

# 2002 Assessment Refund and Litigation Settlement

Moore v. Irish Beach Water District, Mendocino County Superior Court,  
Case No. SCUk CVG 09-54665

Filed 09/10/2009

# Relevant Items at issue in the 2009 Moores v. Irish Beach Water District Litigation

- 2002 Proposition 218 included 3 items in the assessment of 459 parcels
  - Systemwide Capital Improvement
    - e.g Replace Storage Tanks 1,3, improve pump stations & water mains, raw waterline
  - Mallo Pass Capital Improvements
    - Development of new water supply from Mallo Pass Creek
  - Capital Replacements
    - Replacement of fixed assess with lives >40 years
- Drilling of T5 well and interpretation of the IBWD easement at the location.

## **Moore v. Irish Beach Water District Litigation** *Relevant Trial Court Decisions (2017)*

- Phase 1 Trial Judgement
  - Liability for Inverse Condemnation by building T5 Well, exceeding the scope of the easement
- Phase 2 Trial Judgement
  - Damages for Inverse Condemnation by building T5 Well, exceeding the scope of the easement
- Phase 3 Trial Judgement
  - Breach 2002 agreement by not building Mallo Pass project
  - 2002 Prop 218:
    - 1) Mallo Pass Assessment to be refunded to property owners because no present Mallo Pass Permit/Project
    - 2) System-Wide Assessment to end in 2017 and to be refunded to property owners
    - 3) Capital Replacement Assessment Funding Ceiling lowered and over assessments refund to property owners.

**Including the 2002 Prop 218 items, Trial Court Judgment was for approx. \$2,380,000 or \$11,400 per customer.**

1.9M for inverse condemnation and \$480K for Prop 218 assessment refunds

Please refer to the IBWD website for additional information regarding *Moore v. Irish Beach Water District litigation*.

# **Moore v. Irish Beach Water District Litigation**

## *Relevant 2021 Appeals Court Opinion*

- **Liability for Inverse Condemnation by building T5 Well**
  - District exceeded scope of the existing easement when it built the T5 Well in 2008.
  - District did not take any water rights or water-related facilities from the Moores when it built the T5 Well.
- **Damages for Inverse Condemnation by building T5 Well**
  - Damages and attorney's fees awarded to Moores by the trial court, which included water rights, were reversed by the Court of Appeals.
- **Breach 2002 agreement by not building Mallo Pass project**
  - Trial court judgment against the District (including damages) reversed and directed that judgment be entered in favor of District.
- **2002 Prop 218:**
  - NOT Appealed: Mallo Pass Assessment account balance to be refunded because no present Mallo Pass Permit/Project
  - NOT Appealed: System-Wide Assessment to end in 2017 and account balance to be refunded
  - Trial court judgment as to Capital Replacement Assessment was reversed and directed that judgment be entered in favor of the District

Please refer to the IBWD website for additional information regarding Moores vs. Irish Beach Water District litigation.

# **Moore v. Irish Beach Water District Litigation**

## *Financial implications*

- Appeals Court remanded case back to Superior Court for proceedings consistent with Appeals Court opinion.
- Inverse Condemnation Judgement
  - IBWD agreed to a settlement payment of \$25,000 in return for well easement.
  - In the final judgement, Moores awarded \$16,667.13 for various legal fees and costs
  - Moores awarded an additional \$65,598 in legal fees and costs related to the Inverse Condemnation/T5 well case
- Reimbursement of balances of Systemwide and Mallo Pass 2002 Prop 218 funds to lot owners (detailed in subsequent slides)

## **Impact to Mallo Pass and Systemwide 2002 Prop 218 Funds**

- In the Phase 3 portion of the litigation, an analysis of expenditures in each of the 218 accounts was presented to the court
- The trial court deemed certain expenditures to be improper or unsupported and added those expenditures with interest back to the respective account balances
  - While the expenditures were needed to complete the projects, they were not specifically called-out line items in the engineering report supporting the assessments
    - Examples of expenditures found to be inappropriate by the trial court are the unanticipated cost of replacing Tank 1 foundation and the purchase of special excavator as it was found that underground power lines were co-located with waterlines
- Court Judgment, the Mallo Pass and Systemwide funds were assigned a corrected balance as of Feb. 29 , 2016 to be refunded
  - Mallo Pass assessment fund \$432,792
  - Systemwide assessment fund \$170,829

# Refund Calculations

- Calculations have been reviewed by outside forensic accounting firm, Sugarman & Co.
- Sugarman accountants have verified and agree with the analysis and refund calculations.

# Mallo Pass Account

Description	Amount	IBWD Balance	Corrected Balance	Comments
IBWD Balance as of 30 SEP 2015		260,908	260,908	Last date of accounting in report presented during litigation
Income retained by IBWD	13,066	260,908	273,974	Per report presented during litigation
Inappropriate withdrawals	119,001	260,908	392,975	Per report presented during litigation
2016 Assessment estimated in Report	39,817	300,725	432,792	Matches 2017 Judgment
<b>POST-JUDGEMENT</b>				
correction for actual 2016 assess	(117)	300,608	432,675	
Reimbursed Mallo Pass for Disallowed Legal Expenses from Operating Cash	110,000	410,608	432,675	Reimbursement has no effect of corrected; accounted for in inappropriate withdrawals
Actual Earned Interest to Date	35,033	445,641	467,708	
Interest Owed per Judgment	68,435	445,641	536,143	Net Account deficit of \$90,502
Interest* due on post-judgement deficit	21,090	445,641	557,824	
Interest* Due for disallowed legal expenses	860	445,641	558,684	From date of Judgement to date of reimbursement
<b>Owed to Mallo Pass Account</b>	<b>113,043</b>			

\*Calculated based on 1 year treasury note compounded every 28 days



# Systemwide Account

Description	Amount	IBWD Account Balance	Corrected Balance	Comments
Account Balance as of 30 SEP 2015		4,633	4,633	Last day of accounting presented during litigation
Income retained by IB	7,773		12,406	Per Report presented during litigation
Inappropriate Withdrawals	118,930		131,336	Per Report presented during litigation
Est. 2016 Assessment in Court Report	39,494		170,830	Matches 2017 Judgment
<b>POST-JUDGEMENT</b>				
Correction for Actual Assessment (2016)	(1,173)	42,954	169,657	
Reimburse Sys Wide for Excavator from Operating Cash (2015)	25,845	69,001	169,657	Reimbursement has no effect of corrected; already accounted in Inappropriate Withdrawals
Earned Interest (2015-2017)	202	68,631	169,860	
Actual Final Assessment (2017)	38,535	107,536	208,395	
Spent for Raw Waterline (2016-2017)	(21,055)	86,481	187,3339	
Payback loan from >40 for Tank 1 (2017)	(60,293)	26,188	127,046	2 payments of 10,293 and 50,000
Transfer from Systemwide to Operating Cash Tank 2 improvements (2017)	(26,188)	0	127,046	Expense not applicable to Systemwide
Interest* 3/2016 to 11/2017 on Judgement amount above actual balance	1715		128,761	
2017-2024 interest* on balance	25,269		154,030	
<b>Total Owed Systemwide Account</b>	<b>154,030</b>			

\*calculated based on 1 year treasury note compounded every 28 days

# Judgment Summary

Item	Amount (\$)	Current Assets (\$)	Amount Needed (\$)
Inverse Condemnation Settlement	25,000	0	25,000
Legal Fees	65,598	0	65,598
Other Legal Fees	16,667	0	16,667
<b>Total Inverse Condemnation</b>	<b>107,265</b>	<b>0</b>	<b>107,265</b>
Mallo Pass Account	558,684	445,641	113,043
Systemwide Account	154,030	0	154,030
<b>TOTAL 2002 Prop 218</b>	<b>712,714</b>	<b>445,641</b>	<b>267,073</b>

# Apportionment of Prop 218 Reimbursements

- Some parcels did not pay all Prop 218 assessments between 2002 and 2017
  - 405 Parcels paid all assessments. Each parcel paid:
    - 14 assessment years for Mallo Pass
    - 15 assessment years for Systemwide
  - 44 Parcels in Unit 9 did not pay assessments for Systemwide until 2007, per 2002 settlement agreement, but paid all assessments for Mallo Pass. Each parcel paid:
    - 14 assessment years for Mallo Pass
    - 11 assessment years for Systemwide
  - 10 Parcels in Cluster Homes stopped payment for all assessments in 2012. Each parcel paid:
    - 9 assessment years for each of Mallo Pass and Systemwide

# Apportionment of 218 Reimbursements

- The amounts to be reimbursed to each category of parcel are calculated from percentages of Mallo Pass and Systemwide assessments paid by category of parcel
  - Parcel list generated from assessment rolls 2003 onward. There were no changes in parcels assessed during this period
  - Subsequently merged parcels will be treated as individual parcels
- This is further subdivided between undeveloped parcels and IBWD customer parcels as district is responsible for inverse condemnation settlement costs
- Undeveloped parcels are to receive a total of \$384,705 that will be paid from currently available funds

	Total Amount to be Reimbursed	Portion to parcels that paid all assessments	Portion to Unit 9 parcels	Portion to Cluster home parcels
Mallo Pass Account	558,684	496,822 (88.93%)	53,976 (9.66%)	7,886 (1.41%)
Systemwide Account	154,030	140,733 (91.37%)	11,212 (7.28%)	2,085 (1.35%)
Total to be Reimbursed	712,714	637,555	65,188	9,971
Number of parcels		405	44	10
<b>Amount to be reimbursed per parcel</b>		<b>1,574</b>	<b>1,482</b>	<b>997</b>
Unconnected parcels		200	40	10
Connected parcels		205	4	-
<b>Total owed to Unconnected parcels</b>	<b>384,075</b>	314,842	59,262	9,971
Total owed to Connected Parcels	328,639	322,713	5,926	

# Settlements Summary

## Customer

- Per court judgement, to pay customers their portion of the Prop 218 reimbursement and collect funds for Inverse condemnation settlement, each customer would pay district 1-time fee of \$1,795 or 1,597 (Unit 9):

At a later date, receive a payment of \$1,574 for customer parcels that paid all assessments

At a later date, receive a payment of \$1,482 for customer in Unit 9

	Customers that paid all assessment	Unit 9 Customers
Total amount needed from customers to pay off litigation settlement	107,265	107,265
Total amount needed from customers to pay off Mallo Pass	113,043	113,043
Total amount needed from customers to pay off Systemwide	151,858	2,173
Each customer would pay for litigation settlement	513	513
Each customer would pay for Mallo Pass	541	541
Each customer would pay for Systemwide	741	543
<b>Total Owed by each customer</b>	<b>1,795</b>	<b>1,597</b>
<b>Each customer would receive</b>	<b>1,574</b>	<b>1,482</b>
Net	(221)	(115)

# Settlements Summary

## Customer Option

- If customers apply their portion of the judgement payment from Mallo Pass and Systemwide, the District will pay customer's portion of \$25,000 settlement (cost savings due to simplification of administrative activities). Each would be responsible for a single payment of \$101 (\$4 credit for Unit 9 Customers).

	Customers that paid all assesement	Unit 9 Customers
Total amount needed from customers to pay off litigation settlement (reduced for \$25,000 inverse condemnation settlement)	82,265	82,265
Total amount needed from customers to pay off Mallo Pass	113,043	113,043
Total amount needed from customers to pay off Systemwide	151,858	2,173
Each customer would pay for litigation settlement	394	394
Each customer would pay for Mallo Pass	541	541
Each customer would pay for Systemwide	741	543
<b>Total Owed by each customer</b>	<b>1675</b>	<b>1482</b>
<b>Customer selects to apply Prop 218 reimbursement to settlement</b>	<b>(1,574)</b>	<b>(1,482)</b>
<b>Net per Customer</b>	<b>(101)</b>	<b>4</b>

# Fee Implementation

- Pursuant to the final judgment in *Moores v. Irish Beach Water District*, Mendocino County Superior Court, Case No. SCUK CVG 09-54665, the district is required to implement a one-time fee to cover judgement and settlement costs. The fee is based on:
  - The total cost of settlement obligations.
  - The number of affected parcels.
  - Structured to minimize the financial burden on property owners while ensuring compliance with court mandates.
- This one-time fee is not a recurring charge and will be collected solely to fulfill the settlement requirements.

# Prop 218 Process

- This one-time fee is subject to California proposition 218, majority protest process.
- **Notice of Proposed Fee and Public Hearing**
  - District will mail to each connected parcel a Notice of Proposed Fee and Public Hearing
- **Submission of protests**
  - Any owner of identified parcels upon which the fee is proposed may submit a written protest against the proposed fee by May 2, 2025
- **Tabulation of the protests.**
  - At the conclusion of the public hearing, the District shall tabulate all valid written protests received. If a majority of the property owners of the identified parcels submit written protests, the District shall not impose the proposed fee
- **Public Hearing**
  - The public hearing shall be conducted on May 10, 2025, at 10:00 AM, located at Rex Dunning Firehouse, 15401 Forest View Road, Manchester, CA 95459
  - During the hearing, any interested person may present oral or written testimony regarding the proposed fee
  - The Board of Directors shall consider all protests and other comments before making a final decision



# Proposed Fee Summary

- Implement a one-time fee per connected parcel of
  - \$1795.00 per connected parcel in units 1 thru 8
  - \$1597.00 per connected parcel in Unit 9.
- Connected parcel in units 1 thru 8 will, at a later date, receive a Prop 218 related judgement refund of
  - \$1574.00 per connected parcel in units 1 thru 8
  - \$1482.00 per connected parcel in Unit 9.
- Connected parcels will be given an option to apply their portion of the Prop 218 related judgement refund to the one-time fee. If selected,
  - connected parcels in Units 1-8 will be charged a one-time fee of \$101.00
  - connected parcels in Unit 9 will receive one-time credit of \$4.00
  - This is a reduction of \$120 owed versus paying the full amount and receiving the refund at a later date.
- Unconnected parcels will receive refunds totaling \$384,705 that will be paid from currently available funds
  - \$1574.00 per unconnected parcel in units 1 thru 8
  - \$1482.00 per unconnected parcel in Unit 9.
  - \$997 per unconnected parcel for select cluster home parcels