IN THE SUPREME COURT OF CALIFORNIA

TOWN OF APPLE VALLEY,
Plaintiff and Appellant,
v.
APPLE VALLEY RANCHOS WATER et al.,
Defendants and Respondents.

S289391

Fourth Appellate District, Division Two
E078348

San Bernardino County Superior Court
CIVDS1600180

August 24, 2026

Justice Kruger authored the opinion of the Court, in which Chief Justice Guerrero and Justices Corrigan, Liu, Groban, Evans, and Langhorne Wilson* concurred.

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* Associate Justice of the Court of Appeal, First Appellate District, Division One, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

TOWN OF APPLE VALLEY v. APPLE VALLEY RANCHOS WATER

S289391

Opinion of the Court by Kruger, J.

Under California's Eminent Domain Law (Code Civ. Proc., § 1230.010 et seq.), a public entity's right to take private property for public use depends, broadly speaking, on whether the taking is necessary to serve the public interest. As a general rule, public necessity is a matter for the public entity to decide, subject to limited judicial review: Ordinarily, when a public entity has adopted the statutorily required "resolution of necessity," the relevant public necessity requirements are "conclusively establishe[d]" unless a court finds that the public entity has grossly abused its discretion in adopting the resolution. (*Id.*, §§ 1245.250, subd. (a), 1245.255, subd. (b).)

In 1992, however, the Legislature created special rules for the taking of privately owned public utility property. Under those rules, even after adopting a resolution of necessity, a public entity's decision to take over a privately owned electric, gas, or water public utility does not conclusively establish the propriety of the taking, but merely creates a "rebuttable presumption" that the statutory requirements for taking the property are met. (Code Civ. Proc., § 1245.250, subd. (b), added by Stats. 1992, ch. 812, § 3, p. 3846; see *id.*, § 1240.650, subd. (c), added by Stats. 1992, ch. 812, § 2, p. 3846.)

The question in this case is what these special rules mean for judicial review of a public entity's decision to take property

belonging to a privately owned public utility. The Town of Apple Valley, which seeks to take over a privately owned water utility, argues that its decision to take the utility is subject to the usual standard governing judicial review of a resolution of necessity — meaning, in effect, that the court can disallow the taking only if it concludes that the Town has grossly abused its discretion. The Court of Appeal accepted this argument. We do not.

The Town's argument for gross abuse of discretion review cannot be squared with the 1992 amendments, which make the Town's resolution rebuttable, rather than conclusive, on the critical question of whether public necessity requires the taking of the utility's property. To evaluate a challenge to the taking of privately owned public utility property, the trial court, sitting as trier of fact, must exercise its independent judgment to determine whether the utility owner challenging the taking has rebutted the relevant presumptions and has thus established by a preponderance of the evidence that the taking is not authorized by the Eminent Domain Law.

We reverse the judgment of the Court of Appeal and remand for further proceedings.

I.

A.

In California, the power of eminent domain is governed by a set of statutory rules dating back to 1872, when the Legislature enacted a comprehensive Code of Civil Procedure that included a "new and valuable" "Title on Eminent Domain." (1 Ann. Code Civ. Proc. (1st ed. 1872, Haymond & Burch, commrs.-annotators) preface, p. vi.) The current Eminent Domain Law, which was enacted a century later (Code Civ. Proc., § 1230.010 et seq., added by Stats. 1975, ch. 1275, § 2, p.

3410), extensively revised California's eminent domain statutes " 'to cover, in a comprehensive manner, all aspects of condemnation law and procedure' and to produce 'a modern Eminent Domain Law within the existing California statutory framework.' " (*City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 65, quoting Eminent Domain Law, 13 Cal. Law Revision Com. Rep. (1975) pp. 1010–1011.)

Like its historic precursor, the current Eminent Domain Law permits public entities to exercise the power of eminent domain "to acquire property only for a public use." (Code Civ. Proc., § 1240.010.) A public entity seeking to condemn property by eminent domain must make certain substantive showings. In all cases, the condemning entity must establish that "[t]he public interest and necessity require the project" in question (*id.*, § 1240.030, subd. (a)); that "[t]he project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury" (*id.*, § 1240.030, subd. (b)); and that "[t]he property sought to be acquired is necessary for the project" (*id.*, § 1240.030, subd. (c)). These three required showings are commonly referred to as " 'the public necessity elements.' " (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 468; *Town of Apple Valley v. Apple Valley Ranchos Water* (2025) 108 Cal.App.5th 62, 74 (*Apple Valley*).) In addition, if the targeted property is already in public use, the public entity must establish a fourth element — that "the use for which the property is sought to be taken is a more necessary public use than the use to which the property is appropriated." (Code Civ. Proc., § 1240.610.) This element has been referred to as the " 'more necessary public use' " element. (*Apple Valley*, at p. 73.)

The public entity must also satisfy certain procedural requirements, including the "adopt[ion] [of] a resolution of necessity." (Code Civ. Proc., § 1240.040.) The adoption of a valid resolution of necessity is a prerequisite to "commenc[ing] an eminent domain proceeding." (*Id.,* § 1245.220.) In addition to other requirements, the resolution must contain "[a] declaration that the governing body of the public entity has found and determined each" of the public necessity elements to be true. (*Id.*, § 1245.230, subd. (c).) When the property is already in public use, there is no comparable requirement to explicitly state that the condemning entity has found the "more necessary public use" element to be true, but the resolution must "refer specifically" to section 1240.610, which sets out that requirement. (*Id.*, § 1240.610.)

Before adopting a resolution of necessity, the public entity must "give[] each person whose property is to be acquired by eminent domain . . . notice and a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030" — that is, the public necessity elements. (Code Civ. Proc., § 1245.235.) The resolution must state that the public entity made an offer to purchase the property, or that "the owner cannot be located with reasonable diligence" (*id.*, § 1245.230, subd. (c)(4)), and must be approved "by a vote of two-thirds of all the members of the governing body of the public entity" (*id.*, § 1245.240). After adopting a resolution, the public entity may initiate the eminent domain proceeding by filing a complaint in court. (*Id.*, § 1250.110.)

Generally a validly adopted resolution of necessity is all that is required to justify the proposed taking. Code of Civil Procedure section 1245.250 (section 1245.250) provides that a resolution "conclusively establishes the matters referred to in

Section 1240.030," i.e., the three public necessity elements. (§ 1245.250, subd. (a); see *id.*, § 1240.030.) Code of Civil Procedure section 1240.650 (section 1240.650) contains an analogous instruction concerning the more necessary public use element, although the instruction is not, in terms, keyed to the adoption of a valid resolution of necessity: It provides that "[w]here property has been appropriated to a public use by any person other than a public entity, the use thereof by a public entity for the same use or any other public use is a more necessary use . . . ." (*Id.*, subd. (a).)

There are, however, exceptions to the general rule treating a resolution of necessity as conclusive. One long-standing exception, included in the Eminent Domain Law as a continuation of prior, pre-1975 law, applies to extraterritorial takings by a local public entity — that is, takings where "the property described in the resolution is not located entirely within the boundaries of the local public entity." (§ 1245.250, subd. (c) (section 1245.250(c)); see Stats. 1975, ch. 1275, § 2, p. 3425; Sen. Legis. Com. com., 19 West's Ann. Code Civ. Proc. (2007 ed.) foll. § 1245.250, p. 431 [1975 Addition].) In this scenario, "the resolution of necessity creates a presumption that the matters referred to in Section 1240.030 are true," which "is a presumption affecting the burden of producing evidence." (§ 1245.250(c).)

Another exception, first enacted as part of the Eminent Domain Law in 1975, provides that when the state (as opposed to other public entities) seeks to appropriate property that is already in public use "for the same use or any other public use," the state's appropriation, rather than conclusively establishing the more necessary public use element, instead creates a presumption of a more necessary public use, which is a

"presumption[] affecting the burden of proof." (Code Civ. Proc., § 1240.640 (section 1240.640); see Stats. 1975, ch. 1275, § 2, p. 3419.) The legislative committee commentary accompanying this provision explains that "unlike prior law, the presumptions of this section are made rebuttable rather than absolute." (Sen. Legis. Com. com., 19 West's Ann. Code Civ. Proc. (2007 ed.) foll. § 1240.640, p. 390 [1975 Addition].)

In 1992, the Legislature added a set of provisions specific to the taking of privately owned public utility property. (Stats. 1992, ch. 812, §§ 2–3, p. 3846 (Sen. Bill. No. 1757 (1991–1992 Reg. Sess.)) (Senate Bill No. 1757).) Using language essentially identical to the language of section 1240.640, the first of these public utility provisions states that "[i]f the taking is by a local public entity . . . and the property is electric, gas, or water public utility property, the resolution of necessity creates a rebuttable presumption that the matters referred to in Section 1240.030 are true. This presumption is a presumption affecting the burden of proof." (§ 1245.250, subd. (b) (section 1245.250(b)), as amended by Stats. 1992, ch. 812, § 3, p. 3846.) A second provision created a parallel presumption regarding the "more necessary use" element: if the property "is electric, gas, or water public utility property which the public entity intends to put to the same use, the presumption of a more necessary use established by subdivision (a) is a rebuttable presumption affecting the burden of proof." (§ 1240.650, subd. (c) (section 1240.650(c)), as amended by Stats. 1992, ch. 812, § 2, p. 3846.) For ease of reference, we refer to these rebuttable presumptions as the "utility presumptions."

In all cases, the Eminent Domain Law permits a property owner to challenge a resolution of necessity in court. (Code Civ. Proc., § 1245.255 (section 1245.255), subd. (a).) This was not

always the case; "[p]rior to the enactment of the 1975 eminent domain law, a resolution of necessity could not be collaterally attacked." (*Anaheim Redevelopment Agency v. Dusek* (1987) 193 Cal.App.3d 249, 254 (*Dusek*).) But section 1245.255 now delineates two pathways for challenging a resolution of necessity. "Before the commencement of the eminent domain proceeding," an owner may challenge a resolution "by petition for a writ of mandate pursuant to [Code of Civil Procedure] Section 1085." (§ 1245.255, subd. (a)(1).) Otherwise, a challenge may be raised "[a]fter the commencement of the eminent domain proceeding, by objection to the right to take pursuant to this title." (§ 1245.255, subd. (a)(2).) Section 1245.255 further provides that a resolution "does not have the effect prescribed in Section 1245.250" — meaning that the resolution does not give rise to either a conclusive or a rebuttable presumption of public necessity — "to the extent that its adoption or contents were influenced or affected by gross abuse of discretion by the governing body." (§ 1245.255, subd. (b) (section 1245.255(b)); see also § 1245.250.)

For purposes of challenging a resolution of necessity, the Courts of Appeal have held that " 'a gross abuse of discretion may be shown by a lack of substantial evidence supporting the resolution of necessity' " (*City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1221 (*Hinz*); see Sen. Legis. Com. com., 19 West's Ann. Code Civ. Proc. (2007 ed.) foll. § 1245.255, p. 435 [1975 Addition]); or, alternatively, by demonstrating that the adoption of the resolution "was arbitrary, capricious, or . . . [that] the governing body failed to follow the mandated procedure, or . . . was irrevocably committed to taking the property regardless of the evidence presented at the resolution of necessity hearing" (*Council of San Benito County*

Governments v. Hollister Inn, Inc. (2012) 209 Cal.App.4th 473, 485).

The Eminent Domain Law contains a separate set of provisions permitting defendants in an eminent domain proceeding to challenge the public entity's right to take their property. Code of Civil Procedure section 1250.350 explains how and on what grounds an owner can object "to the plaintiff's right to take." Section 1250.360 lists objections that are available "regardless of whether" the public entity has adopted a valid resolution of necessity, including that the taking is not for a more necessary public use. (*Id.*, § 1250.360, subd. (f).) Section 1250.370 provides additional grounds "where the plaintiff has not adopted a resolution of necessity that conclusively establishes" the public necessity elements (*id.*, § 1250.370, citing *id.*, § 1240.030), and allows the owner to dispute those elements (*id.*, § 1250.370, subds. (b)–(d).) Courts are required to "hear and determine all objections to the right to take" (*id.*, § 1260.120, subd. (a)), and "may, on motion of any party, after notice and hearing, specially set such objections for trial" (*id.*, § 1260.110, subd. (b)).

B

The Town of Apple Valley is served by a water system operated by a private water utility. In December 2010, the then-owner of the water system, defendant Apple Valley Ranchos Water Company (Water Company), was sold to an investment fund, Carlyle Infrastructure Partners, which implemented significant price increases. In response, the Town began to consider taking over the water system.

In November 2015, the Town approved two resolutions of necessity. One resolution covered the portion of the system

within the Town's boundaries, and the other covered small portions of the system outside those boundaries. The resolutions described the Town's project as "the public ownership, operation and maintenance of the Apple Valley Water System to provide water service to the public." Not long after issuing the resolutions, the Town filed an eminent domain complaint against the Water Company.

In the meantime, defendant Liberty Utilities had acquired the Water Company from Carlyle. In its answer to the eminent domain complaint, Liberty objected to the taking under Code of Civil Procedure sections 1250.360 and 1250.370, arguing that the public necessity and more necessary public use elements were not met. Liberty did not challenge the validity of the resolutions of necessity. It instead argued that the resolutions "do not conclusively establish the elements of necessity" and only "creates a rebuttable presumption" because they target public utility property.[1]

Before trial, the parties litigated what the trial court termed the "standard of review" applicable to the rebuttable presumptions for a taking of utility property. (§§ 1245.250(b), 1240.650(c).) The Town argued that the court's review of Liberty's objections was governed by the gross abuse of discretion standard in section 1245.255(b). Liberty argued that this standard did not apply because a trial court's role is to decide the existence of the four elements in the first instance, as the trier of fact, and that its burden as defendant was to

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[1] In the case of the resolution targeting areas outside the limits of the Town's boundaries, Liberty also argued that the resolution created only a rebuttable presumption because it involved an extraterritorial taking.

disprove any of the elements by a preponderance of the evidence. The trial court agreed with Liberty, concluding that under the special rules for public utility takings added by the 1992 amendments to the Eminent Domain Law, the public necessity and more necessary public use elements "are to be decided by the court when put in issue by a public utility's objection to the agency's right to take." The court explained that, as a result of the 1992 amendments, a utility owner disputing the existence of the public necessity elements could either (1) invalidate the resolution of necessity by showing an abuse of discretion, or (2) object directly under Code of Civil Procedure section 1250.370 to the existence of an element, in which case the owner's burden is to disprove the element by a preponderance of the evidence.

Following a 67-day bench trial, the trial court found that the Town did not have the right to acquire the water system and entered judgment for Liberty. After making extensive findings about Liberty's track record in managing the water system and the risks of management by the Town, the court explained that Liberty had overcome the rebuttable presumptions and disproven two of the public necessity elements as well as the more necessary public use element.

The Court of Appeal reversed. (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 83.) The court concluded that the trial court erred in failing to apply a gross abuse of discretion standard and thus failing "to give the appropriate deference" to the Town's decisions and findings. (*Id.* at p. 71.) Under the proper standard, the court reasoned, " 'the [public entity's] findings are presumed procedurally valid and presumed supported by substantial evidence, and a private utility must convince the trial court, using evidence outside the administrative record if necessary, that the resolution is procedurally invalid or that the

[public entity's] findings are not supported by substantial evidence.' " (*Id.* at p. 89.)

The Court of Appeal went on to conclude that, "regardless of what standard of review applies, the trial court made a series of related errors in applying the rebuttable presumption to the evidence that the court deemed relevant and admissible." (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 90.) Among other things, the court concluded that the trial court erroneously allowed Liberty to rebut the resolutions using evidence of post-resolution facts and developments not pleaded in its answer to the eminent domain complaint. (*Id.* at pp. 92–94.) The court remanded with instructions for the trial court to determine what further proceedings were warranted on remand. (*Ibid.*)

The Court of Appeal's decision in this case expressly parted company with the then-recent decision in *Pacific Gas & Electric Co. v. Superior Court* (2023) 95 Cal.App.5th 819 (*PG&E*), which raised a similar set of issues. In that case, the South San Joaquin Irrigation District adopted a resolution of necessity and filed an eminent domain action to take the part of PG&E's electric grid within the irrigation district's boundaries. (*Id.*, at pp. 826–827.) PG&E objected to the taking on the grounds that the public necessity and more necessary public use elements were not established. (*Id.* at p. 827; see Code Civ. Proc., §§ 1250.360, 1250.370.) The trial court characterized this challenge as one to the validity of the resolution and concluded that PG&E had " 'to show that the District committed a gross abuse of discretion in adopting the Resolution.' " (*PG&E*, at pp. 827–828.) The Court of Appeal disagreed, reasoning that PG&E was not challenging the validity of the resolution and thus was not required to demonstrate a gross abuse of discretion in its adoption. (*Id.* at pp. 833, 837.) Instead, because PG&E was

challenging the irrigation district's right to take under Code of Civil Procedure sections 1250.360 and 1250.370, its burden was to disprove one of the elements by a preponderance of the evidence. (*PG&E*, at p. 832.)

We granted review to resolve the conflict between *PG&E* and the Court of Appeal's decision in this case concerning the standard a trial court should apply in adjudicating a private utility owner's challenge to a public entity's right to take its property.

II.

A.

The issue before us presents a question of statutory interpretation, which we consider de novo. (*People v. Walker* (2024) 16 Cal.5th 1024, 1032.) "'"'"We first examine the statutory language, giving it a plain and commonsense meaning. . . . If the language is clear, courts must generally follow its plain meaning."'"'" (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 278–279.) The plain meaning of the statute supplies a clear answer to the question presented.

We observe at the outset that nothing in the plain language of the statute supports the Town's argument for applying a gross abuse of discretion standard to a challenge to the taking of public utility property. The gross abuse of discretion standard is set forth in section 1245.255, which applies to challenges to the validity of a resolution of necessity. (§ 1245.255, subds. (a) [detailing how "[a] person having an interest in the property described in a resolution of necessity . . . may obtain judicial review *of the validity of the resolution*" (italics added)], (b) ["A resolution of necessity does

not have the effect prescribed in Section 1245.250" — which is to say, it does not "conclusively establish[]" (§ 1245.250, subd. (a)) the requisite public necessity for the taking of private property — "to the extent that its adoption or contents were influenced or affected by gross abuse of discretion by the governing body" (§ 1245.255(b)].) Nothing in section 1245.255 purports to extend the gross abuse of discretion standard to the kind of challenge Liberty brings here, which aims at the Town's right to take its property rather than its adoption of a resolution of necessity.

Although the Town does not seriously dispute this point, it contends that the gross abuse of discretion standard still should apply because any challenge to a public entity's right to take private property necessarily aims at the validity of its resolution of necessity. The plain terms of the statute refute the argument; a challenge to the right to take is distinct from, and does not necessarily depend on, an objection to the resolution of necessity.

This basic point tends to be obscured in day-to-day practice because the typical eminent domain case involves an intraterritorial taking in which the resolution of necessity conclusively establishes the substantive public necessity elements, leaving challengers with no choice but to attack the resolution of necessity under the gross abuse of discretion standard. But while the adoption of a resolution of necessity is a prerequisite to condemnation by a public entity (Code Civ. Proc., §§ 1245.220, 1240.040), the statute makes clear that a resolution of necessity is not the only possible focus of a challenge to a proposed condemnation. A property owner may also challenge the public entity's right to take the property in question on the basis that the substantive statutory

requirements for a taking — i.e., the public necessity elements — have not been satisfied. (*Id.*, §§ 1250.360, 1250.370.)

As noted above, challenges to the right to take are governed by different provisions from challenges to a resolution of necessity. Section 1245.255, which sets out the gross abuse of discretion standard, is located in chapter 4, titled "Precondemnation Activities," and article 2, titled "Resolution of Necessity," of the Eminent Domain Law. But the provisions detailing the grounds on which an owner may object to the right to take are all housed in a different part of the Eminent Domain Law, in chapter 5, titled "Commencement of Proceeding," article 5, titled "Objections to Right to Take." (See Code Civ. Proc., §§ 1250.350–1250.370.) The primary provision governing objections to the right to take is section 1250.350, which provides: "A defendant may object to the plaintiff's right to take . . . on any ground authorized by Section 1250.360 or Section 1250.370." (Code Civ. Proc., § 1250.350.) The cited sections authorize grounds for objection not aimed at the resolution of necessity. Section 1250.360 lists "[g]rounds for objection to the right to take, *regardless of whether the plaintiff has adopted a resolution of necessity* that satisfies the requirements of Article 2 . . . of Chapter 4," including that the taking does not satisfy the more necessary public use element. (*Id.*, § 1250.360, subd. (f), italics added.) Section 1250.370 provides additional grounds "where the plaintiff has not adopted a resolution of necessity that *conclusively* establishes the matters referred to in Section 1240.030," and allows the owner to challenge the existence of the Code of Civil Procedure section 1240.030 public necessity elements. (*Id.*, § 1250.370, subds. (b)–(d), italics added.)

In the context of proposed utility takings like the one in this case, these provisions allow a utility owner to challenge the rebuttable presumptions created by sections 1245.250 and 1240.650 without challenging the validity of any underlying resolution of necessity. That is because a resolution targeted at utility property only gives rise to a rebuttable presumption (§ 1245.250(b)) and thus permits the objections available under Code of Civil Procedure section 1250.370 "where the plaintiff has not adopted a resolution of necessity that conclusively establishes" the public necessity elements.

And the presumption of a more necessary public use (§ 1240.650(c)) may be objected to "regardless of whether the plaintiff has adopted" a valid resolution of necessity. (Code Civ. Proc., § 1250.360, subd. (f).) Indeed, it could hardly be otherwise, as this presumption is not triggered by the adoption of a resolution, and instead applies by operation of statute whenever a public entity seeks to take utility property or other property already dedicated to public use. (§ 1240.650, subds. (a), (c); see also Code Civ. Proc., § 1240.610 [stating that where a condemnor seeks to take property appropriated to public use "the complaint, and the resolution of necessity *if one is required*, shall refer specifically to this section" (italics added)].) In other words, at least for a privately owned public utility, the road to successfully challenging the condemnation of its property need not run through section 1245.255.

Of course, determining that the gross abuse of discretion standard does not, in terms, apply to Liberty's objections does not tell us what standard *does* apply. And the Eminent Domain Law does not expressly specify. But it does provide that the utility presumptions are both "presumption[s] affecting the burden of proof" on the questions of public necessity and more

necessary use. (§§ 1245.250(b), 1240.650(c).) Naturally understood, the reference to a "burden of proof" in an eminent domain proceeding suggests a proceeding in which the trial court will act as a finder of the relevant facts to be proved, rather than merely reviewing the regularity of a public entity's findings. And under the Evidence Code, "[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code, § 115.) This is the default rule in every kind of civil proceeding. (*Id.*, § 300 ["Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal or superior court"]; see, e.g., *Guardianship of Saul H.* (2022) 13 Cal.5th 827, 842 ["[P]reponderance of the evidence is the default burden of proof for findings of fact in civil cases"].) And the Eminent Domain Law explicitly states that eminent domain proceedings are ordinarily subject to the same rules as other civil actions. (Code Civ. Proc., § 1230.040 ["Except as otherwise provided in this title, the rules of practice that govern civil actions generally are the rules of practice for eminent domain proceedings"].) The preponderance of the evidence standard is also supported by Evidence Code section 606, which describes how a presumption affecting the burden of proof operates: "The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." The commentary to this provision explains that "[i]n the ordinary case, the party against whom it is invoked will have the burden of proving the nonexistence of the presumed fact by a preponderance of the evidence." (Cal. Law Revision Com. com., 29B pt. 2A West's Ann. Evid. Code (2019 ed.) foll. § 606, p. 81 [1965 Addition].)

Thus, absent statutory indications to the contrary, it follows from the creation of the rebuttable presumptions in sections 1245.250(b) and 1240.650(c) that the questions of public necessity and more necessary public use are factual questions to be resolved by the trial court, as the trier of fact, under a preponderance of the evidence standard. The burden of rebuttal falls on the party seeking to challenge the condemnation.

B.

This straightforward understanding of the rebuttable presumptions created by the 1992 amendments is bolstered by considering the similar rebuttable presumption for extraterritorial takings.[2] (See *Prang v. Los Angeles County Assessment Appeals Bd.* (2024) 15 Cal.5th 1152, 1170 [In interpreting statutory language, " '[w]e consider the ordinary meaning of the relevant terms, related provisions, terms used in other parts of the statute, and the structure of the statutory scheme' "].)

Since well before the 1992 amendments, the Eminent Domain Law has provided that where a public entity seeks to take property outside of its boundaries, "the resolution of

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[2] As previously noted, the Eminent Domain Law also contains another rebuttable presumption where the state seeks to appropriate property in public use "for the same use or any other public use." (§ 1240.640, subd. (a).) This section bears a particularly close resemblance to section 1245.250(b), as both create rebuttable presumptions "affecting the burden of proof." (§§ 1240.640, 1245.250(b).) But while there is a substantial body of case law interpreting the extraterritorial exception, there does not appear to be any case law interpreting section 1240.640. The parties thus naturally focus on the extraterritorial exception rather than section 1240.640, and we do the same.

necessity creates a presumption that the matters referred to in Section 1240.030 are true," which "is a presumption affecting the burden of producing evidence." (§ 1245.250(c); see Sen. Legis. Com. com., 19 West's Ann. Code Civ. Proc. (2007 ed.) foll. § 1245.250, p. 431 [1975 Addition]; see Stats. 1913, ch. 293, § 1, pp. 549–550.) This provision now neighbors the provision establishing a rebuttable presumption of public necessity for utility takings. (§ 1245.250(b).)

By the time of the 1992 amendments, the Courts of Appeal had long held, in addressing extraterritorial takings: (1) that a rebuttable presumption can be overcome without challenging the underlying resolution of necessity, and (2) that the trial court, as trier of fact, independently assesses whether the required elements are established. (See *San Bernardino County Flood Control Dist. v. Grabowski* (1988) 205 Cal.App.3d 885, 898 ["the end result is the same whether (1) the Resolution of Necessity is successfully challenged . . . or (2) the presumption of truth created by" a valid resolution "is overcome by the introduction of contradicting evidence at trial"]; *City of Carlsbad v. Wight* (1963) 221 Cal.App.2d 756, 761 (*Wight*) [explaining that Code Civ. Proc. former § 1241, a predecessor to § 1245.250 "limits the power of the condemning agency when the proposed taking is outside its territorial limits" and that "it devolves upon the courts to determine whether the taking of the particular land is necessary"]; *City of Los Angeles v. Keck* (1971) 14 Cal.App.3d 920, 925 (*Keck*) [explaining that former § 1241 "has specifically provided that the courts shall pass upon" an extraterritorial taking]; cf. *City of Oakland v. Superior Court* (1983) 150 Cal.App.3d 267, 279 [explaining that because "[t]he extraterritorial exception is inapplicable" and the resolution was not influenced by a gross abuse of discretion or the result of

bribery, "the trial court was foreclosed from inquiring into" the public necessity elements].)

The Legislature that enacted the 1992 amendments is presumed to have been aware of how courts had implemented the rebuttable presumption in the extraterritorial takings context. (E.g., *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [" '[W]hen legislation has been judicially construed and a subsequent statute on the same or an analogous subject is framed in identical language, it will ordinarily be presumed that the Legislature intended that the language as used in the later enactment would be given a like interpretation.' "]. The enactment of a parallel rebuttable presumption in an adjacent subdivision of section 1245.250 naturally suggests the Legislature contemplated a similar approach.

The Town argues that because the two presumption provisions use different language, the Legislature must have intended for trial courts to apply different standards. We disagree. It is true that the provisions are not precisely identical: the section 1245.250(c) presumption affects the burden of production, while section 1245.250(b) affects the burden of persuasion. But they are alike in the way that matters: because both are rebuttable, both lack conclusive effect. (See Evid. Code, § 601 [presumptions are either conclusive or rebuttable]; compare § 1245.250, subd. (a) [a resolution of necessity ordinarily "conclusively establishes" the public necessity elements].) Accordingly, both permit challenges to the right to take based on the nonexistence of the public necessity elements. (See *id.*, § 1250.370 [providing "grounds for objection . . . where the plaintiff has not adopted a resolution of necessity that conclusively establishes the matters

referred to in Section 1240.030"].) And ordinarily, under both types of presumptions, the trial court independently reviews the evidence to determine whether, as a matter of fact, the relevant propositions have been established. (See Evid. Code, §§ 604 [if presumption affecting burden of producing evidence is rebutted, "*the trier of fact shall determine* the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption" (italics added)], 115 [" 'Burden of proof' means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact *in the mind of the trier of fact or the court*" and "[e]xcept as otherwise provided by law . . . requires proof by a preponderance of the evidence" (italics added)].) The inference therefore holds: When the Legislature enacted a rebuttable presumption for utility takings, it presumably contemplated that courts would apply the same standard they have long applied in adjudicating the rebuttable presumption applicable to extraterritorial takings.

C.

Given the clarity of the statutory text, we see no genuine ambiguity about the question before us: The gross abuse of discretion standard of review does not apply to Liberty's challenge to the Town's right to take the water utility. But to the extent the text leaves any possible doubt, we note that our reading of the statutes is also consistent with the legislative history of the 1992 amendments.[3]

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[3] We grant the request for judicial notice filed on July 3, 2025, by Liberty; the request for judicial notice filed on January 21, 2026, by amicus curiae Golden State Water Company; and the request for judicial notice filed on January 21, 2026, by amicus curiae California-American Water Company.

The legislative history of Senate Bill No. 1757, which was eventually enacted into law in the 1992 amendments (Stats. 1992, ch. 812), confirms that the bill's purpose was to permit privately owned public utilities greater scope for challenging a condemnation, specifically by enhancing their ability to challenge the public necessity elements. The Assembly Judiciary Committee report explained that while existing law protected a public entity's decision to take, following the adoption of a resolution, "by providing a conclusive presumption that the content of the resolution is true," Senate Bill No. 1757 provides "a rebuttable, rather than a conclusive presumption" which provided "a private electric, gas or water utility" with "much greater ability to challenge any decision to condemn their property." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1757 (1991–1992 Reg. Sess.) as amended May 13, 1992, pp. 4, 1 (Assembly Judiciary Report).)

The Senate Judiciary Committee report likewise explained that "[t]his bill would repeal those two conclusive presumptions [in sections 1240.650 and 1245.250] and instead provide for a rebuttable presumption" which would "allow private utility companies to challenge the decision of a public entity to take over the utility property." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1757 (1991–1992 Reg. Sess.) as amended May 4, 1992, p. 2 (Senate Judiciary Report).) The report elaborates that "[u]nlike a conclusive presumption, which cannot be challenged or contradicted, a rebuttable presumption

affecting the burden of proof permits a challenge to the fact being assumed." (*Id.* at p. 3.)[4]

The legislative history indicates that the Legislature understood Senate Bill No. 1757 as overriding a status quo that gave utility owners limited ability to challenge a public entity's findings as to the necessity of a taking. Given this understanding, the Town's view that Senate Bill No. 1757 overlaid the existing gross abuse of discretion standard of review onto the newly enacted rebuttable presumptions is implausible. The Town's approach would not meaningfully expand public utilities' ability to challenge the substantive determinations underlying a public entity's decision to take over their property; it would instead largely preserve the status quo, under which public utilities would be required to focus their challenges on the regularity of the condemning entity's decisionmaking.

The Town points to a statement by Jackie Speier, the assembly member who introduced Senate Bill No. 1757. In the statement, which was printed in the Assembly Journal by unanimous consent, Speier stated that "SB 1757 makes a procedural change in how, under limited circumstances, the question of necessity and better public use is proven in eminent domain actions," and described the bill as "a procedural change, evidentiary in nature" that "does not affect basic rights but only allows introduction of evidence on the subject of the presumption." (6 Assem. J. (1991–1992 Reg. Sess.) p. 9647.)

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[4] The report's reference to the "similar rebuttable presumption of 'more necessary use' " in section 1240.640 (Sen. Judiciary Rep., *supra*, at p. 3), reinforces the conclusion that the resemblance between the provisions is not accidental.

The Town, like the Court of Appeal, insists that gross abuse of discretion review was "among the 'basic rights' the 1992 amendments were intended *not* to affect." (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 87.) Like the Court of Appeal in *PG&E*, we find the argument unpersuasive — both because it is contrary to the plain language of the statute and because Speier's unelaborated reference to "basic rights" is "too vague for us to understand." (*PG&E*, *supra*, 95 Cal.App.5th at p. 837.) Nothing in the statement indicates that Speier was using the term "basic rights" to refer to the technical legal standards governing the adjudication of eminent domain challenges, as opposed to, for instance, the substantive necessity elements that check the exercise of the right to take. And the former interpretation seems particularly unfounded, since the enacted statute contains no indication whatsoever of a legislative intent to apply the gross abuse of discretion standard in a challenge to the taking of utility property.

D.

The Town argues that even if the text and history favor a different approach, we should adopt a gross abuse of discretion standard to avoid serious separation of powers concerns. We are not persuaded.

The Town's separation of powers argument relies heavily on *Dusek*, in which the court characterized a public entity's decision to take property within its territorial boundaries as "quasi-legislative." (*Dusek*, *supra*, 193 Cal.App.3d at p. 260.) Specifically, the *Dusek* court rejected the contention that a public entity's resolution of necessity was defective because it failed to include specific findings. The court reasoned that no such requirement applied because the decision to condemn

property required weighing the interests of the owners against those of the entity's other constituents and thus involved " 'a fundamental political question' and therefore a quasi-legislative act." (*Ibid.*)

The Town contends that this characterization is important because the courts' power to second-guess legislative determinations is "extremely limited" (*Connecticut Indem. Co. v. Superior Court* (2000) 23 Cal.4th 807, 814), and "excessive judicial interference" with legislative decisionmaking "would conflict with the well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers" (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572.)

To avoid "excessive judicial interference" of this sort, the Town urges us to read the 1992 amendments as preserving gross abuse of discretion review for intraterritorial utility condemnations. Notwithstanding the notable resemblance between the rebuttable utility presumptions and the pre-existing rebuttable presumption for extraterritorial takings, the Town argues that the extraterritorial cases are not instructive here because the extraterritorial takings cases themselves recognize that extraterritorial takings do not implicate the same separation of powers concerns. (See *Wight*, *supra*, 221 Cal.App.2d at p. 761 ["[W]hen a city seeks to condemn land without its corporate limits, it devolves upon the courts to determine whether the taking of the particular land is necessary for the use"]; *Keck*, *supra*, 14 Cal.App.3d at p. 925 [explaining that while a public entity targeting property inside its limits has full knowledge of local conditions and is accountable to both the property owners and the taxpayers, both factors are lacking when a public entity targets extraterritorial property].)

How, then, should we understand the Legislature's decision to introduce the rebuttable presumption for utility takings? The Town posits that this change was intended to overturn prior law that, as the Town understands it, prevented property owners from presenting evidence outside the administrative record. (See *Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 24–27.) In the Town's view, the Legislature was motivated by this "*evidentiary* limitation . . . to add the rebuttable presumptions for utility condemnations," which "*expanded* what evidence judges may consider for utility condemnations" without eliminating the deference given to quasi-legislative, intraterritorial resolutions.

The Town's argument encounters a number of difficulties. For starters, the argument relies heavily on characterizations of the eminent domain power in various mid-20th century cases while ignoring a number of older cases that, at least facially, seem to contradict its position. As amici curiae Golden State Water Company points out, before the passage of statutes making the adoption of a resolution of necessity conclusive on the question of public necessity (Stats. 1913, ch. 293, § 1, pp. 549–550), it appears the issue was in fact decided by courts as finders of fact. (See *Vallejo & N.R. Co. v. Reed Orchard Co.* (1915) 169 Cal. 545, 555–556, 561 (*Vallejo*) [putting the "question as to the necessity for the taking" to the jury under the 1874 amendment to Code Civ. Proc. § 592]; *Cummings v. Peters* (1880) 56 Cal. 593, 594 (*Cummings*) [submitting the question of whether " 'the land sought to be condemned, or any part of it, [was] necessary for' " a proposed ditch to the jury].) These cases at least suggest that, if the governing statutory law so permits, issues of necessity are generally considered "questions of fact, on which issues may be joined, to be decided

at the trial." (*Southern Pac. R. R. Co. v. Raymond* (1878) 53 Cal. 223, 227–228 (*Southern Pac. R. R. Co.*).) The Town offers no response. At a minimum, the cases tend to undermine the Town's supposition — based entirely on mid-20th century case law — that the question of necessity for an intraterritorial taking case is a matter constitutionally committed to the substantial discretion of the condemning entity, subject only to deferential judicial review.

More fundamentally, the mid-century case law on which the Town relies concerns review of a public entity's decision to adopt a resolution of necessity — i.e., its decision to invoke the statutory mechanism necessary to *begin* the process of condemnation. But as already discussed, it is a different question whether the condemnation itself, once the public entity has chosen that course of action, is consistent with the governing law. Nothing in the Town's cases holds that, regardless of what the Legislature might have to say about the matter, courts necessarily must take a hands-off approach in evaluating whether a proposed condemnation represents a proper exercise of the right to take private property by eminent domain. Indeed, the case law suggests the contrary is true: It is within the Legislature's power to decide whether and to what extent to place justiciable limits on the eminent domain power. (See *People v. Chevalier* (1959) 52 Cal.2d 299, 306 (*Chevalier*) [approvingly citing the "majority rule" that " '[o]nce it is judicially established that a use is public, it is within the exclusive province of the Legislature to pass upon the question of necessity for appropriating private property for that use, *unless the question of necessity has been made a judicial one, either by the Constitution or by statute*' " (italics added)].) Thus, even if the Town's adoption of the resolutions of necessity were

a "legislative act" to which courts were constitutionally required to defer, Liberty's objections do not place the validity of that legislative act at issue, nor do they otherwise threaten to encroach on any cognizable legislative power. Liberty simply challenges the Town's right to take its property, invoking the statutory mechanism that the Legislature has provided for that very purpose.

The Town's argument seems to assume that judicial review of an act committed to another branch is at odds with the separation of powers. This is, of course, not the case. For example, "the traditional charging power of the prosecutor" means there is "no judicial 'review' of the prosecutor's exercise of discretion to file charges in criminal court." (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 559; *People v. Birks* (1998) 19 Cal.4th 108, 134 [prosecutors "ordinarily have the sole discretion to determine whom to charge with public offenses and what charges to bring," and this discretion is based "on the principle of separation of powers, and generally is not subject to supervision by the judicial branch"].) But that does not mean that courts may not decide questions concerning the validity of charges once filed. Similarly, while the separation of powers means that "a court may not compel the Legislature to enact a legislative measure" (*Mandel v. Myers* (1981) 29 Cal.3d 531, 539), that does not mean that legislation is not subject to judicial review. So too here: while the decision to initiate a condemnation proceeding by adopting a resolution of necessity belongs to the public entity, once initiated, it falls to the courts to determine whether that condemnation satisfies the statutory prerequisites for exercising the power of eminent domain.

Nor does the case law support the idea that the Legislature is constitutionally restricted in its ability to set

limits on the eminent domain power. The cases discussed by the Town set out no such constitutional limitation; unsurprisingly, they instead anchor their reasoning, first and foremost, in the Legislature's statutory directives. *Chevalier*, for instance, explained that "*our statutory provisions* . . . have placed the determination of the question of 'necessity' within the exclusive province of the condemning body" by giving conclusive effect to the condemner's finding of necessity, and that holding otherwise would "thwart *the legislative purpose* in making such determinations conclusive." (*Chevalier*, *supra*, 52 Cal.2d at pp. 306–307, italics added, citations omitted.)[5] Likewise *Dusek*, which faulted the trial court for failing to look to "*the specific statutory standard* compelled under the eminent domain law (Code Civ. Proc., § 1245.255)," and for instead beginning "its analysis with a determination of whether the adoption of a resolution was an adjudicative or legislative act." (*Dusek*, *supra*, 193 Cal.App.3d at p. 254, italics added.)[6]

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[5] The Legislature subsequently overruled *Chevalier* by enacting section 1245.255, which "provided for a very limited collateral attack on a resolution of necessity" under the gross abuse of discretion standard. (*Dusek*, *supra*, 193 Cal.App.3d at p. 254.)

[6] The other Court of Appeal cases on which the Town relies likewise focus on the terms of the statute, rather than purporting to elaborate a constitutionally-rooted right of public entities to take private property with only limited judicial oversight. (See *Wight*, *supra*, 221 Cal.App.2d at p. 761 [explaining that a municipality "derives power from statutory law to condemn land," that one provision "of the Code of Civil Procedure limits the power of the condemning agency when the proposed taking is outside its territorial limits" and that no statute contains "an express grant of power enabling the

Finally, we reject the Town's argument that, regardless of its ability to do so, the Legislature that enacted the utility presumptions in 1992 did not intend to alter the standard of review for intraterritorial utility takings, and instead merely sought to allow owners to introduce additional evidence to rebut the relevant presumptions.

The statutory text provides no support for the Town's claim that the 1992 amendments merely repealed a prior limitation on the evidence a challenger may introduce in an eminent domain proceeding. If the Legislature merely intended to permit the introduction of evidence outside of the administrative record, it could have said so. It instead enacted rebuttable presumptions affecting "the burden of proof." (§§ 1245.250(b), 1240.650(c).) The most natural understanding of these presumptions — particularly considered in light of the legislative history and prior experience employing similar presumptions in other contexts — is that the Legislature intended to make necessity a question for the court to decide as trier of fact, placing on utilities the burden of disproving the findings reflected in the public entity's resolution of necessity.

Arguing that the Legislature did not intend to modify the standard of review also erroneously presupposes that the gross abuse of discretion standard applied to challenges to the right to take intraterritorial property before the 1992 amendments. This again conflates the standard of review for the adoption of

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plaintiff to reach its hand outside its boundaries"]; *Keck*, *supra*, 14 Cal.App.3d at p. 925 [finding it "apparent that the *Legislature*, in differentiating between property inside and outside the territorial limits of the condemning agency, recognized the differences . . . in these contrasting situations" (italics added)].)

the resolution of necessity with the burden of proof at a trial on an owner's objections. As we have explained, these legal standards apply to distinct challenges. The Legislature thus had no reason to modify the standard of review in section 1245.250 once it had replaced the conclusive presumptions with rebuttable presumptions.

The Town's position also finds no support at all in the legislative history. The Town seizes on references in the legislative committee reports to resolutions of necessity as "legislative" determinations (see, e.g., Sen. Judiciary Rep., *supra*, at p. 3); these references, the Town argues, demonstrate a recognition of separation of powers concerns that "require[] gross abuse of discretion review to avoid judicial usurpation of local policymaking."[7] But the committee reports say nothing about separation of powers or the gross abuse of discretion standard. And the same materials demonstrate that the Legislature understood that it was the "conclusive presumption[s]" — not the "legislative" nature of the resolutions — that required judicial deference to a public entity's determinations at a subsequent trial. By altering the conclusive nature of those presumptions, the Legislature likewise altered the degree of deference that courts must afford to a public entity's decision to take utility property.

The Town also advances various arguments based on what the legislative history "doesn't say." According to the Town, it is

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[7] The argument ignores the fact that the legislative committee reports also expressly described "[a] resolution of necessity [as] an *administrative* determination that the statutory prerequisites for the taking . . . have been met." (Assem. Judiciary Rep., *supra*, at p. 1.)

significant that "the legislative history does *not* state that the change from 'conclusive' to 'rebuttable' means resolutions are no longer legislative/quasi-legislative acts or that intraterritorial utility condemnations should be treated the same as extraterritorial takings"; that the history does not mention extraterritorial cases; and that the history does not state that the administrative record and gross abuse of discretion standard are irrelevant. The court below similarly claimed that the legislative history "repeatedly acknowledges the 'gross abuse of discretion' standard codified in section 1245.250" but "did not touch it nor suggest that it should not apply in public utility condemnations after the 1992 amendments," and did not "suggest that utility condemnations should be treated the same as extraterritorial takings." (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 87.) This reliance on the Legislature's purported silence is misplaced; the Town offers no sound basis to override the usual rule that "[t]he objective manifestation of the legislative intent (the words of the amended statute) controls over silence in the legislative history record." (*Hayes v. Temecula Valley Unified School Dist.* (2018) 21 Cal.App.5th 735, 753.)

Finally, and perhaps most fundamentally, the Town's proposed approach fails because it is simply unworkable. (See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567, quoting *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122 [Courts construing a statute also " 'apply common sense to the language at hand and interpret the statute to make it workable and reasonable' "].)

As the court in *PG&E* explained, " '[a] presumption affecting the burden of proof places on the party against whom it operates . . . the affirmative obligation to prove it false by a

preponderance of the evidence, unless a different standard of proof is required by law.' " (*PG&E*, *supra*, 95 Cal.App.5th at p. 835, quoting *Farr v. County of Nevada* (2010) 187 Cal.App.4th 669, 681; see also Evid. Code, § 115.) In contrast, under the gross abuse of discretion standard — which, again, may be satisfied by showing " 'a lack of substantial evidence supporting the resolution of necessity' " (*Hinz*, *supra*, 115 Cal.App.4th at p. 1221) — " ' "the reviewing court defers to the factual findings made below [and] does not weigh the evidence presented by both parties . . . . Instead, it determines whether the evidence the prevailing party presented was substantial." ' " (*PG&E*, at p. 835, quoting *Coastal Environmental Rights Foundation v. California Regional Water Quality Control Bd.* (2017) 12 Cal.App.5th 178, 187–188.) In other words, while "a[] [litigant] whose evidence constitutes 60 percent proof would satisfy the preponderance of the evidence," the litigant would still fail to demonstrate the absence of "*any* substantial factual basis because 40 percent proof would qualify as a substantial factual basis." (*Bichai v. DaVita, Inc.* (2021) 72 Cal.App.5th 1126, 1140.) Thus, layering the gross abuse of discretion standard onto the rebuttable utility presumptions would render those presumptions a nullity: a property owner who demonstrated the nonexistence of the required elements by a preponderance of the evidence would still not have thereby demonstrated " 'that the [public entity's] findings are not supported by substantial evidence.' " (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 89.)

The Town resists this conclusion by disputing the nature of substantial evidence review, insisting that even under this standard, trial courts must consider " ' " 'evidence that fairly detracts from the evidence supporting the agency's decision.' " ' " (*Cate v. State Personnel Bd.* (2012) 204 Cal.App.4th 270, 281.)

This proposition, which echoes the United States Supreme Court's seminal substantial evidence case, *Universal Camera Corp. v. NLRB* (1951) 340 U.S. 474, 487, establishes a standard for reviewing administrative decisionmaking. (*Cate*, at p. 282.) But as courts have made clear, this approach "does not constitute independent review where the court substitutes its own findings and inferences"; rather, the standard means that a court "may reverse [the agency's] decision only if, based on the evidence before [the agency], a reasonable person could not have reached the conclusion reached by [the agency]." (*Kirkorowicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980, 986.) Engaging in this form of record-based review of agency action is, of course, not the same thing as applying a rebuttable presumption imposing a burden of proof with respect to the existence of a particular set of facts.

The Town suggests, evidently in the alternative, that because the text of the 1992 amendments does not expressly refer to the preponderance of the evidence standard, the burden of proof could be a heavier burden, akin to a clear and convincing standard, more in line with gross abuse of discretion review. But as explained above, the default rule is that the standard of proof is by a preponderance of the evidence (Evid. Code, § 115), and the Town points to nothing in the text or the history of the statute suggesting that the Legislature intended to prescribe a heavier burden.

The Town also attempts to deflect these criticisms by arguing that it is actually Liberty's approach that would be illogical. The Town reasons that "[t]he Legislature left in place only two routes for attacking" resolutions of necessity — either via a Code of Civil Procedure section 1085 mandamus petition before the public entity files an eminent domain complaint (see

§ 1245.255, subd. (a)(1)), or objecting in the eminent domain proceeding if the public entity has already sued (see *id.*, subd. (a)(2)). In the Town's view, imposing two different standards in these scenarios — gross abuse of discretion in the first, independent review in the second — would permit "different review standards to apply depending on who sues first." But as we have explained, a challenge to a resolution is distinct from an objection to the right to take. There is nothing illogical about prescribing two different standards for adjudicating two different kinds of challenges.[8]

E.

The parties vigorously dispute the policy implications of their respective positions. The Town argues that Liberty's

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[8] The Town also asks us to follow the reasoning of *Dusek*, which concluded that the gross abuse of discretion standard of review applicable under Code of Civil Procedure section 1085, the traditional mandamus statute, also applies where a challenge to a resolution of necessity is raised in an already initiated eminent domain proceeding. (*Dusek*, *supra*, 193 Cal.App.3d at p. 258; see also § 1245.255, subd. (a)(2).) But *Dusek* does not embrace the proposition that, regardless of whether the owner attacks the resolution itself, all objections that contradict a resolution's findings are subject to the gross abuse of discretion standard; *Dusek* addressed only the challenge before it, in which the property owners challenged the resolution for not including findings of fact. (*Id.* at pp. 252, 258.) Other cases cited by the Town concerning the standard of review for a challenge to the resolution simply have no bearing on whether there would be any incongruity in permitting independent review by the trial court of the public necessity elements in an eminent domain proceeding. (See, e.g., *Inglewood Redevelopment Agency v. Aklilu* (2007) 153 Cal.App.4th 1095, 1114 [addressing standard for reviewing challenge to a resolution of necessity].)

approach allows trial courts to make policy determinations that rightly belong to public entities and, furthermore, prevents these entities from pursuing objectives that privately owned utilities cannot or do not effectively pursue, such as improving water recycling, fire prevention, environmental review, and the coordination of city services and land use development. Liberty's construction, we are told, also turns the acquisition of private utilities into "a crapshoot where a judge has ultimate say," despite the democratically expressed will of the voters, and exposes municipalities to astronomical attorney fees, such as the $13.2 million fee in this case. For its part, Liberty argues that the Legislature had good reason for allowing greater judicial scrutiny where a public entity seeks to take utility property, and that allowing the appellate court's decision in this case to stand will have "a dramatic adverse impact on utility services throughout the state" by producing less informed decisions regarding whether a given taking actually serves the public interest. The utilities that advocated for the 1992 amendments made a similar argument to the Legislature, urging that such oversight guards against the risk that public entities will target utilities as a means of generating revenue. (Assem. Judiciary Rep., *supra*, at p. 3.)

Consideration of the Town's policy concerns does not persuade us to depart from the best reading of the statutory text. We would observe, in that regard, that it is not unprecedented to treat the question of public necessity as a question of fact for the court, rather than a matter committed largely to the discretion of the condemning authority. (See, e.g., *Vallejo*, *supra*, 169 Cal. at pp. 561, 577; *Cummings*, *supra*, 56 Cal. at p. 594; *Southern Pac. R. R. Co.*, *supra*, 53 Cal. at pp. 227–228; see also, e.g., *Cersosimo v. Town of Townshend* (1981) 139 Vt. 594,

597; *Central Puget Sound Regional Transit Authority v. WR-SRI 120th North LLC* (2018) 191 Wn.2d 223, 250.) In all events, given the complex and multifaceted nature of the policy considerations involved, the Town's objection to this approach " 'is best directed to the Legislature, which can study the various policy and factual questions and decide what rules are best for society.' " (*Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 55, quoting *Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132, 1140.) We, however, are bound to give effect to the statutory provisions the Legislature has already enacted.

Ultimately, the Town and the Court of Appeal have accorded to resolutions of necessity a significance that is not supported by the statutory text, or by any of the other aids to interpretation. The resolution is not the be-all and end-all of a condemnation proceeding; the Eminent Domain Law allows an owner to object to the right to take "regardless of whether the plaintiff has adopted a resolution of necessity that satisfies the requirements of Article 2" (Code Civ. Proc., § 1250.360), and authorizes further grounds for objection where the resolution lacks conclusive effect (*id.*, § 1250.370).

That does not mean that the adoption of a resolution is an empty formality. Again, where a conclusive presumption applies, a valid resolution "conclusively establishes" the public necessity elements. (§ 1245.250, subd. (a).) And even a mere rebuttable presumption shifts a burden of proof that would ordinarily be borne by the public entity, as the plaintiff in the eminent domain action, to the property owner. (See Code Civ. Proc., § 1230.040; Evid. Code, § 500.) But in all events, the adoption of a resolution of necessity serves other purposes besides achieving litigation advantage. "Implicit in t[he] requirement of a hearing and the adoption of a resolution of

necessity is the concept that, in arriving at its decision to take, the Agency engage in a good faith and judicious consideration of the pros and cons of the issue. . . ." (*Redevelopment Agency v. Norm's Slauson*(1985) 173 Cal.App.3d 1121, 1125–1126.)

III.

The parties debate what should follow from our conclusion that the trial court in this case applied the correct standard in adjudicating Liberty's challenge to the Town's eminent domain action. The Town argues that the Court of Appeal's reversal should nonetheless stand because, separate and apart from the standard applied by the trial court, the Court of Appeal found other reversible errors in the trial court's judgment that were not included in this court's limited review grant.

It is not clear, however, that any of the additional supposed errors the court identified were truly independent of the court's understanding of the meaning and import of the rebuttable utility presumptions. The Court of Appeal explained that, in its view, "the trial court erred in three principal respects: (1) it did not apply the gross abuse of discretion standard; (2) it did not properly apply the rebuttable presumption; and (3) it erroneously relied solely on post-[resolution] evidence to find that Liberty met its burden." (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 93.) The court reasoned that, "[t]aken *together*, these errors were prejudicial because it is reasonably probable that [the Town] would have obtained a better result had the errors not occurred." (*Ibid.*, italics added.)

The final statement makes it unclear whether the court considered the second or third grounds, standing alone, to be sufficient grounds for reversal. In any event, the court's analysis as to the second and third grounds was not independent

of its understanding of the standard of review. With respect to the second ground, the court held that "[t]o successfully challenge [the] eminent domain action, Liberty had to rebut [the Town's] presumptively correct findings," which it could not do "unless the [resolution] and its underlying findings/objectives in the [administrative record] and [the Town's] reasons for adopting the [resolution] were considered at the outset." (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 90.) Although the court deemed the exclusion of the administrative record harmless, it nonetheless found error because the trial court did not " 'begin its review with a presumption of the correctness of administrative findings.' " (*Id.* at p. 91, quoting *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 819.) But this premise — that Liberty could not rebut the rebuttable presumptions without considering the resolution's "underlying findings/objectives" — conflates the resolution of necessity with the right to take. (*Apple Valley*, at p. 90.) In the context of a challenge to the right to take utility property, the trial court's " 'starting point' " (*id.* at p. 91) is the rebuttable presumption itself (§ 1245.250(c)), and not the resolution of necessity.

The third ground also appears to rest on the premise that the necessary object of Liberty's challenge is the resolution of necessity. The court explained that "the [resolution] 'is the fundamental predicate to the entire condemnation process' " and would be "meaningless . . . if it could be invalidated with exclusively post-[resolution] evidence." (*Apple Valley*, *supra*, 108 Cal.App.5th at p. 93, quoting *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 107.) The court should have the opportunity to reconsider that conclusion in light of the guidance this opinion offers.

On this last point, renewing an argument it made in its petition, Liberty asks us to decide that the Court of Appeal erred in limiting its ability to rely on post-resolution evidence. We specifically limited review to not address this issue and again decline to address it. Liberty may be correct that the answer to this question is necessarily informed by our resolution of the issue on which we did grant review. But this question is best addressed by the Court of Appeal in the first instance.

IV.

The Court of Appeal erred in concluding that the Town's decision to take over the privately owned public water utility was subject to review only for gross abuse of discretion. We reverse the judgment of the Court of Appeal and remand for further proceedings consistent with this opinion.

KRUGER, J.

We Concur:

GUERRERO, C. J.
CORRIGAN, J.
LIU, J.
GROBAN, J.
EVANS, J.
LANGHORNE WILSON, J.[*]

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[*] Associate Justice of the Court of Appeal, First Appellate District, Division One, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Town of Apple Valley v. Apple Valley Ranchos Water

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Procedural Posture (see XX below)
Original Appeal
Original Proceeding
Review Granted (published) XX 108 Cal.App.5th 62
Review Granted (unpublished)
Rehearing Granted

Opinion No. S289391
Date Filed: August 24, 2026

Court: Superior
County: San Bernardino
Judge: Donald R. Alvarez

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Matteoni, O'Laughlin & Hechtman, Gerry Houlihan; Murphy & Evertz and Douglas Evertz for the Association of California Water Agencies,

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Manatt, Phelps & Phillips, Edward G. Burg, Michael M. Berger, George M. Soneff, David Moran, Benjamin Shatz, Joanna S. McCallum; Horvitz & Levy, Bradley S. Pauley and Robert H. Wright for Defendant and Respondent Apple Valley Ranchos Water.

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