys of record as follows:

5 1. The parties agree that the Cross-Complaint filed on or about June 10, 2002 in San  
6 Diego County Superior Court Case No. GIE 012239 shall be severed from the Action.

7 DATED: June 12, 2002

BEST BEST & KRIEGER LLP

8 By:   
9 JAMES B. GILPIN  
10 MELISSA W. WOO  
11 Attorneys for Cross-Defendant  
12 HELIX WATER DISTRICT and Real  
Parties in Interest HAROLD BALL, H.  
WARREN BUCKNER, BARBARA  
BARBER and JIM LEWANSKI

13 DATED: June \_\_, 2002

ROBERT P. OTTILIE, ESQ.

14 By: \_\_\_\_\_  
15 ROBERT P. OTTILIE  
16 Attorneys for Cross-Complainant  
JOEL SCALZITTI

17 DATED: June \_\_, 2002

FOLEY & LARDNER

18 By: \_\_\_\_\_  
19 KENNETH S. KLEIN  
20 GREGORY V. MOSER  
21 JOHN C. LEMMO  
Attorneys for Cross-Defendant People of the  
22 State of California in Relation of  
JOHN B. LINDEN

23 DATED: June \_\_, 2002

OFFICE OF THE COUNTY COUNSEL

24 By: \_\_\_\_\_  
25 JOHN J. SANSONE  
26 Attorneys for Cross-Defendant  
SALLY McPHERSON

27 IT IS SO ORDERED.

28 JUDGE WILLIAM J. HOWATT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): John C. Lemmo, Bar No. 190885 Foley & Lardner 402 W. Broadway, 23rd Floor San Diego, CA 92101-3542  TELEPHONE NO.: 619-234-6655      FAX NO.: 619-234-3510 ATTORNEY FOR (Name):	FOR COURT USE ONLY           CASE NUMBER: GIE 012239
NAME OF COURT: Superior Court of the State of California STREET ADDRESS: County of San Diego MAILING ADDRESS: 250 East Main Street CITY AND ZIP CODE: El Cajon, CA 92020 BRANCH NAME: East Division	
PLAINTIFF/ PETITIONER: The People of the State of California on the Relation of John B. Linden DEFENDANT/ RESPONDENT: Joel Scalzitti	
<b>CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents and Things at Trial or Hearing AND DECLARATION</b>	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):

Sarah Arnold c/o Melissa Woo, Esq.  
 402 W. Broadway, Suite 1300, San Diego, California 92101

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS** in this action at the date, time, and place shown in the box below **UNLESS** your appearance is excused as indicated in box 3b below or you make an agreement with the person named in item 4 below.

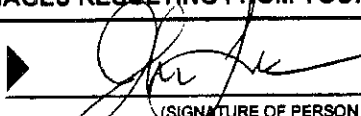
a. Date: July 30, 2002      Time: 9:00 A.M.    ☒ Dept.: 17    ☐ Div.:    ☐ Room:  
 b. Address: 250 East Main Street, El Cajon, California 92020

2. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**
3. **YOU ARE (item a or b must be checked):**
- a. ☒ Ordered to appear in person and to produce the records described in the declaration on page two or the attached declaration or affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
- b. ☐ Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.
4. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**
- a. Name of subpoenaing party or attorney: John C. Lemmo      b. Telephone number: (619) 234-6655
5. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 4.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: July 3, 2002

John C. Lemmo  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney for People of the State of California

(Declaration in support of subpoena on reverse)

(TITLE)

Page one of three

PLAINTIFF/PETITIONER: The People of the State of California on the Relation of John B. Linden DEFENDANT/RESPONDENT: Joel Scalzitti	CASE NUMBER: GIE 012239
--	----------------------------

The production of the documents or the other things sought by the subpoena on page one is supported by (check one):  
☐ the attached affidavit or declaration    ☒ the following declaration:

**DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING**

(Code Civ. Proc., §§ 1985, 1987.5)

- I, the undersigned, declare I am the ☐ plaintiff ☐ defendant ☐ petitioner ☐ respondent  
☒ attorney for (specify): People of the ☐ other (specify):  
 State of California  
 in the above-entitled action.
- The witness has possession or control of the following documents or other things and shall produce them at the time and place specified in the *Civil Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing* on page one of this form (specify the exact documents or other things to be produced):
  - Sign-in ledger from August 2000, or thereabout, wherein Joel Scalzitti signed for receiving candidacy materials.
  - Notes, records relating to August 2000 communications with Joel Scalzitti concerning receipt of candidacy materials.

☐ Continued on Attachment 2.

- Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:

☐ Continued on Attachment 3.

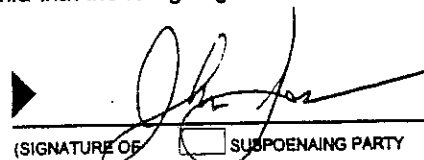
- These documents or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:

☐ Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 3, 2002

John C. Lemmo .....  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF ☐ SUBPOENAING PARTY ☒ ATTORNEY FOR SUBPOENAING PARTY)

(Proof of service on page three)

PLAINTIFF/PETITIONER: The People of the State of  
California on the Relation of John B. Linden  
DEFENDANT/RESPONDENT: Joel Scalzitti

CASE NUMBER:  
GIE 012239

**PROOF OF SERVICE OF CIVIL SUBPOENA (DUCES TECUM)  
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS  
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

1. I served this *Civil Subpoena (Duces Tecum)* for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

7-3-02

d. Time of delivery:

11:30 a.m.

e. Witness fees (check one):

(1) ☐ were offered or demanded  
and paid. Amount: ..... \$ 0.00

(2) ☐ were not demanded or paid.

f. Fee for service: ..... \$ 0.00

2. I received this subpoena for service on (date):

3. Person serving:

a. ☐ Not a registered California process server.

b. ☐ California sheriff or marshal.

c. ☒ Registered California process server.

d. ☐ Employee or independent contractor of a registered California process server.

e. ☐ Exempt from registration under Business and Professions Code section 22350(b).

f. ☐ Registered professional photocopier.

g. ☐ Exempt from registration under Business and Professions Code section 22451.

h. Name, address, telephone number, and, if applicable, county of registration and number:

ERIC P. DEPTAK  
#1021 San Diego Cty.  
4250 Pacific Hwy. Ste. 120  
San Diego CA 92110  
619-221-0700

I declare under penalty of perjury under the laws of the State  
of California that the foregoing is true and correct.

Date:

  
(SIGNATURE)

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:

  
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Robert P. Ottilie SBN 95845 550 West "C" St., Suite 1600 San Diego, CA 92101  TELEPHONE NO.: 619-231-4841 FAX NO.: 619-231-3293 ATTORNEY FOR (Name): Joel Scalzitti	FOR COURT USE ONLY           CASE NUMBER: GIE 012239
NAME OF COURT: SUPERIOR COURT OF CALIFORNIA STREET ADDRESS: 250 E. MAIN STREET MAILING ADDRESS: CITY AND ZIP CODE: EL CAJON, CA 92020 BRANCH NAME: EAST COUNTY DIVISION	
PLAINTIFF/ PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA IN THE RELATION OF JOHN B. LINDEN DEFENDANT/RESPONDENT: JOEL SCALZITTI	
<p style="text-align: center;"><b>CIVIL SUBPOENA</b>          For Personal Appearance at Trial or Hearing</p>	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):

LYNN YOUNG, HELIX WATER DISTRICT, 7811 University Avenue, La Mesa, CA 91941;  
 619-465-0585

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below  
 UNLESS you make an agreement with the person named in item 2:

a. Date: July 30, 2002 Time: 9:00 a.m. ☒ Dept.: 17 ☐ Div.: ☐ Room:  
 b. Address: El Cajon Superior Court, 250 E. Main Street, El Cajon, CA 92020

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

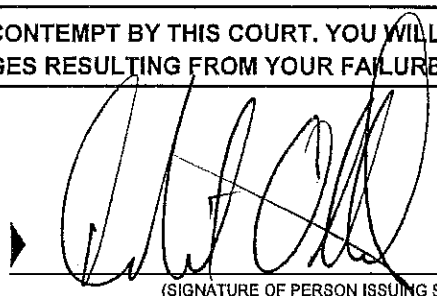
a. Name of subpoenaing party or attorney: Robert P. Ottilie b. Telephone number: 619-231-4841  
 SBN 95845

3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: July 25, 2002

Robert P. Ottilie SBN  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney for Joel Scalzitti  
 (TITLE)

(Proof of service on reverse)

PLAINTIFF/PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA IN THE RELATION OF JOHN B. LINDEN DEFENDANT/RESPONDENT: JOEL SCALZITTI	CASE NUMBER: GIE 012239
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**PROOF OF SERVICE OF CIVIL SUBPOENA  
FOR PERSONAL APPEARANCE AT TRIAL OR HEARING**

1. I served this *Civil Subpoena for Personal Appearance at Trial or Hearing* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees (*check one*):

(1) ☐ were offered or demanded  
and paid. Amount: ..... \$ \_\_\_\_\_

(2) ☐ were not demanded or paid.

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

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b. ☐ California sheriff or marshal.

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e. ☐ Exempt from registration under Business and Professions Code section 22350(b).

f. ☐ Registered professional photocopier.

g. ☐ Exempt from registration under Business and Professions Code section 22451.

h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_

(SIGNATURE)

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:

\_\_\_\_\_

(SIGNATURE)

1 ROBERT P. OTTILIE (Bar No. 95845)  
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2 San Diego, CA 92101  
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7 Attorneys for Defendant  
8 JOEL SCALZITTI

9  
10  
11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SAN DIEGO-EAST COUNTY DIVISION

13 PEOPLE OF THE STATE OF  
14 CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

15 Plaintiffs,

16 v.

17 JOEL SCALZITTI

18 Defendants.

19 AND ALL RELATED CROSS  
20 ACTIONS

CASE NO. GIE 012239

TRIAL BRIEF NO. 2 RE:

CONSTITUTIONAL ISSUES

Judge: William J. Howatt  
Dept: 17  
Trial date: July 30, 2002

21  
22 I

23 INTRODUCTION

24 For purposes of trial, this court bifurcated constitutional issues raised by Defendant's  
25 Answer. In his original Answer, by way of his Eleventh Affirmative Defense Defendant Scalzitti  
26 had contended that any requirement limiting candidacy for position as Director of the Helix Water  
27



1 District would violate the rights of residents to equal protection under the law, as provided in the  
2 California and United States Constitutions.

3 Pursuant to CCP §472 (amendment as a matter of course), Scalzitti filed his First Amended  
4 Answer on July 17, 2002 adding a Thirteenth Affirmative Defense, citing section 22 of Article 1 of  
5 the California Constitution which provides, "the right to vote or hold office may not be conditioned  
6 by a property qualification."

## 7 8 II

### 9 FACTUAL BACKGROUND

10 At the continued trial on July 30 and/or July 31, 2002, defendant may produce some  
11 additional facts with respect to the composition of the Helix Water District, its responsibilities, and  
12 the impact it has on users, property owners and non-owners. However, the parties have already  
13 stipulated to the admissibility of Exhibits 9 and 10, and those have been accepted by the court into  
14 evidence. Those will provide the principal facts as they relate to the constitutional issues.

15 Exhibit 9 is the Helix Water District website. It provides an excellent background on the  
16 District, but more importantly describes its governance, water ownership, service area, mission  
17 statement, functions, and customer base. It also describes, in detail, how revenues are generated,  
18 who pays fees, who receives water, and the rate structure in the district.

19 Exhibit 10 is a document dated May 1, 2002 prepared by Mark S. Weston, general manager  
20 of the Helix Water District. He has been identified as a witness, but his testimony may come in  
21 through this document which is a response by the Helix Water District to a Request for Information  
22 generated by the San Diego LAFCO (Local Agency Formation Commission). This provides  
23 additional facts that have a bearing on the two constitutional issues that will be addressed by this  
24 court in that portion of the trial.

25 The two principal factual issues that this court will have to determine in resolving the equal  
26 protection issue, are the scope of this irrigation district's activities and whether its activities,  
27

1 financial practices and revenue generating mechanisms impose a burden on landowners that is  
2 significantly disproportionate to that imposed upon non-landowners.

### 3 4 III

#### 5 WATER CODE SECTION 21100 DENIES EQUAL 6 PROTECTION OF THE LAWS BOTH TO CANDIDATES 7 FOR OFFICE AND THE VOTERS WHOSE CHOICES 8 FOR THE POSITION OF DIRECTOR ARE LIMITED

9 A The right to Hold Office And the Concurrent Right of Electors to Be Able to Vote For  
10 the Most Qualified Candidate, is a Fundamental Right and the "Compelling Interest"  
11 Test Should Be Applied To Any Restriction On the Right to Hold Office

12 The United States Supreme Court has held that the "strict scrutiny" analysis must be applied  
13 in an equal protection analysis if the classification has a "real and appreciable impact" upon the  
14 quality, fairness and integrity of the electoral process. *Bullock v. Carter* (1972) 405 US 134, 144.

15 A number of cases have therefore held that a strict scrutiny test must apply in analyzing a law  
16 which would require the payment of a filing fee as a precondition to having access to the ballot  
17 (*Bullock v. Carter*, supra, 405 US 134, 144; *Knoll v. Davidson* (1974) 12 Cal.3d 335, 345), to certain  
18 durational residence requirements for candidacy (*Johnson v. Hamilton* (1975) 15 Cal.3d 461;  
19 *Thompson v. Mellon* (1973) 9 Cal.3d 96, 101-102; *Zeilenga v. Nelson* (1971) 4 Cal.3d 716, 720-  
20 723), and to a statute reserving the top place on the ballot to incumbents (*Gould v. Grubb* (1975)  
21 14 Cal.3d 661, 670-672).

22 The limitation on candidacy for a position on the Board of Directors of the Helix Water  
23 District has a significant impact on both the quality and the fairness of the electoral process. Not  
24 only does it deny non-landowner voters the right to run for office and make decisions for the district,  
25 it limits the options that will be presented to landowners and non-landowners alike in the actual  
26 election. The choice of the voters is confined to a limited number of people. The pool of qualified  
27 candidates is reduced. As the California Supreme Court concluded in *Choudhry v. Imperial*

1 | *Irrigation District*, the restriction involved in Water Code Section 21100 in some respects is *more*  
2 | *pervasive* than those considered in the several election cases cited above, "because here the potential  
3 | candidate is entirely excluded from the ballot on the ground that [he or she] is not a freeholder, and  
4 | neither the payment of a fee, the fulfillment of a durational residence requirement nor the  
5 | willingness to allow the placement of [his or her] name on the ballot below that of the name of the  
6 | incumbent can qualify him as a candidate." 17 Cal.3d 660 at 665.

7 |  
8 | **B. Most Election Decisions Invalidate Property Requirements**

9 | There are few cases (with the notable exception of *Choudhry v. Imperial Irrigation District*,  
10 | *supra*) that address the issue of property qualifications to *run for office*. Most of the decisions  
11 | address statutes that *limit the right to vote*.

12 | The United States Supreme Court has considered, and struck down, a number of statutes  
13 | requiring property qualifications for voting in special purpose districts. The notable exceptions for  
14 | that trend are *Salyer Land Co. v. Tulare Water District* (1973) 410 US 719, and *Ball v. James* (1981)  
15 | 451 US 355. Both will be addressed below.

16 | The United States Supreme Court has invalidated property requirements for voters in a school  
17 | district election (*Kramer v. Union School District* (1969) 395 US 631, 632) and elections to approve  
18 | the issuance of bonds for the construction of a city library *Hill v. Stone* (1975) 421 US 289, 297),  
19 | revenue bonds for the use of a municipal utility district; (*Cipriano v. City of Houma* (1969) 395 US  
20 | 701, 705-706) and general obligation bonds to finance municipal improvements (*Phoenix v.*  
21 | *Kolodziejski* (1970) 390 US 204).

22 | In *Burry v. Embarcadero Municipal Improvement District* (1971) 5 Cal.3d 671, the  
23 | California Supreme Court held that a statute imposing a property qualification for voting in a  
24 | municipal improvement district was invalid because the district exercised powers normally held by  
25 | a municipal government. A "strict scrutiny" test applied.

1 In *Choudhry v. Imperial Irrigation District* (1976) 17 Cal.3d 660, the California Supreme  
2 Court noted the central theme of these cases resolved by both the United States and California  
3 Supreme Court cases:

4 "The consistent theme of these cases is that in order to deny the  
5 franchise to some voters the excluded class must be *substantially less*  
6 *affected by the results of the election* than those who are entitled to  
7 vote," 17 Cal.3d at 666.

7 C. In *Choudhry v. Imperial Irrigation District*, the California Supreme Court Invalidated  
8 as Unconstitutional Under the Equal Protection Clause of the California and United  
9 States Constitutions Water Code Section 21100 As Applied To the Imperial Irrigation  
10 District

10 In *Choudhry v. Imperial Irrigation District* (1976) 17 Cal.3d 660, the California Supreme  
11 Court invalidated as unconstitutional Water Code Section 21100 as applied to the Imperial Irrigation  
12 District to the extent it provided that one must be a "freeholder" of the district in order to run for a  
13 position on the board of directors of that irrigation district.

14 Choudhry was a potential candidate for director of the Imperial Irrigation District. The other  
15 two plaintiffs were voters in the district. None owned real property. All three challenged the  
16 constitutionality of Water Code Section 21100 (requiring landownership to run for the board of  
17 directors) as a violation of Article 1, Section 22 of the California Constitution and the equal  
18 protection clauses of both the United States Constitution and the California Constitution (the United  
19 States Constitution 14<sup>th</sup> Amendment; California Constitution, Article 1, Section 7). In the Imperial  
20 Irrigation District, in contradistinction to the Helix Water District, the district actually enforced  
21 Water Code Section 21100 and would not accept papers from prospective candidates who could not  
22 prove they owned land in the district.

23 The court noted that neither the respondent (district) nor the real parties in interest opposed  
24 petitioner's assertion that section 21100 was unconstitutional. This, as the court noted, virtually  
25 eliminated all adversary aspects to the litigation. However, the Association of California Water  
26 Agencies, an organization that at the time represented over half of the state's 104 irrigation districts,  
27  
28

1 did file an amicus brief defending the constitutionality of the section. The Secretary of State  
2 appeared in support of the petitioners.

3 The court reviewed the broad powers of the irrigation district, most of which were authorized  
4 by the California water code including, at that time, conducting the affairs of the district (§31285),  
5 supplying and delivering water for both irrigation and domestic use (§22075, et seq.), fire protection  
6 (§22077), and the power to store, treat and salvage water (§22078). The court noted the legislative  
7 empowerment of these districts to generate electricity if they chose, provide for drainage made  
8 necessary by irrigation, for the construction, maintenance and operation of flood control and sewage  
9 disposal and for the construction, maintenance and operation of recreational facilities in connection  
10 with dams, reservoirs and other property the control of these districts (§s 22115 - 22122; §s 22095-  
11 22099; § 22160; § 22162; § 22176; § 22185).

12 The supreme court [17 Cal.3d 6690 at 663] went on to note that under the legislative scheme  
13 in California this district had general powers such as eminent domain and the right to enter into  
14 contracts and to sell or lease its property (§s 22456, 22230, 22500), to make assessments on land (§  
15 22950) and to derive revenue from charges for the service it provides, such as water, electric, power,  
16 sewage disposal, and the operation of a recreational facility (§s 22252, 22115 and 22117, 22179,  
17 22186). The court noted that these districts had the authority to substitute such charges for  
18 assessments (§ 22280), pay for its bonds from revenues other than assessments (§s 25240, 25241),  
19 and to call for bond elections (§ 21925(a)).

20 The court found that the irrigation district covered 501,265 acres, supplied all of the water  
21 for Imperial County and serviced a county that had a population of 74,000 people (67% of whom live  
22 in urban areas). [17 Cal.3d at 663-664] With this background the court concluded:

23 "In our view, the pervasive powers exercised by this irrigation district  
24 over all residents within its vast area, whether or not they are  
25 landowners, are such that neither the right to vote nor the right to  
26 serve as a director may be confined to freeholders." 17 Cal.3d at 666  
27 [emphasis added]

1 The court considered a number of United States Supreme Court cases (including the *Salyer*  
2 case discussed below) and correctly interpreted those United States Supreme Court decisions as  
3 follows:

4 "The consistent theme of these cases is that in order to deny the  
5 franchise to some voters *the excluded class must be substantially less*  
6 *affected by the results of the election than those who are entitled to*  
7 *vote. In applying this rule, it was held that all voters have an*  
8 *important interest in the benefits of adequate service and favorable*  
9 *rates of a utility district (Cipriano), that both property owners and*  
10 *those who do not own property are called upon either directly or*  
11 *indirectly to pay for the improvements acquired from the proceeds of*  
12 *bonds (Phoenix, Hill), and that those who do not own property may*  
13 *have as direct an interest in school affairs (Kramer) or in a library*  
14 *(Hill) as those who do."* (17 Cal.3d 660 at 666) [emphasis added]

15 The court specifically addressed the case of *Salyer Land Co. v. Tulare Water District* (1973)  
16 410 US 719. In that case the United States Supreme Court had held that a water storage district did  
17 not exercise normal government authority, and that its actions disproportionately affected  
18 landowners because the economic burdens of its operations were confined to landowners and thus  
19 it was not a denial of equal protection to withhold the right of franchise from those who did not own  
20 land.

21 In *Choudhry*, the court distinguished the irrigation district from the water district addressed  
22 by the United States Supreme Court in the *Salyer* case concluding the following:

23 "Moreover, in the present case, unlike *Salyer* the assessments against  
24 land are not the sole means by which the district's expenses are paid.  
25 The district may collect charges for the sale of domestic water,  
26 electric power, sewage disposal and other services in lieu of  
27 assessments, and such charges are paid by both landowners and  
28 those who do not own land. And, it is authorized to pay its bonds  
from revenues other than assessments. (17 Cal.3d 660 at 667)  
[emphasis added]

29 The *Choudhry* court also noted another distinction from the *Salyer* case. In *Salyer*, at that  
30 time, the legislature had not granted water district residents the right to vote. The California  
31 Supreme Court in *Choudhry* noted that the legislature had specifically granted the right to vote in  
32 irrigation districts to all residents leading the California Supreme Court to conclude as follows:

1 "Indeed, the very fact that the Legislature granted the franchise to  
2 electors who do not own land indicates that they have an appreciable  
3 stake in the affairs of the district." (17 Cal.3d 660 at 668)

4 Because the California Supreme Court concluded on equal protection grounds that § 21100  
5 was unconstitutional, insofar as it applied to candidates for director of the Imperial Irrigation District,  
6 the court did not reach the remaining question as to whether or not § 21100 violated § 22 of Article  
7 1 of the California Constitution.

8 **D. The United States Supreme Court Decisions in *Salyer, Toltec and Ball*: the United States**  
9 **Supreme Court Applies a Two-Step Test with an Emphasis On Whether or Not The**  
10 **Conduct of a Specialized District Places a Disproportionate Impact on Property**  
11 **Owners**

12 1. *Salver Land Co. v. Tulare Water District*

13 In *Salver Land Co. v. Tulare Water District*, supra, a case considered by the California  
14 Supreme Court in *Choudhry*, the United States Supreme Court was considering a scheme for electing  
15 the directors of a California Water Storage District. Under that scheme, non-landowners could not  
16 vote. As to landowners, voting power was apportioned according to assessed valuation. The district  
17 had a population of 77; most residents worked for the four corporations that farmed 85% of the land  
18 in the district.

19 The court found that this was a limited purpose district because "its primary purpose...[was]  
20 to provide for the acquisition, storage and distribution of water for farming" in the district. 410 US  
21 at 728. Significantly, the court found that the district's financial burdens could fall only on  
22 landowners in proportion to the benefits they received from the district, 410 US at 729. For this  
23 reason, the *Salver* court concluded that the water storage district, "by reason of its special limited  
24 purpose and of the disproportionate effect of its activities on landowners as a group, is the sort of  
25 exception to the [one person one vote] rule laid down in *Reynolds*...." 410 US at 728.

26 It is significant that because the *Salver* court determined that the "one person one vote" rule  
27 did not apply, it also determined that the statute in question did not have to be considered under the  
28

1 "strict scrutiny" analysis flowing from that principal, and instead could be determined by the less  
2 demanding "rational basis" test. The court then conducted a rational basis analysis and concluded  
3 that there was a rational basis for the provision in that case.

4  
5 2. Associated Enterprises, Inc. v. Toltec District (1973) 410 US 743

6 This case was decided on the same day as *Salyer*. There, the court dealt with a Watershed  
7 District which it determined to be a limited purpose district which *disproportionately affected*  
8 *landowners*. Given that determination the court considered the equal protection challenge under a  
9 rational basis test and determined that *since landowners are primarily burdened and benefitted by*  
10 *the district*, [the right to] vote may be conditioned accordingly. (410 US at 744 - 745)

11  
12 3. Ball v. James (1981) 451 US 355

13 At issue in *Ball* was the constitutionality of a requirement in a large water reclamation district  
14 in Arizona that limited voting to land ownership. An important distinction in *Ball*, from the *Salyer*  
15 case, was that in *Ball* the district exercised its statutory authority to generate and sell electric power  
16 and had become one of the state's largest suppliers of electricity. Another distinction in *Ball* was that  
17 the district delivered about 40% of its water to urban areas, as opposed to the *Salyer* district which  
18 had delivered water almost entirely for agricultural purposes.

19 As it had in *Salyer*, the United States Supreme Court in *Ball* concluded that the district did  
20 not exercise the sort of governmental powers that invoked the one person one vote principal.  
21 Significantly, and a distinction from the present case, the court noted that even the district's water  
22 functions were very narrow. In that district, the court could not own, sell or buy water.

23 In fact, in the *Ball* case, the district could not even control the use of any water it delivered.  
24 This was because all of its water was distributed according to landownership (acreage rights  
25 determined under law). Because all of the water in that district was distributed according to who  
26 owned how much land, the court also found the distinction between agriculture and urban land as  
27



1 to be of no special constitutional significance in that case. More significantly, the United States  
2 Supreme Court determined that only landowners were subject to land assessment liens to secure  
3 district bonds and subject to the district's acreage-based taxing power, and only landowners had  
4 committed capital to the district. Given this disproportionate impact of the district's activities on  
5 those who owned land, the court applied the rational basis test and concluded the voting scheme was  
6 constitutional, largely for the reasons already expressed by the court in the *Salyer* case. 451 US at  
7 371.

8  
9 **E. In *Quinn v. Millsap* the California Supreme Court Characterized Its Holdings in *Salyer-***  
10 ***Toltec-Ball***

11 In 1989, the United States Supreme Court had an occasion to characterize its holdings in the  
12 *Salyer-Toltec-Ball* trilogy of landowner voting cases. In *Quinn*, the United States Supreme Court  
13 found unconstitutional, under the equal protection clause of the 14<sup>th</sup> Amendment, a requirement for  
14 land ownership to become a member on a public board that was drafting a municipal reorganization  
15 plan that would be submitted to voters in the general election. In distinguishing the *Salyer* line of  
16 cases, the United States Supreme Court in 1989 declared:

17 "Whereas it was rational for the states in those cases to limit voting  
18 rights to landowners [citations], the 'constitutionally relevant fact'  
19 there was 'that all water delivered by [those districts was] distributed  
20 according to land ownership' [citation] the purpose of the board  
[here] however is not so directly linked with land ownership." 491  
US at 109

21 **F. *Bjornstad v. Hulse* Is the Leading California Case Subsequent to Both *Choudhry* and**  
22 **the *Salyer-Toltec-Ball* Line of Cases at the United States Supreme Court**

23 The principal California case to interpret these interesting voting cases, since the United  
24 States Supreme Court weighed in with the cases referenced above and since *Choudhry* was decided  
25 by the California Supreme Court, is the case of *Bjornstad v. Hulse* (1991) 229 Cal.App.3d 1568.  
26 That involved a water district (which Helix appears now to have become) and an action which  
27

1 challenged the constitutionality of then Water Code Section 30700.6 which restricted both voting  
2 and eligibility for membership on the district board to landowners. The trial court found in favor of  
3 plaintiffs on a constitutional challenge to those provisions, but stayed its judgment pending appeal.  
4

5 While the case was pending on appeal, the legislature amended the water code to provide for  
6 voting and board eligibility for all residents of the district, as well as non-resident landowners. The  
7 legislature also limited the powers of the district in its amendments to the code.

8 In its amendments, the legislature allowed the then sitting members of the district to retain  
9 their positions (those who had been elected according to the prior unconstitutional election process)  
10 until either the next election or until that seat became vacant.

11 When the matter was heard on appeal, the water district contended all issues were moot as  
12 a result of the legislative action which had voided the unconstitutional provisions. The court  
13 determined otherwise, both because it presented an interesting on-going issue (that may affect other  
14 districts) and because the legislature had allowed the other members of the board of directors  
15 (elected at the unconstitutional election) to remain in office rather than providing for a special  
16 election (conducted constitutionally) to replace the entire board.

17 The court in *Bjornstad* had benefit of the California Supreme Court decision in *Choudhry*  
18 and the entire line of the United States Supreme Court cases addressed above. The court correctly  
19 determined that the issue was whether or not that particular water district was akin to the districts  
20 in *Saylor*, *Toltec* and *Ball*, which impacted the landowners disproportionately, making landowner  
21 only voting (and board membership) constitutionally permissible.

22 The court concluded that the statute in question was unconstitutional under the equal  
23 protection provisions of the California and United States Constitutions.

24 First, the court agreed with the petitioners that the district was not as limited a district as the  
25 districts in *Saylor*, *Toltec* and *Ball* where activities disproportionately affect "landowners as a  
26 group". The court found significant that the legislature had amended the statute to allow all residents  
27

1 to vote, which the *Bjornstad* court found to be "a powerful recognition that [the district] does not  
2 engage in activities disproportionately affecting landowners as a group." 229 Cal.App.3d at 1585.

3 The court then issued its holding:

4 "A few general observations bolster our view. Sierra's primary  
5 purpose is to provide domestic water and sewer services. This aligns  
6 with a county water district's primary purpose of "furnishing water to  
7 its inhabitants. (*Glenbrook Development Co. v. City of Brea* (1976)  
8 253 Cal.App.2d 267, 274 [61 Cal.Rptr. 189], italics added.) As noted  
9 without hesitation in *Johnson v. Lewiston Orchards Irr. Dist.* (1978)  
10 99 Idaho 501 [584 P.2d 646] - a case which invalidated a landowner-  
11 only voting scheme for a domestic water district - "[d]omestic water  
12 service, of course, substantially affects not just landowners but  
13 all...residents." (584 P.2d at p. 650; accord, *Wright v. Town Bd. of*  
14 *Carlton* (1973) 41 A.D.2d 90 [342 N.Y.S.2d 577]). Furthermore, the  
15 constitutionality relevant facts recognized in *Ball* were that the  
16 district there distributed all of its water according to land ownership,  
17 and could not control the use of any water it delivered. (*Ball, supra*,  
18 451 U.S. at pp. 367-368 [68 L.Ed.2d at pp. 160-161]; see also *Quinn*  
19 *v. Millsap, supra* 491 U.S. at p. 109 [105 L.Ed.2d at p. 901].)"

20 The court, noting that all residents were impacted by the conduct of the district, and that the  
21 revenues were not generated or determined as a result of land ownership concluded:

22 "Therefore, [all of the districts] residents have a vital stake in their  
23 district and cannot be denied a voice in its affairs." 229 Cal.App.3d  
24 at 1585

#### 25 IV

#### 26 THE RESTRICTION ON THE RIGHT TO RUN FOR 27 OFFICE IN THE HELIX WATER DISTRICT VIOLATES THE 28 EQUAL PROTECTION CLAUSE BECAUSE OF THE SCOPE OF SERVICES NOW PROVIDED BY THE DISTRICT AND BECAUSE THE ACTIVITIES OF THE DISTRICT DO NOT IMPOSE A DISPROPORTIONATE IMPACT ON PROPERTY OWNERS

Even if this court were to conclude that the Helix Water District is a limited entity akin to  
the *Salyer-Toltec-Ball* line of cases, and applied a rational basis test to this equal protection  
challenge, it would still have to conclude that there is no rational basis for the statutory scheme  
challenged here.

1 Unlike those other cases, this statutory restriction does not affect the right to vote. It is on  
2 the right to hold office in an irrigation district where the legislature has specifically provided that all  
3 residents may vote.

4 By providing that all residents may vote, the legislature has made a "powerful" recognition  
5 that all residents are impacted by this district's affairs. What, under those circumstances, would be  
6 the rational basis for requiring land ownership to hold office? If the legislature has determined that  
7 everyone should get to vote, because all residents are impacted by the district's affairs, then there  
8 can be no rational basis for providing a restriction on the right to run for the board. Even landowners  
9 are prejudiced by a landowner requirement to serve on the board, because this requirement restricts  
10 candidacy to what may be approximately half of the population of the district. Land owners and non-  
11 landowners alike are prejudiced by losing the pool of all qualified candidates.

12 However, a "strict scrutiny" standard should apply. As exhibits 9 and 10 demonstrate, this  
13 is not a specialized district. It affects 31,327 acres. It serves 235,000 residents. It has 54,000 service  
14 locations.

15 Further, the district has changed since its inception. It is not an agricultural district. Mr.  
16 Linden will be hard pressed to identify farms in the district. Almost all of its water is sold to urban  
17 users.

18 Its revenue is generated from charges based on use, not ownership. The district owns water.  
19 It procures water. It sells water.

20 The Helix Water District does not limit voting based on property ownership. Rates are not  
21 set by property ownership. Access to water is not determined by property ownership. Water is not  
22 distributed based on property ownership. Rates are not indexed according to property ownership.

23 In fact, as the court will see from a review of the exhibits, Helix bases its rates charged on  
24 usage only. There is a penalty paid for larger use - the highest rates are charged to the biggest users.  
25 This is completely opposite of how an irrigation districts that support farming operate.

1 The users in this district have no other option for their water. They have to obtain it from  
2 their supplier.

3 Unlike the district in *Ball*, the district buys water, sells water and owns water.

4 It does many things beyond water ownership. It treats all water for consumption. Every user  
5 of Helix Water District water will soon have fluoride in their water. This was decided as the result  
6 of a contract signed by the Helix Water District Board of Directors. Should non-landowners who  
7 are forced to drink the fluoridated water, be limited in the election of directors to landowners only,  
8 or should everyone have a chance to participate when such an important decisions are being made?

9 The Helix Water District maintains security for its holdings. It installs and provides water  
10 for fire hydrant systems and for street service and building service. It has conducted classroom  
11 education programs for over 30 years. It participates in the Water Conservation Garden, a JPA with  
12 other water agencies to promote landscaping and conservation concepts.

13 The district provides recreational facilities at numerous locations, including fishing programs  
14 and boat docks. In fact, within the district the largest recreational facilities for residents are those  
15 provided by the district. The district built a community park on top of the Grossmont Reservoir.

16 The evidence shows that this is not a narrow district. It exercises broad powers, and most  
17 significantly for constitutional purposes, there is no disproportionate impact at all, between non-  
18 owners and owners of land.

19 This case is controlled by the California Supreme Court decision in *Choudhry*, and the  
20 appellate court's decision in *Bjornstad*.

**SECTION 22 OF ARTICLE 1 OF THE  
CALIFORNIA CONSTITUTION PROHIBITS  
PROPERTY QUALIFICATIONS TO HOLD OFFICE**

Section 22 of Article 1 of the California Constitution provides:

"The right to vote or hold office may not be conditioned by a property qualification."

California Water Code Section 21100 provides, in part:

"Each director, except as otherwise provided in this division, shall be a voter and a landowner in the district...that he or she represents at the time of his or her nomination or appointment and through his or her entire term...."

This is the requirement Mr. Linden relies upon in seeking to remove Mr. Scalzitti from office. It is an unconstitutional under § 22 of Article 1.

Mr. Linden seeks support for the enforcement of Water Code Section 21100 in the United States Supreme Court of *Ball v. James* (1981) 351 US 355. However, the *Ball* case is an equal protection case (discussed above). It did not even address the issue of property qualifications for holding office. It addressed a weighted "voting" system in Arizona on an equal protection challenge. *Ball's* applicability to this case was addressed above, in the discussion of the equal protection defense that has been asserted here. For reasons identified above, *Ball* does not help §21100 survive a challenge under section 22 of Article 1 of the California Constitution.

Section 22 of Article 1 of the California Constitution is not the equal protection clause of the California Constitution. It is a separate constitutional provision enacted by the people of the State of California.

Rights guaranteed by the California Constitution are not dependent on those guaranteed by the United States Constitution. Article 1, Section 21 of the California Constitution.

Dated: 7-17-02

  
ROBERT P. OTILIE  
Attorney for JOEL SCALZITTI

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CCP §472

2

Water Code Section 21100

3, 5, 8, 12, 13



PROOF OF SERVICE

People of the State of California on the Relation of John B. Linden v. Scalzitti  
San Diego Superior Court Case No. GIE 012239

I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to this action; I am employed in the County of San Diego, CA, in which county the within-mentioned mailing occurred. My business address is 550 West "C" Street, Suite 1600, San Diego, California 92101. On July 17, 2002 I served the foregoing document described as

**Answer of Joe Scalzitti to Complaint in Quo Warranto for Ouster**

on interested parties in this action by placing \_\_\_ the original; X a true copy thereof enclosed in a sealed envelope addressed as follows:

Kenneth S. Klein  
Gregory V. Moser  
John C. Lemmo  
Foley & Lardner  
402 W. Broadway, 23<sup>rd</sup> Floor  
San Diego, CA 92101  
619-234-6655  
619-234-3510 (fax)

Steve Smith, Esq.  
Best, Best & Krelger  
402 W. Broadway, 13<sup>th</sup> Floor  
San Diego, CA 92101

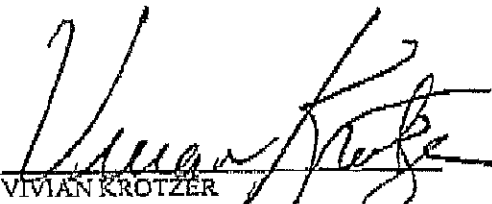
Timothy Barry  
County Counsel  
1600 Pacific Highway  
San Diego, CA 92101

**BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope addressed as above, with postage thereon fully prepaid in the United States mail, at San Diego, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on the same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business.

**BY FAX:** I transmitted a copy of the foregoing document(s) this date via facsimile to the fax numbers shown herein pursuant to Rule 2003(3)

X **BY PERSONAL SERVICE/KNOX ATTORNEY SERVICE** Delivered during business hours to receptionist

Executed on July 17, 2002 at San Diego, California.

  
VIVIAN KROTZER

STEPHEN THUNBERG  
Clerk of the Superior Court

OCT 16 2002

D. Munshower, Deputy  
By: R. Adams, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO  
EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: GIE-012239  
ex rel. JOHN B. LINDEN, )  
Plaintiff, )  
VS. )  
JOEL SCALZITTI, )  
Defendant. )

DECISION OF THE COURT UPON THE  
PLAINTIFF'S MOTION FOR JUDGMENT IN THE  
QUO WARRANTO ACTION BEFORE THE  
COURT.

PREFACE

JOEL SCALZITTI (hereinafter referred to as "SCALZITTI") was elected to a position as a Member of the Board of Directors of the Helix Water District (hereinafter referred to as "DISTRICT"). Upon application, JOHN B. LINDEN (hereinafter referred to as "LINDEN") was granted "Leave To Sue" in an action *In Quo Warranto* by the Attorney General of the State of California in the name of the People of the State of California against SCALZITTI. The purpose of the litigation is to determine whether or not SCALZITTI is entitled to continue to hold and exercise the office of Member of the Board of Directors of

1 the DISTRICT or should be ousted from this office and fined pursuant to Code of Civil Procedure section  
2 809.

3 The Complaint, entitled "VERIFIED COMPALINT IN QUO WARRANTO FOR OUSTER" was filed  
4 pursuant to the Leave to Sue on May 30, 2002.

5  
6 PROCEDURAL HISTORY OF THE CASE

7 The Complaint having been filed on May 30, 2002 the Court held an *ex parte* hearing on June 4,  
8 2002 was held to establish the procedures to be followed and set hearing dates. The Court set the date  
9 of June 24, 2002 for the commencement of the evidentiary hearing in this action. A General Denial  
10 proposed by counsel for SCALZITTI was ordered to be filed with the Court on or before June 7, 2002.

11 The evidentiary hearing was commenced on June 24, 2002. Testimony was presented and  
12 documentary evidence introduced. As the matter was not able to be completed in a single day as  
13 anticipated, the hearing was continued to July 17, 2002 for the presentation of additional evidence. On  
14 June 28, 2002 at the request of SCALZITTI the hearing was continued to July 30, 2002. The hearing  
15 proceeded on July 30, 2002. Further testimonial and documentary evidence was presented during the  
16 course of the hearing. The hearing was not completed on July 30<sup>th</sup> and was continued to the next day,  
17 July 31<sup>st</sup> for presentation of the final testimonial evidence, additional documentary evidence and the  
18 arguments of counsel upon LINDEN's Motion for Judgment, both Plaintiff and Defendant having rested  
19 their case.

20 At the conclusion of the oral arguments of counsel and at the request of counsel for SCALZITTI  
21 the Court continued the matter to September 6, 2002 in order to allow presentation of additional briefing.  
22 SCALZITTI's supplemental briefing was to be filed with the Court on or before August 26<sup>th</sup> and LINDEN's  
23 supplemental and responsive briefing was to be filed on or before September 6<sup>th</sup> at which point the Court  
24 would take the matter under submission for decision. Counsel for SCALZITTI requested additional time  
25 within which to file his supplemental briefing. Over the objection of LINDEN's counsel the Court granted  
the request for additional time to file the supplemental brief. Defendant was given until September 16,

1 2002 in which to file his supplemental brief. The brief was filed on September 17<sup>th</sup>. Additional time was  
2 also given to LINDEN in which to file his supplemental brief. The brief was received and filed by the  
3 Court on September 30<sup>th</sup>. The Court took the matter under submission for decision on September 30,  
4 2002.

#### 5 INTRODUCTION

6  
7 President Theodore Roosevelt once said, "It is character that counts in a nation as in a man." He  
8 also observed that "A lie is no more to be excused in politics than out of politics." It is unfortunate that this  
9 Court must address both the character and the mendacity of SCALZITTI to reach a conclusion in the  
10 present matter.

11 It may well be suggested that the present action is without the jurisdiction of the Court as it is a  
12 "political question" which the courts have traditionally eschewed. Initially in the decision of the United  
13 States Supreme Court in the case of *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 2 LEd. 60,  
14 questions which are by their very nature political are not questions for the court. (*Ibid.*, at page 170).  
15 However, it was *Marbury v. Madison*, *supra*, that clearly established that questions of constitutional  
16 magnitude and statutory construction are questions justiciable and not simply characterized as political.  
17 Here, too, this Court addresses not the electorate's choice of the candidates but rather the qualifications  
18 of the individual candidate to fulfill the requirements of office.

19 These matters are not without precedent. In San Diego County there have been previous  
20 instances in which current office holders are challenged as to the underlying qualifications for or the right  
21 to hold elective office. Two cases involving the Office of District Attorney for the County of San Diego  
22 come to mind: *People of the State of California, ex rel. Sweet v. Ward* (1895) 107 Cal. 236 and *People of*  
23 *the State of California, ex rel. Webb v. Marsh* (1916) 30 Cal.App. 424.

24 In this action the People of the State of California through LINDEN, as Realtor, seeks the removal  
25 of SCALZITTI from his position as an elected member of the Board of Directors of the Hellx Water District  
from Division 1. It is alleged by LINDEN that SCALZITTI has failed to qualify for this office upon two

1 separate and exclusive grounds: (1) SCALZITTI was not at all times a resident of the defined area of  
2 Division 1; and/or (2) SCALZITTI was not at all times a landowner within the geographical description of  
3 the Helix Water District.

4 This action proceeds *in quo warranto*. LINDEN has received a right to sue letter from the  
5 Attorney General of the State of California and is acting, therefore, on behalf of and in the name of the  
6 People of the State of California.

7 The Court has bifurcated the issues and allegations set forth above. The Court will first address  
8 the question of SCALZITTI'S continuous residence within Division 1 of the Helix Water District. Should  
9 the Court determine that SCALZITTI is qualified by virtue of continuous residence within Division 1 at all  
10 relevant times the Court will next determine whether or not SCALZITTI has been a landowner within the  
11 Helix Water District at all relevant times. The legal analysis of the question of the Constitutionality of the  
12 Helix Water District's requirement of land ownership is to be addressed at a later date.

#### 13 14 AN ACTION IN QUO WARRANTO

15 An action *in quo warranto* is an appropriate means by which to test the qualifications of an  
16 individual to hold public office. California Code of Civil Procedure section 803 provides for such an  
17 action. Section 803 provides:

18 \*An action may be brought by the attorney-general, in the name of the  
19 people of this state, upon his own information, or upon a complaint of a  
20 private party, against any person who usurps, intrudes into, or unlawfully  
21 holds or exercises any public office, civil or military, or any franchise, or  
22 against any corporation, either de jure or de facto, which usurps, intrudes  
23 into, or unlawfully holds or exercises any franchise, within this state. And  
24 the attorney general must bring the action, whenever he has reason to  
25 believe that any such office or franchise has been usurped, intruded into,

1 or unlawfully held or exercised by any person, or when he is directed to  
2 do so by the governor."

3 The remedy *in quo warranto* is the appropriate and only procedure by which to  
4 determine the right to a public office where a *de facto* officeholder holds the office. See  
5 *Klose v. Superior Court* (1950) 96 Cal.App.2d 913, 917-918; *Ops. Cal. Atty. Gen. Number*  
6 *02-306 (May 10, 2002)*.

7 Upon application to the Attorney General of the State of California, Leave To Sue  
8 was granted to address two questions:

9 1. Is Joel Scalzitti unlawfully holding the office of director of the Helix Water  
10 District due to a failure to satisfy the qualification of being a landowner within  
11 the district?

12 And,

13 2. Is Joel Scalzitti unlawfully holding the office of director of the Helix Water  
14 District due to a failure to satisfy the qualification of being a resident within  
15 the division of the district from which he was elected?

16 The Attorney General determined that each of these two questions, based upon preliminary inquiry  
17 required judicial resolution. See *Ops. Cal. Atty. Gen., Number 02-306, (May 10, 2002)* at pages 1-2.

18 The genesis of an action *in quo warranto* is in the common law and is now statutorily provided by  
19 section 803 of the Code of Civil Procedure, noted above. In its broadest sense it is a formal judicial  
20 inquiry into the legitimacy or legality of the claim to an elective officer by the current officeholder. See  
21 *American Jurisprudence, Second Edition, "Quo Warranto"* by Anne M. Payner, J.D. It is, therefore, used  
22 primarily to question the authority of the claimant asserting a right to public elective office.

23 The Attorney General must conclude that the issuance of Leave to Sue *In Quo Warranto* is  
24 required to have a judicial resolution of a substantial question of fact or law and, if so, would the overall  
25 public interest be served by allowing the action to proceed. In this case, by granting the Leave to Sue, the

1 Attorney General has determined that these factual and legal questions are not only ripe for  
2 determination, but also that the public interest is served by a judicial resolution of the issues.

3 The Opinion of the Attorney General concludes:

4 "In the present circumstances, Linden has submitted a verified  
5 statement of facts, supported by declarations signed under penalty of  
6 perjury, indicating Scalzitti's residence for purposes of section 21100 to  
7 be in Division 2 rather than Division 1 of the District. Scalzitti has not  
8 presented a verified statement of facts as to the issue of his residence.  
9 Accordingly, we believe substantial issues of fact and law have been  
10 presented concerning Scalzitti's residence at the time of his election and  
11 during his term of office for purposes of section 21100.

12 "We have generally viewed the existence of a substantial  
13 question of fact or law as presenting a sufficient public purpose to  
14 warrant the granting of leave to sue in quo warranto. In such cases,  
15 leave will be denied only in the presence of other overriding  
16 considerations. . . . No such considerations are present here. Rather,  
17 both the public and the District have an interest in a judicial resolution of  
18 this matter.

19 "Accordingly, the application for leave to sue in quo warranto is  
20 GRANTED." (Ops. Cal. Atty. Gen., Number 02-306, supra at pages 5-6).

21 In a quo warranto proceeding such as is before this Court, SCALZITTI has both the burden of  
22 producing evidence and the burden of proof to demonstrate that he lawfully holds his office. (See *People*  
23 *ex rel. Stephenson v. Hayden* (1935) 9 Cal.App.2d 312). In fact, the ordinary rules of pleading and proof  
24 are reversed from a normal civil proceeding. Here the Realtor (LINDEN) is not required to show or prove  
25 anything. Rather it is the responsibility of the defendant (SCALZITTI) to establish his lawful claim to the  
office of Director as well as his right to exercise the authority of that office. (See *Smith v. City of San Jose*

1 (1950) 100 Cal.App.2d 57; *People ex rel. Paganini v. Town of Corte Maria* (1950) 97 Cal.App.2d 726.

2 See also, 53 Cal.Jur.3d, *Quo Warranto*, section 3.)

### 3 4 MOTION FOR JUDGMENT

5 At the conclusion of the presentation of testimony and documentary evidence, the Reator  
6 LINDEN moved the Court for Judgment. SCALZITTI has mischaracterized this motion as a Motion for  
7 Nonsuit. It is not a Motion for Nonsuit. It is a Motion for Judgment. (See *Code of Civil Procedure* section  
8 631.8).

9 Section 631.8 permits either party to an action to move for a judgment at the close of the other's  
10 case. Ordinarily it is the defendant who makes this motion at the close of the plaintiff's case. However,  
11 since this case *in quo warranto* reverses the procedure and requires the defendant to proceed first, the  
12 same principles as would apply, with appropriate adaptations. (*People v. Mobil Oil Corporation* (1983)  
13 143 Cal.App.3d 261, 267-268 footnote 6.)

14 Upon the making of a Motion for Judgment the Court is required to weigh and consider all of the  
15 evidence. In that process the Court may refuse to believe witnesses and draw conclusions that are at  
16 odds with any expert opinions that are offered during the course of the proceedings. And, if supported by  
17 substantial evidence, the grant of a Motion for Judgment will not be reversed. (See *Roth v. Parker* (1997)  
18 57 Cal.App.4<sup>th</sup> 542; *Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4<sup>th</sup> 1245).

19 The determination of the Court may act as a final adjudication of the matter if judgment is granted  
20 pursuant to the motion. (*Code of Civil Procedure* section 631.8(c)). It is the express purpose of this  
21 Motion to dispense with the need for the moving party to produce evidence if the opposing party has failed  
22 to meet his burden of producing evidence and burden of proof. (See *Roth v. Parker*, 57 Cal.App.4<sup>th</sup>,  
23 *supra*; *People v. Mobil Oil Corporation*, 143 Cal.App.3d, *supra* at pages 267-272; and, *Heap v. General*  
24 *Motors Corporation* (1977) 66 Cal.App.3d 824).



**QUALIFICATIONS REQUIRED FOR THE OFFICE OF DIRECTOR  
OF THE HELIX WATER DISTRICT**

As was determined in the Opinion of the Attorney General and now by this Court, the Helix Water District is established as an "Irrigation District" pursuant to California Water Code sections 20500 et seq. (See *Ops. Cal. Atty. Gen.* 02-306, *supra* at page 2). Subsequent to its formation as an Irrigation District, the California State Legislature in 1972 authorized the District to delete the word "Irrigation" from its appellation and operate under the name "Helix Water District". (*Cal. Water Code, section 20980.6*).

The District is organized in five separate geographic "Divisions". There is an elective position of Director for each of the Divisions. Each Director is required to be both a "landowner" of the District and a "resident" of the Division in which he or she resides. Residency in the geographic division from which one is elected as a Director is required throughout the entirety of the term of office for which the individual was elected. (See *Cal. Water Code section 21100; Ops. Cal. Atty. Gen., supra*). Specifically, *Cal. Water Code section 21100(a)* provides:

"Each [Irrigation district] director . . . shall be a voter and a *landowner* in the district and a *resident* of the division that he or she represents at the time of his or her nomination or appointment and *through his or her entire term*. . . ." [Emphasis is added].

**SCALZITTI'S FAILURE TO MEET HIS BURDEN OF PROOF**

As a procedural matter, it was and is the responsibility of SCALZITTI to establish the requirements for the Office of Director of the Helix Water District. SCALZITTI argued strenuously to have this Court hold that the Office is that of a Director of a Water District and not that of a Director of an Irrigation District. SCALZITTI has failed not only to meet his burden of producing evidence on this issue but has also failed to meet his burden of proof on this issue. As noted above, the Helix Water District, although operating under the appellation of a Water District is in fact and law an Irrigation District with all the requirements of office holders attendant thereto.

**1. SCALZITTI HAS FAILED TO MEET HIS BURDEN OF PROOF THAT HE WAS A CONTINUOUS RESIDENT OF THE DIVISION FROM WHICH HE WAS ELECTED DIRECTOR THROUGHOUT THE ENTIRETY OF HIS TERM OF OFFICE:**

It was clearly established through the testimony of SCALZITTI himself that it is his claim that he maintained, throughout his term of office, his residence at 1063 1/2 Sumner Avenue. The residency requirement of an office holder is one which extends throughout the entire term of office. If, then, at any point in time SCALZITTI's residence, during the term of office for which he was elected Director, was outside of the Division from which he was elected, his office must declared vacant and his position forfeit. Cal. Water Code, section 21100.

The credible evidence and reasonable inferences drawn therefrom is irrefutable that SCALZITTI did not intend nor have physical connection with 1063 1/2 Sumner Avenue as his place of residence between December 8, 2000 and December, 2001. As such, the irrefutable credible evidence and the reasonable inferences drawn therefrom is that SCALZITTI did not reside, maintain his residence, within the Division from which he was elected throughout the entirety of his term of office.

In summary, the evidence supporting this conclusion is:

- Between November 2000 and January 2002 SCALZITTI filled out and signed five separate documents which, under oath, identified his residence as other than 1063 1/2 Sumner. (See Exhibits 12 [a voter registration change from "1063" Sumner Avenue to 975 Spinel Street on April 4, 2001], 43 [Fair Political Practices Commission Form 460 filed on July 31, 2001 identifying (under penalty of perjury) his address as 975 Spinel Avenue] and 45 [a series of Department of Motor Vehicles forms, registrations and driver's license applications dated July 9, 2001; July 27, 2001; November 28, 2001; December 31, 2001; April 30, 2002 and July 31, 2002 each of which indicating his residence address at 10050 Country View Road].
- Prior to being sworn into office SCALZITTI moved out of the 1063 1/2 Sumner residence and changed his California Driver's License address to 10050 Country View Road. 10050 Country View Road is located within Division 2 and not the Division 1 from which SCALZITTI was

1 elected. The change of address was under penalty of perjury and remained his mailing and  
2 residence address for Department of Motor Vehicle purposes at the 10050 Country View Road  
3 address until February 2002 shortly after these proceedings were initiated. (See Exhibit 45).

- 4 • The evidence presented has also demonstrated that SCALZITTI has registered automobiles, a  
5 utility trailer, and a boat and trailer at the 10050 Country View Road address. (See Exhibit 45).
- 6 • SCALZITTI has not paid any of the property taxes on 1063 ½ Sumner nor was he one of the  
7 persons to whom the loan was made to purchase the property. His mother, Judy Matthews  
8 testified quite clearly that the loan was made in her name and through a loan broker at  
9 Washington Mutual Bank with whom she had had prior dealings.
- 10 • SCALZITTI has not obtained or claimed any tax benefits from the alleged ownership of 1063 ½  
11 Sumner.
- 12 • The title to the property at 1063 and 1063 ½ Sumner was taken in his mother's name alone at  
13 the time of the sale and transfer of the ownership of the property. SCALZITTI's name did not  
14 appear on the title to the property until the Quit Claim deed from his mother on June 7, 2002.  
15 (See Exhibit 8).
- 16 • SCALZITTI has presented no evidence of a telephone listing for himself at any time between  
17 December 2000 and December 2001 at the 1063 ½ Sumner residence.
- 18 • SCALZITTI changed his voter registration from 10050 Country View Road to 1063 ½ Sumner at  
19 the same time he submitted his nomination papers to the Registrar of Voters for the office of  
20 Director from Division 1 even though he had purportedly been in residence at 1063 ½ Sumner  
21 since May of 2000. (It is also interesting to note that when SCALZITTI reregistered to vote in  
22 April 2001 using the 975 Spinel address he listed his prior address as 1063 Sumner and not  
23 1063 ½ Sumner. See Exhibit 12). After the initiation of this action SCALZITTI reregistered to  
24 vote using the 1063 ½ Sumner address. (See Exhibit 13).

1 In summary, SCALZITTI did not, through the entirety of his term of elected office of Director from  
2 Division 1 of the Helix Water District, maintain residency within that Division. At a very minimum  
3 SCALZITTI has failed to sustain his burden of proof on this issue.

4 While the specific issue of being a *landowner* is technically to await another day, the evidence on  
5 this issue bears great significance as to the credibility and believability of SCALZITTI. It is certainly a fact  
6 that a witness who has failed to be forthright in one material part of his testimony is to be distrusted in  
7 others. Simply put, SCALZITTI was not a *landowner* within the District. The artful creation of a "ledger"  
8 (See Exhibits 7 and 72) from a calendar of hours worked for his mother (See Exhibits 61, 62, and 63) is  
9 but a subterfuge of the worst kind. The documents are all created in the same ink which gives one great  
10 pause from the outset.

11 It is also interesting to note that as of August 10<sup>th</sup> when SCALZITTI filed his nomination papers.  
12 he had paid over to his mother \$1,800.00 from the sale of his Chevy truck (although his mother testified  
13 that she believed that the amount was \$1,400.00 which she had been holding for him for a couple of  
14 months since the sale of the vehicle even though the "ledger" reflects the \$1,800.00 and not the  
15 \$1,400.00) and 9 hours of work at \$10.00 per hour. In other words, SCALZITTI had a purported financial  
16 investment in real property as of August 10<sup>th</sup> at most of 8%. Interesting also is the absence of any  
17 evidence of any payments by SCALZITTI on the mortgage.

18 However, more persuasive are the facts that he was not on the title to the property until recently and  
19 after this action was begun; he never claimed a mortgage deduction; the loan to secure the property was  
20 in his mother's name; he never paid any property taxes on the property; the insurance was not in his  
21 name; he never reported income from the rents received on the property; and, this alleged "contract" with  
22 his mother can only be one which is wholly executory given the testimony of his mother that every  
23 indication of ownership was in her while SCALZITTI "worked off" what was to have been his share of the  
24 down payment of \$40,000.00.

25 Even though not required of the Court on the Motion for Judgment and the defendant having  
presented his evidence regarding ownership through his own testimony and that of his mother, the

1 Court specifically finds that at no time did SCALZITTI own property within the geographical  
2 boundaries of the Helix Water District. That is, SCALZITTI did not at all times qualify for office  
3 because he was not a landowner within the District.

4  
5 CONCLUSION

6 President Abraham Lincoln said:

7 "If you once forfeit the confidence of your fellow citizens, you can never  
8 regain their respect and esteem. It is true that you may fool all the  
9 people some of the time; you can even fool some of the people all of the  
10 time; but you can't fool all of the people all of the time."

11 A public office is a public trust and those who assume a public office should do so not for  
12 personal advancement or private advantage. Public office is a unique opportunity in a democratic  
13 society to serve ones community in the fulfillment of a public trust. This service cannot begin with a  
14 deception.

15 While the State and Federal Courts are loathe to embark upon resolution of purely political  
16 matters when the very foundation upon which a public office and trust is compromised the courts will  
17 move to protect the institutions of democracy.

18 This Court has considered carefully all of the testimonial and documentary evidence presented,  
19 and, in particular, the testimony and explanations offered by SCALZITTI regarding his places of residence  
20 and his assertion of ownership of land within the geographical construct of the Helix Water District. The  
21 Court has reached the following conclusions on the issues presented:

- 22 • SCALZITTI has failed to establish his residency throughout his term of office as being  
23 continuously located at 1063 1/2 Sumner.  
24 • SCALZITTI has failed to establish that he was a landowner within the geographical construct of  
25 the Helix Water District throughout his term of office.

1 SCALZITTI has failed to sustain his burden of proof that he is qualified to hold the office of  
2 Director from Division 1 of the Helix Water District throughout the entire term of his office.

3 THEREFORE, it is the determination of this Court that Judgment must and shall be entered in favor of the  
4 People ex rel. LINDEN; and JOEL SCALZITTI is immediately ousted from the office of Director of the  
5 Helix Water District; and the office of Director of the Helix Water District, Division 1 shall be and is  
6 declared to be vacant; and the People, acting through Realtor John B. LINDEN as a private attorney  
7 general have prevailed and are the prevailing party in this action *in quo warranto*. Counsel for the  
8 prevailing party is directed to prepare and submit an Order and Judgment consistent with the Court's  
9 findings, conclusions and orders set forth above. SCALZITTI shall be assessed reasonable costs  
10 pursuant to a memorandum of costs to be submitted by the People pursuant to Code of Civil Procedure  
11 section 809. The Court determines that a reimbursement of all per diem payments made to SCALZITTI  
12 during the time he unlawfully held office is appropriate and upon an accounting presented by the Helix  
13 Water District an Order of Restitution shall be made. The Court determines that it is not appropriate to  
14 impose a fine pursuant to Code of Civil Procedure section 809 as SCALZITTI shall be responsible for  
15 costs of the action and the per diem reimbursement to the District.

16 DATED: October 16, 2002.

17   
18 WILLIAM J. HOWATT, JR., Judge  
19  
20  
21  
22  
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24  
25

Clerk of the Superior Court

OCT 18 2002

By K. Rominger, Deputy  
EAST COUNTY DIVISION

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
EAST COUNTY DIVISION

PEOPLE OF THE STATE OF CALIFORNIA EX  
REL. JOHN B. LINDEN,

PLAINTIFF,

v.

JOEL SCALZITTI,

DEFENDANT.

CASE No.: GIE 012239

~~[PROPOSED]~~ JUDGMENT FOR PLAINTIFF  
AND ORDER

This action in *quo warranto* came on for evidentiary hearing beginning on June 24, 2002, in the Courtroom of the Honorable William J. Howatt, Department 17, of this Court. All parties appeared by and through their counsel of record.

The People of the State of California, through John B. Linden ("LINDEN") as relator, seek the removal of Joel Scalzitti ("SCALZITTI") from his position as an elected member of the Board of Directors of the Helix Water District from Division 1. It is alleged by LINDEN that SCALZITTI has failed to qualify for office upon two separate and exclusive grounds: (1) SCALZITTI was not at all times a resident of the defined area of Division 1; and/or (2) SCALZITTI was not at all times a landowner within the

[PROPOSED] JUDGMENT FOR PLAINTIFF AND ORDER  
CASE NO. GIE 012239

geographical description of the Helix Water District.

The Complaint, entitled "VERIFIED COMPLAINT IN QUO WARRANTO FOR OUSTER" was filed on May 30, 2002, pursuant to the Leave to Sue letter granted to LINDEN by the Attorney General of the State of California. A General Denial proposed by counsel for SCALZITTI was ordered to be filed with the Court on or before June 7, 2002. The evidentiary hearing was commenced on June 24, 2002, and was continued at the request of SCALZITTI to July 30, and again to July 31, 2002. At the conclusion of presentation of testimony and documentary evidence, the Plaintiff moved this Court for Judgment, both Plaintiff and Defendant having rested their case.

The Court has bifurcated the issues and allegations concerning residence within Division 1 and landownership within the District at all relevant times. The legal analysis of the question of the Constitutionality of the Helix Water District's requirement of landownership is to be addressed at a later date.

Having considered all of the evidence, arguments, and papers provided by counsel and the parties, the Motion for Judgment having been submitted for decision, and the Court having issued its Decision,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction in this *quo warranto* matter. Questions of constitutional magnitude and statutory construction are questions justiciable and not simply characterized as political.

2. The remedy in *quo warranto* is the appropriate and only procedure by which to determine the right to a public office where a *de facto* officeholder holds the office.

3. LINDEN has received a Leave to Sue letter from the Attorney General of the State of California and is acting, therefore, on behalf of and in the name of the People of the State of California.

4. In a *quo warranto* proceeding such as is before this Court, SCALZITTI has both the burden of producing evidence and the burden of proof to demonstrate that he



1 lawfully holds office.

2 5. It is the responsibility of SCALZITTI to establish his lawful claim to the  
3 office of Director as well as his right to exercise the authority of that office.

4 6. At the conclusion of the presentation of testimony and documentary  
5 evidence, LINDEN moved the Court for judgment.

6 7. Code of Civil Procedure section 631.8 permits either party to an action to  
7 move for a judgment at the close of the other's case. Ordinarily, it is the defendant who  
8 makes the motion at the close of plaintiff's case. However, since this case in *quo*  
9 *warranto* reverses the procedure and requires the defendant to proceed first, the same  
10 principles apply, with appropriate adaptations.

11 8. Upon the making of a Motion for Judgment, the Court is required to weigh  
12 and consider all of the evidence. In that process the Court may refuse to believe  
13 witnesses and draw conclusions that are at odds with any expert opinions that are offered  
14 during the course of the proceedings. And, if supported by substantial evidence, the grant  
15 of a Motion for Judgment will not be reversed.

16 9. The determination of the Court may act as a final adjudication of the matter  
17 if judgment is granted pursuant to the motion.

18 10. As was determined in the Opinion of the Attorney General and now by this  
19 Court, the Helix Water District is established as an "irrigation district" pursuant to the  
20 California Water Code sections 20500 *et seq.*

21 11. The District is organized into five separate geographic "Divisions". There  
22 is an elective position of Director for each of the Divisions.

23 12. SCALZITTI was elected in November 2000 to the office of Director of  
24 Division 1 of the Helix Water District.

25 13. Each Director is required to be both a "landowner" of the District and a  
26 "resident" of the Division in which he or she resides.

27 14. Residency in the Division from which one is elected as a Director is  
28 required throughout the entirety of the term of office for which the individual was

1 elected.

2 15. It was and is the responsibility of SCALZITTI to establish the requirements  
3 for the Office of Director of the Helix Water District. Despite SCALZITTI's strenuous  
4 argument to have this Court hold that the Office is that of a Director of a "water district"  
5 and not that of an irrigation district, SCALZITTI has failed not only to meet his burden of  
6 producing evidence on this issue but has also failed to meet his burden of proof on this  
7 issue.

8 16. It was clearly established through the testimony of SCALZITTI himself  
9 that it is his claim that he maintained his residence at 1063½ Sumner Avenue throughout  
10 his term of office. Because the residency requirement of an office holder is one which  
11 extends throughout the entire term of office, if at any point in time SCALZITTI's  
12 residence, during the term of office for which he was elected as a Director, was outside of  
13 Division 1, the Office must be declared vacant and his position forfeited.

14 17. The credible evidence and reasonable inferences drawn therefrom is  
15 irrefutable that SCALZITTI did not intend nor have physical connection with 1063 ½  
16 Sumner Avenue as his place of residence between December 8, 2000 and December,  
17 2001. As such, the irrefutable credible evidence and the reasonable inferences drawn  
18 therefrom is that SCALZITTI did not reside, maintain his residence, within the Division  
19 from which he was elected throughout the entirety of his term of office.

20 18. Even though not required of the Court on the Motion for Judgment and  
21 defendant having presented his evidence regarding ownership through his own testimony  
22 and that of his mother, the Court specifically finds that at no time did SCALZITTI own  
23 property within the geographical boundaries of the Helix Water District. Therefore,  
24 SCALZITTI did not at all times qualify for Office because he was not a landowner within  
25 the District.

26 19. The Court has reached the following conclusions on the issues presented:

27 a. SCALZITTI has failed to establish his residency throughout his term  
28 of office as being continuously located at 1063½ Sumner.

b. SCALZITTI has failed to establish that he was a landowner within the geographical boundaries of the Helix Water District throughout his term of office.

c. SCALZITTI has failed to sustain his burden of proof that he is qualified to hold the office of Director from Division 1 of the Helix Water District throughout his entire term of office.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

20. Judgment is hereby entered in favor of the People *ex rel.* LINDEN;

21. JOEL SCALZITTI is immediately ousted from the Office of Director of the Helix Water District;

22. The Office of Director of the Helix Water District, Division 1, shall be and is declared to be vacant;

23. The People, acting through the relator JOHN B. LINDEN as a private attorney general, have prevailed and are the prevailing party in this action in *quo warranto*;

24. LINDEN recovers against SCALZITTI the costs of the action in the amount of \$ \_\_\_\_\_ pursuant to Code of Civil Procedure Section 809 [LINDEN shall submit a memorandum of costs];

25. The Helix Water District recovers against SCALZITTI a reimbursement of all per diem payments made to SCALZITTI during the time he unlawfully held office in the amount of \$ \_\_\_\_\_ [upon presentation of an accounting by the Helix Water District.]

DATE: OCT 18 2002

WILLIAM J. HOWATT, JR.  
HON. WILLIAM J. HOWATT  
JUDGE OF THE SUPERIOR COURT

1 JAMES B. GILPIN, Bar No. 151466  
2 MELISSA W. WOO, Bar No. 192056  
3 LAW OFFICES OF  
4 BEST BEST & KRIEGER LLP  
5 402 WEST BROADWAY, 13<sup>TH</sup> FLOOR  
6 SAN DIEGO, CALIFORNIA 92101-3542  
7 TELEPHONE: (619) 525-1300  
8 TELECOPIER: (619) 233-6118

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

Attorneys for Cross-Defendant  
HELIX WATER DISTRICT, and REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF  
CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

Plaintiff,

v.

JOEL SCALZITTI,

Defendant.

Case No. GIE 012239  
Judge: William J. Howatt

REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF EX PARTE APPLICATION  
BY CROSS-DEFENDANTS HELIX  
WATER DISTRICT AND REAL PARTIES  
IN INTEREST HAROLD BALL, H.  
WARREN BUCKNER, BARBARA  
BARBER and JIM LEWANSKI FOR  
RESTRAINING ORDER

JOEL SCALZITTI,

Cross-Complainant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA IN THE RELATION OF  
JOHN B. LINDEN, HELIX WATER  
DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,

Cross-Defendants.

DATE: OCTOBER 31, 2002  
TIME: 4:00 P.M.  
DEPT: 17

Trial Date: June 24, 2002

REAL PARTIES IN INTEREST:

HAROLD BALL;  
H. WARREN BUCKNER;  
BARBARA BARBER;  
JIM LEWANSKI.

1 Cross-Defendants Helix Water District and Real Parties in Interest Harold Ball, H. Warren  
2 Buckner, Barbara Barber and Jim Lewanski respectfully request that the Court take judicial notice  
3 of the following documents (of which true and correct copies are attached) in support of its Ex Parte  
4 Application for Restraining Order:

5 EXHIBIT A: Decision of the Court Upon the Plaintiff's Motion for Judgment in the *Quo*  
6 *Warranto* Action Before the Court;

7 EXHIBIT B: Judgment for Plaintiff and Order.

8 The Court is requested to take judicial notice of Exhibits "A" and "B" pursuant to Evidence  
9 Code sections 452 and 453. Both Exhibit "A" and Exhibit "B" are documents of record filed with  
10 this Court. A court may properly take judicial notice of documents in its own records (Evidence  
11 Code section 452(e); *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914 [123 Cal.Rptr. 918], citing 2  
12 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, section 47.2, p. 1757).

13 DATED: October 30, 2002

BEST BEST & KRIEGER LLP

14  
15 By: 

16 JAMES B. GILPIN

MELISSA W. WOO

17 Attorneys for Cross-Defendants  
18 HELIX WATER DISTRICT and Real  
19 Parties in Interest HAROLD BALL, H.  
20 WARREN BUCKNER, BARBARA  
21 BARBER and JIM LEWANSKI  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF  
CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

Plaintiff,

v.

JOEL SCALZITTI,

Defendant.

JOEL SCALZITTI,

Cross-Complainant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA IN THE RELATION OF  
JOHN B. LINDEN, HELIX WATER  
DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,

Cross-Defendants.

REAL PARTIES IN INTEREST:

HAROLD BALL;  
H. WARREN BUCKNER;  
BARBARA BARBER;  
JIM LEWANSKI.

Case No. GIE 012239  
Judge: William J. Howatt

[PROPOSED] ORDER GRANTING EX  
PARTE APPLICATION BY CROSS-  
DEFENDANTS HELIX WATER  
DISTRICT AND REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI FOR RESTRAINING ORDER

DATE: OCTOBER 31, 2002  
TIME: 4:00 P.M.  
DEPT: 17

Trial Date: June 24, 2002

1 IT APPEARING TO THE COURT, based upon the Ex Parte Application and other  
2 documents filed therewith by Cross-Defendants Helix Water District ("District") and Real Parties  
3 in Interest Harold Ball, H. Warren Buckner, Barbara Barber and Jim Lewanski that this is a proper  
4 case for granting a restraining order to prevent Defendant/Cross-Complainant Joel Scalzitti from  
5 representing to any member of the public that he is a Board Member, representative of, or otherwise  
6 affiliated with, the Helix Water District.

7 IT FURTHER APPEARING TO THE COURT that unless a restraining order is issued, it is  
8 probable that great and irreparable injury will result; and for good cause therefore,

9 IT IS FURTHER ORDERED that Joel Scalzitti is hereby restrained from representing to any  
10 member of the public that he is a Board Member, representative of, or otherwise affiliated with, the  
11 Helix Water District.

12  
13 Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 JAMES B. GILPIN, Bar No. 151466  
2 MELISSA W. WOO, Bar No. 192056  
3 LAW OFFICES OF  
4 BEST BEST & KRIEGER LLP  
5 402 WEST BROADWAY, 13<sup>TH</sup> FLOOR  
6 SAN DIEGO, CALIFORNIA 92101-3542  
7 TELEPHONE: (619) 525-1300  
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EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

Attorneys for Cross-Defendants  
HELIX WATER DISTRICT, and REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA ON THE RELATION OF  
13 JOHN B. LINDEN,

Plaintiff,

14 v.

15 JOEL SCALZITTI,

16 Defendant.

17 JOEL SCALZITTI,

18 Cross-Complainant,

19 v.

20 PEOPLE OF THE STATE OF  
21 CALIFORNIA IN THE RELATION OF  
22 JOHN B. LINDEN, HELIX WATER  
23 DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,

24 Cross-Defendants.

25 REAL PARTIES IN INTEREST:

26 HAROLD BALL;  
27 H. WARREN BUCKNER;  
28 BARBARA BARBER;  
JIM LEWANSKI

Case No. GIE 012239

Judge: William J. Howatt  
Dept. 17

DECLARATION OF LORI L. FORD OF  
TELEPHONIC NOTICE OF EX PARTE  
HEARING

DATE: OCTOBER 31, 2002  
TIME: 4:00 P.M.  
DEPT: 17

Trial Date: June 24, 2002



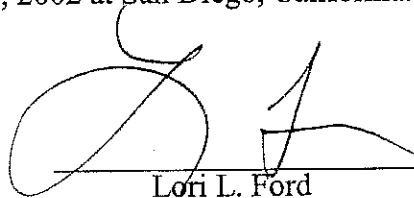
1  
2 I, Lori L. Ford, declare as follows:

3 1. I am employed with the law firm of Best Best & Krieger LLP, the attorneys of record  
4 for Defendants Helix Water District and Real Parties in Interest Harold Ball, H. Warren Buckner,  
5 Barbara Barber, Jim Lewanski, in the above-entitled matter. I am secretary to Melissa W. Woo, one  
6 of the counsel primarily responsible for handling this case on behalf of Defendants. I have personal  
7 knowledge of the matters set forth below and could and would competently testify thereto if required  
8 to do so.

9 2. On Thursday, October 30, 2002, between the hours of 9:00 a.m. and 10:00 a.m., I  
10 telephoned the law offices of Robert Otilie and gave notice to his assistant, Frieda, of Ms. Woo's  
11 Ex Parte appearance on behalf of Defendants and of the nature of the Ex Parte application. Further,  
12 on October 30, 2002, I faxed to Mr. Otilie copies of Defendants' Ex Parte Application for  
13 Restraining Order, and all supporting papers.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing  
15 is true and correct.

16 Executed this 30<sup>th</sup> day of October, 2002 at San Diego, California.

17  
18  
19   
Lori L. Ford

1 JAMES B. GILPIN, Bar No. 151466  
2 MELISSA W. WOO, Bar No. 192056  
3 LAW OFFICES OF  
4 BEST BEST & KRIEGER LLP  
5 402 WEST BROADWAY, 13<sup>TH</sup> FLOOR  
6 SAN DIEGO, CALIFORNIA 92101-3542  
7 TELEPHONE: (619) 525-1300  
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EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

Attorneys for Cross-Defendant  
HELIX WATER DISTRICT, and REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

13 Plaintiff,

14 v.

15 JOEL SCALZITTI,

16 Defendant.

17 JOEL SCALZITTI,

18 Cross-Complainant,

19 v.

20 PEOPLE OF THE STATE OF  
21 CALIFORNIA IN THE RELATION OF  
22 JOHN B. LINDEN, HELIX WATER  
DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,  
23

24 Cross-Defendants.

25 REAL PARTIES IN INTEREST:

26 HAROLD BALL;  
27 H. WARREN BUCKNER;  
BARBARA BARBER;  
28 JIM LEWANSKI.

Case No. GIE 012239  
Judge: William J. Howatt

DECLARATION OF JULIE CRAVEN IN  
SUPPORT OF EX PARTE APPLICATION  
BY CROSS-DEFENDANT HELIX  
WATER DISTRICT FOR RESTRAINING  
ORDER

DATE: OCTOBER 31, 2002  
TIME: 4:00 P.M.  
DEPT: 17

Trial Date: June 24, 2002

1 I, Julie Craven, declare as follows:

2 1. I am a student in the eleventh grade at Grossmont Union High School.

3 2. On Tuesday, October 22, 2002, I attended my U.S. History class at Grossmont Union  
4 High School with Mr. Neill. During this class, Joel Scalzitti, appeared as a guest lecturer. During  
5 his lecture, Mr. Scalzitti told the class that he was with the Helix Water District. Mr. Scalzitti spoke  
6 to the class about the campaign of Duane Hanson.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct.

9 Executed this 29 day of October, 2002 at El Cajon, California.

10  
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12 JULIE CRAVEN  
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1 JAMES B. GILPIN, Bar No. 151466  
2 MELISSA W. WOO, Bar No. 192056  
3 LAW OFFICES OF  
4 BEST BEST & KRIEGER LLP  
5 402 WEST BROADWAY, 13<sup>TH</sup> FLOOR  
6 SAN DIEGO, CALIFORNIA 92101-3542  
7 TELEPHONE: (619) 525-1300  
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EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

Attorneys for Cross-Defendant  
HELIX WATER DISTRICT, and REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

13 Plaintiff,

14 v.

15 JOEL SCALZITTI,

16 Defendant.

17  
18 JOEL SCALZITTI,

19 Cross-Complainant,

20 v.

21 PEOPLE OF THE STATE OF  
22 CALIFORNIA IN THE RELATION OF  
23 JOHN B. LINDEN, HELIX WATER  
24 DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,  
25

Cross-Defendants.

26 REAL PARTIES IN INTEREST:

27 HAROLD BALL;  
28 H. WARREN BUCKNER;  
BARBARA BARBER;  
JIM LEWANSKI.

Case No. GIE 012239  
Judge: William J. Howatt

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE APPLICATION BY CROSS-  
DEFENDANTS HELIX WATER  
DISTRICT FOR RESTRAINING ORDER  
AND REAL PARTIES IN INTEREST  
HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

DATE: OCTOBER 31, 2002  
TIME: 4:00 P.M.  
DEPT: 17

Trial Date: June 24, 2002

1 Cross-Defendant Helix Water District ("District") and Real Parties in Interest Harold Ball,  
2 H. Warren Buckner, Barbara Barber and Jim Lewanski respectfully submits the following  
3 Memorandum of Points and Authorities in support of their Ex Parte Application for an Order  
4 restraining Joel Scalzitti ("Scalzitti") from representing to any member of the public that he is a Board  
5 Member, representative of, or otherwise affiliated with, the Helix Water District.

6 I.

7 **STATEMENT OF FACTS**

8 On May 30, 2002, the Attorney General granted leave pursuant to Code of Civil  
9 Procedure section 803 to relator John B. Linden (hereinafter "Linden") to file a Complaint for  
10 Quo Warranto in the name of the People of the State of California and to conduct and prosecute  
11 the action on behalf of the People of the State of California. The Quo Warranto Action sought to  
12 oust defendant Joel Scalzitti (hereinafter "Scalzitti") from his position as Member of the Board of  
13 Directors of the District on the ground that Scalzitti is not and has never been an owner of real  
14 property within the District and does not reside within the District.

15 On or about June 10, 2002, Scalzitti filed a Cross-Complaint against the District and four  
16 of its Directors, including, Harold Ball, Warren Buckner, Barbara Barber, and Jim Lewanski. In  
17 the Cross-Complaint, Scalzitti attempts to state three causes of action including: (1) declaratory  
18 relief regarding whether District is an irrigation district and whether District is a "landowner"  
19 district and if so, a declaration that all of the Director position have been conducted illegally); (2)  
20 writ of mandate compelling the District and each of them to (a) void all elections conducted; (b)  
21 vacate the Directors position with respect to each position filled by an illegal election or election  
22 in violation of the law; and (c) order compelling the District to immediately conduct a new  
23 election to fill each Director position that has been held by an individual elected at an illegal  
24 election or an election in violation of the law; and (3) injunctive relief directing the District and its  
25 employees and agents from removing Scalzitti from office unless all other offices are vacated.  
26 The Cross-Complaint was stayed pending the trial of the Quo Warranto Action.

27 The trial of the Quo Warranto Action commenced on June 24, 2002. Because the matter  
28 was not completed on June 24, 2002, the hearing was continued to July 17, 2002 for the

1 presentation of additional evidence. On June 26, 2002 at the request of Scalzitti, the hearing was  
2 continued to July 30, 2002. Further testimonial and documentary evidence was presented during  
3 the course of the hearing. The hearing was not completed on July 30, 2002 and was continued to  
4 the next day, July 31, 2002 for the presentation of final testimonial evidence, additional  
5 documentary evidence and the argument of counsels upon Linden's Motion for Judgment.

6 At the conclusion of the trial, oral arguments of counsel and at the request of counsel for  
7 Scalzitti was continued until September 6, 2002 in order to allow presentation of additional  
8 briefing. After the additional briefs were submitted, the Court took the matter under submission  
9 for decision on September 30, 2002.

10 On or about October 16, 2002, the Court issued its "Decision of the Court Upon  
11 Plaintiff's Motion for Judgment in the Quo Warranto Action Before the Court." (RJN, Exh. "A.")  
12 The Court reached the following conclusions:

13 SCALZITTI has failed to establish his residency throughout his  
14 term of office as being continuously located at 10631/2 Sumner.

15 SCALZITTI has failed to establish that he was a landowner within  
16 the geographical construct of the Helix Water District throughout  
17 his term of office.

18 SCALZITTI has failed to sustain his burden of proof that he is  
19 qualified to hold the office of Director from Division I of the Helix  
20 Water District throughout the entire term of his office.

21 THEREFORE, it is the determination of this Court that Judgment  
22 must and shall be entered in favor of the People ex rel. LINDEN;  
23 and JOEL SCALZITTI is immediately ousted from the office of the  
24 Director of the Helix Water District; and the office of Director of  
25 the Helix Water District, Division I shall be and is declared to be  
26 vacant; and the People, acting through Realtor John B. LINDEN as  
27 a private attorney general have prevailed and are the prevailing  
28 party in this action in quo warranto.

23 On or about October 18, 2002, the Court entered judgment declaring that "JOEL  
24 SCALZITTI is immediately ousted from the Office of Director of the Helix Water District" and  
25 that "The Office of Director of the Helix Water District, Division 1, shall be and is declared to be  
26 vacant."

27 On or about October 22, 2002, Scalzitti gave a presentation to a U.S. History Class at  
28 Grossmont Union High School. (Craven Decl., ¶ 2.) During the course of the presentation,

1 Scalzitti conveyed the representation that he was affiliated with the Helix Water District and  
2 spoke to the class about the campaign of Duane Hanson, a candidate in the upcoming elections  
3 for Director of the District. (Craven Decl., ¶ 2.) Because Scalzitti, pursuant to the October 18,  
4 2002 order and judgment, has been ousted from the Office of the Helix Water District, the  
5 District seeks an order restraining Scalzitti from representing to any member of the public that he  
6 is a Board Member, representative of, or otherwise affiliated with the District.

7 **II.**

8 **THIS COURT HAS AUTHORITY TO GRANT THE RELIEF**  
9 **REQUESTED HEREIN BY THE DISTRICT**

10 An injunction may be granted when it appears by the complaint that the plaintiff is entitled  
11 to the relief demanded and the relief, or any part thereof, consists in restraining the commission or  
12 continuance of an act complaintive, either for a limited period or perpetually period. (Code Civ.  
13 Proc., § 526(a)(1); *Southern Christian Leadership Conference v. Al Malaikah Auditorium Co.*  
14 (1991) 230 Cal.App.3d 207, 223 [281 Cal.Rptr. 216].) An injunction may also be issued when it  
15 appears by the complaint (or affidavits, or declarations) that the commission or continuance of  
16 act during the litigation would produce waste, or great or irreparable injury to a party to the  
17 action. (Code Civ. Proc., §§ 526(a)(2), 2015.5; *Volpicelli v. Jared Sydney Torrance Memorial*  
18 *Hosp.* (1980) 109 Cal.App.3d 242 [167 Cal.Rptr. 610].)

19 As set forth above, this Court has entered an order and judgment which oust Scalzitti from  
20 the Office of Director of the Helix Water District” and further declared the office vacant.  
21 Because Scalzitti is no longer a Director of the Helix Water District, he cannot make that  
22 representation to the public and should be restrained from doing so.

23 **A. AN INJUNCTION SHOULD ISSUE BECAUSE THE COURT HAS ALREADY**  
24 **DETERMINED THAT SCALZITTI IS NO LONGER A DIRECTOR OF THE**  
25 **HELIX WATER DISTRICT.**

26 In determining whether the issuance of the an injunction is appropriate, the courts have  
27 looked at two interrelated factors. The first is the likelihood that the [applicant] will prevail on the  
28 merits at trial. The second is the interim harm that the [applicant] is likely to sustain if the  
preliminary injunction is denied as compared to the harm that [opponent] is likely to suffer if the

1 preliminary injunction were issued. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286  
2 [219 Cal.Rptr. 467].)

3 As set forth above, this Court has already determined that Scalzitti is no longer a Director  
4 of the Helix Water District and that the position previously held by Scalzitti is vacant.  
5 Accordingly, there is no harm to Scalzitti if the order requested by the District is entered.  
6 However, the harm to the District would be great if the order requested is not entered because  
7 Scalzitti may, as demonstrated by the declaration of Julie Craven submitted herewith, continue to  
8 represent himself as a member of the Board of Directors of the Helix Water District.

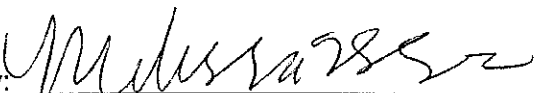
9 III.

10 CONCLUSION

11 For the reasons stated herein, the Court should enter an Order restraining Scalzitti from  
12 representing to any member of the public that he is a Board Member, representative of or  
13 otherwise affiliated with the Helix Water District. As set forth above, pursuant to the October 18,  
14 2002 judgment entered by the Court in the original action, Scalzitti has been ousted from office.  
15 Hence, because Scalzitti is no longer a Board Member of the Helix Water District, he may not  
16 make such representations to the public.

17 DATED: October 30, 2002

BEST BEST & KRIEGER LLP

18  
19 By:   
20 JAMES B. GILPIN  
21 MELISSA W. WOO  
22 Attorneys for Cross-Defendants  
23 HELIX WATER DISTRICT and Real  
24 Parties in Interest HAROLD BALL, H.  
25 WARREN BUCKNER, BARBARA  
26 BARBER and JIM LEWANSKI  
27  
28



JAMES B. GILPIN, Bar No. 151466  
MELISSA W. WOO, Bar No. 192056  
LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
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EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

Attorneys for Cross-Defendants  
HELIX WATER DISTRICT, and REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF  
CALIFORNIA ON THE RELATION OF  
JOHN B. LINDEN,

Plaintiff,

v.

JOEL SCALZITTI,

Defendant.

JOEL SCALZITTI,

Cross-Complainant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA IN THE RELATION OF  
JOHN B. LINDEN, HELIX WATER  
DISTRICT, SALLY McPHERSON, sued  
solely in her capacity as the San Diego  
County Registrar of Voters, and DOES 1  
through 50,,

Cross-Defendants.

REAL PARTIES IN INTEREST:

HAROLD BALL;  
H. WARREN BUCKNER;  
BARBARA BARBER;  
JIM LEWANSKI.

Case No. GIE 012239  
Judge: William J. Howatt

EX PARTE APPLICATION BY CROSS-  
DEFENDANTS HELIX WATER  
DISTRICT AND REAL PARTIES IN  
INTEREST HAROLD BALL, H. WARREN  
BUCKNER, BARBARA BARBER and JIM  
LEWANSKI FOR RESTRAINING  
ORDER

DATE: OCTOBER 31, 2002  
TIME: 4:00 P.M.  
DEPT: 17

Trial Date: June 24, 2002

1 Cross-Defendants Helix Water District and Real Parties in Interest Harold Ball, H. Warren  
2 Buckner, Barbara Barber and Jim Lewanski hereby make the following Ex Parte Application for a  
3 restraining order preventing Defendant/Cross-Complainant Joel Scalzitti from representing to any  
4 member of the public that he is a Board Member, representative of, or otherwise affiliated with, the  
5 Helix Water District.

6 Said Application will be based upon the supporting Memorandum of Points and Authorities,  
7 the Declaration of Melissa W. Woo, the oral argument of counsel, the entire record herein, and any  
8 other evidence which may be presented at the time of hearing this Application.

9 DATED: October 30, 2002

BEST BEST & KRIEGER LLP

10  
11 By: 

12 JAMES B. GILPIN  
13 MELISSA W. WOO  
14 Attorneys for Cross-Defendants  
15 HELIX WATER DISTRICT and Real  
16 Parties in Interest HAROLD BALL, H.  
17 WARREN BUCKNER, BARBARA  
18 BARBER and JIM LEWANSKI  
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1 **FOLEY & LARDNER**  
ATTORNEYS AT LAW  
2 402 W. BROADWAY, 23RD FLOOR  
SAN DIEGO, CALIFORNIA 92101-3542  
3 TELEPHONE: (619) 234-6655  
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4 KENNETH S. KLEIN, BAR NO. 129172  
GREGORY V. MOSER, BAR NO. 101137  
JOHN C. LEMMO, BAR NO. 190885  
5 ATTORNEYS FOR THE PEOPLE OF THE STATE OF CALIFORNIA

6  
7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**  
10 **EAST COUNTY DIVISION**  
11

12	PEOPLE OF THE STATE OF CALIFORNIA EX )	CASE No.: GIE 012239
13	REL. JOHN B. LINDEN, )	
14	PLAINTIFF, )	<b>JOINDER OF PLAINTIFF IN EX PARTE</b>
15	V. )	<b>APPLICATION OF HELIX WATER</b>
16	JOEL SCALZITTI, )	<b>DISTRICT FOR RESTRAINING ORDER</b>
17	DEFENDANT. )	
18	)	JUDGE: HON. WILLIAM HOWATT, JR.
19	)	DEPT.: 17
20	)	DATE: OCTOBER 31, 2002
21	)	TIME: 8:30 A.M.
22	)	
23	)	
24	)	
25	)	
26	)	
27	)	
28	)	

## INTRODUCTION

The People *ex rel.* John Linden (the "People") Join the Helix Water District's Ex Parte Application as it relates to the underlying *quo warranto* action to which the People are the Plaintiff, specifically as it relates to compliance with the Judgment and Order entered on October 18, 2002.

## SCALZITTI WILLFULLY MISREPRESENTED THAT HE WAS A DIRECTOR,

### AFTER JUDGMENT WAS ENTERED

Mr. Scalzitti's attorney, Bob Otilie, telephoned this office at about 9:30 A.M. on October 22, 2002, to discuss his ex parte motion for reconsideration of the Judgment and Order. In Mr. Otilie's motion, he recognized that there was in place a judgment that had removed Joel Scalzitti from the Helix Water District Board. Nonetheless, that same day Mr. Scalzitti apparently was falsely representing that he was a member of the Board of Directors. Further, Mr. Scalzitti was quoted in the San Diego Union Tribune days before (on October 18, 2002) in an article entitled *Water board washes its hands of member ousted in dispute*. When Mr. Scalzitti spoke to Ms. Craven's history class on October 22, 2002, he knew very well that he had been ousted from the Board.

## MR. SCALZITTI ACTED IN CIVIL CONTEMPT OF THIS COURT'S ORDER

By intentionally misrepresenting to the public that he was a member of the Board, Mr. Scalzitti acted in contempt of this Court. Apparently, he lied about his affiliation in a presentation to high school students in the context of discussing a candidate for election to the very Board from which he was ousted—two weeks before the election.

On its own motion, or on motion of any party, the court may cite any person before it for contempt. Code Civ. Proc. § 128. "Contempt" is any act, in or out of court, "that tends to impede, embarrass or obstruct the court in the performance of its duties." *In re Shortridge* (1893) 99 Cal. 526, 532. Any party to the action (including entities and organizations) who willfully disobeys court orders may be punished for contempt. *In re*

1 Coleman (1974) 12 Cal.3d 568, 573.

2  
3 CONCLUSION

4 For the forgoing reasons, the Court should on its own motion order penalties for  
5 Mr. Scalzitti's contempt.

6 DATE: OCTOBER 30, 2002

FOLEY & LARDNER  
KENNETH S. KLEIN  
GREGORY V. MOSER  
JOHN C. LEMMO

7  
8  
9  
10 BY: Ken Klein  
11 KENNETH S. KLEIN  
12 ATTORNEYS FOR THE PEOPLE OF THE  
13 STATE OF CALIFORNIA  
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FOLEY & LARDNER  
402 W. Broadway, Suite 2300  
San Diego, California 92101-3542  
TELEPHONE: 619.234.6655  
FACSIMILE: 619.234.3510

**PROOF OF SERVICE**

I am employed in the **County of , State of California**. I am over the age of 18 and not a party to this action; my current business address is **402 W. Broadway, Suite 2300, San Diego, California 92101-3542**.

On **October 30, 2002**, I served the foregoing document(s) described as:

**Joinder of Plaintiff in Ex Parte Application of Helix Water District for Restraining Order**

on the interested parties in this action as follows:

  X   BY THE FOLLOWING MEANS:

  X   I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

**Robert P. Otilie, Esq.  
550 W. C Street, Suite 1600  
San Diego, CA 92101**

**Attorney for Defendant Joel Scalzitti**

**Melissa W. Wood, Esq.  
Best Best & Krieger, LLP  
402 West Broadway, 13<sup>th</sup> Floor  
San Diego, CA 92101-3542**

**Attorney for Helix Water District**

  X   BY HAND DELIVERY. I delivered the envelope(s) **by hand** to addressee(s).

  X   Executed on **October 30, 2002**, at **San Diego, California**.

  X   I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

       I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

**Cynthia J. King**

**F I L E D**  
 Clerk of the Superior Court  
 NOV 1 2 2002  
 By: D. MUNSHOWER, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SAN DIEGO**  
**EAST COUNTY DIVISION**

12	<b>PEOPLE OF THE STATE OF CALIFORNIA, ex</b>	)	Case No.: GIE-012239
13	<b>rel. JOHN B. LINDEN,</b>	)	<b>ORDER DENYING DEFENDANT'S POST</b>
14	<b>Plaintiff,</b>	)	<b>HEARING MOTIONS</b>
15	<b>Vs.</b>	)	
16	<b>JOEL SCALZITTI,</b>	)	
17	<b>Defendant.</b>	)	

On November 4, 2002, the Court, the Honorable William J. Howatt, Jr., presiding, heard and considered the Post Hearing Motions of the Defendant JOEL SCALZITTI (1) To Vacate the Judgment Entered by the Court on October 18, 2002 pursuant to Code of Civil Procedure Sections 476 [presumably section 478] and 883; (2) For a New Trial, or, in the alternative, To Modify the Court's Statement of Decision/Judgment; (3) For Reconsideration; and, (4) To Stay the Enforcement of the Court's Judgment.

1 The People of the State of California were represented through the Realtor JOHN B. LINDEN  
2 by POLEY & LARDNER by KENNETH S. KLEIN, Esq., GREGORY V. MOSER, Esq., and JOHN C. LEMMO;  
3 the Helix Water District was represented by BEST, BEST & KRIEGER by MELISSA WOO, Esq.; the  
4 Defendant JOEL SCALZITTI was present and represented by ROBERT P. OTTILIE, Esq.

5 The Court received and considered the written arguments and Points and Authorities  
6 submitted by the Realtor and the Defendant as well as the oral presentations and lodged documents.  
7 Based upon the Court's review of the evidence presented at the previous hearings, the Points and  
8 Authorities submitted by counsel for the parties and the oral arguments of counsel at the present  
9 hearing the Court reached the following determinations on the issues presented to the Court upon the  
10 Post Hearing Motions of the Defendant.

11 The Court denies the request for a Statement of Decision by the defendant as the Court has  
12 previously issued a 13-page written Decision in this matter. The vast majority of the "objections"  
13 stated by defendant relate to his disagreement with the conclusions regarding credibility of  
14 witnesses and the believability of evidence reached by the Court. The Court carefully reviewed and  
15 considered all aspects of the testimony of each witness and all of the documentary evidence before  
16 reaching its conclusions regarding believability. The oral testimony of the witnesses measured  
17 against the documentary evidence (which thoroughly contradicts the testimony) assisted the Court in  
18 resolving the question of credibility of the defendant and his position in this matter.

19 The offer of additional character evidence referenced in MR. OTTILIE'S comments to the  
20 Court regarding the number of personal supporters of the defendant present in the courtroom was  
21 noted by the Court. It is, however, frequently the case that character evidence is offered after the fact  
22 to explain, as are "good intentions", an unfortunate act. So too, like "good intentions", character  
23 evidence cannot erase intentional and deliberate conduct.

24 There is one point of clarification which has been pressed by Defendant, namely, that the  
25 Court identify the location at which the Defendant SCALZITTI was in residence if not within the  
geographic description of Division 1.

First, it is the Court's view that, as explained in the Court's written Decision filed on October  
16, 2002, that SCALZITTI was not in residence continuously in Division 1 for the reasons expressed



1 therein. Second, it is not the obligation of the Court to identify a specific place of residence of  
2 SCALZITTI but rather SCALZITTI'S burden of proof and burden of producing evidence under the in  
3 *quo warranto* action to establish his continuous residence within Division 1 and he did not satisfy  
4 either burden. It is, then, enough for the Court to have determined based upon all the evidence that  
5 SCALZITTI did not live continuously within the Division 1 geographic boundaries. The Court, herein,  
6 adopts all the factors previously set forth in the Court's written Decision of October 16, 2002 upon this  
7 issue of residency.

8 The request of SCALZITTI to eliminate the requirement of Reimbursement or Restitution to the  
9 Helix Water District is DENIED. It is the Court's view (there being no authority to the contrary being  
10 presented) that the Court does have the inherent power and authority to require a reimbursement to  
11 the Water District of the funds received by an unqualified officer holder. As noted by the Court at the  
12 hearing of this matter, the amount of the restitution shall be determined only after a hearing at which  
13 the District shall have the burden of proof and the burden of producing evidence as to the exact  
14 amount paid to SCALZITTI to which he was not entitled. At such hearing SCALZITTI may again  
15 address the issue of the Court's authority to require restitution or reimbursement.

16 Pending the hearing defendant's Motions, the Court again reviewed the "ledger" and  
17 "calendars" reflecting alleged work by SCALZITTI in conjunction with the Supplemental Declarations  
18 and materials of MS JUDY MATTHEWS (defendant's mother). The Court is not persuaded as to the  
19 legitimacy of these records both because they are incomplete and internally inconsistent as well as  
20 appearing to have been made all at one time and not on regular basis to reflect accurately hours of  
21 work completed at the time the work was accomplished. Additionally, it must be recalled that  
22 SCALZITTI was also operating as a property manager for MS MATTHEWS' real estate investments and  
23 there is nothing to distinguish these documents (Exhibits 7; 61; 62; 63 and 72) from his work as  
24 property manager. Finally, on this issue, the testimony of MS MATTHEWS and defendant SCALZITTI  
25 is not believable.

26 The Court would also note that the Objection of the defendant pursuant to Code of Civil  
27 Procedure section 631.8 is wholly without merit as this Court extended time and date for the  
28 pleadings of the defendant's counsel. At no time did defendant ever request, in a timely fashion, to

present any additional evidence. Neither did the defendant ever request, prior to the present hearing, the opportunity to present additional evidence. Likewise, the Court has read and considered the lodged declarations and materials presented by the defendant and finds nothing new or significant that has changed the Court's view of all of the evidence presented.

# **CONCLUSION AND DISPOSITION**

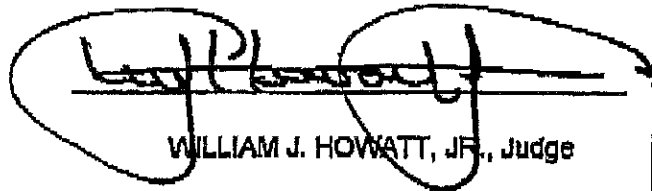
Defendant SCALZITTI'S Motion to Vacate the Judgment pursuant to Code of Civil Procedure sections 473 and 663 is DENIED.

Defendant SCALZITTI'S Motion for a New Trial, or in the alternative, to Modify the Statement of Decision and Judgment pursuant to Code of Civil Procedure section 662 is DENIED.

Defendant SCALZITTI'S Motion for Reconsideration is DENIED.

Defendant SCALZITTI'S Motion for a Stay of the Enforcement of the Judgment is DENIED.

DATED: November 12, 2002.

  
WILLIAM J. HOWATT, JR., Judge

**FILED**

Clerk of the Superior Court

**JAN 08 2003**

By: D. MUNSHOWER, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

**EAST COUNTY DIVISION**

THE PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: GIE-012239

ex. rel. JOHN B. LINDEN, )

Plaintiff, )

Vs. )

JOEL SCALZITTI, )

Defendant. )

DECISION AND ORDER OF THE COURT UPON  
PLAINTIFF'S MOTION FOR AN AWARD OF  
REASONABLE ATTORNEY'S FEES AND  
COSTS; DEFENDANT'S MOTION TO TAX  
COSTS; DEFENDANT'S OPPOSITION TO THE  
IMPOSITION OF AN ORDER OF RESTITUTION

The above-entitled matters came on regularly before the Court for determination of these post trial issues. Defendant SCALZITTI has requested that the Court not only rule upon the various issues presented but also prepare and file a Statement of Decision in ruling upon these post trial motions and issues.

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## FACTUAL SUMMARY

The present post trial motions come at the conclusion of an *in quo warranto* action in which the Court was required to make factual and legal conclusions after the presentation of oral and documentary evidence regarding the legitimacy of SCALZITTI'S claim to hold the elective office of Member of the Board of Directors of the Helix Water District. At the conclusion of the evidentiary and argument presentations of counsel the Court ruled that SCALZITTI was not qualified to hold the office to which he was elected because he was not a resident of Division One and he was not a landowner within the District for his entire term of office. Upon those factual and legal findings the Court ruled that SCALZITTI did not have a rightful claim to the office to which he was elected and the Court declared the office of Director, Division One to be vacant.

The People of the State of California, on the relation of JOHN B. LINDEN, have pursued this action *in quo warranto* based upon and under the authority of a formal preliminary finding and leave to sue letter by the Attorney General of the State of California. LINDEN prevailed in his action.

LINDEN now seeks to recover attorney's fees and costs as the undisputed prevailing party pursuant to Code of Civil Procedure section 809 and the private attorney general doctrine pursuant to Code of Civil Procedure section 1021.5.

## STATEMENT OF DECISION: ISSUES

The Court is not informed of specific issues which the Defendant seeks to have addressed in a Statement of Decision by the Court. However, the Court will attempt to address each of the concerns that was apparent from the oral arguments heard by the Court on December 13, 2002.

## DISCUSSION

Request of the Court for an Accounting from the Helix Water District and  
Reimbursement/Restitution for Monies Received By SCALZITTI While Serving As a Director of the  
Helix Water District:

1 The Helix Water District responded to the Court's request for an accounting of funds paid to  
2 SCALZITTI during his holding of office on the Board of Directors. The accounting provided to the Court  
3 establishes that SCALZITTI received compensation from the Water District in the total amount of  
4 \$51,536.84. This amount is the total of \$30,300.00 in per diem payments; \$7,381.37 for attendance at  
5 conferences as a member of the District's Board; \$389.86 for mileage reimbursements; \$1,928.88 for  
6 miscellaneous expenses paid by the District; \$330.51 for installation of computer by Cox Communication  
7 and, \$11,206.22 for Health and Life Insurance premiums paid by the District on behalf of SCALZITTI.

8 The Defendant does not dispute the accounting.

9 Defendant argues that the Court is without legal authority or inherent power to issue an Order of  
10 Reimbursement/Restitution. Factually, Defendant argues that he attended all meetings of the Board and  
11 conferences for which he was paid a per diem. All other expenses paid by the District were reasonably  
12 incurred by Defendant in the performance of his responsibilities as a member of the Board and for which  
13 he was legitimately reimbursed by the District upon the submission of proof of the expenses.

14 Defendant argues that under Code of Civil Procedure section 809 the sole and exclusive  
15 remedies provided by statute in an *in quo warranto* action are the ouster from office, payment of costs,  
16 and the imposition of a fine of up to \$5,000.00. In support of this proposition Defendant cites the Court to  
17 the decision in *Havermeyer v. Superior Court* (1890) 84 Cal. 327. This Court is persuaded that the  
18 *Havermeyer* Court decision establishes that, prior to the enactment of Code of Civil Procedure section  
19 1021.5, the only action which may be taken by the Court upon the finding of guilty in an *in quo warranto*  
20 action is that which is specifically provided within the terms of Section 809 of the Code of Civil Procedure.  
21 This conclusion is supported by the determination of the Court of Appeal in a later decision in the case of  
22 *Black v. Bailey* (1916) 30 Cal.App. 581. In the *Black* case, (an *in quo warranto* action), the Court of  
23 Appeal reversed the trial court's order requiring the ousted office holder to repay salary received.

24 This Court, therefore acknowledges that it is without legal precedent and/or authority to impose a  
25 condition of Reimbursement/Restitution.

1        **RULING: THE COURT RECEIVES THE ACCOUNTING OF THE HELIX WATER DISTRICT**  
2        **BUT DECLINES TO ISSUE AN ORDER OF REIMBURSEMENT/RESTITUTION OF THE SUMS**  
3        **STATED.**

4  
5        **Defendant's Motion to Tax Costs:**

6        The Defendant objects to the claim by LINDEN to recover the sum of \$1,984.47 for the cost of the  
7        trial transcripts as well as the sum of \$100.00 for the bond premium. Defendant's objection to the cost of  
8        the bond is that there has been no documentation of this expense by the Plaintiff. Defendant objects to  
9        the cost of the trial transcripts as an unnecessary expense. Defendant asserts that the transcripts may  
10       well have been of assistance and beneficial, but nothing to establish that the transcripts were necessary  
11       has been presented by LINDEN. LINDEN, however, argues that the production of the transcripts was  
12       made necessary by the interruption of the trial and examination of witnesses as well as in the preparation  
13       of the Plaintiff's Motion for Judgment, a brief which was requested of the Plaintiff by the Defendant.

14       It is generally considered to be the rule that trial transcripts not ordered by the trial court are not  
15       allowable as costs. (See Code of Civil Procedure section 1033.5(b)(5)).

16       The Court did request copies of the transcripts that had been prepared at the request of Plaintiff's  
17       counsel. These transcripts were necessary to the Court's preparation for the balance of the evidentiary  
18       proceedings as well as helpful to the Court in the preparation of its Statement of Decision as requested by  
19       Defendant's counsel. These transcripts were certainly necessary in the proper preparation of counsel for  
20       the balance of the evidentiary proceedings as well as the Plaintiff's Brief in support of the Plaintiff's Motion  
21       for Judgment.

22       The Court concludes, based upon the foregoing, that the preparation of the trial transcripts was a  
23       legitimate and necessary expense in the prosecution of this action. The bond premium is also a legitimate  
24       expense.

25  
**RULING: DEFENDANT'S MOTION TO TAX COSTS IS DENIED.**

1  
2 **Plaintiff's Motion for an Award of Attorney's Fees:**

3 Counsel for the Defendant raises the previous argument that section 809 is specific and exclusive  
4 with regard to penalties to be imposed and costs awarded. Counsel asserts that the "costs" referred to in  
5 section 809 do not include an award of attorney's fees but simply the costs of litigation. Counsel for the  
6 Defendant also argues that since the action *in quo warranto* is exclusive to the State of California and the  
7 State is a public entity, attorney's fees cannot be awarded to the Plaintiff.

8 Addressing these two arguments it is important to note that the cases and propositions of the  
9 cases cited by Defendant all are dependent upon legal analysis and precedent that is prior to the addition  
10 of Code of Civil Procedure section 1021.5.

11 It is also worthy of note that the following section, section 810, uses "costs" in conjunction with the  
12 phrase "expenses" in very much a collective sense. Such language when construed in a reasonable  
13 manner as affecting both section 809 and 810 includes not only actual costs of litigation but attorney's  
14 fees as well. Certainly if a relator is to be liable for the costs and expenses of the failure of the action, it  
15 stands to reason that the successful relator is entitled to collect costs and expenses in victory.

16 It is this Court's view, however that such a construction of statutes is unnecessary in that the  
17 present *in quo warranto* action is exactly the type of action for which Code of Civil Procedure section  
18 1021.5 was enacted. It cannot be gainsaid that there are a significant number of actions which pertain to  
19 the public interest that the Attorney General of this State does not have the resources to pursue. In the  
20 case at bar the issuance of a Leave To Sue authorization by the Attorney General (Opinion of the Attorney  
21 General Number 02-306 dated May 10, 2002) is based upon the demonstration of the existence of a  
22 substantial question of fact or law of sufficient public interest to warrant the granting of leave to sue *in quo*  
23 *warranto*. In the final words of the Opinion: "Rather, both the public and the District have an interest in a  
24 judicial resolution of this matter. Accordingly, the application for leave to sue *in quo warranto* is  
25 GRANTED." (Opinion of the Attorney General, Number 02-306, May 10, 2002). It is difficult to perceive a  
matter of more substantial public interest than the legitimacy of the democratic elective process. It is,

1 therefore, without question that the authorization of LINDEN to proceed in the name of the People of the  
2 State of California was based upon a substantial issue of public interest and the resolution of which will  
3 result in a substantial public benefit.

4 To paraphrase President John F. Kennedy, the deception of one voter in a democracy impairs the  
5 security of all.

6 In sum, it is appropriate to award attorney's fees to the successful private relator in an *in quo*  
7 *warranto* action. The Supreme Court in the case of *People of the State of California ex rel. Seal Beach*  
8 *Police Officers Association v. City of Seal Beach* (1984) 36 Cal.3d 591 at page 602 states in a matter of  
9 fact way, almost in passing, in an *in quo warranto* action:

10 "We are satisfied that relators' action meets the requirement of section  
11 1021.5 of the Code of Civil Procedure. (*Baggett v. Gates* (1982) 32  
12 Cal.3d 128, 142-143 . . .). They are therefore entitled to recover  
13 attorney fees." [Emphasis added].

14 It is also quite clear that prior to the enactment of Code of Civil Procedure section 1021.5 the  
15 Supreme Court concluded that it was and is within the inherent power and equitable authority of the  
16 California courts to award attorney's fees under a "Private Attorney General" theory to litigants who  
17 successfully pursue "Public Interest" litigation in which an important constitutional right is vindicated. (See  
18 *Serrano v. Priest* (1977) 20 Cal.3d 25 [*Serrano III*]; cited in *Woodland Hills Residents Association, Inc. v.*  
19 *City Council of Los Angeles* (1979) 23, Cal.3d 917, 924-925).

20 In conclusion the successful relator in an *in quo warranto* action may be awarded attorney's fees  
21 under the provisions of Code of Civil Procedure section 1021.5.

22 This conclusion is not end of the analysis with regard to the request for attorney's fees by  
23 LINDEN. The trial court must make the specific finding required by the statute that the action has resulted  
24 in the enforcement of an important right affecting the public interest. Additionally, it is the responsibility of  
25 the trial court to determine the reasonableness of the attorney's fees requested by the successful relator.



1 The Court finds that this action brought by LINDEN as relator on behalf of the People of the State  
2 of California pursuant to a Leave to Sue authorization from the Attorney General is an authorization to  
3 proceed in the capacity of a private attorney general. The Court also finds that the resolution of this  
4 matter has conferred a substantial public benefit upon the general public and, in particular, a significant  
5 and substantial public benefit to the public served by the Helix Water District. The Court also finds that in  
6 the vindication of an important public and constitutional right the financial burden imposed upon the  
7 relator LINDEN was out of proportion to his individual or personal stake in the matter.

8 As to the reasonableness of the fees requested by LINDEN, the Court has determined that upon  
9 an analysis of the complexity of the issues presented, the investigation and preparation for the Leave to  
10 Sue letter, the preparation and presentation of the legal and factual issues, the expertise required of  
11 counsel, and the skill and dedication of counsel to this matter that a reasonable award of attorney's fees  
12 is in the amount of \$75,000.00. The Court recognizes that this is significantly less than that requested  
13 and documented, but the Court is also cognizant of the need for an equitable balance which needs be  
14 struck between the result achieved and the significant impact such an award will have on SCALZITTI, the  
15 individual.

16 **RULING: RELATOR LINDEN'S MOTION FOR ATTORNEY'S FEES IS GRANTED IN THE SUM**  
17 **OF \$75,000.00 TO BE PAID BY THE DEFENDANT SCALZITTI.**

18  
19 **ORDER UPON DETERMINATION**

20 Counsel for the relator LINDEN is Ordered and Directed to prepare and submit to the Court an  
21 Order in conformity with the Court's Rulings in this matter as set forth above.

22 IT IS SO ORDERED.

23 DATED: January 8, 2003.

24   
25 WILLIAM J. HOWATT, JR., Judge