

Frequently asked questions re: the MOORES' Litigation and Appeal

The Appellate Briefs related to the *Moores v. IBWD* litigation set forth the facts and contentions at issue in that dispute. Those Briefs are posted on the District's website: www.ibwd.org.

Below are some of the more frequently asked questions in FAQ form about the litigation and appeal from District staff and legal counsel.

When did the present Moores' litigation start?

The Moores' third amended complaint was filed by Bill and Tona Moores ("Moores") against the District in 2009. This initial Complaint was followed by two more supplemental Complaints filed by the Moores against the District.

There were also three (3) trials in this matter held from 2012 to 2016 (approx. 15 to 16 days of trial all together).

Was this the first time the District has been sued?

No. The District has been sued approximately 10 times over the past 28 years (a lawsuit about every **3 years**). There were three separate complaints filed in the 2009 Moores' action, and an administrative action filed against the District by the Irish Beach Improvement Club in 2018. These matters all primarily involved water rights and various fees.

Did the District try to settle the recent Moores' litigation?

Yes. Several times. The District attempted to settle the matter before the trials in this matter and during the Appeal process.

Why didn't the District just pay the Moores' the judgment of the trial court?

At trial, Mr. Moores sought approximately **\$3.5 million plus** in damages (plus reimbursement of certain assessments) against the District during the trials. The Trial Court refused to award the Moores this amount. The final judgment ended up at about **\$1.8 million** including interest and attorney fees. The District would likely have to substantially increase water rates over many years to have paid the judgment. And due to Proposition 218 procedures, the burden of that increase would unfortunately fall primarily on those water users living full-time in the District through usage rate increases.

Additionally, the District appealed because it believes the trial court erred on several critical issues during trial that would negatively impact the District moving forward particularly with future water development. In particular, the District believes the trial court erred in finding the District “took” water rights belonging to Mr. Moores in part because those same rights had been dedicated to the District by the Moores for the Unit 9 Well. The District also believes the court applied an invalid valuation method with respect to the T5 well that is expressly prohibited by law. Additionally, the District believes the trial court erred in awarding the Moores damages related to the State Water Board’s revocation of the Mallo Pass Creek diversion permit in part because the facts at trial showed the District could have never built that diversion (this issue is discussed in more detail below).

Didn’t the District insurance cover the District’s court costs?

Yes. The District’s insurance covered much of the District’s court costs starting in about 2012 for two out of the three trials. The insurance is also helping with a substantial portion of the costs for the District’s Appellate Attorneys but is not covering all such costs. The District’s portion of the appeal costs is the amount that is related to the temporary rate increase.

Does the Moores’ lawsuit involve more than just a dispute over the T5 well?

Yes. The primary issues the Moores sued on involved the construction of the T5 Well, use of the District’s T2 Well, the Mallo Pass Creek Permit/2002 Settlement Agreement, Road Maintenance, and the District’s assessments, including funding for future water development. As mentioned, the Moores’ filed three separate lawsuits against the District in this action each alleging different actions against the District.

Why did the District construct the T5 Well?

The facts at trial indicated that in 2008, the Unit 9 well (the District’s only well at that time) was failing (the former Unit 8 well had failed years earlier). Originally rated for up to 28 gallons per minute, the Unit 9 well had declined to about 12 gallons per minute in the early 2000s and then to about 8.6 gallons per minute in 2011 or so. Part of the problem was determined to be sand in the area of that well. Therefore, instead of building a new well next to the failing Unit 9 well, the District in consultation with its well driller built the T5 well about 500 feet away from the Unit 9 well – but located within the same deeded easement area.

Well water is important to the entire District as a back-up supply source during the winter when Irish Gulch Creek experiences greater turbidity during rainfall events. Water from the Unit 9 well was important because it was the primary source of water to properties in Unit 9 and the acreage parcels, which will need about 17 to 20 gallons per minute supply (building moratoriums are possible in Unit 9 and the acreage parcels without adequate supply). When that well started to fail, it was therefore vital for the District to construct the T5 Well. It is important to keep in mind that groundwater is scarce within Irish Beach and it appears that there are only a few locations where groundwater is plentiful enough to be of use for District purposes.

Did the District construct the T5 well without any approvals whatsoever?

No. Mr. Moores claimed at trial that the District entered his property without approval and the trial court held in Mr. Moores favor. But this issue is presently on appeal.

The undisputed facts at trial, however, were that the District built the well within an existing fenced and locked easement area dedicated solely to the District by Mr. Moores in 1988. Mr. Moores contended that the easement did not allow the District to build a well in the location at issue. However, before building the T5 Well, the District obtained a well permit from the County and approval from the State Dept. of Health to construct the T5 well based in part upon those agencies review of the District's well easement – determining that the District had authority to build the well at that location.

How were the District's Assessments at issue in the lawsuit?

The District's assessments were approved in 2002 and were intended to be on-going in order to help fund infra-structure and new water source supply for the District. All properties in the District paid these assessments because all properties including undeveloped properties benefited from the projects these assessments funded. The Moores sued the District to impose a 15-year term on these assessments. The court agreed with the Moores.

The Assessments were vitally important to the District's ability to improve the aging water system. The assessments paid for improvements to three of the District's water tanks and pipeline improvements as well as for future water development. The District's system which had historically lost up to 40% of water is now virtually leak free and will comply with the upcoming mandates from

the state regarding leak prevention. Without these assessments, many projects now need to be paid by only those owners using water rather than by all property owners within the District.

How was the Mallo Pass Creek Permit at issue in the lawsuit?

The Mallo Pass Permit which was originally owned by William Moores was transferred to the District in 1988 pursuant to a condition in that Permit. Originally, the District did not want the Permit due to the slow rate of development in Irish Beach.

The facts at trial showed that in 2002, the District entered a settlement agreement with the Moores as the result of a 2000 Lawsuit against the District in which the District agreed to develop a diversion on Mallo Pass Creek in compliance with applicable law at an unspecified time in the future after Irish Gulch Creek was fully developed. The District paid the Moores a reimbursement of about \$450,000 as a result of that 2002 Settlement Agreement. In 2006, the District began the process to construct the Mallo Pass Creek diversion. In about 2007, the State Water Resources Control Board determined that due to the slow rate of development in Irish Beach water from Mallo Pass Creek would not be needed by the District until about 2040 at the earliest, and so, started proceedings to revoke the Permit under Water Code section 1410.

In about 2007, the Department of Fish and Wildlife informed the District that it would not permit water diversions from Mallo Pass during the summer, which is the peak use period for the District. It is also worth noting that the original by-pass flow requirements in the permit along with diversion restrictions from the Coastal Commission and the Fish and Wildlife made the Mallo Pass Permit of little to no use to the District because there would be essentially no water that could be diverted by the District under that permit.

The Trial Court, however, held that the District should have built the Mallo Pass diversion anyway (unlawfully under applicable law) despite: the impossibility of building the Mallo Pass diversion due to severe regulatory limitations, the prior payment of \$450,000 to the Moores, and the fact that water from that Creek would not have been needed for another 30 to 50 years (at current building rates).

How has the lawsuit impacted the District financially?

See Chart of recent legal fees in next page.

**IRISH BEACH WATER DISTRICT
LEGAL FEE RECAP - October 2017 through July 31,2020**

