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Bernardino and other items concerning issues of importance or interest to the
county. Items that may be unflattering to the county or even untrue are
included to make the organization aware of what the public is seeing.
Settlement talks leave

2 S.B. County supervisors, developer negotiate;

2 BY DUANE W. GARG,
   CASSIE MACDOUGG
   AND SHARON MCMARY
   THE PRESS-ENTERPRISE

San Bernardino County could end a lengthy legal battle Monday if supervisors write a check for as much as $230 million to a Rancho Cucamonga developer.

The size of the prospective settlement is unusual, but what makes the deal extraordinary — according to county leaders and people who have examined the case — is how the supervisors got to this point.

During a three-year legal battle with Colonies Partners over who should pay for flood-control measures within a 434-acre commercial and residential development in Upland, the supervisors have not acted like typical adversaries in a lawsuit.

Chairman Bill Postmus and Vice Chairman Paul Biane, who represents the west county area, have bypassed county-paid lawyers and are negotiating directly with Colonies executives, a move that one county supervisor called risky.

Since Colonies filed the lawsuit in March 2002, Postmus, Biane and recently elected Supervisor Gary Ovitt, combined, have accepted tens of thousands of dollars in campaign contributions from Colonies.

And both sides have used the same adviser. The county gave former state Sen. Jim Brulte a $24,999 contract last month to help secure state funding for flood control on the Colonies property, after Brulte worked as a business adviser to the company.

lawyers out

$200 million plus at stake

ny. The contract is one dollar less than what would have required a public board vote.

In February, an appellate court issued a tentative ruling that reversed a trial-court decision favoring Colonies. That put the county into a stronger negotiating position, possibly reducing any ultimate payout to Colonies, which claims losses of $254.2 million.

"They shouldn't be paying for something they don't need to pay for, because the ruling gave it to them," said Redlands land-use attorney John Mirau, who has read the tentative ruling and is not involved in the case.

These events have occurred largely outside the public view, while the county has worked to recover from a corruption scandal that put some of its former leaders in prison. County officials have often pledged to avoid the appearance of conflicts of interest to restore public confidence in county government.

San Bernardino County's five supervisors are scheduled to spend Monday in a closed-door settlement conference at the state Court of Appeal in Riverside.

See Talks/44

JIM BRULTE'S DUAL ROLE:
California assemblyman and state senator for 14 years. Left office in 2004 because of term limits.

- As a legislator, drafted a 2003 state bill to make $10 million available for flood control on Colonies property.
- Partner, California Strategies consulting firm.
- Hired in May by San Bernardino County to help write grant application for the $10 million made available in water bond.

THE PRESS-ENTERPRISE

Press-Enterprise
6.12.05

BURSUB0014034
"They Took It"

Colonies, a group of about 20 investors, bought the land in Upland from the San Antonio Water Company's liquidation trust in 1997 for $16 million. On a rocky slope scarred by decades of gravel mining, the company set about creating a planned community of 1,150 homes and 100 acres of shopping, restaurants and entertainment.

After the 210 freeway sliced across the property in 2002, water that used to flow down the sloping land was funneled through a new storm drain onto Colonies' property. A dispute sprang up as to who should pay for flood-control measures - including a 67-acre drainage basin once used as a gravel quarry.

Legal wrangling ensued.

Settlement negotiations failed last year. Talks resumed earlier this year when the Board of Supervisors unanimously told Postmus and Biane to speak directly with Colonies principals.

Postmus said a settlement is in the county's best interest, rather than risk losing in court.

"Our worse-case liability is like $200 million," he said.

Jeffrey S. Burum, the managing partner of Colonies, declined repeated requests for comment, then provided a half-page written statement late Friday.

The county illegally required the basin to be built on land to which the county had no entitlement, Burum wrote.

"It was ours, they took it," he wrote. "No homeowner would willingly let the government take their property, and we will not allow this abuse of the government's power either."

The company detailed its $254 million claim, citing interest, devaluation of parcels during litigation, and delay in opening a commercial center and compensation for land taken by the county.

Postmus and Biane disagree about how many meetings they have attended with Colonies.

Postmus said that since negotiations began again this year, two meetings have taken place, one with the county's lawyers and one without. Biane said he does not know how many times he and Postmus have met with Colonies officials outside of formal meetings.

"We have met several times," he said. "Too many times. It is a pain."

In addition, Postmus and Biane each say they got buttonholed by Burum to talk about a potential deal when they see each other at events.

"We have had friendly dialogues on it, but we still haven't been able to come to a settlement," Postmus said.

The talks also have been contentious, he said.

"I don't think being told that I am wrong over and over again and (that) taxpayers could be out $200 million... is real friendly talk," Postmus said.

DEALING WITHOUT LAWYERS

Supervisor Dennis Hansberger finds the meetings disquieting because he thought lawyers would be present.

Postmus and Biane are the right people to lead the talks, but not without lawyers, Hansberger said.

"I think it's a highly risky thing to do," he said. "We assign these types of risks to professionals and give them guidance, and you guide them in closed sessions, but you don't ever try to do it alone."

Miran, the land-use lawyer, has negotiated on behalf of the Inland Valley Development Agency, which is remaking the former Norton Air Force Base into an industrial center.

"Very few people would kick the attorneys out and say, 'I'm going to handle this myself,'" he said. "My clients wouldn't do that."

Postmus said it's ridiculous to think he and Biane can negotiate without lawyers.

As full-time public officials, it's their job to find solutions to pressing county issues, he said. The lawyers are kept informed, Postmus said.

George Lefcoe, a University of Southern California professor of real-estate law, said it can be a good idea to get the lawyers out of the room and let the parties negotiate a settlement directly.

"Sometimes people can find options lawyers don't consider," he said.

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BRULTE'S ROLE

Brulite, the former state senator, has participated in settlement talks, supervisors said.

Brulite said he was Colonies' strategy adviser from December through January. The county hired Brulite in May to help the Flood Control Division apply for $10 million in state flood-control money at the Colonies site, he said. Brulite drafted the 2003 state bill that steers the money to the Colonies project.

"I never worked for Colonies and the county at the same time," Brulite said.

He sat in on one meeting with Postmus, Biane and the Colonies principals, Brulite said, and both sides wanted him to be there.

"I think the board never authorized Brulite to represent the county's interests during the talks, Hansberger said. If Brulite was present, it was because one of the supervisors made an individual request."

"I consider it a very awkward situation because he represented the Colonies, and it's my understanding that he's there on behalf of the Colonies, not the county," Hansberger said.

"At the same time, he is very involved with the supervisors who are negotiating this. He is closely involved in their day-to-day political activities and I feel that creates confusion in the minds of many."

"This really belongs in the hands of the lawyers and the supervisors, not outside hands," Hansberger said.

Brulite, having received money from both the county and Colonies, should not be in the room, said Bob Stern, president of the Center for Governmental Studies in Los Angeles, a nonprofit research firm that advocates campaign-finance reforms.

"He should really keep out of this if he was paid by the company," Stern said.

CAMPAIGN CONTRIBUTIONS

Supervisors and candidates for supervisor have accepted more than $50,000 from Colonies since 2001, campaign-finance records show.

"It looks terrible," Stern said, recommending that they return the money. "The only reason the company is giving them tens of thousands of dollars is to have access to them and make the supervisors feel more favorable toward the company."

In 2004, Colonies gave $25,000 to Ovitt, who won the 4th District seat representing Ontario and parts of the west county in November. That was the single largest contribution Ovitt received in 2004.

The company also gave $10,000 to then-Assemblyman John Longville for his losing supervisorial campaign to represent the 5th District, which includes San Bernardino, Rialto, Colton, Bloomington and Muscogee.

Despite repeated requests, Ovitt did not make himself available for an interview for this story.

Colonies in 2004 supported Ovitt in excess of $100,000 to the San Bernardino County Safety Employees Benefit Association, which wrote checks totaling $10,275 to Ovitt's campaign committee. The association represents sheriff's deputies.

Colonies paid $80,000 into the deputies union's political action committee at the same time that the union was funding the campaigns of Ovitt, Longville and Postmus, campaign-finance records show.

From October through December, the union gave $35,000 to Ovitt, $6,000 to Postmus and $30,000 to Longville.

The contributions are large, but not unheard of in a county that places no restrictions on how much candidates and officeholders may accept for their campaigns.

Union officials did not respond to repeated requests for comment. Colonies officials also did not contribute in their statement.

Colonies' donation was the largest out of the source of contributions to the union's political action committee.

Colonies gave Postmus $5,800 from 2001 through 2003, in donations ranging from $900 to $2,500. The amounts are not out of scale with Postmus' average $1,200 contribution.

Postmus said the amount he has taken from Colonies is in-

continued from A45
significant compared with the $3 million he has raised in the past five years.

"I look at things based on the merits, not based on campaign contributions," he said.

Colonies gave Biane a single $10,000 donation in November 2002. He also received $2,000 from Jeff Burum Enterprises in April of that year. Biane's average contribution is $1,600.

Biane, who has known Burum for more than 10 years, said those who do business with the county often are the largest donors to supervisors.

"It still doesn't affect how I vote," Biane said. "I definitely wear the county's hat ... first and foremost."

$1.2 Million in Legal Fees

In the three-year life of the lawsuit, supervisors have spent $1.2 million on three law firms.

Both sides say they knew water would be sloshed on the property. Initially, they worked together to agree on how that would be done.

Eventually, a dispute arose over who should pay, and Colonies sued the county in March 2002.

Colonies contends the county does not have rights to the basin on Colonies' property and must pay to use it for flood control. Water draining into the basin does not come from Colonies but from a 3,000-acre watershed north of the freeway, the company has argued.

County officials counter that easements dating to the 1880s still are in place and that taxpayers shouldn't foot the bill for improvements that make the developer's property more attractive and valuable.

Ken A. Miller, who retired as the county's flood-control chief last year, said the county was confident it had the easements. Therefore, it didn't take the basin by eminent domain, a process that lets governments seize land without the owner's consent while paying fair market value.

"We felt through those easements, we had the rights to drain waters onto, and store waters on, the property," Miller said.

In September 2003, San Bernardino County Superior Court Judge Peter Norell ruled in favor of Colonies, saying the county had abandoned its rights to the property and the 67-acre drainage basin. The judge said the county had not used the land in years.

County officials immediately appealed.

The appellate court's tentative ruling — which permits both sides to debate before it becomes final — states that the trial court erred in finding the county had abandoned the flood-control easements on the Colonies property.

That gave the county "a win on a major issue," said Mitsu Kishino, the land-use attorney. "That's big. It puts this county in a strong bargaining position" for settlement talks.

But the appellate justices also said the county was not entitled to all 67 acres for flood control.

The justices in the tentative ruling said the county's easements totaled just 11 acres, meaning the county still would have to pay for a significant portion of the land.

Upland City Attorney William Curley, who reviewed the ruling, said the court appears to be struggling with equities on both sides.

"That water has got to go somewhere," he said. "But [the justices] also respected that the property owner has some rights and you can't just go flood whatever you please."

Hansberger said Colonies knew what it was getting into when it purchased the land in 1997.

"They think that hole in the ground is worth a lot of money," he said.

'Meter Is Running'

Most likely, any settlement now will cost the county far more than if an agreement had been reached when Colonies first filed its lawsuit.

Property values in the area continue to climb. Steve Johnson of the real-estate consulting firm Metrostudy said housing prices have shot up more than 135 percent in the past four years — and undeveloped land has appreciated even more.

Biane said one legal theory holds that the value of the land froze when the lawsuit was filed. Another, which he subscribes to, says the "meter is running."

When the 210 freeway opened in 2002, it made the commercial land more valuable. Colonies received an $18 million settlement from Caltrans for land consumed by the freeway.

With the settlement conference scheduled for Monday, a deal could be near.

"I don't have any predictions on the outcome," said Biane. "If we can't reach a settlement that is fair to the county, then we will continue to litigate."

Postmus and Biane reject the notion that the Colonies' campaign contributions and the personal meetings with Burum mean they would give the company a settlement that shortchanges county taxpayers.

"Our friendship isn't what it was and probably will never be the same again," Biane said, referring to Burum.

Postmus said, "I wish I would have never even heard the name Colonies."

Staff writer Phil Pitchford contributed to this report.

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**THE COLONIES PROJECTS**

![Disputed flood control area](image)

Source: Colonies Partners

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BURSUB0014036
THE COLONIES

Colonies has more than 20 local investors. Partners are Jeffrey S. Burum, Daniel W. Richards, Andrew Wright and Douglas Gorgen.

The company developing the Colonies projects along the 210 freeway in Upland is suing San Bernardino County over a flood control issue. A settlement conference is set for Monday at the state Court of Appeal in Riverside.

The project:
Acres: 434
Homes: 1,550
Commercial: 100 acres of shopping, restaurants and entertainment. Tenants include Home Depot, Target, Kohl's, Chico's Sporting Goods

Managing partner:
Jeffrey S. Burum
- Board chairman, Southern California Housing Development Corp., a nonprofit developer of affordable housing
- Founder and executive director of National Housing Development Corp., a nonprofit addressing national need for affordable housing
- Member, Congressional Millennial Housing Commission; board member
- Board member, Children's Fund
- Rancho Cucamonga resident

$80,000
$75,000 on Nov. 1, 2004
$5,000 on Dec. 10, 2004

San Bernardino County Safety Employees Benefit Association:
The Colonies donations are unusually large for the committee to receive from an outside source. The committee, which collected more than $1 million for political campaigns from members' dues, received just $3,343 in contributions from three other outside sources.

Colonies campaign contributions
Includes contributions from Colonies Crossroads Inc., Colonies Partners LP and Jeff Burum Enterprises. The contribution amounts are comparable to those made by other developers. For example, in 2004 then-supervisor candidate Gary Ovitt received $27,500 from the Lewis Group and $20,000 from Young Homes.

$5,990
(several contributions, 2003-2004)

Bill Postmus
1st District Supervisor
Former chief aide to Assemblyman Keith Olberg, R-Victorville.
Elected to Board of Supervisors in 2000, re-elected in 2004, now board chairman.
Chairman, San Bernardino County Republican Party.
Board member, SANBAG, the county's transportation agency.
Hesperia resident.

$12,000
(two contributions, 2004)

Paul Blane
2nd District Supervisor
Works in finance and real estate.
Previously served on Rancho Cucamonga City Council.
Elected to Board of Supervisors in 2002, now vice chairman.
President, SANBAG.
Chairman, Local Agency Formation Commission, which governs annexations in the county.
Rancho Cucamonga resident.

$25,000
(one contribution, Sept. 22, 2004)

Gary Ovitt
4th District Supervisor
Former teacher, Chaffey High School.
Previously served as Ontario mayor and councilman.
Elected to Board of Supervisors in 2004.
Board member, SANBAG, Omnitrans, Southern California Association of Governments.
Ontario resident.

$6,000

SEBA's contributions:
$103,500 to county supervisors and supervisor candidates from October through December 2004, including $41,000 to Postmus and Ovitt.

$35,000