

The following information is provided in response to recent statements appearing in the media regarding the recent Judgment issued in the matter of *Moores vs. Irish Beach Water District*. It is the District's position that the Judgment and the recent press release by the Plaintiffs incorrectly reflect the actual facts and applicable law presented to the Court by the District during the **3 trials** held over the past five years.

**Phase 1** of trial was held in 2012, and addressed a new groundwater well constructed by the District within a District owned locked and fenced easement specifically to replace a failing existing well known as the Unit 9 well. The Court found in the Judgment that the language in the deed granting the District the easement did not allow for the construction of a new well. The District disagrees with the Court's findings based in part on the following facts and law shown at trial:

- The language in the District's easement deed specifically allowed the construction of "water system appurtenances" such as the new well and water rights.
- The new well was built solely within a District owned easement that is fenced and locked.
- The new well was approved by Mendocino County and the State Dept. of Health.
- Plaintiffs have no existing developed water rights within the District.

The new well and groundwater provide a valuable resource to the entire District. The wells allow the District to continue to provide water during times that water is too turbid in Irish Gulch Creek to use. The Wells also provide a valuable backup system for the District including for fire protection purposes.

**Phase 2** of trial addressed Plaintiffs alleged damages resulting from the construction of the District's well. The Plaintiffs implied during this second phase of trial that they owned certain water rights and had ownership interest in District, AT&T and PG&E utility facilities in Unit 9. The Plaintiffs sought over \$3 million in damages, but the court awarded less than one-sixth this amount (\$401,000). The District's position at trial was that the Plaintiffs were not entitled to damages based on the following evidence and facts:

- The new well significantly benefits the Plaintiffs' properties. The Plaintiffs own expert at trial found significant value added to all properties in the District resulting from the new well.
- The new well is the only existing long-term water supply available to the Plaintiffs' properties in Unit 9 (and the Acreage Parcels) and without the new well the Plaintiffs could not develop these properties.
- The Court was not able to value anything actually owned by the Plaintiffs to determine any alleged damages. Instead, the Court based the Plaintiffs' alleged damages on the value of the T5 well to the District, which is contrary

to express law prohibiting such valuation. It is the District's position that because the court could not value anything actually owned by the Plaintiffs this fact alone proves the Plaintiffs were not damaged.

**Phase 3** of trial addressed various issues. The primary issue adjudicated were three (3) of the District's four Proposition 218 Assessments. The court found that all three of the District's assessments at issue were validly and lawfully enacted in 2002 and validly levied. The main issue at trial had to do with the duration of the Assessments. The District took the position that the assessments were on-going as determined by the District's consulting engineer and that the Plaintiffs actions were barred by the statute of limitations and their own actions. The court concluded two of the assessments were not on-going and ordered refunds from those funds. More specifically, the court found the following:

- That the District's Mallo Pass/Alternative Water Supply Assessment ended in 2009 when the Mallo Pass permit was rescinded. The entire fund was ordered by the court to be refunded to all landowners in the District.
- The District's System-Wide Assessment was held to be valid. The court did however find that the assessment will terminate at the end of the District's 2017 fiscal year rather than continuing year to year. Any funds remaining at the end of the fiscal year were ordered by the court to be refunded to all landowners in the District.
- The temporary assessment fund ceiling on the District's Capital Replacement Assessment is lower than the ceiling the District had used for the past 15 years and as originally intended by the District's Consulting Engineer who prepared the assessment. The court ordered that any funds remaining above the assessment ceiling to be refunded to all landowners in the District. The court did find that this assessment will continue.
- That the Plaintiffs had failed to pay certain valid assessments over the years.

It should be noted that the District was able to make significant upgrades to many of the water service facilities including Tanks 1 and 3, the District's raw water line, and many pipelines in the District as the direct result of the assessments. The District prevailed in preventing the Plaintiffs from shutting down the District's Tank 1 Project. The Plaintiffs had sought an order of the court directing the District to have halted construction of the tank which would have essentially eliminated water service within the District.

The District has been extremely successful in fixing leaks in the system as a result of these assessments, which will allow the District to better conserve water and improve environmental stewardship of the water resources in the District. The monies at issue are refunds to all landowners, not damages specifically to the Plaintiffs.

The final issue during Phase 3 of trial dealt with an allegation that the District had breached a prior 2002 settlement agreement with the Moores because the District had not constructed a new water diversion facility in Mallo Pass Creek. The Court found the District had breached the agreement with the Moores. The District's positions at trial included the following:

- There was no present need for water from Mallo Pass Creek in the District and that there would not be a need until after 2050 primarily because of the slow pace of building development in the District. This is true even without the new T5 Well.
- The District is prohibited by law from building a surface water diversion when there is not a present beneficial need for the water.
- The Dept. of Fish and Wildlife had indicated to the District that any diversion from Mallo Pass Creek would be limited to 3 winter months only in order to protect certain species that depend on Mallo Pass Creek. Winter is the time of the year when the District needs the water the least making the project presently financially infeasible to the District..
- The Plaintiffs breached the 2002 Agreement when they connected certain properties they own outside of the District to District owned facilities without the permission of the District and failed to timely develop their properties in the District in order to create a need for the Mallo Pass Creek water.

Plaintiffs contended, and the Court ultimately found, however that the District should have built the Mallo Pass Creek Project despite the undisputed facts that to do so would violate state law, the project was presently economically infeasible, and that the project could have potentially impacted sensitive fishery resources in the creek. In what can only be described as ironic, Plaintiffs sued the District during the 1990s to prevent the construction of the Mallo Pass project and voted against the Mallo Pass assessment in 2002 but then sued the District for not building a diversion in Mallo Pass Creek.

The District is appealing the judgement.

[The preceding statement is provided by District's legal counsel. It is not an official statement of the District. It is intended solely for informational purposes. It is responsive to the recent press release by the Plaintiffs in this case. To the extent any facts or legal positions may differ from those set forth at trial or during appeal by the District, those set forth at trial and appeal by the District control.]