

1 LAW OFFICES OF DUNCAN M. JAMES  
DUNCAN M. JAMES, State Bar No. 40505  
2 DONALD J. McMULLEN, State Bar No. 220840  
JONAH S. WALSH, State Bar No. 274060  
3 P.O. Box 1381  
Ukiah, CA 95482  
4 Telephone: (707) 468-9271

5 Attorney for Plaintiffs

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF MENDOCINO

9 \* \* \* \* \*

10 WILLIAM H. MOORES, TONA )  
ELIZABETH MOORES, )

11 Plaintiffs, )

12 v. )

13 IRISH BEACH WATER DISTRICT, )  
14 DOES 1 through 10, inclusive, )

15 Defendants. )

16 )  
17 GORDON MOORES, SANDY MOORES, )  
MENDOCINO COAST PROPERTIES, a )  
18 California Corporation, and MOORES )  
ASSOCIATES, a partnership, )

19 Real Parties in Interest. )  
20 )

Case No. SCUK CVG 09-54665

PLAINTIFFS' OPENING BRIEF RE:  
PHASE ONE TRIAL - INVERSE  
CONDEMNATION LIABILITY

Judge: Hon. Ann Moorman

21 ////

22 ////

23 ////

24 ////

25 ////

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## I. INTRODUCTION

A governmental agency may not take a person's property absent just compensation. Thus, while the government maintains the power to condemn a person's property, it must pay that person before doing so. Where the government takes a person's property and fails to pay just compensation, it is liable for inverse condemnation.

The central issue in this Phase of Trials involves determination of Plaintiffs William Moores and Tona Moores (collectively "Moores") claim for liability against Defendant Irish Beach Water District ("IBWD") for inverse condemnation, or a taking, without just compensation, of: a certain well located on Moores property known as the "T5 Well"; water taken, and that which may be taken, from the T5 Well; and, IBWD's use of access roadways and other improvements to operate and service the T5 Well.

Moores owns several parcels of real property within the service boundaries of IBWD, which is a California Water District, i.e. a governmental agency. More than two decades in the past, Moores granted IBWD by deed the right to use and take water from *another* well located on Moores' property along with that well's pumping facilities and rights of access and use of a roadway, pipelines, and utilities necessary to operate that well. The deeded rights are specific and limited in scope to that particular well. Notwithstanding that, in 2008, IBWD drilled, constructed, and began operating the new T5 Well. Furthermore, IBWD took water from the T5 Well and used access roadways, pipelines, and utilities constructed by Moores to operate it.

At no time did Moores grant IBWD any right or permission to the property, well, water, roadways, pipelines, or utilities associated with the T5 Well. Additionally, IBWD has not paid Moores any compensation, let alone just compensation, for the same. Consequently, IBWD inversely condemned the subject property, well, water, roadways, pipelines, and utilities.

## II. BACKGROUND FACTS<sup>1</sup>

1  
2 Moores owns several parcels of real property in Irish Beach, CA. Included is an  
3 approximate 18-acre parcel referred to in this action as “Moores Property.” Moores Property is  
4 located in the West half of the Southwest quarter of Section 32, Township 14 North, Range 16  
5 West, Mount Diablo Basin Meridian. (Stipulation, p.2 ¶ 2.)

6 IBWD is a California Water District, organized and existing under the laws of the State  
7 of California. (Stipulation, p. 2 ¶1.) IBWD is a public agency that provides water to properties  
8 within its service boundaries for public purposes. (*Id.* p. 4 ¶ 12 & p.5 ¶ 17.) The Moores  
9 Property is located within the service boundaries of IBWD and it, along with other similarly-  
10 situated real property owned by Moores and unnamed third parties, maintains the right to  
11 receive water from IBWD. (*Id.*, p.1 ¶ 4.)

### 13 A. IBWD’s Granted Rights.

14 In or about 1988-1990, and pursuant to recorded deeds admitted in this matter and  
15 referred to as “Stipulated Deeds and Documents” in the parties’ Stipulation, Moores conveyed  
16 the following to IBWD:

- 17 • “A water well commonly known as the “**Unit 9 Well**” or “Number (No.) 9  
18 Well,” which is **located within the 30-foot diameter area described** in the  
19 easement made part of Document 11632 (at Book 1697 page 413), which  
20 document is, its entirety, Exhibit 4 of the Stipulated Deeds and Documents  
21 described below.” (*Id.*, p.1 ¶ 5.a., emphasis not original.)
- 22 • A 60’ by 60’ **water storage tank** site easement. (*Id.* ¶ 5.b.)
- 23 • A **water storage tank** (i.e. a physical tank) located on the referenced 60’ by 60’  
24 tank site easement. (*Id.* ¶ 5.c.)

25 <sup>1</sup> This section’s discussion of background facts is for the court’s convenience and ease of reference in this brief.  
26 Further details are presented in cited Stipulation for Phase 1 Trial – Liability for Inverse Condemnation, submitted  
to the court on December 21, 2011. That document is hereafter referenced and cited as “Stipulation” and exhibits  
attached thereto are simply referenced as “Exhibit \_\_\_.”

- 1 • Facilities on Moores Property used in operating the **Unit 9 Well**. (*Id.* ¶ 5.d.)
- 2 • The right to “access the **Unit 9 Well**, the **water storage tank** located on the [ ]
- 3 60’ by 60’ tank site easement, **and associated Unit 9 Well facilities** on the
- 4 Moores Property via a roadway commonly known as the Alta Mesa Road.” (*Id.*,
- 5 p.3 ¶ 7, emphasis not original.) The right of access across the non-public, or
- 6 “Private Portion of Alta Mesa Road,” is described further in the parties’
- 7 Stipulation. Moores owns nearly all of the parcels across which the Private
- 8 Portion of Alta Mesa Road runs. (*Ibid.*) Said road is further described in the
- 9 parties’ Stipulation (pp. 3-4, ¶ 9) and in Exhibits 1 through 3.
- 10 • In order to allow IBWD to operate the **Unit 9 Well**, Moores granted IBWD an
- 11 easement to use: “(a) electricity and other utilities, including water distribution
- 12 lines and telephone lines, **to operate and run service to and from the Unit 9**
- 13 **Well** on the Moores Property; and, (b) water distribution lines **to operate and**
- 14 **run service to and from the water storage tank** located on the aforementioned
- 15 60’ by 60’ tank site easement **and Unit 9 Well** on the Moores Property.” (*Id.* ¶
- 16 8, emphasis not original.<sup>2</sup>)

11 The Improvements run adjacent to the Private Portion of Alta Mesa Road. (*Id.* p. 4 ¶

12 10.) In our about 1988, Moores constructed and installed both the Private Portion of Alta Mesa

13 Road and the Improvements at *Moores’ expense*. (*Id.* ¶ 11.)

14 The Unit 9 Well was drilled in approximately 1975, and it was the only water well on

15 Moores Property until IBWD drilled and constructed the “T5 Well.” (*Id.*, p.3 ¶ 7:11-13.) The

16 Unit 9 Well provides water to properties within the service boundaries of IBWD, including

17 properties Moores owns. (*Id.* ¶ 6.) “IBWD has pumped water from the Unit 9 Well since at

18 least 1989 for use [ ] within the service boundaries of IBWD as part of its operations as a public

19 agency in providing water to such properties for public purposes.” (*Id.*, p.4 ¶ 12.)

20

21

22

23

24

25

26 <sup>2</sup> For purposes of this action, the parties stipulated that the referenced electricity and other utilities, water distribution lines, and telephone lines may be collectively referred to as the “Improvements.” (*Id.* ¶ 8.)

1                   **B.       IBWD’s Construction of the T5 Well.**

2                   In August 2008, IBWD drilled and constructed a well known T5 Well.<sup>3</sup> (*Id.*, pp.4-5 ¶  
3 13.) The T5 Well is located on Moores Property within the 60’ x 60’ **water storage tank site**  
4 **easement** referred to above. (*Ibid.*) “The T5 Well is approximately 150-200 yards from the  
5 Unit 9 Well, and the T5 Well is **not located** within the 30-foot diameter space referenced in the  
6 easement made part of Document 11632 (at Book 1697 page 413), which document is, its  
7 entirety, Exhibit 4 of the Stipulated Deeds and Documents” previously admitted. (*Id.*, p.5 ¶ 14,  
8 emphasis not original.)

9                   IBWD: uses the Private Portion of Alta Mesa Road to access the T5 Well on Moores’  
10 Property; and, IBWD uses, or has the opportunity to use, the other Improvements to operate and  
11 run service to and from the T5 Well. (*Id.* ¶¶ 15-16.) Since the date the T5 Well was  
12 constructed, IBWD has taken water from that well for IBWD’s use in providing water to  
13 properties within its service boundaries as part of its operations as a public agency in providing  
14 water for public purposes. (*Id.* ¶¶ 17-18.) “The T5 Well, water pumped from it, IBWD’s use of  
15 the T5 Well, IBWD’s access to the T5 Well, including upon the Private Portion of Alta Mesa  
16 Road, and IBWD’s use of other Improvements are for **public purposes.**” (*Id.* ¶ 19, emphasis  
17 not original.)

18  
19                   **C.       Summary of Facts & Contentions**

20                   Of course, Moores contends IBWD had no permission or authority to construct, and  
21 inversely condemned, the T5 Well, water in it, use of the access roadway for the T5 Well, and  
22 use of other Improvements for operation of the T5 Well. (Stipulation, “Contentions and Issues,”  
23 p. 6 ¶¶ 1-2.) Moores also contends that nothing, including the Stipulated Deeds and  
24

25  
26 

---

<sup>3</sup> Also known as the “Tank 5 Well” and identified in Moores’ pleadings as the “new well.” (*Id.* ¶ 13.)

1 Documents, provides IBWD any right to the same and nothing evidences payment of just  
2 compensation. (*Id.* ¶ 2.) IBWD contends it had permission and the right to construct the T5  
3 Well based on the Stipulated Deeds and Documents. (Stipulation, “Contentions and Issues,” p.  
4 6 ¶ 3:18-19.) IBWD further contends that two particular documents submitted as part of said  
5 stipulated deeds and documents demonstrate that IBWD justly compensated Moores for T5  
6 Well. (*Id.*, lines 19-21.) It is noteworthy that IBWD stipulates that “no compensation otherwise  
7 was paid to Moores in regard to the T5 Well.” (*Id.*, lines 21-23.)

8 IBWD defense fails for numerous reasons, not the least of which is the fact that all  
9 relevant grants from Moores to IBWD *specifically* concerned only one of two things: (1) the  
10 Unit 9 Well; and, (2) a tank for water storage and easement to place a water storage tank. In  
11 other words, the grants had nothing whatsoever to do with the T5 Well. These facts are quite  
12 evident by review of the parties’ stipulation concerning the grants, which are cited above and  
13 key portions of which are bolded for ease of reference. Furthermore, and as explained in further  
14 detail below, the law simply does not allow IBWD to extend its rights to drill a new well and  
15 take water from Moores’ property wherever and whenever it so desires.  
16

### 17 III. LEGAL DISCUSSION AND ARGUMENT

#### 18 A. Inverse Condemnation - General Legal Principles

19 The United States Constitution provides, “No person shall be deprived of property,  
20 without due process of law; nor shall private property be taken for public use without just  
21 compensation.” (U.S. Const., Amend V.) The California Constitution provides, “Private  
22 property may be taken or damaged for public use only when just compensation has first been  
23 paid to the owner.” (Calif. Const. (Art. I) § 19.) The basic issues under these provisions  
24 involve: (1) whether private property was “taken” or “damaged”; and (2) whether the taking or  
25  
26

1 damage was for a public use. (*Agins v. City of Tiburon* (1979) 24 Cal.3d 266, 279-284,  
2 judgment affirmed in *Agins v. City of Tiburon* (1980) 447 U.S. 255; abrogated on other grounds  
3 by *Lingle v. Chevron U.S.A. Inc* (2005) 544 U.S. 528.)

4 There is no prohibition on the government taking private property for public use. (*Brown*  
5 *v. Legal Foundation of Washington* (2003) 538 U.S. 216, 233.) Rather, the United States and  
6 California Constitutions require that the government pay just compensation for the taking.  
7 (*Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City* (1985) 473  
8 U.S. 172, 194; superseded by statute.)

9 While the U.S. Constitution and California Constitution require compensation for a  
10 taking of property, the California Constitution also requires compensation for "damage" to  
11 property. Generally, however, the distinction between the terms "taken" and "damaged" has  
12 been blurred, and they are used interchangeably. (*Tilem v. City of Los Angeles* (1983) 142 Cal.  
13 App. 3d 694, 701, 702, 710.) California courts have recognized the protections of the United  
14 States and California to be largely coextensive. (*San Remo Hotel L.P. v. City And County of San*  
15 *Francisco* (2002) 27 Cal. 4th 643, 664.)

17 A public agency has the power to take private property by an action in eminent domain  
18 as an inherent attribute of governmental sovereignty. (*Burbank-Glendale-Pasadena Airport*  
19 *Authority v. Hensler* (2000) 83 Cal. App. 4th 556, 561.) However, a property owner also may  
20 have his or her property "taken" or "damaged" by the acts or conduct of a public agency which  
21 requires the property owner to initiate an action to recover just compensation. "Inverse  
22 condemnation' occurs when there is a public taking of, or interference with, land without formal  
23 eminent domain proceedings." (29 Cal. Jur. 3d Eminent Domain § 332 Inverse Condemnation.)  
24 In other words, inverse condemnation results from the invasion or appropriation of some  
25  
26

1 valuable property right by or under the auspices of a public agency or a private entity with the  
2 power of eminent domain, which injures the property owner. (*Selby Realty Co. v. City of San*  
3 *Buenaventura* (1973)10 Cal.3d 110, 119; *Tilem v. City of Los Angeles, supra*, 142 Cal.App.3d  
4 694, 702; emphasis added.) Accordingly, it is the rule that while it is not always necessary that  
5 there be an actual physical taking of any part of the property in order to have a taking, “it is  
6 necessary that there must be an invasion or an appropriation of some valuable property right  
7 which the landowner has to the legal and proper use of his property, which invasion or  
8 appropriation must directly and specially affect the landowner to his injury.” (*Hilltop*  
9 *Properties, Inc. v. State* (1965) 233 Cal.App.2d 349, 355-56.)

10  
11 **B. Inverse Condemnation as Applied to Water Rights**

12 A property owner has several water-related property rights which are recognized and  
13 protected by law. (*Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49  
14 Cal.App.3d 992, 1000-1002.) Ownership of land appurtenant to groundwater engenders an  
15 overlying right to the water. (*Central and West Basin Water Replenishment District v. Southern*  
16 *California Water Co.* (2003) 109 Cal.App.4th 891, 905.) An overlying right is the owner's right  
17 to take water from the ground underneath the owner's property; it is based on the ownership of  
18 the land and is appurtenant thereto. (*Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74,  
19 83-84; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240; *Tehachapi-*  
20 *Cummings, supra*, at p. 1000.) Appropriation of these rights by a public entity entitles the  
21 property owner to compensation, either through eminent domain proceedings initiated by the  
22 public entity or through an action in inverse condemnation initiated by the property owner.  
23 (*Peckwith v. Lavezzola* (1942) 50 Cal.App.2d 211, 218.)  
24



1           Once acquired, water rights become vested property rights and cannot be infringed by  
2 another, or taken by government action, without due process and just compensation. The holders  
3 of water rights are entitled to judicial protection against infringement. (*United States v. State*  
4 *Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 104.) The right of a riparian owner or  
5 overlying user is a property right that can be taken by condemnation, but it cannot be taken for a  
6 public use without compensation. (*Id.* at p. 101.) Where land is condemned, everything that  
7 enters into its value is to be considered, and compensation must be awarded for any water rights  
8 in connection therewith. (*Yolo Water & Power Co. v. Hudson* (1920) 182 Cal. 48, 52-53.)

9           **C.       The Scope of Easements and Easements as Applied to Water Rights**

10           The fundamental law of easements provides that “an easement conveys rights in or over  
11 the land *of another*.” (*Thorstrom v. Thorstrom* (2011) 196 Cal.App.4th 1406, 1415.) An  
12 easement involves primarily the privilege of doing a certain act on, or to the detriment of,  
13 another's property. (*Ibid.*) An easements is classified as either appurtenant or in gross. (Civ.  
14 Code, §§ 801, subd. (4), 802, subd. (5); *Continental Baking Co. v. Katz* (1968) 68 Cal. 2d 512,  
15 521.) In both cases, the easement imposes a burden on the land of another, which is called the  
16 servient tenement. (Civ. Code, § 803; *County Sanitation Dist. v. Watson Land Co.* (1993) 17  
17 Cal. App. 4th 1268, 1278.)

18           An appurtenant easement creates either a right to use, or a right to restrict the use of, the  
19 servient tenement for the use and benefit of real property of the easement owner. (*City of*  
20 *Anaheim v. Metropolitan Water Dist. of Southern Cal.* (1978) 82 Cal. App. 3d 763, 767.) An  
21 easement in gross is a personal right to use the land of another, and as such it is an *interest* in  
22 real property. (*Buehler v. Oregon-Washington Plywood Corp.* (1976) 17 Cal. 3d 520, 527;  
23 *Balestra v. Button* (1942) 54 Cal. App. 2d 192, 197.) The property burdened by an easement in  
24  
25  
26

1 gross is called the servient tenement, however, because the right does not benefit any particular  
2 parcel of property, there is no dominant tenement. (Civ. Code, § 802; *County Sanitation Dist. v.*  
3 *Watson Land Co.* (1993) 17 Cal. App. 4th 1268, 1279.)

4 A fundamental principle is that the use of an easement, whether created by express grant,  
5 implication, or prescription, cannot be altered to impose an unreasonable or unintended burden  
6 on the servient tenement. (*Thorstrom, supra*, 196 Cal.App.4th 1406, 1415.) The owner of the  
7 dominant tenement must use his or her easements and rights in such a way as to impose as slight  
8 a burden as possible on the servient tenement in accordance with the terms of the grant or as  
9 otherwise established when use commenced. (*Id.* at p. 1422<sup>4</sup>.) Similarly, where an easement or  
10 right is obtained by grant, the rights of the grantee must be found **in the grant itself**. (*Woods*  
11 *Irrigation Co. v. Klein* (1951) 105 Cal.App.2d 266, 269; see also Civ. Code § 806.))

13 In *Woods, supra*, the Court of Appeal found that even a “general” grant that allowed the  
14 grantee to “construct, maintain, police, patrol, operate, extend, widen, and repair as series of  
15 canals” for irrigation did not allow the grantee to relocate the canals as need arose. (*Id.* at p.  
16 268-269.) In so finding, the *Woods* Court stated: “Any other rule would make the burden  
17 imposed by the easement a matter of perpetual speculation and subject the servient owners to  
18 continual uncertainty as to their rights and use and enjoyment of their land.” (*Id.* at p. 270.)

19 In other words, a grant of an easement or right otherwise is limited by the terms of the  
20 instrument creating it. Thus, where a right reserved by a grantor is exercised by the **drilling of**  
21 **a well** and the installation of a pipeline across the servient tenement, followed by years of use,  
22 *that use fixes the limits of the easement, which may not thereafter be increased without the*  
23

---

25 <sup>4</sup> Even where the right is implied from use and not express grant, the grantee’s right is fixed and certain in  
26 accordance with the type and scope of use as initially commenced, not as later extended or desired by the grantee.  
(*Kern Island Irrigating Co. v. City of Bakersfield* (1907) 151 Cal. 403, 406.)

1 consent of the owner of the servient tenement. (*Goubert v. Pomona Val. Water Co.* (1955) 137  
2 Cal.App.2d Supp. 852, 853; emphasis added.)

3 In *Goubert v. Pomona Val. Water Co.*, *supra*, 137 Cal.App.2d Supp. 852, the Chino Land  
4 and Water Company conveyed to the L. M. Jacobs Company several parcels of land, retaining  
5 the right to develop water on one acre in Lot 46 by artesian or surface wells, and the right to  
6 convey such water from said lot. The Chino Land and Water Company conveyed this 'right' to  
7 Pellissier, together with the well which had been developed on Lot 46. Appellants acquired Lot  
8 46 and respondents acquired the well. Several years later, respondents, over the objection of  
9 appellants, entered upon the appellants' land and installed thereon a new structure and a hydro-  
10 pneumatic system. The Court held that right to develop water by artesian or surface wells and  
11 to convey water from land, became fixed, if not by terms of reservation, then by drilling of well  
12 and installation of pipeline, and owners of such right, in absence of landowner's consent, could  
13 not increase extent of servitude and could not build additional structures for purposes not  
14 mentioned in grant and not therefore exercised. (*Id.* at p. 853.) As the *Goubert* Court expressed,  
15 "Where the right, not definitely limited by grant, has become fixed by the manner of its use, it  
16 cannot be enlarged without the consent of the parties who may be affected." (*Ibid.*)  
17

18 In *Thorstrom*, *supra*, 196 Cal.App.4th 1406, 1411-1413 the defendant maintained use of  
19 water from a well developed in 1969 located on the plaintiff's property. In 1980 an additional  
20 well was built on plaintiff's property. No grant deed existed for the 1980 well. (*Id.* at pp. 1412-  
21 1415.) Water from the 1980 well was used by the parties' predecessor in interest and serviced  
22 both plaintiffs' and defendants' properties. (*Ibid.*) Without plaintiffs' permission the defendants  
23 constructed a 2,500-gallon water storage tank on defendants' parcel and diverted all water from  
24 the 1980 well to the new storage tank. (*Id.* at p. 1415.) The *Thorstrom* Court held that the  
25  
26

1 taking of all water from the 1980 well by defendants constituted an overuse of the implied  
2 easement acquired by defendants from prior use of water from the 1980 well; this, the court  
3 found, justified issuance of injunctive relief to preclude further excessive and inordinate  
4 consumption of the water from the 1980 well, and to prevent a continuation of defendants'  
5 unlawful acts which would deprive plaintiffs of their full property rights, including use of the  
6 1980 well. (*Id.* at p. 1425.)

7 In *Moore v. California-Michigan Land & Water Co.* (1921) 55 Cal.App. 184, the  
8 grantors of two lots, who did not have any title to a third lot (known as lot 8), conveyed by deed  
9 with the two lots, "eight fifty-fourths of the water *in the well* on lot 8...to the extent of twenty-  
10 six thousand gallons each twenty-four hours." (*Ibid.*, see also p. 188.) The owner of lot 8  
11 thereafter executed a deed conveying to the grantees "the water right described" in the earlier  
12 deed, thereby validating the conveyance. (*Id.* at p. 188.)

13  
14 The grantees later initiated an action for equitable relief. (*Id.* at pp. 184-185.) They  
15 alleged that they were the owners of the two lots of land *and* the owners of the right to eight  
16 fifty-fourths of the *water on and under* lot 8, not just that sourced from the referenced existing  
17 well. (*Ibid.*) The Court of Appeals held that the confirmatory deed did not enlarge the right  
18 given to the grantees by the earlier deed, and they acquired only the fractional part of the water  
19 *in the existing well*, and not an equal part of all the waters underlying lot 8. (*Id.* at p.189.) As  
20 the *Moore* Court expressed, "[t]he plaintiffs may be said then to have shown a clear title by  
21 chain of conveyances to a right to eight fifty-fourths of the water in the well which was located  
22 on lot 8, such right to be limited to the use of a maximum quantity of 26,000 gallons each 24  
23 hours. This is quite a different thing from the possession of a right to that proportion of all the  
24 waters underlying lot 8." (*Ibid.*) The *Moore* Court further noted: "The water right itself under  
25  
26

1 the evidence cannot be enlarged from that proportion and quantity fixed in the early conveyance  
2 ...in other words, the interest is an interest in the **water in the particular well** and not the water  
3 underlying lot 8.” (*Id.* at p. 191, emphasis not original.)

4 **D. Application to Present Case**

5 Pursuant to stipulation, IBWD admits it is a public agency and that it uses the T5 Well ,  
6 the Private Portion of Alta Mesa Road, and the Improvements for public purposes. The only  
7 question is whether IBWD maintained the right to take that property and those property rights  
8 without just compensation.

9 As set forth above, in 1988 Moores granted IBWD the rights to the Unit 9 Well within a  
10 particular 30-foot diameter area. (Exhibit 4, page. 2 ¶¶2-3.) The fact of this matter is further  
11 confirmed in the parties’ 1988 Water Development Agreement (Exhibit 6 [see Book 1764 pages  
12 93-96 thereof], which only references—specifically—the Unit 9 well and water from it, not  
13 some other well on Moores Property. Exhibit 7, IBWD’s plans for the property as approved by  
14 it on December 5, 1988, was part of the Water Development Agreement and it denotes only the  
15 Unit 9 Well and related facilities specifically. It has nothing to do with the T5 Well. Exhibit 12  
16 (procured by IBWD) forwards this fact in that it identifies the deeds by which rights to the Unit  
17 9 Well, access easements, and facilities were created. (See page 2 thereof and Exhibit 7A [blow  
18 up].) Noteworthy is the lack of any reference to any grant in association with the T5 Well. In  
19 short, even IBWD’s own documents demonstrate no granted rights in relation to the T5 Well.  
20  
21

22 As noted and cited above, Moores did grant an easement to IBWD to (a) use electricity  
23 and other utilities, including water distribution lines and telephone lines, to operate and run  
24 service to and from the Unit 9 well on the Moores property and (b) water distribution lines to  
25 operate and run service to and from the water storage tank on the 60’ by 60’ tank site easement  
26

1 and Unit 9 well on the Moores Property, and it further granted IBWD the facilities used to  
2 operate the Unit 9 Well. (See also, Exhibits 9-10.) Nothing in those grants extends beyond the  
3 Unit 9 Well in particular.<sup>5</sup>

4 In August 2008, IBWD drilled and constructed a new well also known as the “Tank 5  
5 well.” As noted, the Tank 5 Well is approximately 150-200 yards from the Unit 9 Well, and  
6 thus outside the referenced 30’ diameter Unit 9 well easement granted. In other words, the T5  
7 Well is not located within the 30-foot diameter space referenced in the easement made part of  
8 Document 11632 (at Book 1697 page 413), which document is, its entirety, Exhibit 4 of the  
9 Stipulated Deeds and Documents. IBWD admits is uses the Private Portion of Alta Mesa Road  
10 to access the Tank 5 Well on Moores’ Property. IBWD admits it has pumped water from the  
11 Tank 5 Well since its construction for use, including sale, within the service boundaries of  
12 IBWD as part of its operations as a public agency in providing water to such properties for  
13 public purposes. IBWD admits it uses or could use the Improvements for the T5 Well.  
14

15 IBWD had no permission, authority, or consent otherwise to drill, construct, take, or use  
16 the Tank 5 Well the property on and in which it lies, to pump, use, or otherwise take water from  
17 the Tank 5 Well, or to use the Alta Mesa Road and Improvements to access, service, or  
18 otherwise operate the Tank 5 Well. Nothing, including the Stipulated Deeds and Documents,  
19 gave or gives IBWD any right to the same, and certainly not without payment to Moores of just  
20 compensation.  
21

22 The actions of IBWD represent an inverse condemnation commenced as of August  
23 2008 when IBWD entered onto Moores’ property and drilled and constructed the Tank 5 Well.  
24

---

25 <sup>5</sup> Other grants by Moores contained in the Stipulated Deeds on Documents are outside Moores Property, as  
26 described in particular (legally) above. Hence, the grants do not and cannot pertain to the T5 Well located on  
Moores Property.

1 The rights granted to IBWD in 1988-1990 are limited by the terms of the instruments creating  
2 them. The easement granted in 1988 did not allow for the drilling, construction and use of the  
3 Tank 5 well. Moreover, the original construction of the Unit 9 well and storage tank, and the  
4 installation of a pipeline across the Moores property, followed by years of use (1989-2008),  
5 fixed the limits of the easement, which may not thereafter be increased without the consent of  
6 the owner of Moores.

7 The continued taking of water from the Tank 5 well deprives Moores of their full  
8 property rights. As expressed by the *Moore, supra*, the granting of water rights to a well and  
9 storage tank on the Moores property is quite different thing from granting possession of a right  
10 to of all the waters underlying the Moores property. Therefore, IBWD's actions represent a  
11 condemnation of the Tank 5 well and the water contained therein. As a result, everything that  
12 enters into its value is to be considered, and compensation must be awarded for any water rights  
13 in connection therewith.  
14

#### 15 IV. CONCLUSION

16 The deeds submitted into evidence in this action are definitive and dispositive for  
17 purposes of establishing IBWD's liability for inverse condemnation. Recognition of  
18 fundamental property rights along with proper construction of the deeds plainly establishes  
19 IBWD's liability. Only by ignoring both the deeds' plain language and well-established legal  
20 principals concerning the scope of IBWD's lawful rights may a finding otherwise result.  
21

22 In short, IBWD maintains no right—without payment of just compensation—to drill,  
23 construct, or take water from Plaintiffs' property via the T5 Well. Similarly, absent just  
24 compensation, IBWD maintains no right to use any roadway, pipelines, or utilities to operate the  
25 T5 Well. Consequently, IBWD inversely condemned: the T5 Well; water that has been or may  
26

1 be taken from the T5 Well; use of the subject roadway, pipelines, and utilities in its operation of  
2 the T5 Well.

3 Accordingly, Plaintiffs respectfully request the court grant it Judgment establishing  
4 IBWD's liability for inverse condemnation of: the T5 Well; water taken, and that which may be  
5 taken, from the T5 Well; use of the Private Portion of Alta Mesa Road for IBWD's operation of,  
6 and service to, the T5 well; and use of other Improvements in IBWD's operation of, and service  
7 to, the T5 Well.

8 Dated: January 10, 2012

Respectfully submitted,

9  
10 LAW OFFICE OF DUNCAN M. JAMES

11 

12 DONALD J. McMULLEN

13 Attorney for Plaintiffs  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

I am a citizen of the United States and a resident of the County of Mendocino. I am over the age of eighteen years and not a party to the within above entitled action; my business address is 445 N. State Street, Ukiah, CA 95482. On January 10, 2012, I served the within PLAINTIFFS' OPENING BRIEF RE: PHASE ONE TRIAL - INVERSE CONDEMNATION LIABILITY by electronic mail and by placing a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the United States post office box at Ukiah, California, addressed as follows:

Matthew L. Emrick, Esq.  
Law Office of Matthew Emrick  
6520 Lone Tree Blvd., #1009  
Rocklin, CA 95765

E-mail: [matthew@mlelaw.com](mailto:matthew@mlelaw.com)

I, Katie Brown, declare under penalty of perjury that the foregoing is true and correct.

Executed this 10<sup>th</sup> day of January, 2012, at Ukiah, California.

  
KATIE BROWN