MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

9.28

During the oral communication section of the agenda for Tuesday, June 8, 2010, Robert Mabee read his statement into the record.

ATTACHMENTS FILED WITH CLERK OF THE BOARD

AGENDA NO. 9.28

FORM 11-D (8/92

JUNE-8-2010

I HAVE BEEN BEFORE THIS BOARD 83 TIMES AND HAVE GIVEN TO THIS BOARD OVER 100 DOCUMENTS THAT SHOW THE CORRUPTION OF SUPERVISOR STONE AND COUNTY COUNSEL OFFICE. I HAVE TWO DOCUMENTS TODAY THAT I HAVE GIVEN TO CHAIRMAN ASHLEY - COUNTY COUNSEL - CLERK OF THE BOARD. DOCUMENT NO 1 - A BRIEF FILED BY COUNTY COUNSEL ATTORNEYS IN CASE 187104 IN THE FOURTH APPELATE DISTRICT - DIVISION TWO. OCT-25-1991. PAGE 2 - PARAGRAPH 2 STATES IN NO UNCERTAIN TERMS THAT RIVERSIDE COUNTY FLOOD CONTROL DISTRICT CONSTRUCTED A NEW 40 FT PUBLIC ROAD TO TAKE THE PLACE OF A NON EXCLUSIVE PRIVATE EASEMENT - IT WAS THEN DEDICATED TO THE COUNTY OF RIVERSIDE AS A PUBLIC ROAD - THIS WAS DONE TO GET OUT OF A INVERSE CONDEMNATION LAW SUIT IN CASE - 187104. THE 32 PAGE BRIEF DESCRIBES THE CONSTRUCTION OF THE NEW 40 FT PUBLIC ROAD DOWN TO THE SMALLEST DETAIL OF CONSTRUCTION AND THE PURPOSE OF THE NEW PUBLIC ROAD. YOU ARE ALL AWARE NOW THAT NO PERMITS WERE EVER ISSUED TO CONSTRUCT THIS NEW ROAD AND THAT IN THE PROCESS OF CONSTRUCTION OF THIS NEW ROAD THAT THE US CORPS OF ENG HAS DETERMINED THE FILL PLACED OVER A LEVEE COULD CAUSE THE FLOOD CONTROL CHANNEL TO FAIL. ALONG THE CHANNEL THAT COULD FAIL IS A NEW SCHOOL - 610 CHILDREN DOWNSTREAM IS THE NEW INDIAN CASINO THAT WOULD BE FLOODED IF THE CHANNEL FAILS.

DOCUMENT NO 2 - A 5 PAGE REPORT FROM RIVERSIDE COUNTY SUPERVISOR NORTON YOUNGLOVE DEC-31-1992 - STATING THAT UPON HIS PERSONAL INSPECTION OF THE ROAD AND 8 COUNTY DOCUMENTS AND PICTURES OF THE CONDITIONS OF THE ROAD THAT THE FLOOD CONTROL DISTRICT DID NOT HAVE FULL OWNERSHIP AT THE TIME OF TRANSFER OF THE PROPERTY TO THE COUNTY - AND BECAUSE OF FILL THAT FLOOD CONTROL PLACED IN THE ROAD BLOCKING THE PUBLIC FROM 300 FT AT THE SOUTH END OF THE PUBLIC ROAD - HE HAS SERIOUS DOUBTS THAT THE NEW 40 PUBLIC ROAD CAN EVER BE A PUBLIC ROAD THAT THE PUBLIC CAN USE - COUNTY COUNSEL IS WELL AWARE THAT RIVERSIDE COUNTY NEVER TOOK RESPONSIBILITY FOR A MISTAKE IT TRIED TO COVER UP THROUGH DECEIT - IF COUNTY COUNSEL WILL NOT PETITION THE COURT TO SET ASIDE CASE NO 187104 - I WILL FILE A COMPLAINT WITH THE STATE BAR - WITH THESE DOCUMENTS AND MORE. I AM NOT YOUR ENEMY - IT IS COUNTY COUNSEL AND THE CORRUPT JEFF STONE - JEFF STONE WHO HAD THESE AND MORE DOCUMENTS BEFORE HIS ELECTION PROMISED ME A AUDIT AND INVESTIGATION. HE IS A CRONIC LIAR -

Robert MABEE
3086 Miguel St
Riverside - 92506
951-788-4858

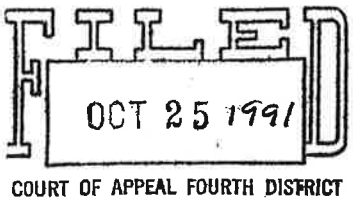
4th Civil No. E009108
187104

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO



ROBERT D. MABEE and
MARTHA A. MABEE,

Plaintiffs and Appellants,

vs.

COUNTY OF RIVERSIDE AND RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,

Defendant and Respondent.

Appeal from the Riverside County Superior Court
Honorable Ronald T. Deissler, Judge

RESPONDENTS' BRIEF

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4th Civil No. E009108

IN THE COURT OF APPEAL

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DIVISION TWO

ROBERT D. MABEE and
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4th Civil No. E009108

IN THE COURT OF APPEAL

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Defendant and Respondent.

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Honorable Ronald T. Deissler, Judge

INTRODUCTION

Plaintiffs Robert D. Mabee and Martha A. Mabee allege to be at all relevant times owners of a certain easement for ingress and egress. The easement was created pursuant to deed and expressly made subordinate to the rights of the grantor, defendant Riverside County Flood Control and Water Conservation District (the

"District"), to "construct, maintain and operate Bautista Creek Channel." The deed further expressly provides that when a "public highway or street" is extended to the property, the easement "shall cease and determine."

In 1986, pursuant to its right and obligation to maintain and operate Bautista Creek Channel (the "Channel"), the District developed a plan to secure the Channel against mounting incidences of unauthorized trespass and vandalism. The plan focused on the construction of a new road that would provide plaintiffs with an alternate, unobstructed access to their land and allow the Channel to be fenced off. Construction of the new road necessitated the use of machinery, the grading of soil, the installation of culverts and the erection of a fence. The District completed the new road and in May 1988, dedicated it to defendant County of Riverside (the "County") for "public road" purposes.

Plaintiffs brought the instant action for inverse condemnation, alleging that by such construction, defendants "substantially destroyed" their easement, "making portions of it unpassable" and preventing access. Following a full trial on the merits, the trial court entered judgment in favor of defendants. The court denied plaintiffs' motion for new trial. For the following reasons, the judgment and ruling must be affirmed.

1. The trial court found that plaintiffs' easement was extinguished in May 1988 when the District deeded the new road it had constructed to the County of Riverside for "public road" purposes. Plaintiffs refer to the basis of this finding as the "public highway or road" defense. The thrust of plaintiffs' appeal is that this defense constitutes "new matter" that was not raised by defendants in the pleadings and that the trial court erred by allowing defendants to rely upon this defense. These

contentions are patently without merit. In order to state a cause of action for inverse condemnation, plaintiffs must plead and prove ownership of an allegedly infringed property right. Because ownership is an essential element of plaintiffs' cause of action, the absence of this element is not "new matter" and need not be pleaded specifically as an affirmative defense. Moreover, even if lack of ownership were "new matter," it would be adequately raised by pleading the affirmative defense of failure to state a cause of action. Because defendants specifically denied plaintiffs' alleged ownership of the easement at all times alleged and pled the affirmative defense of failure to state a cause of action, the trial court did not err in allowing defendants to rely on the "public highway or road" defense.

2. The trial court's interpretation of the new road constructed by the District and dedicated to the County for "public road" purposes as a "public highway or street" that extinguished plaintiffs' easement pursuant to the express terms of the easement deed was entirely reasonable and proper. It was reasonable for the court to give the words "highway" and "street" their ordinary meaning--that of a public thoroughfare. It was also reasonable for the court to find that acceptance by the County pursuant to Government Code section 27281 of the dedication of the new road for "public road" purposes was sufficient to create a "public" road as contemplated by the easement deed.

3. Plaintiffs' easement rights were expressly subordinate to the District's right to maintain and operate the Channel. Pursuant to this right, the District constructed a new road that would enable it to secure the Channel. Any alleged interference with plaintiffs' easement was reasonable, unsubstantial and necessitated by the actual construction of the new road. Moreover, plaintiffs were able to access

their property throughout the construction process. Thus, the trial court correctly found that plaintiffs' easement was not substantially impaired prior to its extinguishment in May 1988.

4. The trial court properly denied plaintiffs' motion for new trial on the grounds of newly discovered evidence because (a) plaintiffs' notice of intention to move for new trial was untimely, (b) plaintiffs failed to timely file a memorandum of points and authorities and supporting affidavits, and (c) plaintiffs wholly failed to show that the purported "newly discovered" evidence could not have been, with reasonable diligence, discovered and produced at trial and that such "evidence" was in any way material or likely to alter the result.

For these reasons, which we now discuss in detail, the judgment in favor of defendants and the trial court's order denying plaintiffs' motion for new trial should be affirmed.

STATEMENT OF FACTS

Plaintiffs allege, as a result of acquiring certain real property, to be successors in interest to an access easement, originally granted by the Riverside County Flood Control and Water Conservation District (the "District") to Raymond Deichsel, Jr. and Lola H. Deichsel (the "Deichsel Easement") pursuant to deed dated August 9, 1965 (the "Deed"). (CT 6-7; RT 4-7.)

The Deed expressly provides, in pertinent part:

"This easement is subordinate to the rights of the District to construct, maintain and operate Bautista Creek Channel. 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." (CT 7.)

The Deichsel Easement came into being because the District, in order to construct the Bautista Creek Channel, acquired a right-of-way which affected adjoining parcels. (RT 105.) The Deichsel property was one such affected parcel. (Ibid.) Rather than pay severance damages, the District agreed to grant the Deischels a private, non-exclusive access easement along 15 feet immediately adjacent to the Channel up to Deischels' property line. (Ibid.) The access easement went partially over a paved maintenance road. (Ibid.) It is this easement to which plaintiffs claim to be successors in interest. (RT 4-7.)

It was the District's responsibility to operate and maintain Bautista Creek Channel. (RT 102.) In 1985 and 1986, problems the District had been experiencing with vandalism and trespassing in the Channel began to multiply. (RT 106.) In response to these problems, the District developed a plan to provide to the Deischels and/or their successors in interest alternative, unobstructed access away from the maintenance road so that the Channel could be fenced out to secure it from unauthorized access and trespass. (RT 107.) The plan was to construct a new road 21 feet from the edge of the Channel. A fence would then be placed between the new road and the maintenance road to secure the Channel from unauthorized access. (RT 108.)

Pursuant to its plan, the District began construction of the new road in 1986. (RT 70.) As part of the construction process, the District put culverts[1/] under the new road so that fill would not block the drainage. (RT 109.) Construction equipment was used to place fill to build the grades over the dikes in the culverts. (RT 73.) The culverts faced toward the Channel and directed flow into it. (RT 71, 96.) The culverts were covered with soil and did not extend onto the paved maintenance road. (RT 72, 111, 200.)

The District built a ramp outside the existing easement to enable the Deichsel successors to easily traverse onto their property. (RT 114.) A grade change was made at the south end. All the work the district did on the south end was on the District's right-of-way. (RT 116.) No part of it was on the original Deischel easement. (Ibid.) A barbed wire fence was placed 21 feet out from the edge of the Channel. (RT 109-110.) The District left openings approximately 20-25 feet wide in the fence where property owners were located so they could drive through. (RT 78, 120, 198, 207.)

Between September 1987 and the end of 1988, the District did additional construction on the new road. (RT 84.) During the first phase, the District took out the culverts and the fill material that had been placed. (RT 84-85.) During the second phase, the District cut back part of the dikes, constructed concrete aprons, removed the barbed wire fence and put in a chain link fence. (RT 85.) The new road extends from Fairview avenue to plaintiffs' property. (RT 56-60.)

In May 1988, the District dedicated the new road to the County of Riverside for "public road" purposes. (RT 69, 95, 234; CT 116-117). From the beginning of

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1/ A "culvert" is a big round pipe for drainage. (RT 22.)

construction in 1986 to May 1988, the 15 foot paved maintenance road was open at all times from Fairview Avenue to the point where the Deischel easement turned away from the paved maintenance road to go into the Deischel property. (RT 113, 117, 121.)

STATEMENT OF THE CASE

On July 11, 1988, plaintiffs filed the operative First Amended Complaint, Riverside Superior Court Case No. 187104, for inverse condemnation. (CT 1-13.) Defendants County of Riverside and Riverside County Flood Control and Water Conservation District filed their answers, respectively, on July 27, 1988 and October 9, 1990. (See Plaintiffs' Application to Augment Record on Appeal, dated July 5, 1991, certified copies of defendants' answers attached thereto, and Order dated July 26, 1991, granting application.)

The liability phase of the case was bifurcated from the damages phase and came on regularly for trial before the Honorable Ronald T. Deissler on October 11, 1990. Following a full trial on the merits, on October 15, 1990, the trial court made the following findings:

1. Plaintiffs had a nonexclusive easement, as successors in interest by virtue of their acquisition of the land the easement runs through;

2. Plaintiffs' easement was extinguished by deeding of the public right of way as evidenced by the deed to the County and by virtue of the terms of the Easement Deed;

3. Defendants' construction on the new road that was dedicated was within their right to construct, maintain and operate Bautista Creek Channel; and, plaintiffs' rights of ingress and egress were expressly subject to the District's right to construct, maintain and operate the Channel; and

4. The evidence does not support the finding that plaintiffs suffered substantial impairment of the easement before its extinguishment. (RT 274.)

Accordingly, the court ordered judgment to be entered in favor of defendants. (RT 274.) Judgment was entered on November 27, 1990. (CT 110-111.) On December 5, 1990, defendants served plaintiffs with a Notice of Entry of Judgment. (CT 110-111.)

Sixteen days later, on December 21, 1990, plaintiffs filed their Notice of Intention to Move for New Trial on the grounds of newly discovered evidence. (CT 113-130.) Plaintiffs failed to serve and file a memorandum of points and authorities in support of the motion for new trial or any supporting affidavits reciting that the "newly discovered evidence" could not have been, with reasonable diligence, discovered and produced at trial. On January 18, 1991, plaintiffs' motion for new trial was denied based on plaintiffs' failure to timely file and serve a memorandum of points and authorities and affidavits in support thereof. (CT 145-146, 147.) Plaintiffs now appeal from the judgment and from the order denying their motion for new trial.

LEGAL DISCUSSION

I.

BECAUSE PLAINTIFFS HAD TO PLEAD AND PROVE OWNERSHIP OF THE PROPERTY RIGHT ALLEGEDLY INFRINGED TO STATE A CAUSE OF ACTION FOR INVERSE CONDEMNATION, THE SPECIFIC DENIAL IN DEFENDANTS' ANSWER OF PLAINTIFFS' ALLEGATION OF OWNERSHIP AND THE AFFIRMATIVE DEFENSE OF FAILURE TO STATE A CAUSE OF ACTION WERE SUFFICIENT TO RAISE THE "PUBLIC HIGHWAY OR ROAD" DEFENSE.

Defendants' position below was that the easement rights claimed by plaintiffs were extinguished in May 1988 when the District dedicated and the County accepted for "public road" purposes the new road. (RT 263; 7, 116.) The trial court so found. (RT 273.) The thrust of plaintiffs appeal is that the trial court erred by allowing defendants to raise this defense, characterized by plaintiffs as the "public highway or road defense," on the grounds that it constituted "new matter" which defendants did not plead affirmatively. (Appellants' Opening Brief, "AOB" at pp. 3-6.) As we now discuss, "the public highway or road" defense shows that an essential allegation of the complaint, namely plaintiffs' ownership at all times of the property interest allegedly invaded, is not true and that plaintiffs are not entitled to recovery. Under controlling law, the defense is therefore not "new matter" and, even if it were, it was adequately

raised in defendants' answer by pleading the affirmative defense of failure to state a cause of action.

A. A Denial In An Answer Which Shows That An Essential Allegation Of The Complaint Is Not True And That Plaintiffs Are Not Entitled To The Recovery Sought Is Not "New Matter."

The statutory requirement that an answer to a complaint include "new matter" and what "new matter" is has been summarized as follows:

> "Under Code of Civil Procedure section 431.30, subdivision (b)(2), the answer to a complaint must include '[a] statement of any new matter constituting a defense.' The phrase 'new matter' refers to something relied on by a defendant which is not put in issue by the plaintiff. [Citation] Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as 'new matter.' [Citation]. Where, however, the answer sets forth facts showing some essential allegation of the complaint is not true, such facts are not 'new matter,' but only a traverse. [Citation.] (State Farm Mut. Auto Ins. Co. v. Superior Court (1991) 228 Cal.App.3d 721, 725 [holding that in insurance bad faith action defense of advice of counsel is not 'new matter' and need not be specifically pleaded in the answer].)

The California Supreme Court long ago expounded upon this distinction:

"Anything which shows that the plaintiff has not the right of recovery at all, or to the extent he claims, on the case as he makes it, may be given in evidence upon an issue joined by an allegation in the complaint, and its denial in the answer. Where, however, something is relied on by the defendant which is not put in issue by the plaintiff, then the defendant must set it up." (Bridges v. Paige (1859) 13 Cal. 640, 641, quoted in Erler v. Five Points Motors, Inc. (1967) 249 Cal.App.2d 560, 566 [holding trial court erred in denying admission under general denial in defendant's answer of evidence of plaintiff's earnings in action for breach of employment contract].)

"New matter" is that which admits the truth of all the essential allegations of the complaint and attempts to avoid them. (See Goddard v. Fulton (1863) 21 Cal. 430, 436; Pomeroy, Code Remedies (5th ed. 1929) § 549, p. 901 ["The new matter of the codes *admits that all the material allegations of the complaint or petition are true, and consists of facts not alleged therein which destroy the right of action, and defeat a recovery*"]; italics in original.) Facts which directly tend to disprove an essential allegation of the complaint--to show it is not true--do not constitute new matter and may be offered under a general denial. (See Bridges v. Paige, supra, 13 Cal. at 642; State Farm Mut. Auto Ins. Co. v. Superior Court, supra, 228 Cal.App.3d at 725 [concluding that defense of reliance on advice of counsel may be shown under a general denial of the complaint]; Lever v. Garoogian (1974) 41 Cal.App.3d 37, 39 [holding that defense of fraud and misrepresentation may be shown under a general denial of the complaint].)

In the final analysis, the question as to whether the "public highway or road defense" constitutes new matter hinges on whether the defense is directed to the essential elements of plaintiff's cause of action. (Erler, supra, 249 Cal.App.2d at 566.) Because, as we discuss below, ownership of the property right allegedly invaded is an essential element of a cause of action for inverse condemnation, and because defendants denied plaintiffs' allegation thereof and affirmatively pleaded that plaintiffs failed to state a cause of action, the "public highway or road defense" is not new matter and was adequately raised by defendants' answers.

B. Possession of The Property Right Allegedly Infringed Is An Essential Element of A Cause Of Action For Inverse Condemnation.

The California Supreme Court "has laid down the basic requirements for pleading inverse condemnation: 'In order to state a cause of action for inverse condemnation, there must be an invasion or appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury.'" (Gilbert v. State of California (1990) 218 Cal.App.3d 234, 249 [emphasis added], quoting Selby Realty Co. v. City of San Buenaventura (1973) 10 Cal.3d 110, 119-120; see also Rancho La Costa v. County of San Diego (1980) 111 Cal.App.3d 54, 60; Pier Gherini v. California Coastal Com. (1988) 204 Cal.App.3d 699, 713.) "The burden is on the owner to allege and prove the owner's property right and its infringement." (Gilbert, supra, 218 Cal.App.3d at 249-250.)

As the trial court properly noted, plaintiffs had to allege and prove possession of a valuable property right to state a cause of action for inverse condemnation. (RT 255.) The First Amended Complaint was filed on July 11, 1988 and alleged, in pertinent part,

> "1. Plaintiffs are, and at all times herein mentioned were, individuals and owners of a certain easement over real property as described in the Exhibits A and B attached to this Complaint and made a part hereof by reference." (CT 1.)
>
> * * *
>
> "6. Beginning on or about February, 1986 and continuing to the present time, Defendants, and each of them, without Plaintiffs' consent entered the easement described in 'Exhibit A and B', of which Plaintiffs are the owners and possessers, and substantially destroyed the easement . . . and erected a fence which prevents access to and from the easement." (CT 2.)

Defendants did not admit and attempt to avoid these allegations of ownership and possession but rather specifically denied them. (See answers attached to Plaintiffs' Application to Augment, respectively, at p. 1.) These denials joined in issue the essential allegation that plaintiffs at all times owned the property interest they claim defendants infringed and that plaintiffs allegations of continuing ownership were not true. Specially, defendants claimed that plaintiffs did not own the Deichsel Easement after May 12, 1988, when any easement rights plaintiff may have possessed terminated by the District's dedication of the new road to the County for "public road"

purposes. Defendants' specific denials that plaintiffs owned at all times a property interest went to an essential element of plaintiffs' cause of action, and the defense was therefore not "new matter."

Moreover, even assuming arguendo that plaintiffs' lack of ownership of the easement at all times could somehow be construed as "new matter," because continuing ownership was an essential element of plaintiffs' cause of action, it was adequately raised by defendants' first affirmative defense which asserted that the First Amended Complaint failed to state facts sufficient to constitute a cause of action. (See answers attached to Plaintiffs' Application to Augment Record, respectively, at p. 2.) For these reasons, defendants sufficiently raised the "public highway or road" defense, and plaintiffs' contention that the trial court erred by allowing defendants to rely on it is wholly without merit.

C. Even If The Trial Court Erred (Which It Did Not) By Allowing Defendants' To Rely On The "Public Highway Or Road Defense, Any Such Error Was Not Prejudicial.

The law is clear that "[p]rocedural defects which do not affect the substantial rights of the parties do not constitute reversible error. (Lever v. Garoogian, supra, 41 Cal.App.3d at 40; Code Civ. Proc., § 475.) Before a judgment may be reversed or affected by any error or defect, it must appear from the record that such error or defect was prejudicial. (Code Civ. Proc., § 475.) No prejudice is present here.

The Easement Deed provides that the Deischel Easement would terminate when a "public highway or street" was extended to the easterly part of Section 22.

(CT 7.) The prejudice plaintiffs claim to have suffered as a result of defendants' failure to affirmatively raise the "public highway or road defense" is the lack of an opportunity to designate an expert to testify about what constitutes a "public highway or road." Plaintiffs contend that such determination requires "special training" and the "application of law and engineering." (AOB at p. 7-8.) This is absurd.

The issue of whether the dedicated new road constituted a "public highway or road" so as to extinguish the Deischel Easement pursuant the terms of the Easement Deed was a question of interpretation for the trial court. (See City of Los Angeles v. Howard (1966) 244 Cal.App.2d 538, 542 ["the extent of an easement is a question of interpretation," citing Civ. Code, § 806]; Jones v. Wilterding (1950) 100 Cal.App.2d 210, 212 [trial court's interpretation of an instrument cannot be disturbed on appeal if reasonable and consistent with the intention of the parties]; Civ. Code, § 1066 [grants are to be interpreted in a like manner as contracts in general].)

The issue is not one that required expert testimony, it is one that required only that the trial court interpret the express terms of the Easement Deed and the document dedicating the new road pursuant to applicable law. As we now discuss, the court's interpretation of these instruments and its application of the law were entirely reasonable and proper.

II.

THE NEW ROAD CONSTRUCTED BY THE DISTRICT AND DEDICATED TO AND ACCEPTED BY THE COUNTY FOR "PUBLIC ROAD" PURPOSES EXTINGUISHED PLAINTIFFS' EASEMENT.

A. The Road Constructed By The District Constituted A "Highway" or "Street" As Contemplated By The Terms Of The Easement Deed.

Plaintiffs contend that whether the "road easement" constructed by the District qualified as a "public highway or road" under various provisions of the Streets and Highways and the Vehicle Codes required expert testimony and the application of law and engineering. (AOB at p. 7.) Any such code provisions were, however, wholly irrelevant to the issue at bar. What had to be interpreted by the trial court were (1) the Easement Deed and (2) the grant from the District to the County deeding an easement for "public road" purposes. In interpreting these instruments, the controlling element is the intention of the parties. (Jones v. Wilterding, supra, 100 Cal.App.2d at 212; Civ. Code, § 1638 [the language of a contract is to govern its interpretation].)

The Easement Deed expressly states that the easement was granted to provide the Deischels ingress and egress to their "landlocked remainder" in the south half of Section 22, and that the easement "shall cease and determine" if a "public highway or street" was extended to the accessed property. (CT 7.) Obviously, the express purpose of the parties to the Easement Deed and their main intention was to afford

the Deischels a means of ingress and egress until such time as they could access their property by a public thoroughfare, i.e., a public highway or road.

"The primary purpose of a highway is the passing and repassing of the public . . . " (Argues v. City of Sausalito (1954) 126 Cal.App.2d 403, 407.) "The word 'road' is a generic term which includes highways, streets, public ways and thoroughfares." (Fischer v. County of Shasta (1956) 46 Cal.2d 771, 774-775, citing B. & H. Transportation Co. v. Johnson (1932) 122 Cal.App. 451, 453 ["Roads and highways are generic terms embracing all kinds of public ways . . . "] and San Francisco-Oakland Terminal Rys. v. County of Alameda (1924) 66 Cal.App. 77, 81 ["A public road or highway through unincorporated territory is generally a public way dedicated to the public use but not owned as such by the county. Generally speaking, the same applies to a public street within a municipality"]; see also Santa Ana v. Santa Ana Val. Irr. Co. (1912) 163 Cal. 211, 219 ["streets" is "a term which as applied to cities or towns or growing communities contiguous thereto means a public thoroughfare"].)

Clearly, the parties to the Easement Deed did not intend that the road providing access to the Deischels' landlocked land and extinguishing the easement satisfy any particular code definition of a "highway" or "street." They intended, as the court found, the easement to extinguish when access was available by means of a public road or way.[2/]

The District constructed and installed a new road to provide property owners with access to their properties. (RT 31, 69-70, 109.) Plaintiffs themselves refer to the

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2/ Contrary to plaintiffs' contention, the fact that the "road" was an easement further supports the court's interpretation. (See San Francisco-Oakland Terminal Railways, supra, 66 Cal.App. 77, 81 ["[i]n most cases the fee to the land rests in the adjoining property owner and the public holds an easement for the use"].)

road as the "new, unpaved road" or "road easement." (AOB 4, 7, 10.) There can be no doubt that the trial court's interpretation that the new road constituted a "highway or street" as contemplated by the Easement Deed and extinguishing the easement was entirely proper.

B. The Road Constructed By The District Became "Public" When It Was Dedicated To And Accepted By The County For "Public Road" Purposes.

Plaintiffs contend that the "road easement has never been accepted by the Board of Supervisors, and thus remains an easement, not a public street." (AOB p. 12.) Plaintiffs' position is that if a road is not officially accepted into the county-maintained road system pursuant to Streets and Highways Code section 941, it is not a public road. This contention is erroneous.

The termination of the easement does not, by the express terms of the Easement Deed, hinge on whether the "highway or street" accessing the landlocked parcel is officially accepted into the county-maintained system of roads. The termination of the easement hinges on whether the "highway or street" providing access to the Deischel property is "public."

The District expressly granted to the County an easement for "public road" purposes. (RT 69, 234-235; CT 116-117.) The Easement grant contains on its face a "Certificate of Acceptance" pursuant to "Government Code Section 27281" and bearing

the signature of Leroy D. Smoot, the Riverside County Road Commissioner in 1988. (RT 234-235; CT 116.)[3/]

Government Code section 27281 provides that

"[d]eeds or grants conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes shall not be accepted without the consent of the grantee evidenced by its certificate or resolution of acceptance attached to or printed on the deed or grant." (Gov. Code, § 27281.)

By the Certificate of Acceptance printed on the face of the Easement grant and signed by the Riverside County Road Commissioner, the easement was accepted for the purpose of vesting title in the County of Riverside on behalf of the public for public road and utility purposes. At that point, it became a public road regardless of whether it was accepted into the county-maintained system of roads.

"A dedication may be defined as devotion of land to public use (e.g. public streets . . .) by an unequivocal act of the fee owner

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3/ The "Certificate of Acceptance" on the Easement instrument reads as follows:

"CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

THIS IS TO CERTIFY that the interest in real property conveyed to the County of Riverside, State of California, by the within instrument, is hereby accepted for the purpose of vesting title in the County of Riverside by the undersigned on behalf of the Board of Supervisors pursuant to the authority conveyed by Resolution No. 86-194 of the Board of Supervisors adopted May 13, 1986 and the grantee consents to the recordation thereof by its duly authorized officer.

This certificate of acceptance does not constitute acceptance of any road into the county maintained system pursuant to Section 941 of the Street & Highways Code."

manifesting an intent that the land shall be accepted and used for the public purpose. [Citation.]" (1 Ogden's Revised California Real Property Law (1974) § 4.10, p. 125.)

"When streets have been offered for dedication and there has been an acceptance of the offer[,] they are public streets subject to public control as to their opening, continued use or closure . . . Brick v. Cazaux, 9 Cal.2d 549 (1937)." (47 Ops.Cal.Atty Gen. 191, 194 (1966).)

Directly on point is Hays v. Vanek (1989) 217 Cal.App.3d 271, in which the court discussed the question of whether "a county could accept an offer of dedication without also accepting responsibility for maintenance of the road" (id., at p. 283) and noted that Streets and Highways section 941 clearly empowered a county to do so. The court confirmed that

"'Although a road is a "public street" and subject to "public control," it need not necessarily be maintained by the local governing entity. All roads over which the public has a right to travel, whether express or prescriptive, are "public" roads. "Public" roads, however, are not "county" roads until accepted as such by appropriate resolution of the board of supervisors. (Sts. & Hy. Code § 941; 45 Ops.Cal.Atty. Gen. 98, 100 (1965).)' (County Responsibility for Public Roads, 61 Ops.Cal.Atty.Gen. 466, 468 (1978).)" (Id., at p. 284.)

(See also Mulch v. Nagle (1921) 51 Cal.App. 559, 568 [it is no defense to a claim of dedication to a county that the road does not meet the specifications generally required for county highways].)

By dedication and acceptance of the easement granted to the County by the District for "public road" purposes, the new road constructed by the District became a "public road" which, as the trial court correctly found, extinguished the Deischel Easement.

III.

THE TRIAL COURT CORRECTLY CONCLUDED THAT PLAINTIFFS' RIGHTS IN THE EASEMENT WERE NOT IMPROPERLY INFRINGED UPON BECAUSE THE DISTRICT CONSTRUCTED THE NEW ROAD PURSUANT TO ITS EXPRESS AND PRIMARY RIGHT TO MAINTAIN AND OPERATE BAUTISTA CREEK CHANNEL.

Plaintiffs complain that defendants "substantially destroyed their easement, making portions of its unpassable, moved large quantities of earth on the easement and erected a fence which prevents access to and from the easement." (CT 2.) What the District did was construct a new access road and fence off the Channel in order to secure it from unauthorized access and vandalism. As the trial court correctly found, the District, in so doing, was well within its rights.

A. Plaintiffs' Easement Rights Were Expressly Subordinate To The District's Right To Construct, Maintain and Operate The Channel.

The Easement Deed expressly provides that the Deischel Easement is "subordinate to the rights of the District to construct, maintain and operate Bautista Creek Channel." (CT 7.) A subordinate easement "should not interfere with [the] prior and paramount right" to which it is subject, and the possessor of the primary property right is entitled to "free and unobstructed use and control" of its property. (See Santa Ana v. Santa Ana Val. Irr. Co., supra, 163 Cal. 211, 220-221 [holding easement for ditch subordinate to easement for public road purposes].) Here, plaintiffs' easement right was expressly subordinate to the District's express right, and indeed obligation, to maintain and operate Bautista Creek Channel. (RT 102; CT 7.) The Deischels knew that and agreed to it when they contracted for the Deischel Easement. (CT 6-7.)

In 1985 and 1986, the District began experiencing increasing incidences of vandalism and trespass in the Channel. (RT 106.) The District had already received a claim for damages and information about an auto accident. (Ibid.) In response to these problems, the District undertook measures to secure the Channel from unauthorized access. (RT 107.) Pursuant to this goal, the District constructed a new road to provide the Deischel successors with alternate access to their properties so that the Channel could be fenced out. (RT 108.)

Securing of the Channel necessitated construction of the new road replete with soil grading, the installation of culverts and the use of machinery. Securing of the Channel necessitated fencing it off. It is these protective measures instituted by the District to maintain the Channel about which plaintiffs complain. Because the

Easement Deed by its express terms makes plaintiffs' easement rights subordinate to the District's primary right to maintain and operate the Channel, and because the District, in constructing the new road and erecting a fence, was acting pursuant to that right, plaintiffs have no cause to complain.

B. Prior To Its Extinguishment, Plaintiffs' Easement Was Not Unreasonably Or Substantially Impaired.

Plaintiffs' claim that they suffered injury occasioned by defendants' construction of the new road. (CT 2.) The evidence shows, however, that as discussed, (1) plaintiffs' easement rights were subordinate to the District's right to operate and maintain the Channel, (2) the construction activities which resulted in the alleged interference with plaintiffs' easement were all performed pursuant to the District's plan to secure the Channel by construction of an alternate road and by the actual construction of that road, (3) certain alleged quantities of dirt were not on plaintiffs' easement but on the District's own property, and (4) at all times from inception of the construction of the new road to the road dedication in May 1988, plaintiffs had access from Fairview Avenue to their property. Based on this evidence, the trial court correctly concluded there was no substantial impairment to plaintiffs' easement prior to its extinguishment in May 1988.

The law as to compensability for injuries resulting from construction has been explained as follows:

"Temporary injury resulting from actual construction of a public improvements is generally noncompensable. Personal inconvenience,

annoyance or discomfort in the use of property are not actionable types of injuries. [Citations.] 'It would unduly hinder and delay or even prevent the construction of public improvements to hold compensable every item of inconvenience or interference attendant upon the ownership of private real property because of the presence of machinery, materials, and supplies necessary for the public work which have been placed on streets adjacent to the improvement. [Citations.] Appellants are not entitled to compensation for temporary interference with their right of access, provided such interference is not unreasonable, that is, occasioned by actual construction work. It is often necessary to break up pavement, narrow streets and provide inconvenient modes of ingress and egress to abutting property during the time streets are being repaired or improved. Such reasonable and temporary interference with the property owner's right of access is noncompensable." (People v. Ayon (1960) 54 Cal.2d 217, 228, emphasis added.)

"[T]he right of a property owner to ingress and egress is not absolute. He cannot demand that the adjacent street be left in its original condition for all time to insure his ability to enter and leave his property in the same manner as that to which he has become accustomed." (People v. Ayon, supra, 54 Cal.2d at 223; People ex Rel. Dept. Pub. Wks. v. Romano (1971) 18 Cal.App.3d 63, 73.) "[L]andowners are not entitled to access at all points along their boundary." (Smith v. County of San Diego (1967) 252 Cal.App.2d 438, 445.)

In making a determination whether there is a substantial impairment of plaintiffs' right of access, the inquiry is tantamount to determining whether their right has been unreasonably interfered with. (Romano, supra, 18 Cal.App.3d 63, 72-73.) While, the determination of whether substantial impairment has been established must be reached as a matter of law (Breidert v. Southern Pac. Co. (1964) 61 Cal.2d 659, 664), whether a particular use of land by the servient owner is an unreasonable interference with the rights of the dominant owner is a question of fact for the court, and its findings based on conflicting evidence are binding on appeal. (City of Los Angeles v. Howard (1966) 244 Cal.App.2d 538, 543-544.)

Here, defendants' alleged interference with plaintiffs' easement rights was entirely reasonable. It is undisputed that (1) the Easement Deed expressly provides that plaintiffs' easement was "subordinate to the rights of the District to construct, maintain and operate Bautista Creek Channel." (CT 7.) It is further undisputed that the new road constructed by the District, which allegedly interfered with plaintiffs' easement, was part of a plan to secure Bautista Creek Channel and that the alleged interference was occasioned by actual construction of the new road.

Plaintiffs claimed that mounds were put over culverts installed under the new road and that large quantities of earth were moved to the south end of the maintenance road. Defendants, however, presented evidence that all the work the District did on the south end of the paved maintenance road was not on plaintiffs' easement, it was on the District's right-of-way. (RT 166-167.) Moreover, even if the dirt was on plaintiffs' easement, it created an impasse only at one point of access, a point beyond which there was no reason for anyone to go. (RT 78, 216.)

In addition, the evidence as to whether the temporarily installed culverts, necessary for drainage purposes, extended onto the paved road was in conflict. One witness who drove down the road did not recall if the culverts extended onto the paved road. (RT 130.) Two witnesses testified that the culverts did not extend onto the paved road. (RT 74, 111, 200-201.) It is undisputed that the culverts were subsequently removed. (RT 22, 85, 112.)

As to the barbed wire fence, there was undisputed testimony that the fence was (1) erected to secure the Channel, and (2) that there were openings from 20-25 feet wide left in the fence so that the property owners could access their properties. (RT 78, 120, 175, 207, 217.) It was only after construction of the new road was finished that the easement was permanently sealed off. (RT 218.)

Though perhaps inconvenienced due to the construction of the new road, there was substantial evidence that from 1986 through 1988, plaintiffs were able to use the Deischel Easement to access their properties and that any interference with the easement by the District due to the construction was both reasonable and necessary. (RT 59-60, 190-191; 239-241.) For these reasons, the trial court properly found that prior to its extinguishment, plaintiffs' easement was not substantially impaired.

IV.

THE TRIAL COURT PROPERLY DENIED PLAINTIFFS' MOTION FOR NEW TRIAL.

A. Plaintiffs' Notice of Intention To Move For New Trial Was Untimely.

Plaintiffs contend that the trial court erred in denying their motion for new trial on the basis of untimeliness. The law and the record, however, directly refute such contention.

Code of Civil Procedure section 659 provides that a party intending to move for a new trial must file with the clerk and serve upon adverse parties a notice of intention to move for new trial (1) before the entry of judgment; or (2) within 15 days of (a) the date of mailing notice of entry of judgment by the clerk of the court, (b) service upon him by any party of written notice of entry of judgment, or (c) within 180 days after the entry of judgment, whichever is earliest. (Code Civ. Proc., § 659.) The timely filing of notice of intention to move for new trial is jurisdictional. (Ehrler v. Ehrler (1981) 126 Cal.App.3d 147, 153.)

Judgment below was entered on November 27, 1990. (CT 110-111.) On December 5, 1990, defendants' served upon plaintiffs Notice of Entry of Judgment. (Ibid.) Plaintiffs therefore had 15 days, until December 20, 1990, to file their notice of intention to move for new trial. Plaintiffs filed their Notice of Intention To Move For New Trial on December 21, 1990--16 days after service of Notice of Entry of Judgment by defendants and one day past the jurisdictional limit. (CT 113-129.)

Plaintiffs assert that the "Amended Notice of Entry of Judgment" by the Clerk, which corrected the date of service shown from November 26, 1990 to December 10, 1990, extended their time for filing their notice of intention to move for new trial to 15 days from December 10, 1990. Plaintiffs are incorrect. First, the judgment was not corrected, modified or amended. What was corrected or amended by the "Amended Notice of Entry of Judgment" was the notice. The correction was merely a ministerial correction of a clerical error that showed the date of service of the notice as November 26, 1990, when it presumably should have been November 27, 1990.

> The law is clear, however, that only
>
> "a change that materially affects the judgment and the rights of the parties against whom it is rendered and which involves the exercise of judicial discretion amounts to a new judgment." (Machinery Etc. Co. v. University City Synd. (1934) 3 Cal.App.2d 425, 426.)

Here, there was no addition or change to the statement of decision or modification or vacation of the judgment sufficient to extend the jurisdictional deadline for plaintiffs' to file their notice of intention to move for new trial. (See Code Civ. Proc., § 662.)

Second, under Code of Civil Procedure section 659, the jurisdictional period began to run on December 5, 1990, when defendants properly and timely served on plaintiffs a Notice of Entry of Judgment. The Notice of Entry of Judgment correctly informed plaintiffs that judgment was entered on November 27, 1990. The Amended Notice of Entry of Judgment did the same.

Because plaintiffs' notice of intention to move for new trial was untimely, their motion for new trial was properly denied.

B. Even If Plaintiffs Had Timely Filed And Served A Notice Of Intention To Move For New Trial, The Trial Court Properly Denied Plaintiffs' Motion for New Trial Based On Their Failure To Timely File And Serve A Memorandum Of Points And Authorities And Supporting Affidavits.

The trial court expressly denied plaintiffs' motion for new trial on the grounds that plaintiffs failed to timely file and serve a memorandum of points and authorities and affidavits in support of their motion. (CT 145-146.) Even if plaintiffs had timely filed their notice of intention to move for new trial (which defendants contend they did not), the trial court was entirely within its discretion to deny plaintiffs' motion on the stated basis.

> Code of Civil Procedure § 659(a) provides, in pertinent part that "[W]ithin 10 days of filing the notice, the moving party shall serve upon all other parties and file any affidavits intended to be used upon such motion." (Code Civ. Proc., § 659, subd. (a).)

When a motion for new trial is made on the grounds of newly discovered evidence, the grounds upon which plaintiffs moved, "it must be made upon affidavits." (Code Civ. Proc., § 658, emphasis added; see also Bostard v. Bostard (1968) 258 Cal.App.2d 793 [new trial on grounds of newly discovered evidence will be granted only if affidavit in support recites facts showing evidence could not, by exercise of reasonable diligence, have been produced at trial].)

In addition, Rule 203 of the California Rules of Court provides

"Within 10 days after filing notice of intention to move for a new trial in a civil case, the moving party shall serve and file a memorandum of points and authorities relied upon . . . . If the moving party fails to serve and file the prescribed memorandum, the court may deny the motion without a hearing on the merits." (Cal. Rules Court, rule 203.)

Plaintiffs filed a Notice of Intention To Move for New Trial on December 21, 1990. In their notice of intention, plaintiffs made the following representation:

"Said motion with respect to the grounds mentioned in paragraphs 1, 2, 3 and 4 above, is made on affidavits hereafter to be served in this case, and in respect to the rest of said grounds said motion is made on the minutes of the Court and on all the records in this case, and as to all said grounds, said motion is made on a Memorandum of Points and Authorities to be submitted hereafter." (CT 114-115, emphasis added.)

According to plaintiffs' calculations (with which defendants do not agree), plaintiffs had 10 days from December 21, 1990, or until December 31, 1990, to file and serve the memorandum of points and authorities and supporting affidavits represented. They failed to do so. The trial court thus clearly had and properly exercised discretion to deny plaintiffs' motion for new trial.

C. Even If Plaintiffs Had Timely And Properly Moved For A New Trial, The Motion Was Properly Denied Because The Alleged "Newly Discovered Evidence" Could Have Been Discovered By Reasonable Diligence And Was Wholly Immaterial To The Result.

Plaintiffs moved for a new trial based on "newly discovered" evidence. (CT 113-129.) To support a motion for new trial based on newly discovered evidence, the court must determine if the evidence existed at the time of trial and could have been discovered with reasonable diligence. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 138 [to support motion for new trial on grounds of newly discovered evidence, it is essential to establish that the evidence is newly discovered and that reasonable diligence has been exercised in its discovery and production]; Schultz v. Mathias (1970) 3 Cal.App.3d 904, 909-910 [same]; see also Bostard v. Bostard, supra, 258 Cal.App.2d at 797 [new trial on grounds of newly discovered evidence will be granted only where affidavit in support recites facts showing evidence could not have been, with reasonable diligence, produced at trial].)

The purported newly discovered "evidence" upon which plaintiffs' motion was grounded consisted of some documents purporting to show that since 1909, the Lake Hemet Water District has held a right-of-way across the property owned by District that was deeded to the County for public road purposes in May 1988. Plaintiffs did not submit affidavits reciting facts why such "evidence" could not have been, with reasonable diligence, discovered and produced at trial. The nature of the documents suggest that they indeed could have been.

However, even if plaintiffs had surmounted this hurdle, which they did not, the trial court would have been correct in denying the motion because the purported "newly discovered evidence" is wholly immaterial. (See e.g., Dankert v. Lamb Finance Co. (1957) 146 Cal.App.2d 499, 502 [newly discovered evidence must be material and of such a nature that if presented at retrial a different result would result].) Whether Lake Hemet Water District had an easement for its "main flume" across a portion of the property deeded by the District to the County of Riverside in May 1988, and/or whether Lake Hemet Water District was required to consent or consented to the District's dedication of the new road to the County are questions wholly without relevance to any material issue in this case.

For any or all of the aforementioned reasons, the trial court correctly denied plaintiffs' motion for new trial.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9601 Wilshire Boulevard, Suite 544, Beverly Hills, California 90210.

On October 25, 1991, I served the foregoing document described as **RESPONDENT'S BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Robert D. Mabee
Martha A. Mabee
27750 Grant Avenue
Hemet, California 92344

Clerk
California Supreme Court
300 South Spring Street
Los Angeles, California 90013

Clerk to the
Honorable Ronald T. Deissler
Riverside County Superior Court
4050 Main Street
Riverside, California 92501

I caused such envelope to be deposited in the mail at Beverly Hills, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on October 25, 1991, at Beverly Hills, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Roberta Simmons

CONCLUSION

For all of the reasons stated, defendants and respondents County of Riverside and Riverside County Flood Control and Water Conservation District respectfully request that this Court affirm the trial court's entry of judgment in favor of defendants' and the order denying plaintiffs' motion for new trial.

Respectfully submitted,

KINKLE, RODIGER & SPRIGGS
PAUL REYNOLDS

GREINES, MARTIN, STEIN & RICHLAND
MARTIN STEIN
CYNTHIA N. SARNO

By _____
Cynthia N. Sarno

Attorneys for Attorneys for Respondent
County of Riverside and Riverside County
Flood Control and Water Conservation District

I, Stephen M. Kelly, Clerk of the Court of Appeal, Fourth Appellate District, State of California do hereby Certify that the preceding and annexed is

a true and correct copy of Respondents Brief as shown by the records of my office.

WITNESS my hand and the seal of the Court this

20th day of September A.D. 1976.

STEPHEN M. KELLY, CLERK

By Helen J. Bradbury
Deputy Clerk

COUNTY OF RIVERSIDE

TO: CORKY LARSON, SUPERVISOR
KAY CENICEROS, SUPERVISOR
MELBA DUNLAP, SUPERVISOR
BOB BUSTER, SUPERVISOR
LARRY PARRISH, CAO
KEN EDWARDS, FLOOD CONTROL
BILL KATZENSTEIN, COUNTY COUNSEL

FROM: NORTON YOUNGLOVE, SUPERVISOR

DATE: DECEMBER 31, 1992

RE: ROBERT MAYBEE DISPUTES

ATTACHED PLEASE FIND THE MAYBEE REPORT I PROMISED MANY WEEKS AGO.

WHAT DO YOU WISH DONE WITH IT? I HAVE SENT A COPY TO MR. MAYBEE. I SUGGEST WE FOLLOW KAY'S DIRECTION; ESPECIALLY SINCE SHE WILL BE CHAIR OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT IN 1993.

December 30, 1992

A REPORT

RELATING TO THE DISPUTES OF ROBERT MAYBEE WITH FLOOD CONTROL

Too many weeks ago, I assured the Board and Mr. Maybee that I would personally review the records, ask questions and provide a report on the dispute between Mr. Maybee and our Flood Control District. I apologize for my slowness in getting this done. It is a very complicated subject which doesn't lend itself to easy analysis.

I. DISCLAIMERS

I am not an engineer nor am I surveyor, attorney etc. I also am not an arbitrator with any official duties or responsibilities. I have reviewed much but not all of the written records and have interviewed Mr. Maybee, Mr. Edwards and others. I have also viewed the property. The conclusions and recommendations are my own and do not necessarily reflect the view of any other person.

II. A BRIEF CHRONOLOGY

ATTACHMENT #1 November 5, 1909. Joseph Crawford grants to the Lake Hemet Water Company a 32 foot wide easement for a "main flume" right-of-way, crossing both the current and previous road or easement right-of-way of Mr. Maybee. This right remains fully intact.

ATTACHMENT #2 September 12, 1932. An easement is granted to Riverside County page 211 of official Records over the westerly 50' for roadway purposes affecting Parcel 1 as noted above.

ATTACHMENT #3 July 24, 1946. Rights of Way, reservations, conditions and restrictions as set out in Deed from Hemet Land Company in Book 766, page 162.

ATTACHMENT #4 May 12, 1960. Riverside County Flood Control District initiated action in Superior Court to condemn a portion of Parcel 1 (see above) for Bautista Creek Channel. Superior Court Case No. 72010 as recorded in Book 2694, Page 316.

ATTACHMENT #5 The Maybees purchased the property on October 7, 1964. Grant Deed was recorded on the same date with instrument No. 121565. It is worth noting that the Maybee property is almost one half mile removed from the road right of way and therefore neaeds additional right of way to reach his property. Neither the county nor county flood control are involved in that, in so far as I know.

ATTACHMENT #6 August 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 Maybees are legitimate successors to this easement right. Significantly, 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".

ATTACHMENT #7 April 27, 1987. Superior Court Case #187104 filed by the Maybees. Ultimately appealed to the 4th Circuit Court of Appeals with a finding in favor of the County.

ATTACHMENT #8 May 12, 1988. Riverside County Flood Control grants to Riverside County for "public road and drainage purpose, including public utility and public services purposes", a strip of land 40' in width along the most easterly border of district Bautista Creek land and affecting Parcels 4030-16, 17, 17B, 19A, 20, 21A and 22. Riverside County's Recorder Instrument #127298.

III. BRIEF ADDITIONAL FACTS

As the Board has witnessed, Mr. Maybee is extremely difficult to get facts from; his mind runs to charges of lying, conspiracy, lawsuits, etc. The root of the problem lies on the fact that our Flood Control District was being subjected to increasing liability from increased use of the private use easement granted in 1965. The only solution was to fence off the easement next to the flood control channel and substitute a road outside the fence and adjacent to the private properties being served. This process took about a decade and involved many negotiations, considerations, etc. Including more than a few misunderstandings and disagreements but also included all the appropriate public hearings, notifications etc. in so far as I can determine.

It is unfortunate that two 30" syphons were built for Lake Hemet Water District in 1960 as a part of the necessities for the concrete lining of the channel in a location that precludes the current 'road' right-of-way being of sufficient width its full length to satisfy Road Commissioner requirements for a road to be accepted into the County-maintained road system.

The Maybees have an understandable desire to do some division of their land and apparently are not able to do so without adequate road access as defined by law and required by our Road Commissioner and the Board of Supervisors. This he does not have nor apparently has he ever had.

IV. QUESTIONS AND CONCLUSIONS.

A. Have you found any indications of lying, conspiracy, etc. on the part of Mr. Edwards, Supervisor Ceniceros or anyone else?

Conclusion: No. Misunderstandings, yes. Information which is confusing and easily misunderstood or not sufficiently understood by all parties, yes.

B. Were the Maybees 'made-whole' by the transfer of their ingress/egress 15' easement next to the channel to a 40' easement with constrictions reducing to as little as 20' further removed from the channel but immediately adjacent to their property?

Conclusion: Yes, in so far as right-of-way width and a lack of change in the Lake Hemet "main flume" right of crossing either road right-of-way. However, there is a further important consideration which I make subject of the next question.

C. Does the transfer from flood to roads for road and related purposes satisfy the phrase "public highway or street" as found in the August 1965 grant deed by Flood Control?

Is the condition of the road as constructed sufficient to satisfy that condition?

Conclusion: As to the first question, I don't know; legal counsel needs to answer it. As to the second question, a review of the property raises serious questions as to its ability to meet the condition. If the condition is not met then presumably Mr. Maybee still has rights to his initial 15' ingress and egress passage-way and Flood Control presumably should provide him access.

V. RECOMMENDATIONS

A. The Board should direct Flood Control to prepare a base map with appropriate overlays showing each property rights change that relates in order that both the Board and Mr. Maybee can be assured as to which property is affected by what through the long and complicated series of transactions and also in order that we may all be assured that Flood Control

had adequately perfected its rights prior to transfer of rights. Mr. Maybee claims that we, Flood Control, vested rights without first adequately owning the property.

B. County Counsel should be directed to provide answers to the legal questions posed in "C" above.

C. Roads and Flood Control should either provide clear evidence that the new substitute 'road' was in useable condition at the time of ingress/egress transfer, including sufficient compaction, turning angles and overall utility, to provide normal ingress/egress to the Maybee property or in the alternative put the 'new' access into useable condition.

D. Embankment effects upon the Maybee access rights should be reviewed.

E. Roads should be directed to work with the Maybees and other affected property owners in an attempt to provide a road right of way sufficient to allow access to the properties dependent upon the current 'road' but capable of being accepted into the county-maintained road system upon sufficient improvements by the affected property owners.

F. Supervisor Younglove should never again volunteer for another assignment such as this.

Sincerely,

Norton Younglove, Supervisor
Fifth District

Attachments: Documents listed chronologically

Photographs taken by Norton Younglove
on December 30, 1992.

Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Robert MABEE

Address: 3086 Mitchell ST
(only if follow-up mail response requested)

City: Riverside **Zip:** 92506

Phone #: 788-4858

Date: 6-8-2010 **Agenda #**

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____**Support** _____**Oppose** _____**Neutral**

ORAL COMUNICATIONS

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

_____**Support** _____**Oppose** _____**Neutral**

I give my 3 minutes to:

6-8-10 9.28