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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MENDOCINO, UKIAH BRANCH

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WILLIAM H. MOORES, TONA ELIZABETH MOORES, Plaintiffs, vs. IRISH BEACH WATER DISTRICT, DOES 1 through 10, inclusive, Defendants.	Case No. SCUK CVG 09-54665 **DEFENDANT, IRISH BEACH WATER DISTRICT'S OBJECTIONS TO PHASE 2 STATEMENT OF DECISION; REQUEST FOR CONSIDERATION OF ALTERNATIVE VALUATION** Hearing Date: TBA Time: TBA Dept: A
GORDON MOORES, SANDY MOORES, MENDOCINO COAST PROPERTIES, a California Corporation, and MOORES ASSOCIATES, a partnership, Real parties in Interest.	**Assigned to Hon. Judge Moorman**

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INTRODUCTION

Defendant, Irish Beach Water District ("District"), submits the following objections to this Court's Statement of Decision ("Decision") regarding damages for inverse condemnation (Phase 2) filed on March 4, 2015. The District's objections are submitted pursuant to Code of Civil Procedure 634 and California Rules of Court, Rule 3.1590 as well as pursuant to this court's direction at the April 10, 2015 hearing (e.g. to be filed within 10 courts days of such hearing)..

OVERVIEW

The application of law to fact in this case demonstrates conclusively that Plaintiff's are only entitled to nominal damages - if even that. While that outcome may appear potentially unjust or unfair, it is actually the lawful, fair, and just outcome in this matter.

In its present form, the Statement of Decision ("Decision") improperly compels the District to pay the Moores $400,000 for the exact *same* water the District has pumped via the Unit 9 Well from the *same* aquifer in the *same* amount for the past 30 years.[1] Further, the "damages" awarded the Moores are not based on beneficial use but rather on the pumping capacity of the District's own T5 Well and a purported cost-savings differential between the T5 Well and the Mallo Pass project – neither of which are owned by the Moores. The District contends that because the Decision's valuation is not legally or factually supported the award of damages to the Moores is unfair and unjust.

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[1] The Moores granted the Unit 9 well and all water that can be pumped from that well to the District in 1988 (1988 Agreement, **Ex. 9)**. Prior to that time, the Moore had never used the Unit 9 well because it did not have a pump or power source until it was acquired by the District under the 1988 Agreement (Testimony of William Moores). The District pumped water from the aquifer via the Unit 9 well for 30 years (testimony of William Moores and Charlie Acker). In 2008, the District constructed the T5 Well in the District's Soderberg Tank Site easement. The T5 Well pumps water from the same aquifer as the Unit 9 Well (Testimony of Tom Elson; **Exhibits 61, 72** - Reports of Pacific Geoscience) that the District had pumped for 30 years. The amount of water pumped from the aquifer did not increase with the construction of the T5 well – the combined amount is the same as prior to the alleged taking (Testimony of Tom Elson; **Exhibits 61, 72** - Reports of Pacific Geoscience).

SPECIFIC OBJECTIONS TO THE STATEMENT OF DECISION FOR PHASE 2

The Statement of Decision purports to award damages based on the Moores "ownership" of property overlying the aquifer; however, this is not the proper measure of any ownership to water or to a water right. It is also contrary to this Court's prior Decisions in Phase 1 of this matter.

A. Objections Relating to the Scope of Damages

***Objection No. 1*: The Statement of Decision does not properly measure the scope of the Moores' right, if any, to groundwater based on beneficial use.**

As this court found in its Phase 1 Decisions, the Moores do not own all of the groundwater underlying their property. It is owned by the State of California and not by the Moores. See Water Code section 102; *Central and West Basin Water Replenishment District v. Southern California Water Co.,* (2003) 109 Cal. App. 4th 891, 905. This Court's *Statement of Decision for Phase 1 Trial*, at page 4 recognized that the measure of the Moores' "compensation" if any is subject to reasonable and beneficial use:

> While IBWD had no legal right to develop the T5 well and pump water from it, plaintiff does not own all the water underneath their property and compensation may ***likely be limited by their reasonable and beneficial use*** (pg. 4).

However, both Court's Phase 1 and Phase 2 Decisions fail to do this. Instead, the Phase 2 Statement of Decision relies on the mistaken and long-dispelled notion that mere ownership of land above a groundwater aquifer bestows a compensable water right to the Moores, and that somehow this right "vested" when the Moores built the Unit 9 Well back in the 1970's (ignoring that the Moores granted all rights and water rights to the Unit 9 Well to the District in 1988). Both Decisions fail to properly measure the scope of the Moores' beneficial use of groundwater to establish the existence of any water right actually owned by the Moores – precisely because no such beneficial use or ownership exists.

The doctrine of absolute "ownership" of water beneath overlying property without showing an actual beneficial use has ***not*** been the law for over 100 years. While a right to divert water is established by ownership of overlying property (no permit required other than a well drilling permit), the scope of any overlying groundwater right is limited to a present beneficial use of water. In *Katz v. Walkinshaw* (1903) 141 Cal. 116, 134-135, the court rejected the old doctrine of absolute ownership by an overlyng landowner and held that while an overlying owner has a priority right to "use" underlying groundwater, the overlying owner's right is ***limited*** to the amount of water necessary for a "reasonable beneficial use."[2] The court in *Casitas Municipal Water District v. United States,* 708 F.3d 1340 (Fed. Cir. 2013) addressing the issue of the scope of a water right in inverse condemnation stated the rule precisely and unambiguously:

> the only **compensable** right under California water law is a right to beneficial use" . . . [t]he holder . . . receives nothing more than this right to beneficial use and possesses ***no legal entitlement to water that is diverted but never beneficially used.***

In *San Bernardino v. Riverside* (1921) 186 Cal. 7, 31, the court held that a water right extends only to a current actual beneficial use – not a speculative future use of a dormant right:.

> The measure of a water right . . . ***extends only to the quantity actually theretofore applied to beneficial uses*** and includes no right to take additional water in the future. . . . The Judgment should not make any declaration of the right of any party to take in the future any water to which it has no present right."

In the case of *City of Barstow v. Mojave Water Agency*, (2000) 23 Cal. 4th 1224, the California Supreme Court specifically held that the scope of an overlying right to groundwater extends only to a reasonable beneficial use and any water not being used is excess and surplus water (owned by

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[2] "it cannot be successfully claimed that the doctrine of absolute ownership is well established in this state . . . The doctrine of reasonable use, on the other hand, affords some measure of protection to property now existing" *Katz v. Walkinshaw* (1903) 141 Cal. 116, 134-135

the state and not the overlying user):

> Although the law at one time was otherwise, it is now clear that an ***overlying owner*** or any other person having a legal right to surface or ground water ***may take only such amount as he reasonably needs for beneficial purposes***. . . . Any water not needed for the reasonable beneficial uses of those having prior rights is excess or surplus water.

To establish a compensable right in groundwater, therefore, the Moores were required to establish a *present* actual diversion and a current <u>active</u> *beneficial use* of groundwater – and an interference with such use. Where no actual reasonable beneficial use of water is established, there is ***no*** compensable taking. *Joslin v. Marin Municipal Water District*, (1967), 67 Cal. 2d 132; *Casitas Municipal Water District v. United States,* 708 F.3d 1340 (Fed. Cir. 2013).

Significantly to the present case, the quantity of water to which a person becomes entitled to use is <u>*not*</u> determined by: the ***capacity*** of diversion, or the ***amount diverted***, or the scope of the ***legal entitlement***, to such water, or by an alleged ***developed access*** to such water. The extent of the right is the amount of water <u>actually</u> applied to a present beneficial use. *Haight v. Costanich* (1920) 184 Cal. 426, 431-436 [right to water not determined by capacity of facilities]. *Casitas Municipal Water District v. United States,* 708 F.3d 1340 (Fed. Cir. 2013) [right to water not determined by diverted amount or legal entitlement – scope of compensable right limited to water actually beneficially used.][3]

Based on the foregoing principles of water rights and beneficial use, the Phase 2 Statement of Decision ("Decision☺ errs as follows:

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[3] "***no legal entitlement to water that is diverted but never beneficially used.***" . . . Under well-established California law, "the right of property in water is ***usufructuary***, and consists not so much of the fluid itself as the advantage of its use." . . . *Casitas Municipal Water District v. United States,* 708 F.3d 1340 (Fed. Cir. 2013)

1. The Phase 2 Statement of Decision incorrectly finds (directly and by implication) that the Moores as overlying landowners had a legal right (e.g. vested right) to **all** of the water pumped, or capable of being pumped, from the T5 Well by the District merely from ownership of the overlying property (see pg. 4 of the Decision) without any measure of beneficial use. As discussed above, the water beneath the Moores' property is owned by the state and not by the Moores and the Moores have never beneficially used any groundwater on the subject property. Water Code Sec. 102. *Katz v. Walkinshaw* (1903) 141 Cal. 116, 132, 134; *City of Barstow v. Mojave Water Agency*, (2000) 23 Cal. 4th 1224. Water Code Section 35602 ["There is given, dedicated, and set apart for the uses and purposes of each *district* all water and water rights belonging to the state within the district"].

2. The Court's Statement of Decision improperly determines that the Moores somehow established a compensable right to water at the time of taking because they had built the Unit 9 Well some 40 years ago in 1976 (see pg. 3 of Decision). Again, a mere "legal entitlement" to divert water (even a permit or license) or past diversion is not the measure of a water right for determining damages in inverse condemnation. *Casitas Municipal Water District v. United States*, 708 F.3d 1340 (Fed. Cir. 2013). The measure of a water right is limited solely and exclusively to a present actual beneficial use – which did not exist in this case.[4] *Haight v. Costanich* (1920) 184 Cal. 426, 431-436.

   The Moores did not even own the Unit 9 Well at the time of the taking and had conveyed the Unit 9 well and all rights to water from the Well to the District in the 1988 Agreement [**Ex. 9,**

[4] See testimony of Brian Gray, Ron Garland, William Moores, Charlie Acker and Debra Stephenson; Stipulation for Phase 1 Trial.

Exhibit 2 to 1988 Agreement – *Assignment of Water Rights in Well No. 9***;** Soderberg Tank Site Easement from Phase 1].

Plaintiff, William Moores, testified during cross-examination at trial that his only use of the Unit 9 Well – ***ever*** - was an initial pump test in 1976 with no application of water ever to a beneficial use because the well did not have a *pump* in it. In fact, Mr. Moores testified that the Unit 9 Well never had a *power source* while it was owned by the Moores. Power was connected to Unit 9 well for the first time only when it was conveyed to the District in 1988. Most significantly, the Moores did not own the Unit 9 Well or use any water from that well (or from <u>any</u> well) at the time of the taking alleged in this matter. The Moores conveyed the Unit 9 Well and all water rights to that well *without* reservation and *without* limitation to the District in 1988. [5] Therefore the fact that the Moores built the Unit 9 Well some 40 years ago or more is not related to the measure of beneficial use.

3. The Court's Decision invalidly indicates that Plaintiffs' are entitled to compensation for a future "yet to be exercised" water (pg. 4 of the Decision). As stated above, a projected future expansion of a presently *unexercised water right* is not compensable.[6] The Plaintiffs do not have a current beneficial use – and failed to demonstrate the existence of any plan or evidence whatsoever for any future actual beneficial use of groundwater on the subject property. In fact, Moores testified that he had no plans in the future to sell or develop the subject property

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[5] It should be kept in mind that the Moores have up to 21 service connections that could potentially be all used on the subject property under the 2002 Agreement.(**Ex. 18**). Given the presence of two district wells and up to 6,300 gallons of water under the 2002 Agreement, it is difficult to imagine under what circumstances the. Moores would ever even consider building a well on the subject property.

[6] "The measure of a water right . . . extends only to the quantity actually theretofore applied to beneficial uses and includes no right to take additional water in the future. . . .The judgment should not make any declaration of the right of a party to take in the future any water in which it has no present right" *San Bernardino v. Riverside* (1921) 186 Cal. 7, 31.

and the evidence at trial showed no local market for groundwater. (See testimony of William Moores, Ron Garland, Debra Stephenson for example). Even if the Moores had rights to a future unexercised right, that right still exits and would have priority over the T5 Well (see discussion below). *Peabody v. City of Vallejo*, (1935) 2 Cal. 2d 351, 383; *Katz v. Walkinshaw* (1903) 141 Cal. 116, 134.

Speculative future damages are prohibited in inverse condemnation cases: "a property owner may not value his property based upon its use for a projected special purpose or for a hypothetical business." *County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1059. This is exactly why the Moores are not entilted to compensation for any speculative future use or loss of a speculative future appropriative use (see further discussión below).

4. Examining the Stephenson Report and the Moores' Closing Brief, Stephenson purported to value: the capacity of the T5 Well; the value of developed access to the water below the Moores' Property; and/or the value of a developed water source on the Moores Property. The problem is that none of these "valuations" are the proper measure of a water right. Instead, these were all cleverly disguised attempts to avoid the fact that the Moores presently own no water rights because they do not beneficially use any groundwater on the subject property – and never have.

***Objection No. 2*: The Statement of Decision overlooks the undisputed fact that the Moores are not putting any groundwater to a present beneficial use – and never have.**

The stipulated facts during the first phase of trial established conclusively that the Moores do not own any wells on the property and that the property is presently undeveloped (Stipulation for Phase 1 Trial). The Moores and their experts failed to establish any measure (scope) of beneficial use – none. The only evidence at the Phase 2 Trial regarding the scope of the Moores'' beneficial

use of water was presented solely by the District. And that *undisputed* evidence established conclusively that the Moores do not presently put any groundwater to beneficial use on the subject property. None whatsoever.[7] As discussed above, a beneficial use is the actual, present use of water for a beneficial purpose and the facts established conclusively that the Moores had no beneficial use of groundwater at the time of the taking.

Again, it does not matter that the Moores built the Unit 9 well and did a one-day pump test with a generator nearly ***40*** years ago or that they may decide at some undisclosed point in time in the future to somehow use water. The Moores never used water from the Unit 9 Well for a beneficial use – the Unit 9 well did not have power or a pump until the Moores conveyed that well to the District via the 1988 Agreement (Testimony of William Moores). The fact is that the Moores have not, and are not, putting any water whatsoever to a beneficial use on the subject property. As a result, the scope of any damages to water in this case is **zero**.

Water service from the District is not considered the use of any water right by a landowner in the District as Mr. Moore has attempted to contend. In fact, both the courts and statutory law provide that the use of water provided from a public water district is not the fulfillment of an overlying users' groundwater right. Water Code section 35428.[8] *San Bernardino v. Riverside* (1921) 186 Cal. 7, 10-11, 24-26. And in this case, the Moores have not used any such water on the subject property – ever (from a well or from the District).

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[7] See testimony of Brian Gray, Ron Garland, William Moores, Charlie Acker and Debra Stephenson; Phase I Stipulation.

[8] "The owner of overlying land who is served with water taken from the underlying groundwater supply" by a public entity and served with that water is not receiving water in the "fulfillment" of their "overlying right." *San Bernardino v. Riverside* (1921) 186 Cal. 7, 10-11, 24-26. Water Code sec. 35428: "No right in any water or water right owned by the district shall be acquired by use permitted under this article."

Even if the Moores could somehow establish some amount of beneficial use, the undisputed evidence at trial failed to show that the Moores suffered any compensable damages and none of their expert valuations were based on Beneficial Use. Under long established water rights law, any such damage must be substantial to be compensable[9]

In the present case, the 1988 and 2002 Agreements conveyed *all* rights to the Unit 9 Well and *all water* from that well to the District without limitation or reservation. The District has used that water for 30 years for a public use.[10] The undisputed evidence at trial showed that both the T5 and Unit 9 Wells draw from the ***same aquifer*** and there has not been any increase in average overall use since the construction of the T5 Well.[11] Any unexercised overlying rights to groundwater that the Moores may allege they have are already fully encumbered by, and subordinate to, the District's first priority rights to pump ***all*** water from the aquifer via the Unit 9 Well under the 1988 and 2002 Agreements. The Moores absolutely failed to show how taking water by the T5 Well from the same aquifer in the same amount as the Unit 9 Well but from a different location resulted in any substantial harm to them or any beneficial use of water.

***Objection No. 3*: The Moores right as an overlying user still exists based on the law of the case.**

Based on the law of the case, the Moores' still have dormant unexercised overlying rights to initiate a beneficial use (but not a present actual "compensable" beneficial use) if they choose to do so at some point in the future. This potential overlying right is inferior in priority to the Unit 9

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[9] It has long been established that even where there is an interference with a beneficial use, the Plaintiff is required to show substantial harm and interference with such beneficial use. *Peabody v. City of Vallejo*, (1935) 2 Cal. 2d 351, 383; *Katz v. Walkinshaw* (1903) 141 Cal. 116, 134.

[10] The aquifer has an estimated capacity of 24 gallons per minute and that the District's average pumping from *both wells* is 7 to 8 gallons per minute with no increase in pumping from prior to the alleged taking.

[11] The aquifer beneath the subject property is common to both the Unit 9 Well and the T5 Well as conclusively established at trial by District expert Tom Elson and by the Pacific Geoscience Reports relied on by the Moores.

Well as found in the Phase 1 Trial because the Moores conveyed all priority of use from the Unit 9 Well to the District in 1988 (and re-verified by the 2002 Agreement). However, the Moores dormant right if ever exercised would be **s**uperior in priority to the District's use of water from the T5 Well.[12] The District's experts, Ron Garland and Brian Gray, both conceded that this is the situation based on the law of the case.

This means that if the Moores initiated a beneficial use of the groundwater on the subject property at some point in the future, the District could potentially have to reduce its own pumping from the T5 Well to accommodate the Moores beneficial use if there was not sufficient water in the aquifer. The Moores presented ***no*** evidence whatsoever that any use of groundwater by the T5 Well under these (or any) circumstances would somehow result in any harm to this dormant right by preventing them from diverting any groundwater should they elect to do so in the future. The Moores right is not taken or lost but remains unexercised with a potential priority of use over the T5 Well. The Moores presented no evidence to the contrary.

The District, on the other hand, presented un-contradicted evidence that there is in fact more than enough water in the aquifer for the Moores to use on the subject property without the District having to cut back any pumping from the T5 Well - - should the Moores ever initiate a beneficial use. (see Testimony of Tom Elson; **Exhibits 61, 72 -** Pacific Geoscience Reports). The District has not increased its average pumping from the aquifer after the construction of the T5 Well *Id*. And as noted above, if the Moores somehow needed extra water for a beneficial use if they ever initiated one in the future, the District would reduce pumping from the T5 Well to make

[12] The District continues to contend as it did in Phase 1 that the Moores severed all of their rights to any groundwater when they conveyed the Unit 9 Well and all associated water to the District in 1988 and connected to the District's system and does not waive such argument. Nevertheless, this court found otherwise in Phase 1 holding that such water pumped from the Unit 9 Well had a priority over any rights the Moores may have had remaining to groundwater.

that water available to the Moores as an overlying owner. In sum, the un-contradicted evidence demonstrated no harm to the Moores. [13]

***Objection No. 4*: The District is an appropriator as a matter of law and fact, and even if it were not, the Moores are still not entitled to compensation for any water they did not put to an actual beneficial use.**

The facts at trial established that the District obtained all necessary authorizations to divert water from the T5 Well including: a well permit from Mendocino County, a well completion report from the Department of Water Resources, and a permit from the State Department of Health (See testimony of Bruce Burton, Charlie Acker, **Exhibits 21**). A permit to appropriate percolating groundwater from the State Water Resources Control Board is not required as matter of law as it is with surface water *People v. Shirokow* (1980) 26 Cal.3d 301 fn. 5:[14]

> There never has been any statutory procedure . . . for the appropriation of percolating water. . . .The *only* way in which percolating water can be *appropriated* in California is by taking the water and applying it to beneficial use." Hutchins, *The California Law of Water Rights*, 1956, pg. 456.

This is exactly what the District is doing here. If the District did not have all of the proper authorizations, the State Department of Health would not have issued its own permit to the District or have allowed the District to continue using the T5 Well. The Department of Health will not issue a Health Permit for a municipal supply well source unless all authorizations have been obtained. See 22 CCR Sec. 64560 (a)(2). While it may be in this court's view debatable

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[13] And in fact, the Moores rights to beneficially use any groundwater on the subject property were arguably foreclosed when the Moores received subdivision approvals and connected to the District. Mendocino County requires that any subdivision of Property within 500 feet of a public water district connect to the District for water service (Mendocino County Division of Land Regulations, Title 17, Sec. 17-55). The approvals the Moores received for the subdivisions of the Unit 9 and the acreage properties required that the Moores connect to the District's system (See **Ex.102**,- Coastal Commission Permit incl. County Conditions of Approval). Given these limitations with the amount of water service connections the Moores have via the 2002 Agreement, it is difficult to imagine under what circumstances the Moores would – or could – build a well.

[14] The aquifer in this present case was established conclusively as a percolating groundwater aquifer with the testimony of Tom Elson, Charlie Acker and Bruce Burton as well as by the Pacific Geoscience Reports relied on by the Moores (**Exs. 61, 72**). *North Gualala Water Company v. SWRCB* (2006) 139 Cal.App.4th 1577.

whether the District had right to build a well within the Soderberg Easement it is simply not debatable as a matter of law that the District had all necessary rights and authorizations to use the water. Compare this law and facts to the Moores claim for the first time ever at trial that they has some future priority to appropriation over the T5 Well: the Moores never built a well, never obtained a well permit for the subject property, and never applied water to a beneficial use on another property. In short, the Moores never lost appropriative priority because they never exercised an appropriative right. Even if they did they did not show there was any damage related to such priority – none and the evidence at trial showed there is water available for additional use beyond the T5 and Unit 9 Wells. (Testimony of Tom Elson and Pacific GeoScience Reports).

Critically, even if the District had somehow not "perfected" its appropriation or appropriative rights - that still does not mean that the District was "taking" water from the Moores or that the Moores are entitled to any compensation. This is a critical concept that is ignored by the Moores and the Moores' "experts'" valuations. Again, the Moores water rights (if any) extend only to the amount of water they are putting to a present beneficial use - and <u>*not*</u> to any surplus unused water. *City of Barstow v. Mojave Water Agency*, (2000) 23 Cal. 4th 1224. Water Code sec. 102. Unused water is owned by the state and not the Moores. *Id,* Water Code Section 35602 ["There is given, dedicated, and set apart for the uses and purposes of each *district* all water and water rights belonging to the state within the district"].

Therefore, if the Moores believed that the District's use of such "unused" groundwater was without proper authorizations or "appropriative rights," then the Moores' relief is injunctive or declaration of priority – and ***<u>not</u>*** compensation. *San Bernardino v. Riverside* (1921) 186 Cal. 7,

31.[15] Significantly, this court can fully address this entire issue without any damage award by simply declaring that: 1) the Moores overlying use has priority over the T5 Well (the District has already conceded this based on the law of the case); and 2) that the District would have to reduce pumping if the Moores did not have sufficient water for a legitimate exercise of a beneficial use on the subject property pursuant to their overlying rights.

B. Objections Relating to the Valuation of Damages

***Objection No. 5*: The Stephenson Valuation fundamentally violates applicable law**

The valuation by Ms. Stephenson, an expert who testified on behalf of the Moores and relied on by the Court's Decision, is fundamentally flawed and contrary to applicable law

a. Capacity of the T5 Well as the Measure of Damages is Prohibited

Ms. Stephenson's analysis is fundamentally based on the ***capacity*** of the District owned T5 Well at that time of the taking (approx.. 40 gallons per minute at that time) and the cost differential of replacing the T5 Well with the Mallo Pass Project of roughly equal water producing capacity.. The Stephenson Report, (**Ex. 88** at p. 3) provides:

> The ***subject property*** [to be valued] in this report is the developed groundwater that is pumped, or which can be pumped, from the T5 well.

However, the Moores do not own the T5 Well or any developed groundwater from a well - none. The "Developed Groundwater" Ms. Stephenson purports to value exists only as a consequence of the T5 Well – and nothing that the Moores owned at the time of the taking. It is similar to valuing a courthouse site on undeveloped agricultural property based on the value of

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[15] The District takes issue with the Decision's statement that the District committed "Piracy" by way of its appropriation of groundwater. Far from it. The District obtained ***all*** required authorizations, consulted with the County and appropriate state agencies, drilled the well within an easement that the District believed (and as both Mendocino County and the state believed) it had a right to drill in, and pumped water it already had a right to pump from the aquifer via the Unit 9 well – and the same water it had already paid the Moores for back in 1988. If there was an act of "piracy" in this matter as to water, then both the state and Mendocino County were complicit.

the developed courthouse rather than on the value of undeveloped agricultural property. Ms. Stephenson is therefore by her very own statement not valuing anything actually owned by the Moores. The analysis measures only the developed pumping capacity of the T5 Well owned by the District- without a reference to any beneficial use by the Moores.

As discussed above, "capacity" of a water source or water diversion is not a proper measure of water rights damages in inverse condemnation – under any scenario – especially where the developed capacity is a project owned by the District and not the Moores. This is black letter law. *Casitas Municipal Water District v. United States*, 708 F.3d 1340 (Fed. Cir. 2013)[16]; *Haight v. Costanich* (1920) 184 Cal. 426, 431-436. Ms. Stephenson made no attempt to measure the scope of harm to any alleged beneficial use of water by the Moores - precisely because she realized that no such beneficial use exists.[17] Capacity and "access" are thinly veiled improper attempts to avoid the undisputed fact that the Moores have no beneficial use.

In sum, Capacity is an invalid and prohibited measure of a water right.

b. <u>The Stephenson Valuation inappropriately values the benefit to the District and District owned assets</u>

Ms. Stephenson's entire damage analysis is improperly based on the "benefit" of an alleged *replacement cost differential* to the District between two District-owned projects (the T5 Well and the Mallo Pass Creek project). Ms. Stephenson and the Court's Decision awards this

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[16] "the only compensable right under California water law is a right to beneficial use" . . . [t]he holder of an appropriated water right, in other words, receives nothing more than this right to beneficial use and possesses ***no legal entitlement to water that is diverted but never beneficially used.***" . . . Under well-established California law, "the right of property in water is ***usufructuary***, and consists not so much of the fluid itself as the advantage of its use." . . . *Casitas Municipal Water District v. United States*, 708 F.3d 1340 (Fed. Cir. 2013)

[17] Even if "capacity" were somehow a measurement of unexercised groundwater rights, 40 g.p.m. is not the legal "capacity" of the T5 well. The legal capacity is 10 g.p.m.as testified to at trial by Bruce Burton and set forth in the District's Health Permit (**Ex. 21**). Nor is 40 g.p.m. the actual amount of water pumped before and at the time of the taking, that amount is only 7 to 8 gallons per minute on average. .

"District-Project based" cost-differential to the Moores. This is expressly prohibited by law becauuse it values the "project" (e.g. the T5 Well) and the value received by the District in proceeding with the T5 Well allegedly in place of the Mallo Pass project. *County Sanitation District v. Watson Land* (1993) 17 Cal.App.4th 1268, 1279-1280; *County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1059. 1063-1064; *East Bay Municipal Utility Dist. v. Kiefer* (1929) 99 Cal.App. 240, 253 [valuing benefit to the Utility District from condemning property for a future water supply was prohibited as a matter of law].

The Court's Decision nevertheless states that Ms. Stephenson's valuation are not based on the "benefit" to the District but rather on the "firm costs" of the Mallo Pass and T5 Projects. (see pg. 7 of the Court's Decision). This is simply not the case. Ms. Stephenson values the cost-savings benefit to the District of proceeding with the T5 Well project as compared to a potential replacement project of Mallo Pass. The cost differential of these two "district" projects is then awarded to the Moores (see pgs 22 -23 of the Moores Closing Brief). The Stephenson Report, *Valuation of Developed Groundwater from the T5 Well*, (**Ex. 88**), provides:

- Stated another way, the Replacement Cost Approach estimates the ***benefits*** of an environmental asset, water in this circumstance, based on the costs of replacement. P. 7-8

- DMS then analyzes the ***differential*** in the remaining development and operational ***costs*** between the subject property [T5 Well] and the proportionate share (83.33%) of the Mallo Pass Project. ***This differential*** comprises the remaining incremental costs associated with developing the alternative water supply. The remaining incremental costs to develop a water supply similar to that provided by the subject property ***provide an estimate of value for the subject property***.["subject property" is defined by Stephenson as the groundwater pumped by the District's T5 Well] Pgs. 10-11 (emphasis added).

- The incremental remaining development ***costs IBWD would likely incur*** to develop a comparable water supply, the Mallo Pass Project, ***were attributed to the value*** of the subject property. P. 19.

- This report uses the Replacement Cost methodology to value the ***developed groundwater from the T5 well***. [which is not owned by the Moores]

It cannot be any clearer that the "damages" Ms. Stephenson assigns to the Moores is based

on the cost-savings "benefit" to the District in pursuing the T5 Well measured against the Mallo Pass project as a replacement (cost differential between the two projects). The Report is unambiguous.

In addition, the Stephenson report inappropriately uses the value of the District's project(s) in terms of "firm costs" as the basis of damages to the Moores. Again, this is also expressly prohibited by law. In other words, considering the "firm costs" of the District's T5 Well project to estimate damage to the Moores is also invalid. *San Diego Land etc. Co. v. Neale* (1888) 78 Cal. 63; *Redevelopment Agency v. Tobriner* (1989) 215 Cal. App. 3d 1087; *County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1059. 1063-1064. Code of Civil Procedure section 1263.330 provides:

> The fair market value of the property taken ***shall not include*** any increase or decrease in the value of the property that is attributable to any of the following:
> (a) ***The project for which the property is taken***.
> (b) The eminent domain proceeding in which the property is taken. (emphasis added)

The Stephenson report and analysis unabashedly and improperly uses the value/capacity of the T5 well as significant measure of the damage valuation – and thus is invalid and unlawful. In the case of *Stockton v. Vote* (1926) 76 Cal.App. 369, 400, the court held with respect to valuation of a taking for a public water project that:

> All the authorities agree that ***the purposes for which the water is to be used by the plaintiff*** [e.g. the condemning agency] ***in eminent domain and the beneficial purpose to be derived therefrom*** are ***not*** to be taken into consideration in determining market values. Availability may be shown, but the ***purposes*** and ***use***s, necessity, and ***values*** of or to the plaintiff in such actions are <u>wholly irrelevant</u> matters.

Taken to its logical (illogical) conclusion, under the proposed Stephenson valuation, undeveloped land condemned for toll roads, or courthouses, or public sports complexes would be valued based on the project value and not the cost of undeveloped property.

In sum, no matter how the Moores or this Court's Decision contend that the Stephenson

Report does not value a benefit to the District – this is in fact exactly what was done as expressly stated in the Stephenson Report. Further, there is no dispute that the Stephenson valuation improperly uses the District owned T5 Well project (e.g. "Firm Costs") as an integral component of valuation, which is also expressly prohibited.[18] .

c. Misapplication of the Replacement Cost Approach

Ms. Stephenson misapplies the "replacement" cost approach and the Court's decision errs in adopting this approach. The replacement cost approach in inverse condemnation values an existing building, structure or other physical asset owned by the condemnee-landowner and actually "taken" by the condemning agency. See generally Cal. Civ. Pro 1263.310 [compensation is awarded for property taken]; *Housely v. City of Poway* (1993) 20 Cal.App.4th 801, 807 [compensation is based on what the owner has lost]; Rebuttal Declaration of Ron Garland at pg. 3 (**Ex. 106**).[19]

Here, Ms. Stephenson improperly uses the cost replacement approach to value the theoretical replacement of the District-owned T5 Well / Mallo Pass Projects *to the* District – and then assigns this valuation as damages to the Moores in the guise of "developed groundwater" or "developed

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[18] Notably, the Court's decision and Ms. Stephenson's analysis are factually incorrect in finding that the District constructed the T5 Well to replace the Mallo Pass Creek Project. The District built the T5 Well to replace the Unit 9 well, which had been failing and not to replace the Mallo Pass Creek project (See testimony of Charlie Acker; **Exs. 23-28** for example). However, the District did chose not to take any further actions to oppose the Mallo Pass permit revocation due to the amount of water originally thought to be available from the T5 Well, which later proved not to be the case. It should be noted that one of the main reasons the Mallo Pass permit was revoked was because of the lack of building in Irish Beach which resulted in a reduced demand for water - - and in fact, Mr. Moores testified during cross-examination that he is still not selling lots which will likely impact the District's Irish Gulch Creek permit.

[19] As previously set forth in the District's Closing Brief, Ms. Stephenson also attempts to rely on a water valuation text book by Stephen Herzog, "*The Appraisal of Water Rights*," but her trial testimony and report contradict this text. Herzog specifically states that the cost method is used to estimate the cost to replace an existing water right attached to the property being condemned (Herzog at pgs 59-60). Here, the Moores have no well and no presently exercised groundwater right. Herzog states further that cost approach used by Ms. Stephenson is "generally not well received" (pg. 60) and that it is best to use the "before and after" approach to valuing groundwater (pg. 67) – as Mr. Garland did. If the cost method is used, Herzog specifically states that *replacement* costs, and not reproduction costs must be used when valuing a physical existing water related fixture (pgs. 59-60). And yet Ms. Stephenson states in her report that cost method for water uses "reproduction or replacement" costs. This error is repeated in the court's decision (pg. 6).

pumping capacity" or "access." This approach of valuation based on the condemner's project or project purpose has long been expressly prohibited. *San Diego Land etc. Co. v. Neale* (1888) 78 Cal. 63; Code of Civil Procedure section 1263.330; U. S. v. Miller 317 U. S. 369 (1941). It is not the District' project or improvements (e.g. pumping capacity of the T5 Well) that are to be considered in valuation.[20] In the seminal case of *People v. La Macchia* (1953) 41 Cal.2d. 738, 754, the California Supreme Court held:

> The beneficial purpose to be derived by the condemner's use of the property [e.g. pumping capacity of the T5 well] is not to be taken into consideration in determining market values for it is wholly irrelevant.

It really could not be any clearer. This is exactly what Ms. Stephenson's version of "cost-approach" valuation attempts to do in this case and it is completely prohibited and invalid. Again, this was all done to avoid the undisputed fact that the Moores have no present developed beneficial use of water subject to compensation.

d. <u>The facts demonstrate there is no private access to water via the Soderberg Tank Site Easement and no market for such groundwater</u>

The evidence at trial and applicable law show that the Moores's claim they could have built a private well within the District's Soderberg Tank Site Easement identical to the T5 Well is without merit and contrary to the facts and law. The Soderberg Tank Site was designed by the Moores themselves to be gated and locked to protect the public water system **(Ex. 79**, para 27 (Declaration of Moores); **Exs 13 – 14** - construction plans). The District has the right to adopt measures to protect its public water system. See generally Title 22 sec. 64560[21]; Calif. Dept. of

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[20] CCP 1263.205 nor 1263.210 apply in this case because: the T5 Well is owned by the District, not the Moores. The Moores stipulated in Phase 1 that they do not own any wells and that their property is undeveloped (no improvements).

[21] § 64560. New Well Siting, Construction, and Permit Application.
(a) To receive a new or amended domestic water supply permit for a proposed well, the water system shall provide the following information to the Department in the technical report as part of its permit application:
(1) A source water assessment as defined in Section 63000.84 for the proposed site;
(footnote continued)

Health Security Measure Checklist. Mendocino County defers to local public water districts regarding the location of any private well within a district (**Ex. 74** - May 26, 2011 letter to Moores denying well permit for a property not subject to the present lawsuit; Mendocino County Policy 4400-11-01). The District's own regulations require an encroachment permit from the District to build any facilities upon a District owned easement or facility. Water Code sec. 35401, 35413; District Policy 3070. And Mr. Acker testified at trial that the District would not allow a private well within the Soderberg Easement – or private use of the District's facilities.

Further, the Moores (and their assigns) are prohibited from interfering with the District's uses of the Soderberg Tank Site Easement which would have priority of use over any subsequent easements. *Bd. Dir. Turlock Irr. Dist. v. City of Ceres*, (1953) 116 Cal. App. 2d 824; *Pasadena v. California-Michigan Land and Water Co.* (1941) 17 Cal.2d 576. This includes any interference by a private well with the District's Unit 9 Well which was granted priority specifically by the Moores themselves in the 1988 Agreement. Recall that the testimony that even the District owned T5 Well has the potential to interfere with the Unit 9 Well if not operated correctly (Testimony of Charlie Acker and Tom Elson; Exs. 61, 72 – Pacific GeoScience Reports).

The Moores presented no evidence, plans, strategies, proposals or specifications detailing how the Moores could have ever built a well in the Soderberg easement without interfering with the District's use of the easement (e.g. not interfere with placement of a new water tank, or control panels, parking, storage etc.). The Moores presented no evidence as to how a private well would not ever interfere with the District's priority to use the Unit 9 well and all the water

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(2) Documentation demonstrating that a well site control zone with a 50-foot radius around the site can be established for protecting the source from vandalism, tampering, or other threats at the site by water system ownership, easement, zoning, lease, or an alternative approach approved by the Department based on its potential effectiveness in providing protection of the source from contamination;

that well can pump.

The failure of the Moores to present any such evidence is demonstrative of the fact that the Moores' "speculation" of a private well is based only on conjecture – at best. The Moores failed to show the existence for any market to access the groundwater from the subject property. The Moores failed to show any market for groundwater that is already *fully encumbered* by (and subordinate to) the District's prior right to pump all groundwater from the aquifer via the Unit 9 Well. In fact the Moores experts testified that there was no market at all for groundwater from the subject property (**Ex. 88** - Stephenson Report at page 7 - describes that there is essentially no market for groundwater sales in the area of Irish Beach).

As discussed above, speculative damages, speculative uses, and projected future special uses of property are not to be used as a measure of valuation or damage. *People v. La Macchia* (1953) 41 Cal.2d. 738, 754 ["There can be no allowance for enhanced damage which an owner would suffer . . . existing ***only in contemplation*** at the time of the trial]; *County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1059 ["a property owner may not value his property based upon its use for a ***projected special purpose*** or for a ***hypothetical business***"]. Here, implied development rights and implied lost appropriative priority are pure conjecture. The Moores presented no plans for use, no purpose of use, or place of use for such private groundwater - and the evidence showed there is no local private market for groundwater or private wells on the subject property.

Additionally, development rights have development costs and the Moores' testimony at trial was that infrastructure for a third party private well would cost well over a million dollars just to get water outside of the District under an illusory future appropriative right. This would entirely offset the value of the water. There was no evidence showing that there is anyone willing to pay

such huge development costs for this amount of water– especially since the District has the right to use all such water via the Unit 9 well. Again, the evidence showed there was no market at all.

.Further, the Moores are prohibited from pumping any groundwater and delivering it to properties within the District. The District testified that it would not allow the Moores to use District facilities and duplication of water service to other properties within the District is prohibited without compensation to the District under the anti-duplication of service statutes. Public Utilities Code section 1505 .

Again, it should be recalled that the Moores were willing to sell the District a brand new well site on the property *outside* of the Soderberg Easement for the cost of a single service connection – worth approximately **$300** at the time of the taking (Testimony of C. Acker; **Ex 101**). The District did not accept the Moores offer because they wanted to provide the water to a parcel that was out of the District. However, the Moores offer was a present non-speculative valuation of a well site just two years prior to the construction of the T5 Well and is the absolute best evidence of what such a well and water are worth.[22]

In sum, the Moores perhaps said it best in their *Closing Brief* with respect to valuing the market for groundwater rights already fully encumbered by the District's use of water from the Unit 9 Well: "no one would pay for a water supply – no matter how large – that they simply can't access or use." (Plaintiff's *Closing Brief* at p. 20, lns 1-2) And if fact, this is why there is not such local market.

[22] Plaintiff, William Moores was essentially qualified as a percipient expert on real estate values in the Plaintiff's Closing Brief (See pg. 2, lns 1-8).

e. Evidence Code section 823 and its counterpart Code of Civ. Proc. 1263.32 do not allow the Moores to avoid the application of the rules of valuation in inverse condemnation.

Evidence Code section 823 and its counterpart Code of Civ. Proc. 1263.320 are not trump cards that allow the Decision (or Ms. Stephenson) to avoid the application of valuation principles including the prohibition against using the benefits to the condemner or project-based enhancements as part of valuation. *Redevelopment Agency v. Tobriner* (1989) 215 Cal. App. 3d 1087 In the case of *County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1059. 1063-1064, the court held:

> It is the loss suffered by the property owner which provides the guide for just compensation, a loss measured by the ***private marketplace***; the loss ***may not*** be measured ***by the benefit to the condemner***. Id at 1063-1064

These Code Sections were primarily intended to value property known as special purpose property such as cemeteries, schools, and churches. *Redevelopment Agency v. Tobriner* (1989) 215 Cal. App. 3d 1087. However, these sections do not apply where, as here, the subject property has other marketable purposes. *County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1059. 1063-1064. The subject property (the overlying property) is zoned for residential and timber preserve (see Testimony of Ron Garland and William Moores). Under these circumstances, the property owner may not assert a special use for valuation. *People v. La Macchia* (1953) 41 Cal.2d. 738, 754.[23]

Because the subject property at issue in this case has the potential for uses other than water production, the property is not a special use property contemplated by these code sections and so these sections do not apply. *Id*. Even if it were, the taking cannot be valued based on

[23] Even where such statutes do apply, they only allow alternative highest and best use based on the public purpose but for valuation based on a private fair market value – they still restrict valuation based on the public project itself. *County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1059. 1063-1064.

the District's T5 Well or developed groundwater.

***Objection No. 6*: The *Santa Clarita* case does not apply, rather it is the *Casitas* case that is legally and factually applicable**

The case of *Santa Clarita Water Co. v. Lyons* (1984) 161 Cal.App.3d 450 relied on by Plaintiffs as well as by this court's Decision has absolutely no application in the present case. Although the *Santa Clarita* case has some superficial similarities to the present case, *Santa Clarita* is fundamentally not applicable for multiple reasons:

- The *Santa Clarita* case addressed surface water rights and the rights to subsurface flow of surface water pumped from wells (similar to the situation on the Russian River) – ***not*** groundwater. The present case deals with percolating groundwater from a confined fractured rock basin (Testimony of Tom Elson, Bruce Burton (State Dept. of Health) and the Pacific Geoscience Reports). Different rules of law apply *City of Barstow v. Mojave Water Agency*, (2000) 23 Cal. 4th 1224.
- Critically, the *Santa Clarita* court applied tort/unjust enrichment damages via Civil Code 2224 to the water rights issue *because* the water company in that case had abandoned its condemnation action. While Plaintiffs in the present case pled trespass and unjust enrichment, they elected to pursue inverse condemnation liability at trial and so this is the measure of damages and not tort or unjust enrichment. Plaintiffs must accept the application of inverse condemnation law to their alleged damages – even if that means Plaintiffs' damages are minimal to non-existent. To apply tort or unjust enrichment damages in this case deprives the District of certain defenses it could have raised and is neither fair nor just.
- Even the *Santa Clarita* decision briefly refers to beneficial use as the measure of damages (once), but the case fails to define the Lyons' actual present beneficial use (presumably this was done on the trial court level). To the extent it was not done, it is contrary to long recognized law.

- Unlike the water company in *Santa Clarita*, the District in the present case had a pre-existing right to be on the property in the form of the Soderberg Easement and also a pre-existing right to take ***all*** of the water from the aquifer via the Unit 9 Well. In fact, because the District paid Plaintiff **$25,000** for the Unit 9 Well, and has used it for 30 years, the District continues to contend that all such water has been dedicated to a public use – at least as to the Moores claims to any such groundwater. By agreeing to allow the District the first priority use of the groundwater in the aquifer, the Moores received additional compensation in the form of their subdivision approvals from the County - worth millions of dollars. None of these facts were present in *Santa Clarita*.
- Also, unlike the water company in *Santa Clarita*, the District here had all legal permits to divert water from the aquifer. The District had the required well permit from the County and the required State Health Permit (See testimony of C. Acker; **Exhibits 20-21**). As Mr. Charlie Acker testified, he went to both Mendocino County and the State Health Department to get the applicable permits – and both of those agencies reviewed the Soderberg Tank site easement and agreed the District had the right to build a well within that site. See 22 CCR Sec. 64560 (a)(2).
- In addition, unlike the *Santa Clarita* case, the water pumped from the T5 Well is available from the District to the subject property (via the 1988 and 2002 Agreements) and other properties owned by the Moores. Substituted water service can potentially be a mitigating factor to be considered in determining the scope of damages to water rights in inverse condemnation cases See *Collier v. Merced Irrigation District* (1931) 213 Cal. 554, 566-570 [substituted water a factor that can be considered in the scope of damages to water rights in condemnation]. As Charlie Acker testified at trial, the Unit 9 Well and the T5 Well are the only physical and legal sources of water to the subject property and the other properties

owned by the Moores in the Unit 9 subdivision and the Acreage Parcels. This situation is entirely opposite of the situation in *Santa Clarita* where the property owner was apparently not served with water from the District.[24] There is no doubt that the primary beneficiaries of the T5 Well are the Moores.

Instead, the case that actually applies most closely to the present case is *Casitas Municipal Water District v. United States,* 708 F.3d 1340 (Fed. Cir. 2013) in which a local water district contended that there had been a taking when the district was required to use some water under a license it held from the State Water Resources Control Board for fish flow purposes. The Court held that it was not the District's "capacity" to physically store water or the amount of capacity of use in the District's license or even the amount of water actually diverted that determined the local district's rights for the purpose of a taking- - rather it was the extent of the local district's present and actual beneficial use of water. The Court found that the water used for fish flow purposes was not water that the District was presently putting to any beneficial use (even though the District would eventually) and therefore there was no taking (based on the claim not being ripe). In the present case, the Moores do not presently divert any groundwater on the subject property for a beneficial use, and therefore, the scope of any damage is presently zero.

***Objection No. 7*: Potential alternative valuations and remittitur**

The Statement of Decision implies that the District somehow failed to offer other potential valuations for the Court's consideration.

First, it should again be considered that the District's valuation is accurate and valid and is nearly identical Mr. Moores own valuation of a new well on the subject property. Recall that Mr.

[24] "The trial court reasoned that cross-defendant SCWC had committed a substantial trespass over a long period of time, and had taken water for which it charged its customers but for which it had not paid, and that a remedy was available, in Civil Code section 2224, to cross-complainant." *Santa Clarita* at 460-461.

Moores attempted to "sell" the District a new well site (with all easements and the right to pump water) on the subject property for the "cost of another connection" to the District's water system (See Testimony of C. Acker; **Ex 101**) Ultimately, the District did not accept that offer because Mr. Moores indicated he wanted to use the connection to supply water to a property outside of the District (testimony of C. Acker). The "value" of such a service connection at the time of the taking the connection was valued at $300 (testimony of C. Acker).

It should also be recalled that the undisputed testimony at trial was that the District could have purchased the *entire* Fee Interest of the Soderberg Tank Site easement for less than $1,000 - **$839.00** (Testimony of Ron Garland; **Ex. 93,** p. 11). The District could have then built the T5 Well or multiple wells on the tank site without any compensation to the Moores.

The point of the above discussion is that the valuation in this case is an unfair and unjust windfall to the Moores. Without waiving these contentions as to valuation and damages, the District proposes potential alternative valuations to the Stephenson Report

This court has the power to consider the benefit of the District's water service to the subject property as part of valuation. See *Collier v. Merced Irrigation District* (1931) 213 Cal. 554, 566-570 [substituted water supply is a factor that can be considered in determining the scope of damages to water rights in condemnation]. Based on the foregoing, the District proposes that the damage award in this case should be *significantly* reduced based on the following facts:

- The T5 Well and Unit 9 Well are the only physical and legal public water sources to the Moores' properties in the Unit 9 and Acreage Parcel subdivisions. (Testimony of Charlie Acker)
- Without the T5 Well there would not be sufficient water available to the Moores to sell or develop their remaining properties within the Unit 9 and Acreage Parcel subdivisions. (2002 Agreement and testimony of Bruce Burton).

- The District obtained all approvals for the T5 Well from the State and County.
- The T5 Well is limited to pumping an average of 10 gallon per minute by the State.
- The 2002 Agreement provides the Moores with up to 21 service connections to the subject property at 300 gallons per connection. The Moores have not shown that they have any beneficial need for any water beyond that provided in the 2002 Agreement. The Moores were awarded the development rights to the Unit 9 Subdivision and the acreage parcels based on this water service and not any service from a private well site.

The District proposes that based on these facts the award in this matter should be substantially reduced. Using some non-speculative testimony from the trial, the District proposes the following alternative valuations:

- The actual cost of a developed private "access" to the groundwater. Charlie Acker testified at trial that a well shaft to reach the aquifer on the subject property – not including the well related equipment – would be valued at about **$8,000**.
- The cost to complete a private well (other than the District's T5 Project) to access groundwater. Mr. Moores testified via a declaration in evidence that he could build such a well on the subject property for **$25,000**. (See Declaration of Moores, **Ex. 79**: para. 34, p. 14).

Respectfully submitted,

Dated: April 16, 2015

Law Offices of Matthew Emrick

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