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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MENDOCINO, UKIAH BRANCH

10 * * * * *

11 WILLIAM H. MOORES, TONA
12 ELIZABETH MOORES,
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14 Plaintiffs,

15 vs.

16 IRISH BEACH WATER DISTRICT, DOES
17 1 through 10, inclusive,
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19 Defendants.

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CASE NO.: SCUK CVG 09-54665
PLAINTIFFS' OBJECTIONS TO
STATEMENT OF DECISION (PHASE
TWO)

Real Parties in Interest.

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I. INTRODUCTION

Moore respectfully submits this objection to the Court's Phase 2 Statement of Decision (SOD). Two legal basis exist on which to object to the SOD: (1) alleged omission in the SOD such that the decision fails to resolve a controverted issue; and, (2) alleged ambiguity created or presented in the SOD.

As discussed more fully below, the Court's Phase 2 SOD entirely omits any compensation for IBWD use of the subject roadway and improvements (water-delivery system). The Court's Phase 1 SOD, however, made it clear that IBWD condemned such rights and must pay just compensation for the rights so acquired. Moore submits that the Phase 2 SOD omitted compensation for the *usage* rights condemned by IBWD or, alternatively, that the failure to award compensation for such condemned interests renders the decision ambiguous.

II. LEGAL STANDARD

A. Objection To A Court's Statement Of Decision Is Limited To Matters Omitted Or Rendered Ambiguous In The Decision.

Code of Civil Procedure section 634 governs statements of decision. It provides two grounds for objections to a SOD: (1) matters that are omitted from the decision such that the decision fails to resolve a controverted issue; and, (2) matters rendering the decision ambiguous.

III. LEGAL DISCUSSION

A. The Court's Phase 2 Statement Of Decision Omits Compensation For The Taking By IBWD Of Use Of The Improvements And Roadway And Is Ambiguous In That Regard.

On page three (3) of the Phase 2 SOD, the Court states that just compensation is designed "to reimburse the owner for the property interest taken and to place the owner in as good a position pecuniarily as if the property had not

1 been taken." In its Phase 1 SOD, the Court concluded that, "IBWD maintains no
2 right, without payment of just compensation, to use the Private Portion of Alta
3 Mesa Road or the Improvements for purposes associated with the T5 well." (SOD
4 6/20/2012, p.19.) Additionally, in the Phase 1 Supplemental SOD, the Court
5 found "[t]he easement sold to the District gave it the right to use all the water it
6 can extract from the Unit #9 well, but it was a limited right to use water from that
7 well only." (SOD, 8/27/2012, p. 2.)

8 The Phase 2 SOD indicated that the court "will not overlook the fact that
9 the easement for use of the private portion of Alta Mesa Road was conveyed to the
10 District in 1989 along with the then existing improvements for distribution of
11 water extracted from the Unit 9 well." (Phase 2 SOD, p. 7.) That decision also
12 makes it clear that the \$401,000 compensation awarded for the T5 Well access
13 right condemned is separate from usage rights condemned from Moores. (See,
14 *Ibid.*) As noted above, the latter is the subject of this objection.

15 IBWD condemned Moores' right to restrict use of the easement previously
16 conveyed to IBWD. That previously-conveyed easement was also for use of the
17 Improvements and Roadway, but one the Court specifically found in Phase 1 was
18 limited to purposes associated with the Unit 9 Well. Here, IBWD inversely
19 condemned an entirely new water source with pre-developed water delivery
20 system for a purpose entirely different than that utilized for the Unit 9 Well.

21 However, in its Phase 2 SOD, the Court indicates it is not inclined to award
22 compensation for IBWD's taking of Moores' right to sell the right to use the
23 necessary infrastructure and roadway to deliver water from the T5 Well to the
24 balance of district parcels outside Unit 9 because:
25
26

1 1. The roadway and water-delivery infrastructure already existed in
2 2008 when the condemnation occurred; and,

3 2. Awarding compensation for IBWD's taking of Moores right to sell
4 usage rights to the roadway and infrastructure for the T5 Well would conflict with
5 the premise that compensation for inverse condemnation is based on what the
6 owner has lost, not what the taker gained. (Phase 2 SOD, pp. 7-8.)

7 **1. The fact the roadway and improvements existed at the**
8 **time of the taking is the starting point for valuation. The**
9 **court's statement of decision omits valuation for IBWD**
 condemned use of this existing infrastructure.

10 The fact the roadway and improvements existed at the time of the taking
11 does not eliminate (or reduce) the compensation due Moores. For instance, had
12 IBWD simply condemned the land on which the improvements and roadway
13 presently exist in an unimproved condition, the compensation due would indeed
14 be different (less). In that event, IBWD would have had to pay for the area of land
15 taken and then construct the roadway and water-delivery system at its own cost
16 in order to use the T5 Well.

17 The fact is, however, Moores had already constructed these items and, as
18 the Court found in Phase 1, previously made a limited grant for IBWD's use
19 thereof for purposes associated with the Unit 9 Well only. Consequently, IBWD
20 condemned *usage* rights to the roadway and improvements--that Moores had
21 already constructed--for an entirely *new* purpose. The fact the roadway and
22 improvements were already constructed is thus necessarily the starting point for
23 determining compensation.¹

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26 ¹ Similarly, even assuming IBWD owned some of the subject improvements as it argued (not
roadway), the ownership of that personal property was conveyed subject to underlying

1 In that vein, Moores' expert Dietrich provided the only evidence on valuing
2 the *use* rights condemned by IBWD. Dietrich noted that, in the absence sales
3 comparable to the subject interests as was the case here, both statutory law and
4 appraisal guidelines required application of a just and equitable valuation
5 methodology, which included the Cost approach. (Exh 87 p.2 "Definition of
6 Value"; 10:24-11:23.) Dietrich further explained that, where use rights are
7 condemned for an indefinite period and sales of comparable rights don't exist, it is
8 appropriate to directly value the property on which the use applies in a manner
9 equivalent to the fee value of that property. Dietrich utilized the Cost Approach,
10 supported by Dee Jaspar's reproduction cost valuation of the subject
11 infrastructure, to do just that. IBWD offered no contrary valuation to the use
12 interests condemned.²

13
14 Moores respectfully submits that the omission of compensation for IBWD's
15 taking of the *use* of the roadway and improvements should be remedied. The fact
16 an existing \$3+ million roadway and water-delivery system existed at the time of
17 the taking established the starting point for valuation; it did not eliminate
18 compensation. In the very least, by failing to award any compensation for this
19 taking, the Court's Phase 2 SOD is ambiguous given the Phase 1 SOD.

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23 easement grants--which limited the use of those assets to the Unit 9 Well. Mr. Ronco testified
24 to this point, and his testimony was uncontradicted. Again, as the court found in Phase 1,
25 what IBWD took in this regard was the *use* of the infrastructure.

26 ² The Court's Phase 2 SOD also noted that IBWD testified to its limited additional use of the
roadway in relation to the T5 Well. As implied by Dietrich, and as Moores contends is a
matter of fact, that "fact" is irrelevant. Use of the roadway and improvements is absolutely
necessary to operate the T5 Well. It is the availability to use it, not how much it is used, that
is dispositive in this instance.

1 **2. The fact that what was taken from Moores and what was**
2 **gained by IBWD may be equivalent does not bar Moores'**
3 **valuation approaches, nor does it preclude an award for**
4 **just compensation. The Phase 2 Statement of Decision**
5 **improperly omits compensation for the condemned usage**
6 **interests, rendering it ambiguous.**

7 It is precisely the taking of Moores' right to restrict the *use* of the subject
8 roadway and improvements to the delivery of water from the Unit 9 Well that
9 Moores lost. Stated differently, Moores lost the right to sell the *use* of the
10 roadway and improvements for the new water source. This lost right is not
11 valueless. Surely, with the omission of a compensation award for these usage
12 rights taken by IBWD, it cannot be said that Moores has been placed in "as good a
13 position as if the property interest had not been taken," which is the primary
14 objective of just compensation. (Phase 2 SOD, p. 3.)

15 Simply because what Moores lost may be characterized as being the same
16 as what IBWD gained does not eliminate compensation due Moores for what was
17 lost. Omitting compensation for the taking of Moores' right to sell the use of the
18 roadway and improvements for an entirely new underlying easement purpose (T5
19 Well) is not warranted simply because its value may *also* be equivalent to what
20 IBWD gained through the taking.

21 Additionally, what IBWD "gained" was *use* of the Moores-constructed Unit 9
22 Well improvements for the T5 Well project. But, IBWD gained those usage rights
23 without paying a per parcel share of the development costs of the infrastructure
24 on which the use arises. It was established during trial that IBWD sought to have
25 a lower costs in development of the T5 Well as a water source. (C. Acker
26 testimony.) Since Moores had already constructed the roadway and
 infrastructure, the only manner in which IBWD's objective could be accomplished

1 in relation to the T5 Well was to have Moores (40 Unit 9 Subdivision parcels) bear
2 the costs of this new water source infrastructure. Indeed, the proximity of the T5
3 Well to the Unit 9 Well and its roadway and water-delivery system was valuable--
4 absent compensation to Moores, it reduced the cost of delivering the T5 Well
5 water since IBWD had to pay nothing for that roadway or water-delivery system
6 (cf. with the Mallo Pass project requirements--See Exh. 54 [Resolution 2008-3,
7 Attachment 4.]) These facts do not eliminate compensation. Rather, they all shed
8 light on the value of what was taken--facts one must consider to arrive at the
9 value of what was taken.

10 Furthermore, the 2002 Settlement Agreement mandates that all future
11 assessments within the district for water source development shall be shared
12 equally among all IBWD parcels. (Exh. 18, ¶ 7.) Of course, the T5 Well project is
13 one such water source, and the roadway and improvements necessary to operate
14 and maintain that water source are part of the project. And, since the Moores'
15 earlier grants were limited to the Unit 9 Well and use (delivery) of that water
16 through the subject infrastructure, as the Court ruled in Phase 1, it would be
17 unreasonable to contend that the Unit 9 Well project was part of T5 Well project.
18 Rather, the roadway and water-delivery system became essential to the T5 Well
19 project through the non-negotiated inverse condemnation action of IBWD.³

21 The 40 Unit 9 Subdivision parcels already paid the full cost for the roadway
22 and water-delivery system. It was made clear at trial that the T5 Well provides
23 water to the lower 416 IBWD parcels. The 2002 Settlement Agreement requires
24

25 ³ While it is true that, if negotiated, IBWD may not have paid the price set for valuation by
26 Dietrich for the use of the roadway and improvements, the fact of the matter is that IBWD
acted at its own risk in condemning the subject interest. Stated simply, the value is what it is.

1 equal participation of all parcels in the development. Absent compensation, that
2 requirement will not be met. Moores had the right to sell the subject usage rights
3 with those parameters in mind. And, in fact, Moores presented the only evidence
4 during trial of valuation that met the per parcel criteria.⁴

5 On the other hand, if the Court's conclusion is that the evidence presented
6 by Moores during trial on the value of IBWD's condemned use of the roadway and
7 improvements is *singularly* based on what IBWD gained (as discussed above,
8 Moores submits what they lost may be the same as what IBWD gained), then its
9 actions in taking those use rights operated to breach its 2002 contract with
10 Moores, wherein IBWD agreed to develop Mallo Pass as a water source and, also,
11 that all new water source development costs would be shared equally by all
12 district parcels. Presently, Moores' Unit 9 parcels are the only parcels being
13 burdened with the costs of the infrastructure now being used by IBWD to service
14 416 other parcels. This action is directly contrary to the 2002 Settlement
15 Agreement terms. And, *if* that is the case, it will necessarily constitute breach of
16 contract and losses described by Moores' experts will be an item of damage under
17 Moores' cause of action for the same.
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25 ⁴ It may be recalled that Jaspar's valuation, on which Dietrich relied under the Cost Approach,
26 discounted the reproduction cost on account of the 40 Unit 9 Subdivision parcels. (Exh. 89,
p. 2 last ¶.) And, Dietrich's report broke out such costs on a per parcel basis.

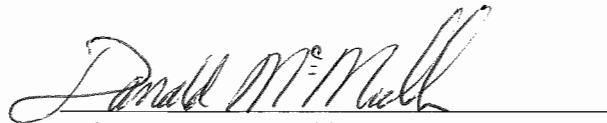
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IV. CONCLUSION

Moore respectfully requests the Court revise its Phase 2 SOD to remedy key omissions and perceived ambiguities as discussed above. In doing so, Moore submits that the Court should enter an award for compensation in relation to the condemned use of the roadway and improvements in line with the opinion evidence offered by Moore--the only such evidence presented on point.

Dated: April 20, 2015

LAW OFFICE OF DUNCAN M. JAMES



DONALD J. McMULLEN
Attorney for Moore

PROOF OF SERVICE

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 April 20, 2015, I served the within PLAINTIFFS' OBJECTION TO STATEMENT OF DECISION on the parties in this action as follows:

Matthew L. Emrick, Esq. E-mail: matthew@mlelaw.com
Law Office of Matthew Emrick
6520 Lone Tree Blvd., #1009
Rocklin, CA 95765


XXX **BY MAIL** – As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one date after date of deposit for mailing in affidavit.

BY OVERNIGHT DELIVERY – I enclosed the documents in an envelope or package provided by an overnight deliver carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

XXX **BY ELECTRONIC SERVICE** - Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above.

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

Executed this 20th day of April, 2015, at Ukiah, California.


Katie Brown