1998 Flooding Lawsuit

The following 77 pages were extracted from

Contra Costa County Superior Court files for

Case # C98 03774 consolidated with Case # C99 00182.

A.
2/11/98

Lamm's Kickin' Back Ranch
Willis & Sharon Lamm
2883 Delta Rd.
Brentwood, CA 94513
(510) 625-0781

February 11, 1998

East Contra Costa Irrigation District
PO Box 646
Brentwood, CA 94513

1 copy hand delivered
1 copy certified mail, return receipt requested

FORMAL CLAIM FOR DAMAGES

1. **FORMAL CLAIM FOR DAMAGES**

1.1 This correspondence shall constitute a formal claim, and intent to sue, if necessary, for damages to land, property, structures, machinery, possessions, business, livestock and persons located at 2883 Delta Rd., Brentwood, CA 94513 which are situated on APN 020-190-028-9. This claim is for damages caused by repeated discharge of water by the East Contra Costa Irrigation District, said damages being summarized in "Attachment A."

1.2 This claim is made by Willis and Sharon Lamm, 2883 Delta Rd., Brentwood, CA 94513, hereinafter referred to as "Claimants."

1.3 This claim is made against the East Contra Costa Irrigation District, its employees, contractors, agents and connected contract customers, hereinafter collectively referred to as "District."

1.4 This claim is for damages which occurred as a direct result of repeated nightly discharges from District facilities of massive quantities of water which followed watershed contours, diversions and County drainage apparatus into, and over the top of, Claimants' property causing damage to land, buildings, personal property, machinery and livestock, and causing loss of business, other lost income, hardship, pain and suffering, and emotional distress.

1.5 This claim is for the aforementioned damage to land, buildings, personal property, machinery and livestock, and resulting loss of business, other lost income, hardship, pain and suffering and emotional distress, and in addition, to the costs of reclaiming property, housing and caring for livestock off property, restoration of Clients' infrastructure and other costs directly or indirectly resulting from the inundation of District water and the suspended matter and contaminants which the water contained.

1.6 This claim is submitted in letter form after the District ~~refused to~~ 1.5 mo ok

EXHIBIT A

~~provid~~e District claim forms to Claimants in a timely manner.

2. **ALLEGATIONS**

2.1. Claimants allege that the damages suffered were as a direct result of the failure of the District to issue and enforce a "stop pump order" in a timely, appropriate and responsible manner.

2.2 Claimants allege wilful, negligent and unlawful discharge of water from District facilities, commencing on or about the night of February 2, 1998, which inundated the properties northeast of the Santa Fe railroad tracks, south of Delta Rd. and west of Byron Highway; such water being released in such a massive volume that it collected behind Byron Highway to the extent that it overran the crown of the highway and flooded the parcels west of it.

2.3 Claimants allege lack of reasonable care and diligence by District personnel and management to reasonably prevent unlawful pumping and discharge of water by the District's connected contract customers after a "stop pump" order was issued; such lack of reasonable care and diligence amounting to gross negligence and/or tacit approval of, and complicity in, said unlawful discharges.

2.4 Claimants allege that unlawful pumping and discharges were made by certain Directors of the District during the aforementioned "stop pump" order, and said Directors, with reckless disregard for the property of others and damages which would result from said pumping and discharges, unlawfully leveraged their authority and influence over District personnel and management in a successful effort to prevent District personnel and management from enforcing said "stop pump order."

2.5 Claimants allege lack of reasonable care and diligence by District Personnel and management to reasonably prevent and correct repeated unlawful tampering and abuse of District facilities in the vicinity of Delta Rd. and Eden Plains Rd. in Knightsen, CA, which resulted in the repeated inundation and destruction of Claimants' property.

2.6 Claimants allege gross negligence and misconduct by District personnel and management inasmuch as the aforementioned District facilities were being tampered with and releasing damaging amounts of water, yet neither District personnel nor management acted in a timely manner to file any police reports, formally request increased surveillance by any law enforcement agency, make spot checks during the night, or engage in any other reasonable and prudent attempts to catch perpetrators, prevent additional tampering or shut off flows which resulted from such tampering, and that such failures to act constitute gross negligence and reckless disregard on the part of District personnel and management with respect to the continual and repeated nightly inundation and destruction of Claimants' property.

2.7 Claimants allege gross negligence, reckless disregard for the property of others and reckless endangerment on the part of District employees and management for failing to reasonably monitor, maintain and operate

the District's canal and pipeline system, causing repeated flows which generated a widespread traffic hazard, safety hazard, public health hazard, environmental damage, release of stored pollutants and toxic materials on properties flooded, and caused widespread property damage over a period of several days in the region in which Claimants' property was located and was directly impacted.

3 **PRELIMINARY ESTIMATE OF DAMAGES**

3.1 A Preliminary Estimate of Damages is attached as "Exhibit A."

3.2 Many costs will not be accurately established until the remainder of standing water can be removed from buildings, function areas, equipment and appurtenances and Claimants' property, contents and equipment can be more closely inspected.

3.3 Claimants will provide supplementary estimates and revisions to "Exhibit A" whenever more specific estimates can be obtained.

4. **WILLINGNESS TO NEGOTIATE SETTLEMENT FOR REASONABLE DAMAGES**

4.1 Claimants hereby express a willingness to negotiate a settlement for reasonable damages provided that the District acts in a timely, fair and expeditious manner. In this regard, time is of the essence. Claimants' horse boarding and training business is inoperable and loss of income as well as hardships and expenses related to care and maintenance of personally owned livestock off-premises will continue until basic restoration and repairs to the Claimants' property can be made.

4.2 Should the District choose not to act expeditiously and in good faith, or should the District choose to deny responsibility for the damage which resulted from its actions and/or lack of diligence and responsibility, Claimants shall pursue relief and compensation through the courts and will seek any and all damages to which they are entitled, including actual damages, loss of business, loss of income (time away from regular employment), hardship, pain and suffering, emotional distress, punitive and exemplary damages.

4.3 Claimants would hope that the District would act responsibly in this matter and take immediate steps, without the added expense of prolonged legal proceedings, to mitigate the present damages, offer appropriate compensation for direct and indirect losses, pain and suffering, and cease and desist in its negligent, inappropriate and/or illegal conveyances and diversions of water onto Claimants' property.

Willis Lamm

Sharon Lamm,

Willis Lamm
Claimants
2883 Delta Rd.
Brentwood, CA 94513

Lamm's Kickin' Back Ranch
Willis & Sharon Lamm
2883 Delta Rd.
Brentwood, CA 94513
(510) 625-0781

February 15, 1998

Mr. Ron Harvey, Liability Claims Manager
Contra Costa County Risk Management
651 Pine St.
Martinez, CA 94553

Re: ADDITIONAL Delta Rd. Flooding

Dear Mr. Harvey,

Regrettably I am submitting to you an additional claim for damages. Following repeated attempts to get forces from Contra Costa County Public Works to take some action to mitigate the diverted runoff from the Eden Plains agricultural parcels into the County culvert, I was informed that according to Public Works policy, field personnel were not permitted to take any definitive action and that those persons with such authority would not be available until Tuesday, February 17, 1998.

The County personnel on-scene agreed that heavy diversions into the culvert would likely result in "downstream" damage and that the agricultural operator, whom they identified as Mr. Ron Nunn, "probably shouldn't be putting water into the culvert."

Considering the substantial damage, inconvenience, hardship and suffering that has been thrust upon local residents for over a week, I had expected the County to take this matter seriously and take reasonable and prudent steps in an attempt to avert additional flooding. Instead, County personnel left to clear a culvert out on Marsh Creek Rd. and as far as I can tell, no formal action of any kind was taken to resolve the Eden Plains Rd. issue. This water subsequently and predictably flooded us. I consider the County's failure to take any responsible action to be negligent, and therefore am filing this additional claim for damages sustained.

Sincerely,

Willis Lamm

cc: Supervisor Joseph Canciamilla
CCC Public Works

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Lamm's Kickin' Back Ranch
Willis & Sharon Lamm
2883 Delta Rd.
Brentwood, CA 94513
(510) 625-0781

February 15, 1998

Risk Management, Liability Claims Section
County of Contra Costa
651 Pine St.
Martinez, CA 94556

Certified mail, return receipt requested

NOTICE OF INTENT TO FILE CLAIM FOR *ADDITIONAL* DAMAGES

1. This correspondence shall constitute our formal notice of intent to claim, and eventually sue if necessary, for additional damages to the property and structures at 2883 Delta Rd., Brentwood, CA 94513 which are situated on APN 020-190-028-9. This claim is for water damages which are listed on "Attachment B."

2. This claim is made by Willis and Sharon Lamm, 2883 Delta Rd., Brentwood, CA 94513, hereinafter referred to as "Claimants."

3. This claim is made against the County of Contra Costa, its employees, contractors and agents, hereinafter collectively referred to as "County."

4. This claim is based on the wilful, negligent and unlawful collection, diversion, conveyance and retention of water collected from the agricultural property or properties situated at the southwest corner of the intersection of Delta Rd., Knightsen Ave and Eden Plains Rd. in Knightsen, CA., such water being collected with the full knowledge of Contra Costa County and being conveyed through County facilities to such an extent that it inundated and caused damage to multiple properties in the "triangle" of parcels which is located northeast of the Santa Fe railroad tracks, south of Delta Rd. and west of Byron Highway on or about February 14 and 15, 1998.

   a. This claim is made for damages resulting from the collection, diversion, inadequate distribution and ultimate retention of water through County facilities which was collected and diverted from the aforementioned agricultural property or properties. This claim is based on the negligent and wilful acceptance and distribution of massive quantities of artificially retained water. This is not a claim for storm runoff damages.

   b. The specifics of this claim are substantiated by eyewitness

EXHIBIT D

accounts, on-site meetings with County personnel, still photographs, aerial photographs and videotape which clearly demonstrate the volume, rate of discharge and path of water flowing from the aforementioned agricultural property or properties to the impacted properties via County owned and maintained conveyances, that the County knowingly accepted water in such volume that it was unable to safely and reasonably convey and /or percolate it, that the "downstream" conveyances were poorly constructed with inadequate capacity, particularly at the County owned and maintained culvert which lies under Byron Highway at the intersection of Delta Rd., that the conveyances ultimately had no outlet from which to discharge water which was collected, conveyed and diverted, and that the County failed to act in a reasonable and responsible manner to reduce the flow of water being accepted into its apparatus when it became evident that such flows were directly contributing to damage to other properties as well as to the pain, suffering and emotional distress to property owners that suffered said damages. Such evidence provides conclusive proof as to the quantity of water that the County received, inability of "downstream" conveyances to pass water under County owned roadways, that a lack of any point of ultimate discharge caused an artificial retention of said water which in turn directly effected the water levels in the two County road runoff ditches that converged at the intersection of Byron Highway and Delta Rd., and lack of any substantive action on the part of County forces present to mitigate the damages being caused. This evidence constructs a record as to the inability of the County infrastructure to reasonably convey the volume of water which, arising from its presence and design, it collected and retained, and that instead of diverting said water away from improved properties and structures, it was so designed as to discharge said retained water onto properties and into structures which would otherwise not be damaged.

c. The culpability of the County is substantiated by:

1. The County's prior knowledge as to the problems associated with the Delta Rd. and Byron Highway ditches and the County installed and maintained culvert which conveys water under Byron Highway at Delta Rd., its knowledge as to the reasonably expected capacity of said ditches and culvert, and its knowledge as to the reasonably expected inflows of water into County facilities at Eden Plains Rd., its knowledge that the volume of water being accepted into County facilities (a) would cause property damage, and (b) could not be adequately dissipated at the Byron Highway culvert, causing a retention of water onto and over nearby properties and into the structures situated on those properties.

2. The County failed to act in a reasonable and prudent manner. In spite of direct knowledge by all parties as to the grave nature of the circumstances surrounding the acceptance of artificially retained water at the Eden Plains Rd. culvert, field personnel did not have the authority to mitigate the

acceptance of water into the County owned and maintained culvert, and supervising personnel who had such authority failed to respond as they were on a "holiday weekend." Claimants allege that this failure to act with full knowledge as to the consequences which would result constituted gross negligence and dereliction of duty.

3. The County of Contra Costa, through its failure to take ANY reasonable and affirmative action, gave tacit approval for, and became a silent partner in, the conveyance of massive quantities of retained water by the permitting the continual direct conveyance from the aforementioned agricultural parcel or parcels into the mouth of the Eden Plains Rd. culvert, which in turn distributed said water en masse over the watershed of the "Knightsen Triangle," and which backed up at the Byron Highway culvert, causing the artificial retention of water and widespread property damage.

d. Through its actions, e.g., constructing a collection and conveyance apparatus which has no outlet, through its failure to act, e.g., failing to notice the offender or offenders causing the large quantity dumping of water into County facilities, and by failing to construct or install any berm, deflection, diversion or restricting devices in order to reasonably contain or control said excessive and uncontrolled diversion which it was receiving, the County has inflicted pain, suffering, hardship, loss of income and property damage which have come as a direct result of the continuing acceptance and diversion of high water from the aforementioned agricultural property or properties onto and into the properties of citizens situated in the "Knightsen Triangle."

e. The circumstances surrounding this issue are particularly despicable inasmuch as the citizens were in the midst of recovery and repair of their property and possessions when this unlawful diversion overtook their properties and once again caused widespread flooding. The result of the County's complicity, improper actions, engineering failures and failure to control in ANY way the volume of unlawfully diverted water which it knowingly received and itself diverted, has directly contributed to widespread hardship, pain and suffering, emotional distress, a general state of despair and a sense of lawlessness among the affected citizens as they needlessly suffer flooding after flooding after flooding due to these acts of man.

Specific causes of action:

a. The County within the previous 24 months intentionally engineered and installed a culvert under Eden Plains Rd., the flow capacity of which could not be handled by County owned and maintained downstream ditches and culverts.

b. The County was aware of massive diversions which were conveyed directly into the mouth of the Eden Plains Rd. culvert in such

quantities that the 24" culvert would become completely submerged.

c. The County was aware as to the downstream path of the water with respect to the properties which would be affected and that the volume of discharge in fact did exceed the capacities of downstream ditches and culverts, and that it could be reasonably expected that such inadequacies would result in flooding and damage to private property.

d. The County was aware that the volume of water discharged by the Eden Plains Rd. culvert could not be handled by the only downstream outlet which it owned and maintained, that outlet being the culvert under Byron Highway at Delta Rd., and that the inadequacies of this culvert could reasonably be expected to cause a retention of water which would back up and inundate the properties and structures located south and west of this culvert.

e. When presented with the findings of massive diversions of water into the Eden Plains Culvert by a private party or parties, the County failed to take any reasonable action to divert or restrict the flow of water into said culvert which surely would result in downstream flooding and property damage, and failed to enjoin or otherwise prevent the private party or parties who was/were diverting said water into the County facilities from doing so.

f. Through the design of its water conveying apparatus, as a direct result of the County's failure to take reasonable mitigating action, and through the discharge of County retained water onto Claimants' property, the County has turned Claimants' property into a flood easement without Claimants' consent and without compensation.

6. Claimants expect the County to immediately refer this claim to County adjusters for mitigation, compensation, repair of damages, loss of business, time lost from regular employment, restoration of property, repair and/or replacement of damaged property, pain and suffering, reduction of real property values, costs of documentation and evidence collection, reasonable attorney's fees, other expenses and damages heretofore not specifically disclosed, but which would be appropriate, and that the County will undertake other good faith actions as are appropriate, including mitigation of the circumstances which caused the damages being claimed in order to prevent further losses, hardship, pain and suffering, claims and litigation. Claimants would prefer to work with the County in such a manner, however if the County fails to act in good faith, Claimants are hereby placing the County on notice that Claimants are prepared to initiate the administrative procedures to undertake a civil lawsuit which will include requests for compensatory, exemplary and punitive damages against the County and any employees, contractors, agents, and private parties and/or corporations who have directed and/or have complicity in these wilful, negligent, malicious and unlawful acts.

7. Claimants hereby demand that the County immediately cease any and all

further collection, diversion and conveyances of water into any, ditch, diversion and/or other apparatus which has been constructed without a means for properly discharging the water collected in a safe and appropriate manner, and that the County construct an appropriate point of discharge if the County intends to continue collecting, diverting and conveying said water. Claimants hope that the County will act in good faith in this regard and that legal proceedings necessary to obtain an injunction could thereby be avoided.

8. The impact of the County's collection, diversion, conveyance and subsequent retention of water from the Eden Plains Rd. agricultural property or properties has caused a further and continuing interruption in the operations of "Lamm's Kickin' Back Ranch" and Claimants will hold the County responsible for the continuing loss of income during the period necessary for additional necessary restoration and repair of Claimant's facilities, as well as for the duration of any delays in said restoration and repair caused by the County due to any additional water releases and failure to respond in good faith to mitigate and repair Claimants' property and premises. Claimants do not have the financial ability to undertake repairs at their own expense, so claims for loss of business may continue until such time as the County takes responsibility for its actions and engages in a mutually agreeable settlement with Claimants.

9. The damage estimates presented in "Attachment B" are preliminary and incomplete inasmuch as Claimants are unable to fully examine their land, improvements, contents and equipment due to the continuing inflow of water which was collected and conveyed by the County and which once again stands on Claimant's property and inside Claimants' structures.

10. Should the County intend to demonstrate good faith and take prompt action, Claimants expect to be formally contacted by County representatives and/or adjusters and develop a mitigation plan in no more than 72 hours.

Claimants would hope that the County would act responsibly in this matter and take immediate steps, without the added expense of prolonged legal proceedings, to mitigate the present damages, offer appropriate compensation for direct and indirect losses, pain and suffering, and cease and desist in its inappropriate and/or unlawful collections, diversions, conveyances and retention of water and subsequent discharges onto Claimants' property.

Willis Lamm

Sharon E. Lamm

Willis Lamm
Claimants
2883 Delta Rd.
Brentwood, CA 94513

Sharon Lamm,

cc: Victoria Kalman, Attorney-at-Law
Joseph Canciamilla, Supervisor, District V
Contra Costa County Public Works

JOSEPH W. COTCHETT (#36324)
GEORGE D. FORD (#47818)
STEVEN N. WILLIAMS (#175489)
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San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
650-697-6000

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

WILLIS AND SHARON LAMM, Plaintiffs, v. EAST CONTRA COST IRRIGATION DISTRICT, a governmental agency, the COUNTY OF CONTRA COSTA, a governmental entity, and DOES I through 100 Defendants.	No. C 98 03774 consolidated with No. C 99 00182 **DECLARATION OF EDWARD BOSCACCI, JR., P.E. IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** Date: Sept. 13, 2001 Time: 9:00 a.m. Dept. 18 Trial Date: October 15, 2001
ART BOYCE, PATRICIA BOYCE, WILLIAM D. MARTIN, P. GAIL MARTIN, WALTER ANTONIAZZI, DIANE ANTONIAZZI, MARCIA HOYT, ROGER COTTLE, LINDA MORSE, AND RICHARD ROBERTSON, Plaintiffs, v. EAST CONTRA COST IRRIGATION DISTRICT, a governmental agency, the COUNTY OF CONTRA COSTA, a governmental entity, and DOES I through 100 Defendants.	

I, Edward Boscacci, declare:

1. I make this declaration based on my personal knowledge and if called as a witness, I would competently testify as to the matters contained herein.

2. I am a Professional Civil Engineer in the State of California, No. 34369. I have a B.S. in Civil Engineering and an M.S. in Civil Engineering from the University of California, Berkeley. I am a member of the American Society of Civil Engineers and the Floodplain Management Association. A copy of my current c.v. is attached to this declaration.

3. I have studied the flooding which took place in the Brentwood and Knightsen area in February of 1998, and have reached the conclusion that a substantial factor in causing the flooding of the properties owned by the plaintiffs in this case was the facilities of the East Contra Costa Irrigation District ("ECCID"), and ECCID's failure to properly maintain those facilities particularly in the area adjacent to the Antoniazzi and Morse/Robertson plaintiffs. I have reviewed: (1) videotapes of the flooding by Plaintiffs Lamm, Morse/Robertson and Martin, (2) read depositions by Lamm, Morse, Preston and Countryman, (3) visited the site several times, (4) reviewed topographic maps from the USGS, Contra Costa County and ECCID, (5) reviewed ECCID system maps, (6) reviewed photographs including my own, the Plaintiffs', and aerial photographs by the Plaintiffs, (7) reviewed rainfall records including the Brentwood CIMIS gage and the Bixler rain gage, (8) reviewed analyses by MBK Engineers (consultants to ECCID) including their HEC-1 analyses, and (9) talked with the Plaintiffs and discussed the flooding issues with various neighbors.

4. The facilities owned by the ECCID caused flooding of plaintiffs' properties by directing flows of water from adjoining drainage areas, through ECCID canals, towards

plaintiffs. In addition, for the Morse/Robertson and Antoniazzi plaintiffs, uncontrolled seepage and leaks occurred through poorly maintained ditches and canal.

5. **CAUSES OF FLOODING.**

6. The primary causes of flooding in the area where the **Antoniazzi** and **Morse/Robertson** properties are located include **uncontrolled seepage and leaks which occurred from the ECCID facilities which were poorly maintained and in a state of disrepair**.

7. The **Antoniazzi** and **Morse/Robertson** properties are located adjacent to Lateral 3 North. These properties are at a lower elevation than Lateral 3 North. Several witnesses have filed declarations in opposition to this motion attesting to the poor condition of the canals and ditches prior to February 2, 1998, and plaintiff Antoniazzi described these conditions during his deposition. Video taken by Morse/Robertson Plaintiffs on February 6, submitted to the Court as an exhibit to Linda Morse's declaration, shows significant cracking of the concrete lining adjacent to their property. In some areas, the concrete liner has shifted from the constructed location, allowing water to seep through the concrete lining. Uncontrolled overtopping of the lateral on February 3rd and 4th worsened conditions along the banks of the lateral, increasing the potential for seepage from the lateral. The seepage from the lateral flowed to the **Antoniazzi** and **Morse/Robertson** properties in an uncontrolled and random manner. The seepage entering the **Antoniazzi** and **Morse/Robertson** properties was not necessarily at the low point of the property where historic runoff would be expected.

8. I have walked/driven along much of Lateral 3 North. The condition of the channel along Lateral 3 North is not consistent. The concrete lining for Lateral 3 North adjacent to **Antoniazzi** and **Morse/Robertson** is in worse condition than along most sections of Lateral 3 North.

9. A second primary reason for the flooding of the Antoniazzi and Morse/Robertson Plaintiffs was that runoff that entered the canals was not managed in a manner that prevented flow from crossing drainage divides in a controlled manner.

10. On February 3, 1998, runoff from the drainage area upstream of Lateral 3 North entered Lateral 3 North. Runoff was concentrated in the Lateral, then released in an uncontrolled manner at a point as a concentrated flow.

11. A third reason is that overland flows from upstream were concentrated in the ECCID facilities and released as concentrated flows at spill points.

12. Video taken by Morse/Robertson Plaintiffs on February 3, submitted to the Court as an exhibit to Linda Morse's declaration, shows flow entering the canal at one location and flow spilling from the canal at another location. The discharge from the lateral is not consistent with the historic flow path for runoff – that is, it was directed there by the lateral. Control of runoff by Plaintiffs is not feasible when historic flow paths are not maintained; in other words, Plaintiffs could not protect themselves from this diversion. The lateral design should have included an overchute or underchute to direct flows across the lateral to the historic low point.

13. Runoff upstream of the project area is through grasses and furrows in the field. At Lateral 3 North, water ponded upstream of the top of the lateral then spilled into the lateral at a single location. Water spilled from the canal at random locations **different** from where flow entered the lateral in a concentrated manner that caused more local damage than if flows had arrived through furrows in a field. The lateral design should have included an overchute or underchute to direct flows across the lateral to the historic low point.

14. A fourth reason is that water was diverted from the normal water course through ECCID canals towards these plaintiffs.

15. The pattern and duration of expected runoff to the Antoniazzi and Morse/Robertson parcels was analyzed by MBK Engineers for defendant ECCID and was presented in their deposition. Exhibit A shows the runoff pattern for February 3rd and 4th, 1998. The flow rate is less than 0.5 cubic feet per second at 5 pm on February 3rd. A flow rate of 0.5 cfs is contained in a grassy swale 6-inches deep and 6-feet wide. This level of runoff could have been conveyed through the site with minimal disturbance to site restoration. Because the ECCID ditch conveyed flows from adjoining drainage areas to the spill point, the spill that occurred after 5 pm on February 3rd was much greater than should have occurred and severely compounded the injuries already suffered by these plaintiffs as a result of the flooding.

16. Runoff continued to spill from Lateral 3 North at this overflow point at a rate that exceeded the ability of Antoniazzi and Morse/Robertson to contain the flow until sandbags were placed on February 4th.

17. During the time period from 5 pm February 3rd until the sand bags were placed, significantly more runoff flowed through the Antoniazzi and Morse/Robertson properties than would have occurred without ECCID facilities in place.

18. A primary cause of flooding in the area where **all other plaintiffs'** properties are located was that runoff entered ECCID's facilities and was not managed in a manner that prevented flow from crossing drainage divides.

19. On February 7th and 8th, minor rainfall amounts were recorded in the Brentwood area. A computer model analysis by MBK Engineers shows that the runoff associated with this rainfall event does not explain the ponding that occurred in the Knightsen area. Gail Martin observed water flowing from ECCID's stand pipes onto grounds in the vicinity of her property and into the storm drain facilities that flows to the Knightsen area. Her video, submitted as an exhibit to the Declaration of P. Gail Martin, documents ECCID staff plugging the standpipe near

her property. ECCID staff stated on video that they were leaving the standpipes on the west side of the railroad tracks open. Spillage from these pipes is to the Knightsen area. On February 8th, ponding occurred in the Knightsen area. A videotape taken by Willis Lamm, submitted to the Court as an Exhibit to the Declaration of Willis Lamm, shows flow crossing over Byron Highway and water inundating the barn area. Similarly on February 14th and 15th, Lamm's video shows water inundating the barn area on a day that the computer model shows a water level a foot below the top of road. Exhibit B shows the runoff pattern for February 8rd through the 15th, 1998. **The only significant source of water to the Knightsen area other than direct rainfall-runoff is the ECCID facilities, which diverted water to this area**.

20. The Lamm video taken February 22, (at night) shows water flowing from an ECCID standpipe.

21. For the events that occurred on February 8th and February 14th and 15th, the source of the inundation cannot be explained as just rainfall runoff. In my opinion, flow conveyed into the drainage area by ECCID facilities was a substantial factor contributing to the extent of inundation shown in the videos. In these events, the runoff conveyed away from the project area by Lateral 4 does not appear to provide a significant benefit, as there would have been little rainfall-runoff from the area upstream of Lateral 4 toward the site.

22. On other days, the ECCID computer model shows that ponding would have occurred in the Knightsen area. However, additional flow from ECCID grossly extended the amount and duration of this ponding.

23. A second reason for flooding for these plaintiffs was that gates to stand pipes were not closed in a timely manner.

24. Following ponding on the Martin property on February 7th and 8th, ECCID plugged the stands that had caused flooding on the Martin property. This damage could have

been avoided if proper maintenance had occurred and the stands been plugged earlier in the season.

25. For the flooding events that occurred on February 8th and 15th, 1998, the Plaintiffs would not have flooded based on the measured rainfall. For other events, the MBK Engineers computer model shows that the Plaintiffs would have had some ponding because of the deficiencies of the culvert crossing at Byron Highway. Given the effect of ECCID facilities on the events of February 8th and 15th, 1998, the ECCID facilities were a substantial factor which increased the duration and severity of ponding at the Plaintiffs' properties.

26. I have reviewed the claims made by defendant in its motion that I agree that flooding would have occurred regardless of the ECCID facilities. I feel this severely misstates and takes out of context what I actually said. My opinion was – and is – that these plaintiffs would have suffered some minimal ponding had there been no ECCID facilities and the County culvert was properly sized. Because of the ECCID facilities, and for the Morse/Robertson and Antoniazzi plaintiffs, because of the failure to maintain these facilities, all of the plaintiffs suffered from severe flooding that would not have otherwise occurred.

I declare the foregoing to be true and correct under penalty of perjury under the laws of the State of California.

Executed this 31st day of August, 2001, at Redwood City, California.

Edward Boscacci Jr.

Edward Boscacci, Jr., P.E.

8/31/01

Robert H. Greenfield SBN 114500
GREENFIELD LAW FIRM
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Attorney for Defendant EAST CONTRA COSTA IRRIGATION DISTRICT

FILED
OCT - 5 2001
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By P. MONDLOCH, Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

WILLIS LAMM and SHARON LAMM,

Plaintiffs,

vs.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, THE COUNTY OF CONTRA COSTA, a governmental entity, and DOES 1 through 25,

Defendants.

ART BOYCE, PATRICIA BOYCE, et al.,

Plaintiffs,

vs.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, THE COUNTY OF CONTRA COSTA, a governmental entity, and DOES 1 through 25,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No.: C98-03774 consolidated with C-99-00182

ORDER RE: SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

Date: September 20, 2001
Time: 9:00 a.m.
Dept.: 18

Trial Date: October 15, 2001

ENTERED ON
OCT 05 2001
MICROFILM

The Motion for Summary Judgment, Or In The Alternative, For Summary Adjudication of Defendant, EAST CONTRA COSTA IRRIGATION DISTRICT ("ECCID"), came on regularly for hearing on September 20, 2001, in Department 18 of the above-entitled Court, before the Honorable William M. Kolin.

Plaintiffs, WILLIS LAMM and SHARON LAMM, et al., (Plaintiffs"), were represented by George D. Ford of COTCHETT, PITRE & SIMON and Defendant, ECCID, was represented by Robert H. Greenfield of GREENFIELD LAW FIRM. The Court, having read all of the evidence set forth in the papers submitted and the inferences reasonably deducible therefrom, and the case having been submitted to the Court for consideration and decision, the Court having read and considered the supporting and opposing points and authorities and having heard the arguments of counsel, and good cause appearing therefor, the Court adopted the tentative ruling as follows:

1. ECCID'S Request for Judicial Notice is granted;

2. Summary judgment as to Plaintiff, ROGER COTTLE, is granted assuming that ECCID agrees to waive fees and costs as proposed by Plaintiffs in exchange for dismissal of COTTLE'S claims;

3. Summary judgment as to Plaintiffs, WILLIS LAMM and RICHARD ROBERTSON is denied. Recovery for inverse condemnation is available for personal property as well as real property. *See*, 8 Witkin, Summary of California Law (9th ed. 1988) Constitutional Law section 1057, p. 629, and 2001 suppl. p. 333.

4. Summary adjudication of the First Cause of Action is denied. The court agrees with the moving party that the reasonableness standard applies. Belair v. Riverside County Flood Control District (1988) 47 Cal.3d 550, 565; Locklin v. City of Lafayette (1994) 7 Cal.4th 327, 367; Bunch v. Coachella Valley Water District (1997) 15 Cal.4th 432, 436; compare with McMahon's of Santa Monica v. City of Santa Monica (1983) 146 Cal.App.3d 683, 698; and Pacific Bell v. City of San Diego (2000) 81 Cal.App.4th 596, 610, 614-615. However, triable issues exist as to whether the moving party's conduct was reasonable. *See, e.g.,* Plaintiffs'

evidence disputing the moving party's Undisputed Fact 18, including Boscacci Declaration, Preston deposition at pp. 36-37, and Garrido deposition at pp. 15-16, 24.

5. Summary adjudication of the Second Cause of Action is granted. Pursuant to Water Code section 22981, any duty that the moving party had to prevent flooding is discretionary, not mandatory.

6. Summary adjudication of the Third Cause of Action is denied. Civil Code section 3482.5 does not apply to this case because the conduct at issue was not "performed by a farmer or on a farm". Id. at subdiv. (e).

7. Summary adjudication of the Fourth, Fifth and Sixth Causes of Action is granted. Discretionary immunity applies to these claims. Johnson v. State of California (1968) 69 Cal.2d 782, 793-794; Odello Brothers v. County of Monterey (1998) 63 Cal.App.4th 778, 792-793.

8. Rulings on Plaintiffs' evidentiary objections:

(a) Deposition of Seth Cockrell, 1-6: Overruled.

(b) Deposition of Edward Boscacci, 1-3: Overruled.

(c) Deposition of Larry Preston, 1-21: Overruled.

Dated: 10-1-01

William M. Kolin

HONORABLE WILLIAM M. KOLIN
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

COTCHETT, PITRE & SIMON

George D. Ford

GEORGE D. FORD
Attorney for Plaintiffs

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
DEPARTMENT 18
JUDGE WILLIAM M. KOLIN

REPORTER: D. HOLLAND DATE: 09/20/01

WILLIS LAMM
PLAINTIFF(S)

VS. CASE NO. MSC98-03774

MINUTE ORDER

EAST CONTRA COSTA IRRIGATION DISTRICT
DEFENDANT(S)

****

PROCEEDINGS: HEARING ON MOTION FOR SUMMARY JUDGMENT FILED BY EAST CONTRA COSTA IRRIGATION DISTRICT

Cause Called for Hearing Before JUDGE WILLIAM M. KOLIN

Court Reporter: DINA HOLLAND, CSR# 9693

COUNSEL: GEORGE FOR FOR PLAINTIFF present in Court

COUNSEL: MR GREENFIELD FOR DEFENANT EAST CO CO present in Court

COUNSEL: TIM RYAN FOR DEFENDANT CO CO FLOOD CONTROL present in Court

THE COURT RULES THAT THE TENTATIVE RULING ISSUED STANDS AS THE ORDER OF THE COURT AS FOLLOWS: EAST CONTRA COSTA IRRIGATION DISTRICT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. SUMMARY JUDGMENT AS TO PLAINTIFF ROGER COTTLE IS GRANTED, ASSUMING THAT ECCID AGREES TO WAIVE FEES AND COSTS AS PROPOSED BY PLAINTIFFS IN EXCHANGE FOR DISMISSAL OF COTTLE'S CLAIMS. SUMMARY JUDGMENT AS TO PLAINTIFFS WILLIS LAMMAND RICHARD ROBERTSON IS DENIED. RECOVERY FOR INVERSE CONDEMNATION IS AVAILALBE FOR PERSONAL PROPERTY AS WELL AS REAL PROPERTY. SEE 8 WITKIN, SUMMARYOF CALIFORNIA LAW (9th ed. 1988) CONSTITUTIONAL LAW SECT. 1057, p 629, AND 2001 SUPPL. p 333. SUMMARY ADJUDICATION OF THE 1st CAUSE OF ACTION IS DENIED. THE COURT AGREES WITH THE MOVING PARTY THAT THEREASONABLENESS STANDARD APPLIES. (BELAIR V RIVERSIDE COUNTY FLOOD CONTROL DISTRICT 1998 17 Cal3d 550565); (LOCKLIN V CITY OF LAFAYETTE 1994 7 Cal4th 327, 367; (BUNCH V COACHELLA VALLEY WATER DISTRICT1997 15Cal 4th 432, 436); COMPARE WITH MCMAHAN'S OF SANTA MONICA VS CITY OF SANTA MONICA 1983 146 Cal.App.3d 683, 698 and PACIFIC BELL V CITY OF SAN DIEGO 2000 81 Cal.App.4th 596, 610, 614 - 615. HOWEVER, TRIABLE ISSUES EXIST AS TO WHETHER THE MOVINGPARTY'S CONDUCT WAS REASONABLE. SEE E.G., PLAINTIFF'S EVIDENCE DISPUTING THE MOVING PARTY'S UNDISPUTED FACT 18, INCULDING BOSCACCI DECLARATION, PRESTON DEPOSITION AT pp. 36-37, and GARRIDO DEPOSITION AT pp. 15-16, 24. PURSUANT TO WATER CODE SECT. 22981, ANY DUTY THAT THE MOVING PARY HAD TO PREVENT FLOODING IS DISCRETIONARY, NOT MANDATORY. SUMMARY ADJUDICATION OF THE 3rd CAUSE OF ACTION IS DENIED.CIVIL CODE SECTION 3482.5 DOES NOT APPLY TO THIS CASE BECAUSE THE CONDUCT AT ISSUE WAS NOT "PERFORMED BY A FARMER ON A FARM." Id. AT SUBDIV (e). SUMMARY ADJUDICATION OF THE 4th, 5th and 6th CAUSES OF OF ACTION IS GRANTED.

ACTMIN

CALIFORNIA 1968 69 Cal.2nd 782, 793-794; ODELLO BROTHERS V COUNTY OF MONTEREY 1998 63 Cal.app.4th 778, 792-793.RULINGS ON PLAINTIFFS EVIDENTIARY OBJECTIONS. A. DEPO OF SETH COCKRELL 1-6: OVERRULE B. DEPO OF EDWARD BOSCACCI 1-3; OVERRULE C. DEPO OF LARRY PRESTON1-21: OVERRULE.

ECCID'S REQUEST FOR JUDICIAL NOTICE GRANTED

SUMMARY JUDGMENT RE ROGER COTTLE GRANTED

MOTION FOR SUMMARY JUDGMENT AS TO WILLIS LAMM DENIED

MOTION FOR SUMMARY JUDGE AS TO RICHARD ROBERTSON DENIED

SUMMARY ADJUDICATION OF THE 1ST CAUSE OF ACTION DENIED

SUMMARY ADJUDICATION OF THE 2ND CAUSE OF ACTION GRANTED

SUMMARY ADJUDICATION OF THE 3RD CAUSE OF ACTION DENIED

SUMMARY ADJUDICATION OF THE 4TH, 5TH & 6TH CAUSES GRANTED

Date: 09/20/01 BY _____
B. LUNDAHL, Deputy Clerk

JOSEPH W. COTCHETT (#36324)
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

WILLIS AND SHARON LAMM,

Plaintiffs,

v.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, the COUNTY OF CONTRA COSTA, a governmental entity, and DOES I through 100

Defendants.

ART BOYCE, PATRICIA BOYCE, WILLIAM D. MARTIN, P. GAIL MARTIN, WALTER ANTONIAZZI, DIANE ANTONIAZZI, MARCIA HOYT, ROGER COTTLE, LINDA MORSE, AND RICHARD ROBERTSON,

Plaintiffs,

v.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, the COUNTY OF CONTRA COSTA, a governmental entity, and DOES I through 100

Defendants.

No. C 98 03774 consolidated with

No. C 99 00182

PLAINTIFFS' MOTIONS IN LIMINE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Trial Date: October 15, 2001
Time: 9:00 a.m.
Dept.: 18

EXHIBIT B

Plaintiffs Willis and Sharon Lamm, Walter and Diane Antoniazzi, Marcia Hoyt, Linda Morse, Richard Robertson, Art and Patricia Boyce, William and Gail Martin, respectfully request that the Court order that defendants County of Contra Costa and East Contra Costa Irrigation District be precluded from submitting, mentioning, or producing the following evidence at trial:

1. Any reference to the referendum conducted in the Town of Knightsen for the purpose of determining whether a flood control district should be formed.
2. Any reference to a so-called "test" of ECCID's system by Willis Lamm and Richard Robertson.
3. Any opinion testimony by Seth Cockrell as to the cause of the flood. Mr. Cockrell is not an expert on the subject, nor has he been offered or qualified as an expert on the subject.
4. Plaintiffs move to exclude David Mattern from testifying as to the causes of the flooding in Knightsen. His deposition testimony reveals that he did no investigation after the flood other than a field review of the Knightsen triangle and looking at the culverts and ditch drainage patterns.

Plaintiffs further submit that, should evidence or mention be permitted in the trial, the sustaining of an objection thereto would be inadequate. Plaintiff would be prejudiced in that it is impossible to "unring the bell" and remove the prejudice. This motion is based on the accompanying memorandum of points and authorities, the papers and records on file herein, and on such other and further oral evidence and documentary evidence as may be presented at the hearing of this motion.

DATED: October 1, 2001 COTCHETT, PITRE & SIMON

By _____
GEORGE D. FORD
Attorneys for Plaintiff

I. MEMORANDUM OF POINTS AND AUTHORITIES

A. General Law Applicable To Motions *In Limine*

Motions *in limine* are not specifically authorized or governed by California statutes. Rather, the trial court's consideration of such motions is authorized under Code of Civil Procedure §§128(a)(3) and (8), which state that every court has the power to provide for the orderly conduct of the proceedings before it, and to amend and control its process in order to make the proceedings conform to law and justice. Further support is found in Evidence Code §350 (concerning the admission of relevant evidence) and §352 (authorizing the exclusion of any unduly prejudicial evidence, evidence confusing to the jury, or evidence intended to mislead the jury). See also *Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444, 451. On this basis, plaintiff respectfully requests that this Court consider and grant plaintiff's motion *in limine* set forth below.

B. Any reference to a referendum in the Town of Knightsen should be excluded.

Defendants contend that if the community of Knightsen had passed a measure to establish an improvement District, it is possible that Plaintiffs would not have been flooded. This attempt to blame the victims should not be permitted. First of all, it is sheer speculation to assert that if the measure had passed there would not have been flooding. Second of all, plaintiffs cannot be held accountable for a democratic vote of an entire community, and the results of this vote do not shield defendants from liability. Finally, it is irrelevant to the subject matter of this action It took place years before the flood herein, and there has been no evidence adduced that formation of a flood control district would have had any effect on the circumstances of this flood.

C. Any reference to a so-called "test" of ECCID's system should be excluded. It is not relevant in that plaintiffs do not contend that water traveling from one canal to the other contributed to the flooding. It would also speculative and prejudicial and would be offered only to impugn the integrity and reputation of plaintiffs.

C. CONCLUSION

For the foregoing reasons, plaintiffs respectfully requests that its motions *in limine* to exclude certain evidence be granted.

DATED: October 1, 2001

COTCHETT, PITRE & SIMON

By: _____
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Attorneys for Plaintiffs

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Attorney for Defendant EAST CONTRA COSTA IRRIGATION DISTRICT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

WILLIS LAMM and SHARON LAMM,

Plaintiffs,

vs.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, THE COUNTY OF CONTRA COSTA, a governmental entity, and DOES 1 through 25,

Defendants.

ART BOYCE, PATRICIA BOYCE, et al.,

Plaintiffs,

vs.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, THE COUNTY OF CONTRA COSTA, a governmental entity, and DOES 1 through 25,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No.: C98-03774 consolidated with C-99-00182

TRIAL BRIEF

Date: October 15, 2001
Time: 9:15 a.m.
Dept.: 18
Honorable William M. Kolin

///

I. INTRODUCTION

Defendant, EAST CONTRA COSTA IRRIGATION DISTRICT ("District") submits herewith its Trial Brief.

The case herein is most succinctly and accurately described as a case in which plaintiffs are attempting to implement flood control by litigation rather than legislation. The regions at issue have historically been subject to flooding by virtue of the manner in which rain waters drain in the region onto the lower lying lands on which plaintiffs reside. Community efforts have been made to come up with a flood control plan, however as described below, when the plans and assessments are submitted to the landowners for a vote, the landowners choose not to implement the plans because of the cost.

II. STATEMENT OF FACTS

A. Background Of The Region At Issue

The background of the area at issue is best set forth in the Knightsen Drainage Improvement Assessment ("Improvement Assessment"), prepared for Contra Costa County Public Works Department, dated April 7, 1998, (Mattern Report) which describes the background of the property at issue.

Plaintiffs generally complain of flooding to their respective properties that occurred in February 1998. The main flood event occurred in the late evening of February 2nd and early morning hours of February 3, 1998. Plaintiffs also complain that their respective properties had standing water through March 1998 and that there were a series of flood events that occurred throughout the month of February (approximately three) during the evening hours, allegedly when there was not rainfall.

As detailed in the Improvement Assessment and which will be substantiated by both the District's hydrologist and the County's hydrologist, there was record rainfall throughout February 1998. The rainfall recordings at the Brentwood precipitation gauge indicated 7.7 inches of rain during the month of February which is 400% of the normal rainfall and which was the highest reading for the month of February since 1880!

Plaintiffs in the Knightsen Triangle area suffered flooding, to a less significant degree, in prior years by virtue of the fact that they live in a low lying drainage basin, as will be

explained by the District's hydrologist, Joseph Countryman. Not only plaintiffs themselves testified regarding prior flooding but a third party percipient witness, Seth Cockrell, also testified regarding previous flooding in the Knightsen Triangle region. Mr. Cockrell is the President of the Knightsen Town Advisory Committee. Mr. Cockrell is not a plaintiff in this case and he testified that the flooding at issue was not a result of the actions of any entity and therefore he did not feel it was appropriate to file suit.

1. The Knightsen Triangle Plaintiffs

All of the plaintiffs testified that they have high groundwater levels year round by virtue of the low-lying geographic location in which they live. The corner of the Knightsen Triangle is located at the Byron Highway – Delta Road intersection at which there is a County culvert into which water from the adjoining County ditches along Byron Highway and Delta Road intersect. The culvert at the Byron Highway – Delta Road intersection collects rain runoff from approximately 2,000 acres of property. The Lamm property is located at this corner and therefore when the culvert exceeds capacity, the Lamm property floods as do the other plaintiffs within the Knightsen Triangle region.

2. Lateral 3 North Plaintiffs (Open Portion Of Canal)

The Antoniazzi/Morse plaintiffs who are located immediately outside of the Knightsen Triangle area also have drainage problems and high groundwater levels on their property. Rainwater drains from the direction of the City of Brentwood, is intercepted by the District's Lateral 3 North at an open portion of the canal and then when it reaches over capacity, as it did in February 3, 1998, it flows onto to the adjacent Antoniazzi property and then to the Morse property. The hydrologist will illustrate the topography and why drainage flows in this particular pattern at this particular area of Lateral 3 North. Further, when the drain ditches and culverts along Eden Plains Road reach capacity, the water on these respective properties drains at a slower pace as was the case in February 1998.

B. The Allegations

Plaintiffs' allege a cause of action for inverse condemnation. This Court has ruled in the District's Motion for Summary Judgment that the inverse condemnation cause of action will be

decided on a reasonable standard.

The District is organized under the laws of the State of California as an irrigation district and does business as such during the irrigation season which is typically from March through November. The District is a party to this lawsuit because of irrigation facilities including a standpipe and one of its canals, Lateral 3 North, which exceeded beyond capacity during this time of severe rainfall and drainage.

Overall, it is the District's position that plaintiffs' damages were caused by severe rainfall and subsequent drainage in the region and not by the acts of the District, the County, or any other entity. In fact, the District and County facilities at issue in fact helped rather than hindered plaintiffs in that without the facilities collecting the drainage, plaintiffs' property would have flooded in a much greater degree.

C. Surrounding Landowners and Plaintiffs' Failure To Develop Flood Control In The Region At Issue

Seth Cockrell, a community activist who is not a party to this litigation, coordinated community meetings prior and subsequent to the flooding event at issue in an effort to create a better flood control plan for the Knightsen Triangle region; these meetings were attended by plaintiffs herein. Efforts and communications were coordinated with Contra Costa County and various state agencies in order to develop some type of flood control plan for the Knightsen area. The Improvement Assessment, discussed above, was developed by the County to detail the historical flooding problems in the region and proposes various plans that the landowners could implement.

Mr. Cockrell was deposed as a percipient witness in this litigation. His testimony was quite profound in the sense that he indicated, based upon his conversations and his work, that the issue was not whether or not a flood control plan could be developed for the Knightsen area but how much would it cost and who would pay for it. He stated that when it was raining, the residents of Knightsen, including plaintiffs, were ready to do everything and anything they could in order to help fund a flood control plan. However, public comment in February would not result in public action until July and August, and Mr. Cockrell found that come summertime,

enthusiasm for increased assessments and taxes for a flood control plan were virtually non-existent since flooding was no longer a predominant concern of the landowners in the region.

Mr. Cockrell's ultimate plan is to create a new community services district that would implement flood control protection for the Knightsen area. At this junction, however, there is lack of funding in order to get an engineering report prepared which could be submitted to LAFCO to allow LAFCO to approve a ballot measure to create the new community services district. The bottom line is that the landowners in this region and the plaintiffs herein would rather sue whomever they can tenuously pin blame on rather than reach into their own pockets and develop what is really needed in the region – flood and drainage control.

D. Portions Of The District's Lateral 3 North Canal System At Issue

The District's canal at issue in this litigation is known as Lateral 3 North. There are two geographically distinct sets of plaintiffs in this coordinated proceeding. The Lamm/Martin/Boyce/Cottle/Hoyt plaintiffs are located within what is referred to throughout as the Knightsen Triangle. The Antoniazzi/Morse plaintiffs are located outside of the Knightsen Triangle off of Eden Plains Road. Both sets of plaintiffs place blame on the District by virtue of its operation of Lateral 3 North. However, the portion of the canal near the Antoniazzi/Morse plaintiffs is an open canal whereas the portion near the Knightsen Triangle plaintiffs is underground which spills out of a standpipe when it exceeds its capacity.

The portion of Lateral 3 North near the vicinity of the Antoniazzi/Morse plaintiffs is an open canal. These plaintiffs complain that breaks in the lining of the canal and a low lining portion of the canal near an East Bay Municipal Utility District ("EBMUD") culvert allowed water to escape the canal onto plaintiffs' property. The Antoniazzi property is adjacent to the canal and the Morse property is adjacent to the Antoniazzi property. Plaintiffs factual contentions are unsubstantiated by the evidence. These allegations are unsubstantiated.

First, at the time of the incidents alleged, Antoniazzi testified that water was flowing over the top of the canal and onto his property. He observed water flowing over the embankment of the canal, into the canal, and then over the opposite embankment onto his property. This means that the canal was simply over capacity, that the rainwater draining into it was so

voluminous that it was flowing over the top of the embankment.

Second, District General Manager Larry Preston testified that he had observed this portion of Lateral 3 North on many occasions and the only deficiencies noted prior to the flood were cracks in the lining. After the flood event, the cracks became breaks because of the tremendous amount of pressure from the drainage inflows. These breaks are seen in pictures taken by plaintiffs after the flooding incident. Further evidence that the breaks were not present prior to the flood are FEMA records which reflect emergency funding given to the District to repair the breaks that were caused by the flood.

Mr. Preston will testify that Lateral 3 North has a capacity of 8 to 10 cfs., that in February 1998 the District was not running any irrigation waters, and that there are gates between the different portions of the lateral and all gates were closed to prevent water from traveling through the lateral. Mr. Countryman will explain that he has prepared a computer model for the flooding of February 1998. This model, called HEC1, shows flows to the Antoniazzi property on the one and only time it flooded between 20 to 25 cfs. greatly exceeding the capacity of Lateral 3 North. This will in fact be demonstrated by videotape taken by plaintiff Linda Morse and photos taken by Richard Robertson on February 3, 1998.

E. The District Standpipe Near The Knightsen Triangle Area

Farther downstream, Lateral 3 North flows into an underground pipeline that connects to a standpipe located near the Knightsen Triangle plaintiffs, Lamm/Boyce/Hoyt/Martin. The standpipe was observed to have discharged one time during the time of the incidents alleged. The reason for which the standpipe discharged was that the Lateral 3 North canal had exceeded its capacity as a result of excessive rainwater drainage. Mr. Countryman will testify that the outflow from the standpipe was approximately 1 cfs. The District's hydrologist will testify that the flows to the Knightsen Plaintiffs on February 3, 1998 exceeded 50 cfs. Furthermore, on February 14-16, 1998 flows were over 10 cfs and February 19-23 flows were over 20 cfs. The one standpipe spill on February 3, 1998 of 1 cfs was insignificant compared to the flows created by the natural runoff from the rain.

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F. Alleged Pumping Into District Facilities

Plaintiffs speculate that numerous landowners were pumping into District facilities, which subsequently caused inundation of their respective properties property. The Antoniazzi/Morse plaintiffs allege that the "illegal pumping" caused the open canal near their properties, Lateral 3 North, to overflow. The Knightsen Triangle plaintiffs allege that the "illegal pumping" caused a standpipe to overflow into the Knightsen Triangle region. However, none of the plaintiffs in deposition could identify any particular pump, or location in which the pumps were allegedly operating. Plaintiffs' contention regarding "illegal pumping" is speculative, unfounded and contrary to the evidence in this case.

First, as the testimony of Mr. Preston reflects, there is only one pump that pumped into Lateral 3 North at the time of the incidents alleged. Second, the capacity of the one pump (approximately 1 cubic foot per second) is insignificant compared with the total inflow of rainwater drainage during the El Nino storm. The District's expert will explain the rainwater drainage inflows to the canal at the mediation and will explain that the canal actually mitigated the plaintiffs' damages. Third and most significant with regard to liability, the District did everything within its power to ensure that this particular pump was not operating during the flood event and went so far as to remove the fuse that allowed the pump to operate.

III. LEGAL ANALYSIS

A. The District Neither Did Anything Nor Failed to Do Anything That Caused, Proximately Or Otherwise, The Damage To Plaintiff's Property.

As explained above, no acts or omissions on the part of the District caused damage, proximately or otherwise, to plaintiffs' properties. Furthermore, a public entity such as the District does not have a duty to provide flood protection. (*See generally*, Miller & Starr, California Real Estate (2d ed. 1990) § 14.22, p.351.) The District is organized as an irrigation district and as such provides irrigation water to surrounding landowners; it is in no way charged with the responsibility with controlling rainfall or runoff.

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B. Plaintiffs Have Failed To State A Claim For Inverse Condemnation Because The Facts Do Not Support The Requisite Legal Elements.

The District did not "take" plaintiff's property within the meaning of the California Constitution. The condemnation clause of the California Constitution provides in part that "[p]rivate property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (*See* Cal. Const., art. I, §19.) Where the government damages property without first paying for the right to do so, the owner may sue for "inverse" condemnation. (*See* Breidert v. Southern Pac. Co. (1964) 61 Cal.2d 659, 663, fn. 1.) Plaintiffs, of course, make this their primary theory of liability because attorneys' fees are recoverable. However, the theory of inverse condemnation simply doesn't fit with the factual scenario herein in that there was not a "taking" or "damage" for "public use" by either the District or the County. There were no failures of facilities, rather the facilities were over capacity as a result of rainfall runoff.

There is no evidence that there was a failure of Lateral 3 North to function as designed and intended (for irrigation purposes); it simply overflowed its capacity during an exceptionally rainy season and spilled over onto the Antoniazzi/Morse properties on an open portion of the canal and spilled out of a standpipe at an underground portion of the canal. And, as described above there is no evidence that the only pump that could have discharged water into Lateral 3 North was operating at the time of the incidents alleged. In fact, the District did everything it could to ensure there was no pumping going so far as to remove the fuse from that particular pump.

There is no evidence that the one time spill from the standpipe in the Knightsen Triangle area caused damage to plaintiffs' property either. The District's hydrologist will explain that the possible outflow from the standpipe was insignificant to the inflow from rain water drainage flowing into the Knightsen Triangle area from thousands of acres of surrounding land, and therefore could not have been a substantial factor in bringing about the plaintiffs' flood damages.

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1. The District Has No Duty To Provide Flood Control

The District is charged with the responsibility of providing irrigation water to its ratepayers. The District is not organized as a flood control district nor does it have any flood control duties or responsibilities. However, even agencies charged with flood control responsibilities have no duty to provide protection from floodwaters. (*See* Stone v Los Angeles County Flood Control Dist. (1947) 81 CA2d 902, 912; Weck v Los Angeles County Flood Control Dist. (1947) 80 CA2d 182, 203; Janssen v County of Los Angeles (1942) 50 CA2d 45, 56, 57.) It is not liable if it fails to build impervious or indestructible flood control facilities, or if the facilities it builds are inadequate. (*See* Weck v Los Angeles County Flood Control Dist., *supra*, 80 CA2d 182 at 203.)

Actions to recover damages from floodwaters based on inverse condemnation generally involve the failure of public improvements constructed to control floodwaters. (*See* Belair v Riverside County Flood Control Dist. (1988) 47 C3d 550, 559-562; Tri-Chem, Inc. v Los Angeles County Flood Control Dist. (1976) 60 CA3d 306, 311, 312; Stone v Los Angeles County Flood Control Dist. (1947) 81 CA2d 902, 912; Janssen v County of Los Angeles (1942) 50 CA2d 45, 56, 57.) When a public agency constructs flood control facilities it is only obligated to exercise reasonable care in the construction and maintenance of the facilities. (*See* Shaeffer v State (1972) 22 CA3d 1017, 1021; Stone v Los Angeles County Flood Control Dist. (1947) 81 CA2d 902, 912.)

2. Plaintiffs Have Made No Showing That The District Acted Unreasonably.

A cause of action for inverse condemnation for damage by surface water is governed by a rule of reasonableness as first applied by Burrows v. State (1968) 260 Cal.App.2d 29. If we assume for purposes of analysis that Antoniazzi/Morse plaintiffs are able to prove that their damages were caused by negligent maintenance of the open portion of Lateral 3 North canal near their property over which water spilled during the time of the incidents alleged, there is no evidence that the District acted unreasonably in failing to ensure that every portion of its canal is in perfect condition such that it can withstand a 100-year flood event.

The California Supreme Court in Belair v. Riverside County Flood Control Dist. (1988) 47 Cal.3d 550, 567, declared that, in cases involving damages from construction, operation, or maintenance of a flood control project, failure to function is not sufficient to impose liability. There must also be unreasonable conduct by the public agency. Although this case is dissimilar to the case at hand in that it involves a flood control project rather than an irrigation drain ditch, the District uses it and its progeny to stand for the proposition that there is no basis of liability because the District acted reasonably under the circumstances.

In Bel Air, *supra*, which is the leading case discussing the liability for injury to private property by the failure of flood control improvements, a levee designed to protect land from flood waters failed, and water inundated the plaintiffs' land. The evidence showed that the plaintiffs' land suffered from flooding before the levee was built and that the design capacity exceeded the flow of water at the time the levee failed. The owners had constructed valuable improvements on their land in reliance on the levee, but there was no evidence that a public agency had been negligent.

The court in Bel Air held that the public entity would not be liable if the water flow exceeded the design capacity of the levee, but it may be liable when the levee fails while operating as designed and the water flow was below the design capacity that the levee was intended to withstand. The court rejected any argument that the entity was not liable merely because the flooding would have occurred in any event in the absence of the levee. However, the court rejected both the "common enemy" doctrine applicable to private parties and the theory of absolute liability for injury caused by a public improvement when used as deliberately designed and constructed. Rather, the court concluded that a public entity is not liable for an injury caused by a public improvement when it is used as deliberately designed and constructed when the entity acts reasonably.

"[W]here the public agency's design, construction or maintenance of a flood control project is shown to have posed an unreasonable risk of harm to the plaintiffs, and such unreasonable design, construction or maintenance constituted a substantial cause of the damages, plaintiffs may recover regardless of the fact that the project's purpose is to contain

the 'common enemy' of flood waters." However, the mere fact that a dam or levee has failed is not sufficient by itself to impose liability. "[W]hen a public flood control improvement fails to function as intended, and properties historically subject to flooding are damaged as a proximate result thereof, plaintiffs' recovery in inverse condemnation requires proof that the failure was attributable to some unreasonable conduct on the part of the defendant public entities." (Id. at 562-567.)

In Bunch v. Coachella Valley Water Dist. (1997) 15 Cal.4th 432, a property owner owned an apartment house in an area that had historically been subject to flooding. Flood control improvements of the district were constructed in an attempt to protect property in the area from damage caused by flooding. These facilities had been operated to protect the downstream property in normal storms; but during a series of extraordinary storms, the improvements failed and the owner's property suffered serious damage from floodwaters. The owner filed an action against the district for inverse condemnation alleging that the district was strictly liable for the damages. The trial court held that the district was not liable since it had designed, constructed and maintained the flood control improvements in a reasonable manner. Both the appellate court and California Supreme Court affirmed.

Plaintiffs fail to make any factual showing of a failed public improvement of the District and fail to make any factual finding of unreasonable conduct. Plaintiffs further fail to state facts showing that the District could have done anything to have prevented the damage to their respective properties. Accordingly, the plaintiffs as a matter of law cannot make out a claim for inverse condemnation against the District.

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IV. CONCLUSION

For the reasons stated herein, the District views this case as one of no liability. Although the flood damages suffered by plaintiffs are unfortunate, they were caused neither proximately or otherwise by either defendant. Further, plaintiffs chose to live in the area in which they live and should they wish to implement drainage improvements they must do so legislatively and should not be permitted to save the costs of assessments by suing public entities not charged with flood control/drainage responsibilities.

Dated: October 12, 2001

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

WILLIS LAMM AND SHARON LAMM, Plaintiffs, vs. EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, the COUNTY OF CONTRA COSTA, a governmental entity, and DOES 1 through 25, Defendants. AND RELATED CROSS ACTIONS CONSOLIDATED WITH ART BOYCE, PATRICIA BOYCE, et al. Plaintiffs, vs. EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, et al. Defendants. AND RELATED CROSS ACTION	Case No. C98-03774 Consolidated w/ C99-00182 **INVERSE CONDEMNATION LIABILITY TRIAL BRIEF OF DEFENDANT COUNTY OF CONTRA COSTA** **TRIAL DATE: 10/15/01** **DEPT: 18**

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I.

INTRODUCTION

This is a property damage case arising out of flooding in the eastern Contra Costa community of Knightsen during the severe El Niño storms of February 1998. The plaintiffs are Willis and Sharon Lamm, Art and Patricia Boyce, Marcia Hoyt, William and Gail Martin, Walter and Diane Antoniazzi, and Linda Morse/Richard Robertson. The defendants are the East Contra Costa Irrigation District ("District") and the County of Contra Costa ("County"). The County is only being sued herein by plaintiffs Willis and Sharon Lamm, Art and Patricia Boyce and Marcia Hoyt.

The plaintiffs' complaints include causes of action in both inverse condemnation and tort. The court has bifurcated the trial into separate phases. The first phase will be a bench trial limited to the inverse condemnation liability issues. The second phase will be a jury trial on the liability and damage issues pertaining to the tort causes of action and the damage issues pertaining to the inverse cause of action, if liability is established.

II.

STATEMENT OF FACTS

A. KNIGHTSEN TRIANGLE

The Knightsen triangle is an area 430 acres in size bounded by the A.T. & S.F. railroad tracks on the southwest, Delta Road on the north, and Byron Highway on the east. The upper watershed is an additional 1,325 acres in size. Storm waters emanating from the upper watershed enter the triangle principally from the southwest through two culverts under the railroad tracks. From there, the storm waters make their way into the triangle. The waters eventually enter the roadside drainage ditches along Byron Highway or Delta Road, and then flow to the intersection of Byron Highway and Delta Road, where they enter an 18"-arch culvert under Byron Highway. The storm waters are then conveyed under Byron Highway and discharged into the portion of the

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Delta Road drainage ditch which extends east of Byron Highway. The waters are carried only a short distance until the Delta Road ditch terminates near the property of Hugo von Fleet. Earthen levees ring the eastern and northern perimeter of Knightsen, separating the low lying lands from the Delta waterways. Consequently, the storm waters reaching the terminus of the Delta Road drainage ditch have nowhere to drain. Reclamation District No. 2065, which owns and operates the Veale Tract levee on the eastern side of Knightsen, refuses to permit the drainage waters to enter its lands at this point.

B. FLOOD CAUSES

The overwhelming cause of the February 1998 flooding was extreme rainfall. The mean level of rainfall for Knightsen in February is 2.1 inches. The actual rainfall in February 1998, however, was 7.7 inches! This was nearly four times the average rainfall for the month. Another way of looking at it is that Knightsen received 62% of its average annual rainfall during February 1998. The El Niño winter produced a truly extraordinary level of precipitation. In fact, in reviewing actual rainfall data for Knightsen dating back 109 years, February 1998 had the fourth highest recorded monthly rainfall on record.

Another significant factor contributing to the flooding was the natural topography of Knightsen, which is extremely flat. The area has very poor drainage characteristics due to the absence of any significant slope. Consequently, the properties within Knightsen drain very slowly, even under normal rainfall conditions.

An added factor was the high ground water table, due to Knightsen's close proximity to the Delta. The recorded groundwater levels were so high in February 1998 that at Delta Road/Byron Highway it was actually at the ground surface. Father upstream within the Knightsen triangle, the depth of groundwater was still extremely shallow at only - 0.5', and in the upper reaches of the watershed it measured only - 3.0'. The high groundwater conditions prevented the storm waters from percolating into the soil, which explains why there was standing water throughout Knightsen during much of February and March 1998.

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The extraordinary rainfall in February 1998, combined with the high groundwater table and the poor drainage characteristics of the Knightsen area, produced massive flooding that included many, many properties both within and outside of the Knightsen triangle. In fact, the incidents of flooding on the plaintiffs properties represent merely a tiny fraction of the widespread flooding that was experienced throughout this region at that time.

III.

LIABILITY ISSUES

A. Knightsen Community Rejected Recommended Drainage Improvements

This was not the first incident of flooding in Knightsen. Significant flooding also occurred during the high rainfall winter of 1982/83. In fact, the damage during that time was so severe that the Contra Costa County Flood Control and Water Conservation District ("Flood Control District") was asked to prepare a study and present proposals for area-wide drainage improvements. A series of meetings were held between governmental officials and community representatives in the early 1980s to address the significant flooding problems plaguing the Knightsen community. The Flood Control District eventually proposed the construction of several alternative drainage improvement projects. Unfortunately, there was virtually no community support for any of these proposals because they were thought to be too expensive. Lacking the support of the community, and the willingness of the property owners to assess their parcels sufficient amounts to raise the requisite funding, the proposals were rejected. Consequently, the recommended improvements were never built. The failure of the community to install area-wide drainage improvements, no doubt, contributed significantly to the incidence and severity of the flooding experienced in February 1998. The absence of adequate drainage facilities, however, may not serve as a basis for liability on the part of the County. The law clearly provides that a public entity is under no obligation to fund and install new drainage improvements and there is no resulting liability for its failure to do so. *Stone v. L.A. County Flood Control District* (1947) 81 C.A. 2d 902.

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B. No County Facilities Served as a Substantial Cause of the Flooding

In order to recover, plaintiffs must establish that there was a "substantial cause - and - effect relationship" between the County facilities and the flooding of their properties. *Belair v. Riverside County Flood Control District* (1988) 47 Cal. 3d 550 at pp. 559-560; *Souza v. Silver Development Co.* (1985) 164 C.A. 3d 165 at p. 161. Liability in inverse condemnation and tort is premised upon a public entity's ownership or control of the offending work of public improvement which is alleged to have served as a substantial cause of the damage. *Albers v. County of Los Angeles* (1965) 62 Cal. 2nd 250; *Holtz v. Superior Court* (1970) 3 Cal. 3d 296. Government Code § 830(c). Unless the damage is proven to have been caused as a substantial result of the operation of a public improvement, there is no liability. *Ullery v. County of Contra Costa* (1988) 202 C.A. 3d 562; *Yox v. City of Whittier* (1986) 182 C.A. 3d 347.

The only relevant public facilities belonging to the County are the drainage ditches along Delta Road and Byron Highway, and the 18" cross-road culvert under Byron Highway. The County submits that the evidence will fail to establish the necessary causal connection between its drainage ditches and/or crossroad culvert and the flooding of the plaintiffs' properties. The Lamm property was inundated, in part, by waters overflowing the Delta Road drainage ditch. But floodwaters also entered the Lamm property from private properties situated to the southwest. In the case of Hoyt, floodwaters were entering from the west and northwest. The Boyce property was inundated by waters overflowing the Byron Highway drainage ditch. But, waters also entered the Boyce property from private lands to the northwest, as well.

The flooding at issue in this litigation was not in any way, shape or form "caused" by the County's facilities. The most that can be said is that the County's drainage ditches and cross-road culvert failed to contain and convey the storm water runoff; but that is only because the extraordinary runoff flows exceeded the limited capacity of the County's facilities. Accordingly, the County's facilities did not serve as a substantial cause of the plaintiffs' flooding and damage.

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C. The Flooding Did Not Occur as a Result of Any "Failure" of the County's Drainage Facilities

An additional requirement for liability is that the damage occurred as a substantial result of the "failure" of a public improvement operating "as deliberately designed and constructed" *Albers v. County of Los Angeles*, supra; *Holtz v. Superior Court,* supra, *Belair v. Riverside County Flood Control District*, supra. *Belair* is perhaps the best example of a true failure of a flood control improvement. In *Belair*, the defendant district's levee collapsed due to the scouring action of the river against the inside toe of a levee. In a literal causation sense, the levee failed and flooding occurred because the embankment physically collapsed. In terms of inverse condemnation law, however, the substantial causation element of liability was met only because the levee collapsed while it was conveying flows which were well within the design limits for the project.

In this case, there was no failure of the County's drainage facilities. The drainage ditches and crossroad culvert were only intended to accept and convey the minimal storm water runoff anticipated from the adjacent streets and convey them downstream. The County's facilities were never intended, nor designed, to accept and convey the extraordinary runoff encountered during the El Niño storms of February 1998. Unlike the situation in *Belair*, where the levee collapsed or failed due to an inherent design flaw in the facility, here the storm waters simply exceeded, and thereby overflowed, the County's roadside drainage ditches and culvert.

The situation here is nearly identical to that which was presented in *Tri-Chem, Inc. v. Los Angeles County Flood Control District* (1976) 60 C.A. 3d 306. In *Tri-Chem*, the storm water runoff exceeded the design capacity of the defendant's drainage system. Accordingly, the court held there was no liability. In *Tri-Chem,* as here, there was no evidence to suggest that the subject drainage facilities failed to function as intended. In *Tri-Chem*, the flooding occurred in spite of the defendant's drainage facilities, not because of them. The same is also true here with respect to the County's facilities.

D. County Acted Reasonably in the Operation of Its Drainage Facilities

In the context of flooding as presented in this case, the courts have adopted a "rule of

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reasonable use" in deciding the question of liability. *Belair v. Riverside County Flood Control District*, supra; *Locklin v. City of Lafayette* (1994) 7 Cal. 4th 327. The standard of strict liability is not applicable in this case. In other words, liability does not result merely by establishing that the public entity owns and operates a public improvement, which thereby served as a substantial cause of the flooding. Under the "rule of reasonable use" a plaintiff must also establish that the flooding occurred as a result of unreasonable conduct by the public entity in the plan, design or operation of its facilities. (See *Belair v. Riverside County Flood Control District*, 47 Cal. 3d at pp. 565 and 567). As the Supreme Court announced in *Belair*:

> "It is sufficient for our purposes here to hold that when a public flood control improvement fails to function as intended, and properties historically subject to flooding are damaged as a proximate result thereof, plaintiffs' recovery in inverse condemnation requires proof that the failure was attributable to some unreasonable conduct on the part of the defendant public entities." (47 Cal. 3d at p. 567) (emphasis added)

There is no evidence here suggesting that the County acted unreasonably in the plan, design or operation of its drainage ditches or crossroad culvert at the Delta Road/Byron Highway intersection. Routine maintenance, including clearing and cleaning, was performed by the County maintenance crews. There is no evidence to suggest that the County's maintenance practices were unreasonable, or more importantly, that the alleged lack of maintenance of these facilities substantially contributed to the flooding of the plaintiffs' properties. The County submits that the evidence will demonstrate that its actions with respect to its facilities were reasonable, and therefore it has no liability in this matter.

IV.

CONCLUSION

The evidence to be introduced in the trial of this action will fail to establish any liability in inverse condemnation on the part of the County. The flooding at issue in this action was not the substantial result of the plan, design or operation of any public facilities owned or operated by the

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County. Further, the flooding did not result from any "failure" of any County facilities. Finally, the evidence will establish that the County has at all times herein acted reasonably in the operation of its drainage facilities.

For all the foregoing reasons, the County submits that it has no liability in this matter.

DATED: October 15, 2001

Respectfully Submitted.

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COUNTY OF CONTRA COSTA

WILLIS AND SHARON LAMM,

Plaintiffs,

v.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, the COUNTY OF CONTRA COSTA, a governmental entity, and DOES I through 100

Defendants.

ART BOYCE et al.,

Plaintiffs,

v.

EAST CONTRA COSTA IRRIGATION DISTRICT, a governmental agency, the COUNTY OF CONTRA COSTA, a governmental entity, and DOES I through 100

Defendants.

No. C 98 03774 consolidated with

No. C 99 00182

PLAINTIFFS' TRIAL BRIEF

Date: October 15, 2001
Time: 9:00 a.m.
Dept: 18

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I.

INTRODUCTION

The Plaintiffs in this action – **Willis and Sharon Lamm, Art and Pat Boyce, William and Gail Martin, Walter Antoniazzi, Marcia Hoyt, Linda Morse, and Richard Robertson** -- suffered damages when the defendants' facilities flooded them in February of 1998. They assert claims for inverse condemnation and nuisance. Liability will be clearly established through the following facts which will be established by plaintiffs at trial:

A. Defendant East Contra Costa Irrigation District's Liability:

Defendant East Contra Costa Irrigation District is liable to Plaintiffs because, inter alia:

- The Irrigation District intentionally closed all gates in its Lateral 3 North irrigation canal,[1/] channeling the destructive water towards plaintiffs;
- The water diverted by the Irrigation District flooded Plaintiffs;
- The irrigation canal adjacent to the Antoniazzi and Morse/Robertson properties was in a broken down and dilapidated condition for years;
- Plaintiff Antoniazzi repeatedly told Irrigation District employees about the broken down conditions, but they refused to make any repairs to the canal;
- Irrigation District employees repeatedly traveled in the area where the dilapidated conditions were, and were aware of the conditions, but refused to make any repairs;

---

1 All subsequent references are to the Lateral 3 North canal unless otherwise stated.

- Water came through the holes, breaks and cracks in the canal and flooded plaintiffs Antoniazzi and Morses several times;
- The Irrigation District provided drainage services to many entities, including the City of Brentwood and Signature Properties;
- The Irrigation District permitted property owners to discharge water from their properties into the canal; and
- During the rains in February of 1998, water was pumped into the canal pursuant to the Irrigation District's policies, causing flooding to plaintiffs.

B. Defendant County of Contra Costa's Liability

Defendant County of Contra Costa is liable to Plaintiffs Willis and Sharon Lamm, Art and Pat Boyce, William and Gail Martin, and Marcia Hoyt because, inter alia:

- It constructed, owned, and maintained roadside drainage ditches;
- The roadside drainage ditches diverted water to an area in Knightsen bounded by Byron Highway and Delta Road;
- The County built Byron Highway and Delta Road above grade, with insufficient drainage;
- The only culvert at Byron Highway was insufficient to disperse the water which the roadside drainage ditches channeled into the area; and
- The County increased the flow of water into the area without taking any steps to permit the water to escape.

II.

STATEMENT OF FACTS

A. THE PLAINTIFFS

The plaintiffs are:

- **Walter Antoniazzi and Diane Antoniazzi.** Walter Antoniazzi resides in Oakley and owns property at 1750 Arabian Lane in Brentwood. Mr. Antoniazzi grows grapes on his property; the grapes typically take four years to become productive, and production increases each year thereafter. The ECCID irrigation canal known as Lateral 3 North runs along the western edge of their vineyard. Mr. Antoniazzi had repeatedly pointed out the dilapidated conditions of the canal to ECCID staff, but they ignored his requests for help. When the flooding came through breaches in the canal in 1998, including a breach ***15 feet long and ½ foot deep,*** the grapes which had only reached production the year before were destroyed.
- **Linda Morse and Richard Robertson.** Linda Morse owns 10 acres at 1850 Arabian Lane in Brentwood. She operates a horse boarding and training facility known as Brentwood Oaks. Richard Robertson operates a bed and breakfast in a restored Victorian home on the property. Ms. Morse and Mr. Robertson live adjacent to the property owned by Mr. Antoniazzi in Brentwood. The water came onto the Morse/Robertson property after coming through breaches in ECCID's canals and ditches and traveling across the Antoniazzi property. Their businesses and properties suffered severe losses as a result of the flooding.
- **Willis and Sharon Lamm**. Mr. and Mrs. Lamm reside at 2883 Delta Road, Brentwood, and operate a horse boarding and training facility on their 5+ acre parcel. Mr. Lamm a captain with the Moraga-Orinda

Fire Protection District, tried to protect himself and his neighbors from the flooding in February of 1998. The Lamms' suffered a great deal of property damage in the flood..

- **Marcia Hoyt.** Ms. Hoyt is employed as a labor attorney with Alameda/Contra Costa Transit. She resides in Brentwood at 2960 Poe Lane, immediately south of the Lamm property.
- **Art and Patricia Boyce.** The Boyces reside at 8180 Byron Highway in Brentwood. The Boyces maintain barns and pasture for their own animals.
- **William and Gail Martin.** The Martins are the owners of property located at 2820 Eden Plains Road, Brentwood. They have barns and pastures for their own animals and an occasional boarder.

B. THE DEFENDANTS

1. The County of Contra Costa.

The County owns and maintains drainage ditches along the southern edge of Delta Road and the Western edge of Byron Highway. These drainage ditches direct water towards the intersection of Byron Highway and Delta Road, two County owned roads which are built **above grade**. There is virtually no drainage from this area, other than a single culvert which is plainly inadequate to discharge the water being directed towards it. The County took steps to increase the volume of water traveling along and through the Eden Plains Road culvert (directed at the Delta Road culvert) but did nothing to address the inability of the Delta Road culvert to receive this water. When the water reached the end it had no place to go, and was forced to back up, ultimately flooding plaintiffs. The County has known about the slow culvert at Delta Road and Byron highway for years.

3. East Contra Costa Irrigation District (ECCID)

ECCID is an agency which sells water to agricultural businesses and farms in Brentwood and Knightsen. This is largely a summer operation, and ECCID Rules and Regulations provide that during the off-season maintenance work on the canals shall take place. ECCID had an ongoing practice of not making repairs if they did not directly relate to the delivery of irrigation water to customers, and even disciplining employees who made repairs without "proper authorization." It is the contention of the plaintiffs that the canals (Lateral 3 North in particular) were so poorly maintained that rainwater and other water which collected in them during February 1998 overflowed or otherwise leaked out and inundated plaintiffs' properties.

Though arguing that it is solely in the business of irrigation, the District in fact is in the drainage business as well, having agreements with entities including the City of Brentwood and Signature Properties to accept drainage water into its canals. ECCID also permits landowners to install automatic pump systems which discharged water from property owners' lands into the irrigation ditches and canals. Finally, ECCID rules and regulations provide that water discharged into the canals and ditches of ECCID becomes the property of ECCID.

The irrigation canals discharge water through a series of gates in the canals. When the gate is open, water flows to property owners. When the gates are closed, water is collected in the canals, diverted from its natural watercourse, and channeled into a destructive force. In this instance, the Irrigation District – knowing of predictions of heavy rain, of the poor conditions of the canal, and of the fact that it would cause a destructive force to be created – closed all of the gates in Lateral 3 North, protecting its board members and large customers and inundating the plaintiffs.

B. THE FLOOD

As set forth, all of the plaintiffs live and/or own businesses in Brentwood and Knightsen. This is an area where dominated by large and small farms, and it is largely rural in character. The Irrigation District provides water to some of these farms, and the larger farmowners sit on the Board of the Irrigation District and are its biggest customers.

The rural character of this area attracted plaintiffs to move to, and open businesses, there. It appears to be the rural nature of the area that has led to the plaintiffs' rights being disregarded by the defendants. Residing in unincorporated Contra Costa County, plaintiffs must look to the County government for solutions to their problems; they do not expect the County to cause problems for them and then turn its back. That is just what has happened here. Plaintiffs find themselves powerless, with their cries for help ignored by the County and the Irrigation District.

During February 1998 plaintiffs were flooded by water which had been collected in drainage ditches owned and maintained by the County, and in irrigation facilities owned and maintained by the East Contra Costa Irrigation District. These ditches and canals overflowed or otherwise deposited water onto the properties of plaintiffs, causing the damages complained of herein. The plaintiffs' properties have not been historically subject to flooding, and never subject to flooding of the type which took place in February of 1998.

On February 2, 1998, at approximately 3:00 a.m., Willis Lamm became aware that his 5+ acre horse boarding facility was taking on water. When it became light enough to see, Mr. Lamm saw that virtually his entire property, with the exception of the residence, was under water. His pastures were flooded, his barn was flooded, and his animals were in distress. Mr. Lamm was able to

determine that the water was coming onto his property from two sources: a Contra Costa County drainage ditch to the north, and across his neighbor's property to the west. This ditch, which ran along the south side of Delta Road immediately adjacent to Lamm's property, had been poorly maintained for years despite requests from Mr. Lamm that the County clean it out. Mr. Lamm had himself cleaned it out on occasion. In addition, the volume of water entering the ditch at Eden Plains Road exceeded the capacity of the culvert downstream at Byron Highway, it being smaller than the culvert at Eden Plains Road. Byron Highway acted as a dam, keeping all of the water directed into the area by the County from escaping, and flooding plaintiffs Lamm and Hoyt. The County had increased the capacity of the Eden Plains culvert without providing any metering or making appropriate adjustments to the Byron Highway culvert.

Willis Lamm later determined that the water coming from the west had overflowed or otherwise escaped from ECCID Lateral 3 North, an irrigation ditch owned and maintained by the District. It being winter there should not have been any water in the irrigation ditch other than water which may have gathered there as a result of natural means. However, Mr. Lamm, other plaintiffs, and other witnesses will testify that some landowners or tenants were pumping excess water from their fields into the irrigation ditch. Larry Preston, General Manager of the ECCID, has testified under oath that with permission of ECCID some property owners had automatic pumps on their properties which discharged surface water into the ECCID facilities. In addition, the Irrigation District had closed all of its gates causing water which otherewise would have been dispersed to collect and be channeled towards plaintiffs. Furthermore, documents produced by ECCID demonstrate that the District has (and still does) contracted with farmers and the City of Brentwood to accept excess water by permitting the farmers and City to

pump water into the canals – contradicting the Irrigation District's claims that the District was not in the drainage business.

ECCID knew that Lateral 3 North was the most difficult to control, even in the summertime when "tail water" was being discharged into it. ECCID also knew the lateral had to be supervised any time water was being pumped into it. All of the plaintiffs with the exception of Robertson, Morse, and Antoniazzi live near Lamm and were damaged by the same flood waters that intruded on Mr. Lamm's property. These include Marcia Hoyt, who lives directly south of Willis Lamm, and whose entire property was flooded, causing damage to her landscaping, fences and barns. Art and Patricia Boyce are also south of the intersection of Delta Road and Byron Highway. Their property was flooded, causing damage to their home, fences and landscaping, and causing their animals to become ill.

William and Gail Martin live between Willis Lamm and the Arabian Lane plaintiffs. They were flooded by an ECCID standpipe, which overflowed for an extended period of time. They were forced to replace crushed rock and alfalfa as a result.

When plaintiffs, particularly Walter Antoniazzi, pleaded with ECCID to repair the breaches in its canals and ditches adjacent to his property, their cries were ignored. Larry Preston, General Manager of ECCID, has testified that he was aware of these breaches prior to the rains of February, 1998, but that nothing was done to remedy the dangerous condition. Field Superintendent Ron Garrido testified that he was also aware of these conditions, but that nothing was done to prevent the harm to plaintiffs. When plaintiffs complained to the County and ECCID, and asked for assistance, they were either ignored or treated rudely.

Walter Antoniazzi, a grape grower immediately adjacent to 3 North, was inundated by huge amounts of water which he could see was escaping from a part of the canal where the bank was substantially lower than other parts, coming through breaches in the ditch, seeping from damaged parts of the concrete liner, and coming through beneath the ditch. Seeing this water escaping from the breaches in the ditch was heartbreaking for Mr. Antoniazzi, as he had repeatedly gone to ECCID to notify them of the breaches and to ask that something be done before he became the victim of escaping water. However, nothing was done and now it was too late, as Mr. Antoniazzi watched the water flood his property and destroy and damage his young vines.

The water flowed over the Antoniazzi property and onto that of Linda Morse and Richard Robertson who, like Willis Lamm, operate a horse boarding facility. In addition, Robertson operates a bed and breakfast on the property. Both Morse and Robertson had property destroyed and lost business as a result of the flood.

III.

INVERSE CONDEMNATION LIABILITY

Inverse condemnation is based on the California Constitution, which provides that "[p]rivate property may be taken or damaged for public use only when just compensation . . . has [ ] been paid." Cal. Const., art. I, § 19. The policy underlying inverse condemnation is that the costs of a public improvement benefitting the community should be spread among those benefitted, rather than allocated to a single person within the community. Belair v. Riverside County Flood Control Dist. (1988) 47 Cal.3d 550, 558. When the owners of "damaged property if uncompensated would contribute more than [their] proper share to the

public undertaking" liability attaches under Art. I, Section 19 of the California Constitution. Locklin v. City of Lafayette (1994) 7 Cal.4th 327, 365.

> "'The decisive consideration is whether the owner of the damaged property if uncompensated would contribute more than his fair share to the public undertaking.' In other words, the underlying purpose of our constitutional provision in inverse – as well as ordinary – condemnation is 'to distribute throughout the community the loss inflicted upon the individual . . ."

Belair, 47 Cal.3d at 558.

Defendants seek to turn the law of inverse condemnation on its head, arguing in favor of immunities and excuses which are not part of the law. Instead, the facts as applied to the property law will demonstrate that all plaintiffs will establish constitutional claims for inverse condemnation.

Because neither defendants' facilities constitute a flood control improvement, the "reasonableness" rule of Belair should not apply.[2/] However, even assuming that the rule does apply, liability is clear. The conduct of each defendant was unreasonable and caused flooding of properties not historically subject to flooding. The District:

- Intentionally closed all gates in its Lateral 3 North irrigation canal, channeling the destructive water towards plaintiffs;
- The water diverted by the Irrigation District flooded Plaintiffs;

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2 Plaintiffs contend that the stricter standard applicable to water diversion cases should apply. Archer v. City of Los Angeles (1941)19 Cal.2d 19, 26-27; Belair v. Riverside County Flood Control District (1988) 47 Cal.3d 550, 564 n.4. See, e.g., Bauer v. Countyof Ventura (1955) 45 Cal.2d 276, 283; Clement v. State Reclamation Board (1950) 35 Cal.2d 627, 637-638; House v. Los Angeles County Flood Control District (1944) 25 Cal.2d 384, 394-395; Granone v. County of Los Angeles (1964) 231 Cal.App.2d 629, 648

- The irrigation canal adjacent to the Antoniazzi and Morse/Robertson properties was in a broken down and dilapidated condition for years;
- Plaintiff Antoniazzi repeatedly told Irrigation District employees about the broken down conditions, but they refused to make any repairs to the canal;
- Irrigation District employees repeatedly traveled in the area where the dilapidated conditions were, and were aware of the conditions, but refused to make any repairs;
- Water came through the holes, breaks and cracks in the canal and flooded plaintiffs Antoniazzi and Morses several times;
- The Irrigation District provided drainage services to many entities, including the City of Brentwood and Signature Properties;
- The Irrigation District permitted property owners to discharge water from their properties into the canal; and
- During the rains in February of 1998, water was pumped into the canal pursuant to the Irrigation District's policies, causing flooding to plaintiffs.

The County:

- Constructed, owned, and maintained roadside drainage ditches;
- The roadside drainage ditches diverted water to an area in Knightsen bounded by Byron Highway and Delta Road;
- The County built Byron Highway and Delta Road above grade, with insufficient drainage;
- The only culvert at Byron Highway was insufficient to disperse the water which the roadside drainage ditches channeled into the area; and

- The County increased the flow of water into the area without taking any steps to permit the water to escape.

These unreasonable actions caused plaintiffs' damages.

IV.

NUISANCE LIABILITY

A nuisance is "[a]nything which is . . . indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." Cal. Civ. Code § 3479. A governmental entity is liable for nuisance just as any other person or entity is. See, e.g., Pfleger v. Superior Court (1985) 172 Cal.App.3d 421, 428 - 432 (reviewing case law, concluding "no governmental immunity against a cause of action can be found in" Tort Claims Act); see also Nestle v. City of Santa Monica (1972) 6 Cal.3d 920, 933; Vedder v. City of Imperial (1974) 36 Cal.App.3d 654, 661.

Encroachments upon land constitute nuisances. See, e.g., 11 Witkin, Summary of California Law, Equity, § 126, and cases cited therein.

The evidence will demonstrate that the acts and omissions of the Irrigation District and the County constitute a nuisance.

V.

DAMAGES

Plaintiffs suffered damages as follows:

A. **Walter Antoniazzi** – At least $225,000.00 for damages to grape vines, cost of replacement, lost income. Mr. Antoniazzi has also suffered severe emotional distress as a result of the destruction of his grape vines and business from the flood.

B. **Linda Morse and Richard Robertson** – At least $100,169.25 for damages to barn, road, box stalls, landscaping, paddocks, tractor, loss

of hay, shavings, and asphalt, loss of income, attorneys fees and expert fees,[3/] and emotional distress. In addition, Linda Morse and Richard Robertson suffered emotional distress as a result of the devastating flood.

C. **Willis & Sharon Lamm** -- At least $107,162 for damages to tools and equipment, repairs to corrals, barn, stalls, drainage system and road, loss of hay and other supplies, loss of stable revenue, lost wages. In addition, Willis and Sharon Lamm suffered emotional distress as a result of the devastating flood.

D. **Gail and William Martin** – At least $10,470.00 – Replacement of crushed granite, alfalfa, emotional distress. Gail and William Martin have also suffered emotional distress as a result of the devastating flood.

E. **Art and Pat Boyce** – At least $13,003.00 – damages to fence, home, landscaping, veterinarian fees, lost wages, emotional distress. Art and Pat Boyce have also suffered emotional distress as a result of the devastating flood.

F. **Marcia Hoyt** – At least $24,540.00 – Damages to fence, landscaping, barn, emotional distress. Marcia Hoyt has also suffered emotional distress as a result of the devastating flood.

G. **Attorneys Fees, Costs and Expenses – Cal. Code Civ. Proc. § 1036**

Should plaintiffs prevail on their claims for inverse condemnation, California Code of Civil Procedure § 1036 provides that a property owner is entitled to recover reasonable litigation expenses, including attorneys fees, expert

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[3] In addition to attorneys fees and expenses relating to representation by Cotchett, Pitre & Simon.

fees, and other costs incurred. Pursuant to section 1036, Plaintiffs are entitled to attorneys' fees and costs in the amount of at least $261,147.00 for attorneys' fees and costs to this point, in addition to additional fees and costs to be incurred through trial.

Dated: October 15, 2001

COTCHETT, PITRE & SIMON

By: _____
GEORGE D. FORD
Attorneys for Plaintiff

PROOF OF SERVICE

I am a citizen of the United States; my business address is San Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010; I am employed in the County of San Mateo where this mailing occurs. I am over the age of 18 years and not a party to the within cause.

On October 15, 2001, I served the following document(s)

PLAINTIFFS' TRIAL BRIEF

by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as follows:

___ **BY MAIL:** I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Cotchett, Pitre & Simon's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

Timothy J. Ryan
GORDON, DeFRAGA, WATROUS & PEZZAGLIA
611 Las Juntas Street
P.O. Box 630
Martinez, CA 94553
Fax: (925) 228-3644

Robert Greenfield
GREENFIELD LAW FIRM
4120 Cameron Park Drive, Suite 402
Cameron Park, CA 95682
Fax: (530) 672-5773

__XX__ ___**HAND DELIVERY:** I personally delivered by hand at the Courthouse.

___ **BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

___ **FACSIMILE:** I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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

Executed at Burlingame, California, on October 15, 2001

George D. Ford

II. IF PLAINTIFFS DO NOT PREVAIL ON INVERSE CONDEMNATION

Ladies and gentlemen, in this action the plaintiffs are Willis and Sharon Lamm, Art and Patricia Boyce, Marcia Hoyt, William and Gail Martin, Walter Antoniazzi, Linda Morse, and Richard Robertson. The defendants are the East Conta Costa Irrigation District and the County of Contra Costa. The Plaintiffs are also asserting a claim against defendants for nuisance due to flooding which occurred to their properties in Knightsen and Brentwood in February 1998. The Court has not made any determination of liability for this claim, and you should disregard the Court's findings on inverse condemnation in considering plaintiffs' claim for nuisance and for damages resulting from the nuisance.

Dated: October 15, 2001

COTCHETT, PITRE & SIMON

By _____
STEVEN N. WILLIAMS
Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Dept. No. 18
K. CARMICHAEL, Clerk
T.GAUL,Bailiff

HON.WILLIAM K. KOLIN
REPORTER DINA HOLLAND
CSR NO.9693

DATE October 15, 2001

Counsel:

WILLIS LAMM,et al.
Plaintiffs

ROBERT SCOTT

vs.

EAST CONTRA COSTA IRRIGATION, et al.

ROBERT GREENFIELD
TIMOTHY RYAN

Defendants

NATURE OF PROCEEDING:

CASE NO. C98-03774

COURT TRIAL DAY ONE

11:05am With all counsel present, the trial begins with the court hearing the bifurcated issues in this case. After the bifurcated issues are heard by the Court, the trial will proceed as a jury trial.

Counsel stipulate the plaintiff's Art Boyce, William Martin and Marcia Hoyt are dismissed with prejudice-settlement reached.

Defense counsel Robert Greenfield makes an oral motion to exclude witnesses. Court grants the motion.

Plaintiff calls **LINDA MORSE** who is sworn and testifies.

Exhibits #1,#2,#3,#5,#6,#7thru #11 are admitted into evidence.

Court views exhibit #3 a videotape with the sound turned off.

12:00pm Counsel are given the noon recess.

2:15pm With all parties present, the trial resumes with the testimony of **LINDA MORSE**.

4:00pm **LINDA MORSE** is excused, subject to recall.

4:10pm Court and counsel discuss the issue of expert opinions/testimony of witnesses.

4:15pm Plaintiff calls **RICHARD ROBERTSON** is sworn and testifies.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Dept. No. 18
K. CARMICHAEL, Clerk
D.DOW,cLERK
T.GAUL,Bailiff

HON.WILLIAM M. KOLIN
RPTR THERESA THOMAS
CSR NO. 10883

DATE October 16, 2001

Counsel:

WILLIS LAMM,et al.
Plaintiffs

ROBERT SCOTT
GEORGE FORD

vs.

EAST CONTRA COSTA IRRIGATION, et al.

ROBERT GREENFIELD
TIMOTHY RYAN

Defendants

NATURE OF PROCEEDING:

CASE NO. C98-03774

COURT TRIAL DAY TWO

1:15pm Plaintiff files a motion in limine re:expert witnesses to remain in courtroom for testimony. Counsel argue the motion in limine- court denies the motion.

1:35pm With all counsel present the trial resumes with the continued testimony of **RICHARD ROBERTSON** who is reminded that he is still under oath.

The following exhibits are admitted into evidence: Exhibit #14,15,16,17,18,19,22,23,24,25,26.

The following exhibits are withdrawn by plaintiff: Exhibit #13 and #27.

4:20pm **RICHARD ROBERTSON** is excused,subject to recall.

Court and counsel discuss the witness schedule for the remainder of the week.
Court discusses further housekeeping issues with counsel.

Dated: October 16, 2001

Kim Carmichael

Kim Carmichael, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Dept. No. 18
K. CARMICHAEL, Clerk
T.GAUL,Bailiff

HON.WILLIAM M. KOLIN
REPORTERTHERESA AGUILAR
CSR NO.10498

DATE October 17, 2001

Counsel:

WILLIS LAMM,et al.
Plaintiffs

ROBERT SCOTT
GEORGE FORD

vs.

EAST CONTRA COSTA IRRIGATION, et al.

ROBERT GREENFIELD
TIMOTHY RYAN

Defendants

NATURE OF PROCEEDING:

CASE NO. C98-03774

COURT TRIAL DAY THREE

10:10am With all counsel present, the trial resumes with both counsel updating the court on the previous testimony that had been given.

11:15am Plaintiff calls **WILLIS LAMM** who is sworn and testifies.

The following exhibits are admitted into evidence: Exhibit #30,#31,#32,#33,#34#35,#36

12:00pm Court takes noon recess.

1:30pm With all counsel present, the trial resumes with the continued testimony of **WILLIS LAMM. WILLIS LAMM** is ordered to return on Tuesday October 23,2001.

4:30pm Court and counsel discuss upcoming witnesses for October 18, 2001, Court and counsel also have discussions regarding work product. Counsel to argue the work product issue on October 18, 2001.

4:45pm Court adjourns for the evening recess. Counsel to return October 18,2001 at 10:00am.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Dept. No. 18
K. CARMICHAEL, Clerk
T.GAUL,Bailiff

HON.WILLIAM M. KOLIN
REPORTER DINA HOLLAND
CSR NO.9693

DATE October 18, 2001

Counsel:

WILLIS LAMM,et al.
Plaintiffs

ROBERT SCOTT
GEORGE FORD

vs.

EAST CONTRA COSTA IRRIGATION, et al.

ROBERT GREENFIELD
TIMOTHY RYAN

Defendants

NATURE OF PROCEEDING:

CASE NO. C98-03774

COURT TRIAL DAY FOUR

10:45am With all counsel present, the trial resumes with the court going over the Court's calendar and timeline. Court notifies counsel that if case is not complete by 12/4/01 the court will have to file a mistrial in this case. The Court will no longer be hearing civil matters as of 12/4/01.

11:00am Plaintiff's counsel requests the court for a break so they may meet and confer with their clients. Court is adjourned until 2:00pm this afternoon.

2:00pm With all counsel present, Plaintiff's counsel states that more time is needed to meet with his clients. Court is adjourned until October 19, 2001 at 9:30a.m.

Dated:
CLERK OF THE COURT

K Carmichael
Kim Carmichael, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Dept. No. 18
K. CARMICHAEL, Clerk
T.GAUL,Bailiff

HON.WILLIAM M. KOLIN
REPORTER DINA HOLLAND
CSR NO.9693

DATE October 19, 2001

Counsel:

WILLIS LAMM,et al.
Plaintiffs

ROBERT SCOTT
GEORGE FORD

vs.

EAST CONTRA COSTA IRRIGATION, et al.

ROBERT GREENFIELD
TIMOTHY RYAN

Defendants

NATURE OF PROCEEDING:

CASE NO. C98-03774

COURT TRIAL DAY FIVE

10:00am With all counsel present, the trial resumes with the counsel addressing the court as to any settlement negotiations. Counsel further update court on issues of case.

11:15am Plaintiff calls **WALTER ANTONAZZI** who is sworn and testifies.

11:30am Court takes noon recess.

2:00pm With all counsel present, the trial resumes with the counsel addressing the court regarding settlement talks that are ongoing with their clients.

2:50pm Witness **WALTER ANTONAZZI** retakes the witness stand to continue with his testimony.

3:20pm Plaintiff's counsel asks court for time for more settlement talks with their clients. Court adjourns until Monday October 22, 2001 at 10:00a.m.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Dept. No. 18
K. CARMICHAEL, Clerk
T.GAUL,Bailiff

HON.WILLIAM M. KOLIN
REPORTER DINA HOLLAND
CSR NO.9693

DATE October23, 2001

Counsel:

WILLIS LAMM,et al.
Plaintiffs

ROBERT SCOTT
GEORGE FORD

vs.

EAST CONTRA COSTA IRRIGATION, et al.

ROBERT GREENFIELD
TIMOTHY RYAN

Defendants

NATURE OF PROCEEDING:

CASE NO. C98-03774

COURT TRIAL DAY SIX

1:40pm With all counsel present, the trial resumes with counsel stating a settlement on the record. The plaintiffs have agreed to each accept $5,000.00 in exchange for a dismissal with prejudice as to the entire action and release of all claims. Each side to bear their own costs.

Counsel have stipulated that all exhibits and depositions in this case can be returned to them. Counsel take all exhibits/depositions with them.

Dated: October 23, 2001
CLERK OF THE COURT

Kim Carmichael

Kim Carmichael, Deputy Clerk

Greenfield
LAW FIRM

October 22, 2001

Via Facsimile Only

Timothy J. Ryan
GORDON, DeFRAGA,
WATROUS & PEZZAGLIA
611 Las Juntas Street
P.O. Box 630
Martinez, CA 94553

Steven Williams
COTCHETT, PITRE & SIMON
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010

Re: Lamm et al. v. East Contra Costa Irrigation District et al.;
Boyce et al. v. East Contra Costa Irrigation District et al.
Contra Costa County Superior Court,
Consolidated Actions Nos.: C98-3774 and C99-00182

Dear Gentlemen:

This will confirm that the above referred matter has settled in it's entirety. Plaintiffs Willis and Sharon Lamm have agreed to accept the sum of Five Thousand Dollars; Plaintiffs Walt and Diane Antoniazzi have agreed to accept the sum of Five Thousand Dollars; and Plaintiffs Linda Morse and Richard Robertson have agreed to accept the sum of Five Thousand Dollars. Bringing the total settlement of the remaining Plaintiffs to Fifteen Thousand Dollars.

Plaintiffs will dismiss the action with prejudice and sign a Release of Claims. Each side will bear their own costs and attorney fees.

All plaintiffs and counsel will appear in Department 18 on Tuesday October 23, 2001 at 1:30 p.m. to place the settlement on the record. By copy of this correspondence, I am advising the Court of the settlement.

Please sign a copy of this correspondence and return to this office by fax to confirm the terms of the settlement.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Add. : TELEPHONE NO.:
TIMOTHY J. RYAN 83775
GORDON, DeFRAGA, WATROUS & PEZZAGLIA
611 Las Juntas Street, P. O. Box 630
Martinez, CA 9453
(925) 228-1400 (925) 228-3644
ATTORNEY FOR (Name): Defendant COUNTY OF CONTRA COSTA

FOR COURT USE ONLY

FILED

2001 OCT 29 P 3:55

K. ROHRE, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
BY: M. Olson Deputy Clerk

Insert name of court and name of judicial district and branch court, if any:
CONTRA COSTA COUNTY SUPERIOR COURT

PLAINTIFF/PETITIONER: Willis Lamm and Sharon Lamm and Related Cross-Actions
DEFENDANT/RESPONDENT: County of Contra Costa

CASE NUMBER:
C98-03774

REQUEST FOR DISMISSAL

- ☐ **Personal Injury, Property Damage, or Wrongful Death**
  - ☐ **Motor Vehicle** ☐ **Other**
- ☐ **Family Law**
- ☐ **Eminent Domain**
- ☒ **Other (specify):** Inverse Condemnation

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:

a. (1) ☒ With prejudice (2) ☐ Without prejudice

b. (1) ☒ Complaint (2) ☐ Petition
(3) ☐ Cross-complaint filed by (name): on (date):
(4) ☐ Cross-complaint filed by (name): on (date):
(5) ☐ Entire action of all parties and all causes of action
(6) ☒ Other: (specify):* Complaint of Willis and Sharon Lamm only as to defendant County of Contra Costa only. Each party to bear their own attorney's fees and costs

(Partial)

Date: 10/24/01

Robert Scott
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for: Plaintiffs

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for the cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☒ Dismissal entered as requested on (date): OCT 29 2001
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal **not entered** as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: OCT 29 2001

Clerk, by M. Olson, Deputy

982(a)(5)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
Robert H. Greenfield SBN114500 GREENFIELD LAW FIRM 4120 Cameron Park Drive, Suite 402 Cameron Park, CA 95682 530.672.5773	530.672.5770	FILED 2002 JUN 12 A 9:55 K. TERRY, CLERK OF THE SUPERIOR COURT COUNTY OF CONTRA COSTA, CALIF. By _____ Deputy Clerk
ATTORNEY FOR (Name): Defendant, East Contra Costa ID		
Insert name of court and name of judicial district and branch court, if any: Contra Costa Superior Court		
PLAINTIFF/PETITIONER: Willis Lamm and Sharon Lamm, DEFENDANT/RESPONDENT: East Contra Costa Irrigation Dist		

REQUEST FOR DISMISSAL

- [X] **Personal Injury, Property Damage, or Wrongful Death**
  - [ ] **Motor Vehicle**
  - [X] **Other**
- [ ] **Family Law**
- [ ] **Eminent Domain**
- [ ] **Other (specify):**

CASE NUMBER:
C98-03774 cons. with
C99-00182
C98-03774

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:

a. (1) [X] With prejudice (2) [ ] Without prejudice

b. (1) [ ] Complaint (2) [ ] Petition
(3) [ ] Cross-complaint filed by *(name)*: on *(date)*:
(4) [ ] Cross-complaint filed by *(name)*: on *(date)*:
(5) [X] Entire action of all parties and all causes of action
(6) [ ] Other: *(specify)*:*

Date: February 20, 2002

Robert Scott
(TYPE OR PRINT NAME OF [X] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

▶ /s/ Robert Scott
(SIGNATURE)

Attorney or party without attorney for:
[X] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: June 11, 2002

Robert H. Greenfield
(TYPE OR PRINT NAME OF [X] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

▶ /s/ Robert H. Greenfield
(SIGNATURE)

Attorney or party without attorney for:
[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[X] Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for the cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. [X] Dismissal entered as requested on *(date)*: JUN 12 2002
4. [ ] Dismissal entered on *(date)*: as to only *(name)*:
5. [ ] Dismissal **not entered** as requested for the following reasons *(specify)*:

6. [ ] a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   [ ] a copy to conform [ ] means to return conformed copy

Date: JUN 12 2002

Clerk, by _____, Deputy

CLERK OF THE SUPERIOR COURT