

ENDORSED-FILED

NOV 10 2014

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA

JOHN LOZANA

1 DANIEL F. CROWLEY, ESQ. (#130261)  
2 PATRICK K. O'BRIEN (#167957)  
3 DANIEL CROWLEY & ASSOCIATES  
37 Old Courthouse Square, Suite 200  
4 Santa Rosa, California 95404  
Telephone: (707) 525-8999  
5 Facsimile: (707) 542-4752

6 CHRISTOPHER J. NEARY (#69220)  
7 JENNIFER M. O'BRIEN  
NEARY & O'BRIEN  
8 100 S. Main Street, Suite C  
Willits, CA 95490  
9 Telephone: (707) 459-5551  
10 Facsimile (707) 459-3018

Exempt from filing  
Fees Pursuant to  
Gov. Code §6103

11 Attorneys for Plaintiff,  
12 BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF MENDOCINO

16 BROOKTRAILS TOWNSHIP COMMUNITY  
17 SERVICES DISTRICT, a Public Agency,

18 Plaintiff,

19 v.

20 CITY OF WILLITS, a General Law City; and  
21 DOES 1 through 100, inclusive

22 Defendant.

CASE NO. **SC01K-CVG- 14-64859**

COMPLAINT FOR TRESSPASS; INVERSE  
CONDEMNATION AND FOR INJUNCTIVE  
RELIEF

**JURY TRIAL DEMANDED**

FILED BY FACSIMILE

24 Comes now, plaintiff BROOKTRAILS TOWNSHIP COMMUNITY SERVICES  
25 DISTRICT, a public agency (the "District" or Plaintiff) for cause of action states as follows:

- 26 1. Plaintiff is now; at all times mentioned in this Complaint has been a duly  
27 organized community services district, created under the Community Services District law.  
28 2. Defendant City of Willits ("the City" or Defendant) is now, and at all times

Daniel Crowley & Associates  
37 Old Courthouse Square, Suite 200  
Santa Rosa, Ca 95404  
Tel: (707) 525-8999

1 mentioned in this Complaint has been, a General Law City located in the County of Mendocino.

2 3. The true names and capacities, whether individual, corporate, associate or  
3 otherwise, of defendants sued herein under the names of DOES 1 through 100, inclusive, are  
4 unknown to plaintiffs at this time. Plaintiff sues such defendants by such fictitious names  
5 pursuant to Code of Civil Procedure § 474 and will amend this Complaint to allege such  
6 defendants' true names and capacities when ascertained. Plaintiff is informed and believes and  
7 on such basis alleges that defendants DOES 1 through 100, inclusive, and each of them, are in  
8 some manner liable to plaintiff, or claim some right, title, or interest in the subject property that  
9 is junior and inferior to that of plaintiff, or both.

10 4. At all times mentioned in this Complaint, defendants and each of them were the  
11 agents, servants, and employees of the other defendants, and in doing the things alleged in this  
12 Complaint, defendants were each acting within the scope and authority of such agency and/or  
13 employment, with the knowledge and consent or ratification of each of the other defendants in  
14 doing the things alleged herein.

15 5. On or about November 19, 1975, Plaintiff and Defendant entered into a written  
16 agreement, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated  
17 herein by this reference as though fully set forth at length (the "Agreement"). Generally, the  
18 Agreement provides for the acceptance of sewage from the District for treatment and processing  
19 at the City of Willits Sewer Plant (WWTP) and the contribution by the District of certain costs of  
20 treatment on the terms as provided in the Agreement. In 1975 the District had the exclusive right  
21 to use capacity in the plant equal to 160,000 gallons per day.

22 6. Following this Agreement a series of amendments to the Agreement were signed.  
23 The Third Amendment ultimately resulted in the District having an ownership share in the  
24 capacity of the WWTP in the amount of 490,000 gallons per day. (.49 MGD). Each of these  
25 amendments refers to The District' rights to capacity as being "exclusive." (See Second  
26 Amendment at paragraph 4; Third Amendment at paragraph 4, the Second and Third  
27 Amendments to the Agreement are attached hereto as Exhibit B.)  
28

1 7. The Agreements required that the City monitor through proper metering the inflows  
2 from both the City and from The District, in order to determine the various parties' liabilities for  
3 operating costs, and also to assure that neither party was exceeding its ownership interest in  
4 capacity.

5 8. In 2001 the City commenced design to abandon the old WWTP and replace it  
6 with a new WWTP. Stage 1 of construction commenced in 2007 and was completed in 2009.  
7 Stages II and III commenced in 2010 and were completed in 2012. The dry weather capacity of  
8 the new plant was ultimately certified at 1,180,000 gallons per day.

9 9. As a result, currently the City has the exclusive right to use 690,000 gallons of  
10 capacity per day and The District has the right to use 490,000 gallons per day of the capacity of  
11 the WWTP. This is a valuable and exclusive property right owned by the District.

12 10. In 2012 the City certified through its own metering that the average dry weather  
13 flow capacity used by the City was 710,000 gallons per day. This is 20,000 gallons per day in  
14 excess of its capacity allowance and thus deprived The District of its exclusive contractual right  
15 to use capacity of 490,000 gallons per day. The City has taken this valuable property right from  
16 The District without any offer of compensation, without permission and without any request to  
17 so use The District property.

18 **FIRST CAUSE OF ACTION**

19 **(Inverse Condemnation)**

20  
21 11 Plaintiff realleges and incorporates by reference as though fully set forth herein  
22 paragraphs 1 through 10 of this Complaint.

23 12 The City of Willits is a Public entity.

24 13. Plaintiff has the exclusive right to capacity in the WWTP amounting to 490,000  
25 gallons per day.

26 14. In 2012 the City wrongfully used and usurped 20,000 gallons per day of  
27 Plaintiff's exclusive treatment capacity. This amounted to the City taking, without  
28 compensation, 7,300,000 gallons of The District's exclusive capacity in the WWTP over the

1 course of the year 2012.

2 15. This taking by the City, in violation of the California Constitution Article 1,  
3 Section 19, has caused Plaintiff damage, in the form of loss of use of its property right, and the  
4 wrongful taking of its property right.

5 16. Plaintiff is entitled to recover its attorney's fees and expert costs in accordance  
6 with California Code of Civil Procedure section 1036.

7 **SECOND CAUSE OF ACTION**

8 **(Trespass)**

9 17. Plaintiff realleges and incorporates by reference as though fully set forth herein  
10 paragraphs 1 through 16 of this Complaint.

11 18. Plaintiff owns and has exclusive right to 490,000 gallons per day of the capacity  
12 of the WWTP.

13 19. Defendant intentionally, recklessly, negligently and without any care to Plaintiff's  
14 property rights, encroached on Plaintiff's exclusive capacity rights and used 20,000 gallons per  
15 day of plaintiff's capacity in the year 2012.

16 20. Plaintiff did not give Defendant permission, either expressly or impliedly, to  
17 trespass on Plaintiff's property.

18 21. Plaintiff was harmed by Defendant's trespass and was denied access to a valuable  
19 property right without any compensation.

20 22. Defendant's actions were a substantial factor in causing the harm to Plaintiff.  
21 Such harm is a basis for injunctive relief against the City.

22 **THIRD CAUSE OF ACTION**

23 **(Injunctive Relief)**

24 23. Plaintiff incorporates by reference the allegations contained in Paragraphs 1  
25 through 22 of this Complaint.

26 24. Plaintiff has an exclusive right to process 490,000 gallons per day of its  
27 wastewater through the WWTP.  
28

1 25. Given that Defendant has already exceeded its capacity of 690,000 gallons per  
2 day, it is highly likely that as the City of Willits grows, it will require further capacity, which  
3 simply does not exist, without continuing to encroach on Plaintiff's exclusive capacity.

4 26. Currently the City continues to issue building permits to large and small projects.  
5 However, the City has no capacity to treat the wastewater generated by these new projects  
6 without unconstitutionally taking capacity from Plaintiff.


7 27. It is therefore necessary that this Court issue a preliminary and permanent  
8 injunction enjoining Defendant from issuing any new building or construction permits, or issuing  
9 any new permits to discharge into the WWTP until the City can assure Plaintiff that it will not  
10 continue to encroach on Plaintiff's exclusive property rights.

11 WHEREFORE, Plaintiff prays for judgment as follows:

- 12 1. For damages for inverse condemnation in an amount to be shown according to  
13 proof;  
14 2. For attorneys' fees;  
15 3. For costs of suit incurred herein, including expert costs;  
16 4. For a preliminary and permanent injunction stopping Defendant from taking any  
17 action which will increase its inflows into the WWTP, and to immediately halt the City from  
18 wrongfully encroaching in Plaintiff's property rights in the WWTP.  
19 5. For such other and further relief as the Court considers appropriate under all of  
20 the circumstances, including any necessary injunctive relief to maintain the *status quo* pending  
21 determination of this controversy.  
22

23 Dated: November 10, 2014

DANIEL CROWLEY & ASSOCIATES

24   
25 Daniel F. Crowley, Esq.  
26 Attorneys for Plaintiff, BROOKTRAILS  
27 TOWNSHIP COMMUNITY SERVICES  
28 DISTRICT