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Judge: Salt pond appraisal flawed

Taxpayers likely overpaid Cargill in $100 million deal

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The appraisal used to justify the government's $100 million purchase of South Bay salt ponds in 2003 was based on "unidentified extraordinary assumptions" on virtually every point, a state judge has declared.

Those assumptions — on development, restoration potential, lost income and other factors — potentially added tens of millions of dollars in phantom value to the 18,000 acres the government received from agriculture giant Cargill.

Paul Talmage of San Mateo, one of two appraisers to sign the document, was fined $36,573 and had his license revoked for three years by state administrative law judge David Benjamin in a ruling signed last month and obtained Thursday.

The other appraiser, Charles Bailey of Mill Valley, agreed to a censure and $4,000 fine in September, before the matter went to court.

Talmage could not be reached for comment. Bailey, reached by phone, said he wasn't a part of the trial. "I haven't paid any attention to it. I have settled and my license is still active and I have no reason to look into that."

In sentencing Talmage, Benjamin noted the cost to taxpayers of the faulty appraisal was not a matter for his court to decide.

"The actual harm to the public, if any ... is not clear," he wrote in the 24-page decision. "It is clear, however, that the appraisal cleared the way for the possible expenditure of hundreds of millions of dollars of public money, based largely on unstated extraordinary assumptions and hypothetical conditions."

Cargill, after much negotiation, sold off much of its vast network of evaporation ponds and wetlands to the state and federal government in 2003 for $243 million: $100 million in cash and $143 million in federal tax write-offs. The ponds ring the South Bay, from San Jose to Hayward to Redwood City.

At the time, architects of the deal, particularly Sen. Dianne Feinstein, D-Calif., insisted it was a fair price.

But that price was based on two secret but independent appraisals of the land's market value. The Bailey-Talmage appraisal valued the property at $338 million. A different appraisal, not subject to the suit, claimed a market value of $400 million.

The judge's decision confirms fears of those who sought access to those appraisals before the deal was inked: That methods used to value the wetlands — a notoriously difficult task — over-inflated the price.

"The public did not get the constitutional protection that the appraisal should have provided," said John Hansen, executive director of Integrity in Natural Resources, a Santa Rosa-based group that scrutinizes such environmental purchases. "The question is whether (the land) is even an asset. It's probably a liability in the private sector."

Feinstein was unavailable for comment late Thursday. But in October, shortly before the case went to trial, she said she stood by her decision. "I believe this was as fair a purchase as was possible at the time," she said then.

Judge Benjamin found inflated assumptions throughout the appraisal:

-Cargill claimed some of the property could be used as a repository for dredged mud and sand. But Bailey and Talmage heard from a U.S. Environmental Protection Agency attorney, who said any dredge disposal operation would need a permit — and that approval of such a permit was unlikely. The appraisers sided with Cargill, valuing the potential disposal site at $17.7 million.

-The 350 acres around Cargill's Redwood City plant was valued at $78.5 million, based on a development plan of thousands of new apartments, stores and office buildings. But such a blueprint would have to clear a gauntlet of state, federal and local agencies and could be tied up for decades. The appraisal, Benjamin said, "provides no factual basis on which to conclude that it is reasonably probable that the public agencies would permit the proposed mixed-use development."

-Cargill's salt-making rights on federally owned wetlands were worth $3,000. The appraisers said Cargill could make many times that by selling the rights as "mitigation credits" to other developers, particularly San Francisco International Airport. But SFO's airport expansion deal was dead by 2003, Cargill's vast holdings would far exceed any sort of demand for mitigation credits, and it's unclear whether regulators would allow such a swap.

"The appraisal's highest and best use conclusion ... and its valuation of those components," Benjamin wrote, "are based on a series of unidentified extraordinary assumptions concerning remediation of the property, restoration of the property, the establishment of mitigation credits, the price of mitigation credits, the demand for mitigation credits and the timing of those events."

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