

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

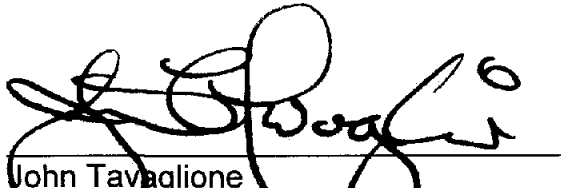


FROM: Supervisors John Tavaglione & Marion Ashley **SUBMITTAL DATE:** June 14, 2011

SUBJECT: Proposed Arbitration with Mr. and Mrs. Robert Mabee.

RECOMMENDED MOTION: That the Board of Supervisors, once again, consider entering into arbitration with Mr. and Mrs. Robert Mabee in order to resolve a long-standing dispute with the County of Riverside over access to real property formerly owned by the Mabees. The individual must be a certified arbitrator that is deemed to be acceptable by both parties.

BACKGROUND: In the attached chronology of events, it is apparent that legal access to Mr. and Mrs. Mabee's property during the late 1980's and early 1990's **may** have been hindered by county projects related to the Bautista Channel. Mr. Mabee contends that this loss of legal access prevented them from dividing their land and selling a portion of it, the proceeds from which would have allowed them to keep their home and remaining land.


John Tavaglione
Supervisor, Second District


Marion Ashley
Supervisor, Fifth District

Chronology of Mr. Mabee's Claim

- 5/12/1960 Riverside County Flood Control District initiated action in Superior Court to condemn a portion of Parcel 1 for Bautista Creek Channel. Superior Court Case No. 72010 as recorded in Book 2694, page 316
- 10/7/1964 The Mabees purchased the Deischel property on October 7, 1964. Grant Deed was recorded on the same date with instrument no. 121565. The Mabees property is almost one half mile removed from the right of way and therefore needs additional right of way to reach his property.
- 8/9/1965 Riverside County Flood Control grants a non-exclusive private easement for ingress and egress over the 15' most immediately adjacent to the Bautista Creek Channel to Raymond and Lola Deichsel; instrument 91932. County Counsel later opines that the Mabees are legitimate successors to this easement right. This easement deed states in part: "if at any time a public highway or street shall be extended to the described lands in Section 22 lying easterly of Bautista Creek Channel, this easement shall cease and determine. If at any time this easement shall be intersected by a public highway or public street, the portion of this easement lying north and northwesterly of such intersection shall cease and determine".
- 1985 Barbed wire fence installed. Located on the easterly boundary of the 15 foot easement, away from the Bautista Creek Channel, the fence precluded direct access from the 15 foot easement to the southern terminus of the private Mabees access easement. This fence had restrictive openings for access of easement.
- 5/12/1988 Flood Control District built a 40 foot road adjacent to the 15 foot easement and dedicated it to the county of Riverside in May 1988, which thereafter accepted this dedication and extinguished the Mabees' easement.
- 1987-1988 Mabees wrote several letters to grand juries and made complaints about the fence blocking their easement.
- 11/27/1989 Riverside County Flood Control and Water Conservation District granted to the county of Riverside an easement for public road and drainage purposes a strip of land 40 feet in width, concentric with the centerline of Bautista Creek within section 18, 21 and 22 of Township 5 south, Range 1 east of San Bernardino Base and Meridian. Access road within this easement was not constructed to County Road and Improvement Standards pursuant to Ordinance 461 and not accepted into the County Maintained Road System.
- 1989 Barbed wire fence was replaced without openings across Bautista Channel improvements (construction of the 40' road). After the construction of this fence, the Mabees could not reach the southwest terminus of their easement where it intersected with the 40 foot public road. The only access to this easement was to follow a diversion created by Riverside County Flood Control and Water

Chronology of Mr. Mabee's Claim

Conservation District across its property to a point on his easement northerly of its southern terminus. Allege that since they have to pass over Flood Control District property there is no legal access to their easement.

- 11/27/1990 Mr. Mabee took the case to superior court and there was a finding that: no "taking" of Mr. Mabee's property/easement by County of Riverside and Flood Control and Water Conservation District occurred. No damage issue to be determined by the jury.
- 10/25/1991 Appeal from first case in November of 1990, confirmed all of the findings in the first case. Denied a motion for a new trial because case was not filed in a timely manner, also the newly discovered evidence could have been discovered by anyone and therefore was not contingent in the case.
- 1992 Mabees want to divide their land and allege they can't do so because there is not adequate road access as defined by law
- 1993 In a certified letter to Mr. Mabee from the District it was stated that "you may access your property per a described easement that intersects a 40' road dedicated to and accepted by the Riverside County Transportation Department." The letter further states that "In order to secure the Bautista Creek Channel, the District has installed chain link fence . . . Although practical and physical access was never impaired the construction **may have impeded your 'legal' access to the dedicated road.** To remedy this situation the District is issuing you an encroachment permit for access across District property that approximates the traveled way being used to REACH THE ACCESS EASEMENT ON AND ACROSS THE DESICHEL [MABEE] PROPERTY."
- 10/3/1995 Easement Deed given to Mr. and Mrs. Mabee: joint tenants a non-exclusive easement for ingress and egress over the real property in the County of Riverside, State of California as described as Parcel 4030-500A; Easement has never been recorded.
- 1/10/1997 In 1988, the Riverside County Flood Control and Water Conservation District constructed an elevated ramp from the 40 foot road across District property to provide access to the subject easement. That ramp was approximately 12 feet wide and was used by residents, including plaintiffs to access the easement which led into Section 22. That ramp obviously cut off access to the terminus of the 40 foot road where that road and the Mabee easement intersected". (#000329, pg. 4, (f). Because the case exceeded the statute of limitations, judgment was entered in favor of the County.
- 12/28/2010 Letter from Riverside County Flood Control verifying that, after a thorough search of records, the easement deed was never recorded.