

## California Contractors and Material Suppliers Beware: A New Appellate Case Just Turned Existing Law on its Head

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You are a supplier or subcontractor on a public work of improvement. You haven't been paid in full so you serve a stop payment notice upon the public entity and initiate a claim upon the public works payment bond. Almost two years later and knowing that project completion is nearing, you decide it is finally time to file a lawsuit. The public entity later records a notice of acceptance signifying completion of the project. Incredibly, the court says, in effect: "Sorry, you filed your stop payment notice *before* the notice of acceptance was recorded and, therefore, it was premature and ineffectual. Thus, your entire statutory claim is invalid." Wait, what?!

There are countless potential consequences stemming from a new California appellate court decision (*Golden State Boring v. Eastern Municipal Water District*). *"Do we really have to wait until the public entity records a notice of acceptance before we can serve a stop payment notice?" "Won't the public entity distribute most of the construction fund if we have to wait until after completion to serve a stop payment notice?" "What happens if the public entity never records a notice of acceptance or notice of completion?" "How will I get notice of the recording of the notice of acceptance?" "Isn't this case based on the old lien law prior to July 1, 2012?"*

**The bottom line is that if you are a contractor or supplier performing work on public projects, it is imperative that you immediately discuss the ramifications of this case with your legal counsel. And if you are a construction attorney, it is time to read (and re-read) this case and explain it to your clients.**

Although the California Supreme Court may review and eventually overturn this case, for now it is the law. Here are some suggestions to contractors and material suppliers:

- Record the preliminary notice with the County Recorder's Office pursuant to Civil Code section 8214. Although it is not guaranteed, you *should* receive notice from the County Recorder that a notice of completion was recorded for the project within several days. Even if you are first-tier subcontractor or supplier and you do not generally serve preliminary notices on public works, for now, always record your preliminary notice.
- Despite the holding of this case, serve your stop payment notice when you are finished with your work on the project. This may protect you if the public entity never files a notice of completion or acceptance and will maximize available construction funds to attach to.
- If a notice of completion or acceptance (or notice of cessation) is recorded, serve another stop payment notice since the Court of Appeal's decision renders the previously served stop payment notice "premature and ineffectual."
- Comply with Civil Code section 9362 and pay the public entity \$10 at the time of giving the stop payment notice; and
- Monitor (or pay someone to monitor) recordings at the County Recorder's Office in the county in which your project is located. At a minimum, check with the County Recorder's Office every 30 days after you serve your stop payment notice to see if a notice of completion or acceptance (or notice of cessation) has been recorded.

For those of you so inclined, here is a copy of the complete appellate opinion. Things get really interesting starting on Page 12 of the Opinion. If you are wondering why the majority opinion focuses on whether the claimant timely served its stop payment notice (rather than the timeliness of its lawsuit to enforce its **payment bond** claim), so are we. <http://www.courts.ca.gov/opinions/documents/E054618.PDF>

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