

# OVERVIEW AND COMMENTS ON JUDGMENT **District's Perspective**

[4x4 ft T5 well shown on left in photo below]



# Phase 1 Trial

## Liability for Inverse Condemnation

- ✓ **Court held:** Court contends District invaded Plaintiffs' Property and water rights by building T5 Well within the District's own easement.
- ✓ **District Believes the Court Erred and contends:**
  - Plaintiffs stipulated they do not use water from beneath their Property and in California a water right acquired only by actual use.
  - Easement Deed granted the District "all water system appurtenances." Water rights and wells are appurtenances.
  - Easement Deed granted the District the right to "extract water" from the Easement area.
  - Replaced a failing well that was an indispensable component of the Soderberg water supply easement.
  - County reviewed the Deed and granted the District a well permit.

# Phase 2 Trial

## Damages for Inverse Condemnation

- ✓ **Court held:** Plaintiffs damages are not \$3.2 million as Plaintiffs contended but are \$401,000 based on the cost difference between the District's Mallo Pass Project and the T5 Well Project.
- ✓ **District believes the Court erred and contends:**
  - Court cases and statutes expressly prohibit valuation of damages for inverse condemnation based on the alleged "benefit" to the condemning agency.
  - Not based on anything the Plaintiffs actually owned. They did not own the Mallo Pass Project or the T5 Well Project. Plaintiffs' alleged damages are \$0.
  - Court stated that what was taken was "developed access" to water. But the Plaintiffs do not own any developed access to water.
  - The Plaintiffs presently have no developed groundwater rights in the District.
  - Plaintiffs expert at trial testified that the T5 Well adds value to properties in Irish Beach by ensuring a reliable water source.



# Phase 3 Trial

## Breach

- ✓ **Court holding No. 1 - Breach:** Court contends District Breached a 2002 Settlement agreement with the District by not building Mallo Pass project.
- ✓ **District believes the Court erred and contends:**
  - District prevented by law from building Mallo Pass Project because the District did not have the present need for water from the Creek. Not until 2050 at the earliest because of lack of building development in District. District would have potentially impacted Irish Gulch Creek water rights.
  - Dept. of Fish and Wildlife proposed limiting Mallo Pass diversions to Dec to March only – when the District does not need the water.
  - No time limit to develop Mallo Pass set forth in the 2002 Agreement.
  - The Plaintiffs breached the Agreement by invalidly connecting to District facilities without permission in 2008 and then failing to pay the assessments they agreed to pay in the 2002 Agreement.

# Phase 3 Trial

## Proposition 218

- ✓ **Court Held –Prop 218:** 1) Mallo Pass Assessment to be refunded because no present Mallo Pass Permit/Project; 2) System-Wide Assessment to end in 2017; 3) Capital Replacement Assessment to continue but with lower fund ceiling.
- ✓ **District believes the Court Erred and contends:**
  - No time limit placed on the Mallo Pass Project construction.
  - System wide assessment funds were all spent on capital improvements – it is up to the District as a public agency to determine what constitutes a capital project expenditure.
  - The Plaintiffs’ action to challenge the fund ceiling of the Capital Replacement fund is long barred by the applicable 30-day statute of limitations. Court improperly applied a 3 year limitations period.
  - District requested court allow the District landowners to decide on assessments but Plaintiffs opposed this proposal.

# Some other issues during trial

- Plaintiffs claimed at trial they had some alleged ownership interest in certain PG&E, AT&T and District owned facilities. Court disallowed these claims.
- Plaintiffs attempted to shut down all water service within the District by trying to have the Court halt the construction of Tank 1. Court disallowed this action.
- Evidence presented showed Plaintiffs do not own any present surface or ground water rights in the District.
- Evidence presented showed the District owns all surface and ground water rights in the District by statute.
- A reason for the lack of water development of Mallo Pass Creek is the Plaintiffs lack of development of their properties – resulting in water from the Creek not being needed.
- Court stated it had not read all of the Court cases cited by the Parties during Phase 1 of Trial.

# How does this impact property owners

- Appeal filed
- District has been looking at a variety of ways to raise revenue for new projects including: grants, loans, assessments, connection fees, etc. The District has sought proposals for updating its project financing plan.
- Some of the Judgment “damages” alleged by Plaintiffs are in fact refunds to landowners from the funds already in the assessment accounts.
- Judgment adds “costs” to construction of T5 and T2 Well projects. However, in conjunction with the recent District pipeline and water tank upgrades, the District has secured reliable water supply through 2050 at least. Groundwater provides for a “built-in” storage component (e.g. groundwater storage) that was not part of the Mallo Pass Creek Project.

\* The proceeding material relates to the District's perspective and opinion on the events and outcome of the trials and litigation. It is for discussion and informational purposes only. The District's official positions on the issues raised during trial are set forth in the District's legal filings with the court and as set forth in the Appeal.