

**CONFORMED AGENDA
SPECIAL MEETING
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT BOARD OF DIRECTORS
6425 MAIN STREET, GEORGETOWN, CALIFORNIA 95634**

**TUESDAY, FEBRUARY 12, 2019
1:00 P.M.**

MISSION STATEMENT

It is the purpose of the Georgetown Divide Public Utility District to:

- Provide reliable water supplies
 - Ensure high quality drinking water
 - Promote stewardship to protect community resources, public health, and quality of life
 - Provide excellent and responsive customer services through dedicated and valued staff
 - Ensure fiscal responsibility and accountability are observed by balancing immediate and long-term needs.
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1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

The meeting was called to order at 1:00 P.M.

Directors Present: Cynthia Garcia, David Halpin, Michael Saunders, David Souza, Dane Wadle.

*Staff Present: General Manager Steven Palmer; Board Assistant Diana Michaelson.
Legal Counsel: Barbara Brenner, Churchwell White, LLP.*

The Pledge of Allegiance was led by Director Halpin.

2. ADOPTION OF AGENDA

Motion by Director Souza to adopt the agenda. Second by Director Garcia.

Public Comment: There was no public comment.

Roll call vote was taken, and the vote was as follows:

Garcia: Aye

Halpin: Aye

Saunders: Aye

Souza: Aye

Wadle: Aye

The motion passed unanimously.

3. PUBLIC FORUM – Any member of the public may address the Board on any matter within the jurisdictional authority of the District. Public members desiring to provide comments,

must be recognized by the Board President, and speak from the podium. Comments must be directed only to the Board. The public should address the Board members during the public meetings as President, Vice President, or Director, followed by the Board member's individual last name. No disruptive conduct shall be permitted at any Board meeting. Persistence in disruptive conduct shall be grounds for summary termination, by the President, of that person's privilege of address. Comments shall be limited to three minutes per person, or such other time limit as may be imposed by the President, to enable the Board to complete its agenda within a reasonable period of time.

*Steven Proe spoke regarding incomplete information the Directors may be receiving. He provided a written document which is included as **Attachment 1** to these Minutes.*

The Board adjourned to closed session at 1:11 P.M.

4. ADJOURN TO CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL

A. Existing Litigation – Pursuant to Paragraph (1) of Subdivision (d) of Government Code Section 54956.9: Jean Lee Choo Leow v. Georgetown Divide Public Utility District.

The Board returned to open session at 2:16 P.M. with no reportable action taken during the special closed session meeting.

5. NEXT MEETING DATE AND ADJOURNMENT – Next Regular Meeting is February 12, 2019, at 2:00 P.M. at the Georgetown Divide Public Utility District, 6425 Main Street, Georgetown, California 95634.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact Steve Palmer by telephone at 530-333-4356 or by fax at 530-333-9442. Requests must be made as early as possible and at least one-full business day before the start of the meeting. In accordance with Government Code Section 54954.2(a), this agenda was posted on the District's bulletin board at the Georgetown Divide Public Utility District office, at 6425 Main Street, Georgetown, California, on February 8, 2019.



Steven Palmer, PE, General Manager

3/12/19

Date

February 12, 2019 Special Board Mtg. Minutes
Attachment 1

Leow Case/ (GDTA) Georgetown Divide Taxpayers Association Public Form submittals
for Feb. 12. 2019 GDPUD Board Meetings

From: Steven Proe (trails-first@att.net)

To: spalmer@gd-pud.org

Date: Monday, February 11, 2019, 5:51 PM PST



Dear General Manager: Of Note, jhanschild@gd-pud.org is still not assigned to Mr. Michael Saunders it reads " jhanschild@gd-pud.org" fyi.

To Who it May Pertain at the Georgetown Divide Public Utility District this issue will be spoken on at the Board Meetings set for February 12. 2019, including Public Forms.

Please have copies available to the Public, Board Members and Staff at/for these meetings.

The purpose of this information is so that the all of the Board Members Public, and Staff at these meetings will be able to read the actual correspondences that have been going on in the negotiations with their Counsels.

It is my opinion that the above parties may not have been given a fully accurate information as to what may be reported to them by staff maybe substantially different than the actual correspondences that exist between parties that have filed a claim/writ against the Georgetown Divide Public Utility District (GDPUD) .

I am concerned that certain entities in GDPUD may be extending negotiations that may be beneficial to them and detrimental to the GDPUD it's Rate Payers and the Public at large.

It has also been brought to my attention that statements supposedly made as instructions from the Board (that they (Board) are not interested in settling the ongoing action re: (GDTA) Georgetown Divide Taxpayers Association vs GDPUD) that may have been made in the ongoing negotiations for the same reasons as above, especially when there was not anything mentioned after the last Closed Session of the GDPUD Board Members and staff of no action reported at the conclusion of the Closed Session Meeting of Jan. 8, 2019.

These statements supposedly made by the Board apparently were made after the last Closed Session Meeting would appear that Counsel, Staff and others may have been meeting and or discussing these issues without having another Closed Session Meeting.

To me if these statements are correct and I ask the Board to investigate these matters. It is especially important at this time as it may be time to take immediate action to stop any potential disruption to the GDPUD water supply to the Auburn Lake Trails Treatment

Plant.

It is my opinion that the above parties may not have been given a fully accurate information as to what may be reported to them by staff maybe substantially different than the actual correspondences that exist between parties that have filed a claim/writ against the Georgetown Divide Public Utility District (GDPUD) .

I am concerned that certain entities in GDPUD may be extending negotiations that may be beneficial to them and detrimental to the GDPUD it's Rate Payers and the Public at large.)

Sincerely

Steven Proe

----- Forwarded Message -----

From: Freda D. Pechner <mylawyer@wildblue.net>
To: 'Steven Proe' <trails-first@att.net>
Sent: Thursday, February 7, 2019, 10:56:12 AM PST
Subject: FW: Leow Case

Steve: I never talked to Dawn Hodson at the Mountain Democrat - she sent me an email regarding the article I published in the Placerville News Wire, but did not identify herself as a reporter for the Mountain Democrat, I informed her that I did not send anything to the Placerville News Wire, since I had never heard of it. I asked her to send me a link - she refused. She did not reply to my last email. Her article in the Mountain Democrat is a total lie - but i have since learned that it what she does, lie, lie, lie. I am sending this to you and if you want to forward to the Placerville News Wire, feel free. My client offered to settle per the attached, a better deal than GDPUD will ever get in court. You can see the rude email I keep getting from the GDPUD attorney, very unprofessional. If GDPUD does not want to settle for the nominal sum of \$30,000, then the new water pipeline will be removed by February 15. I do not know if water in that pipeline goes to ALT or the new treatment plant, if it does, that won't be happening after Feb. 15. I sent an email to the ALT Homeowner's Association, assuring them that GDPUD would not allow any interruption in service, they will just reconnect the old Kaiser Siphon. If it does not, then there will be a lovely pond on the property, and then GDPUD will do some quick work to reconnect the Kaiser Siphon. If the water does flow through the new pipeline to ALT, if i lived there, I would certainly be calling up the Board and tell them to get this settled right now. Go ahead and spread the word, since you can talk to people I cannot talk to, such as any board member or employee of GDPUD. Their attorney has cost them thousands of dollars with no end in sight, now they are paying him to defend KASL Consulting Engineers and T&S Construction, per their contract, more every day. Obviously, it is not in his best interests to settle the case right now, that ends the attorney's fees they would be paying him.

Freda D. Pechner
Attorney at Law
P.O. Box 700
Garden Valley, CA 95633
mylawyer@wildblue.net
(530) 333-1644 (message only)

From: Freda D. Pechner [mailto:mylawyer@wildblue.net]
Sent: Wednesday, February 06, 2019 5:43 PM
To: 'Arnold J. Wolf'
Subject: RE: Leow Case

The depositions did not relate to damages, and will also inquire into the irrevocable license issue, which was not raised as an affirmative defense until after the trial. If your clients do not appear at their properly noticed depositions on the damages issue, then I will move to compel and seek sanctions. As to settlement, my client will accept the terms of the ADR settlement agreement, attached hereto, reached in 2011, when GDPUD was under the mistaken impression that it owned a prescriptive easement in my client's property. In addition, GDPUD will waive the costs claimed in the unserved Memorandum; I will forego filing the motion for relief from default in failing to file a motion to strike until February 15, 2019 to allow GDPUD to consider this offer. GDPUD now knows it did not have a prescriptive easement in my client's property; all of the evidence is clear that the Board, Mr. Scroggs, and Mr. Spinella relied upon that now-proven false assertion - you are very well aware that GDPUD lost on that issue, a loss affirmed by the appellate court when it did not modify the judgment, notwithstanding your argument at the appellate hearing that the trial court was in error because GDPUD had a prescriptive easement. It does not, and the trial court will instruct the jury that GDPUD did not have a prescriptive easement when it built the new water pipeline. The Project Manual was false in representing that GDPUD had a prescriptive easement for the construction. Mr. Wright lied, intentionally or negligently, when he asserted GDPUD had a prescriptive easement. Hank Wright, former GDPUD general manager, lied, intentionally or negligently, when he asserted that GDPUD had a prescriptive easement in my client's property. Every single employee of GDPUD, T&S Construction, and KASL Consulting Engineers should have known that GDPUD did not have a prescriptive easement, and they all should have known they were trespassing when they built that line in 2007. They all should have known GDPUD had the very limited right to an irrevocable license in the exact location of the Kaiser Siphon and, given the amended answer, did know the limitations of an irrevocable license, which was not the same as a prescriptive easement. Every case considering replacement of a structure subject to an irrevocable license has held that it is not an easement, the right is to replace on the

original footprint. If you really believed that the judgment granted GDPUD the right to retain the 2007 pipeline in the current location, you would have sought an order to that effect. You know and I know that the court would not grant any such order in favor of GDPUD, because the judgment was very clear, as were Judge Brooks and Judge Stracener on several occasions, that a jury will decide the location and perimeters of the irrevocable license. A tactical decision was made by the 2010-2011 Board members to ignore the many, many specific findings made by the court that the only way GDPUD could establish the right to the 2007 construction was to file a cross-complaint in choosing not to do so. The attached offer gives GDPUD that which it will never get in the pending litigation, an express easement and the right to keep the pipeline where it is currently located, for the nominal sum of \$30,000. If they want to be reasonable, now is the time; after February 15, 2019, there will never be an offer extended for an express easement to the existing trespass, which will be remediated.

Freda D. Pechner

Attorney at Law

P.O. Box 700

Garden Valley, CA 95633

mylawyer@wildblue.net

(530) 333-1644 (message only)

From: Arnold J. Wolf [<mailto:awolf@freemanfirm.com>]

Sent: Wednesday, February 06, 2019 3:15 PM

To: Freda D. Pechner

Cc: Barbara Brenner; Steven Palmer; Michael N. Morlan; Angela Yess

Subject: RE: Leow Case

Regarding the Notices, you already took their depositions and don't have the right to redepose them. If you have any authority to the contrary, please provide it.

Re settlement, I've requested on at least two occasions in the last month a demand, but received in response a threat to "remove" the replacement pipeline. If you want to try to settle the case, please provide a demand that the Board can consider.

From: Freda D. Pechner <mylawyer@wildblue.net>

Sent: Wednesday, February 6, 2019 2:39 PM

To: Arnold J. Wolf <awolf@freemanfirm.com>

Subject: RE: Leow Case

Attached is the Notice of Taking the depositions of Mr. Scroggs and Mr. Spinella, which will be limited to their liability for plaintiff's damages for the unlawful 2007 construction. Mr. Scroggs has testified that the new pipeline could have been built in the same location; in hindsight, both he and Mr. Spinella likely wish they would not have believed GDPUD's false claim that it had a prescriptive easement in my client's property. In response to your question, I am confident that the trial court will properly instruct the jury on the law, the jury will follow the law, and damages for the unlawful construction will be awarded against KASL and T&S. The jury's determination will, as a collateral matter, bar any claim that the removal of the unlawful 2007 pipeline within the next 2 weeks was improper. GDPUD can put the line where it belongs, on the original footprint of the Kaiser Siphon, if it has chosen not to do so by the time of trial. If GDPUD decides that it would like the line to remain where it is, and end this litigation as to all defendants, my client is willing to entertain all monetary offers for a permanent, written easement for the 2007 pipeline. Those are the only two options for the 2007 trespass - GDPUD buys an easement, or the line will be removed from the current location. I really don't understand why GDPUD would rather pay attorney's fees and costs which I believe, at this point, far, far exceed the cost to buy an easement, which it should have done in the first place, but I obviously have no control over the decision to pay you instead of finally resolving this matter in a manner very favorable to GDPUD, at significantly less expense than it will incur to put the pipeline where it belongs. Your insulting comments do not change the facts, the law, or the judgment.

Freda D. Pechner

Attorney at Law

P.O. Box 700

Garden Valley, CA 95633

mylawyer@wiidblue.net

(530) 333-1644 (message only)

From: Arnold J. Wolf [<mailto:awolf@freemanfirm.com>]

Sent: Wednesday, February 06, 2019 1:22 PM

To: Freda D. Pechner

Cc: Steven Palmer; Barbara Brenner; Michael N. Morlan; Angela Yess

Subject: RE: Leow Case

Albert Einstein's definition of insanity was doing the same thing over and over and expecting a different

result. The arguments in your latest diatribe are the same ones you made before at trial, in the multiple post-trial motions you filed after you lost, and in your appeal, which resulted in an Opinion that recognized the District's "property right" to construct the pipeline where it did. And you expect a different result in any proceeding that's focused on the District's right to operate the replacement pipeline which you unsuccessfully argued was "unlawful"?

From: Freda D. Pechner <rnylawyer@wildblue.net>
Sent: Tuesday, February 5, 2019 3:33 PM
To: Arnold J. Wolf <awolf@freemanfirm.com>
Subject: RE: Leow Case

Mr. Wolf: I continue to be astorished at your incorrect belief that GDPUD obtained any affirmative rights in my client's property under the judgment, which was two lines: "IT IS HEREBY ORDERED & DECREED: Judgment is entered in favor of Defendant GDPUD and against Plaintiff." The judgment was affirmed, without modification; it says what it says, nothing more, nothing less. GDPUD prevailed in the action, but that did not grant GDPUD any rights, it simply denied my client's claims for inverse condemnation and damages. GDPUD was permitted to file an amended answer to allege the "irrevocable license" granted by the court; the Nineteenth Affirmative Defense stated: "The Complaint, and each and every cause of action alleged therein, is barred by the fact that Georgetown had an irrevocable license to maintain, repair, and replace the pipeline on the property, and that Georgetown did not exceed the license in maintaining, repairing, and replacing the pipeline." This affirmative defense made no mention of the 2007 pipeline. There is no mention of this affirmative defense in the judgment, nor any reference to the 2007 water pipeline. On the contrary, when the court denied the motion for summary judgment, as to KASL Consulting Engineers nor T&S Construction, it held that there remained a triable issue of fact as to the whether or not the construction of the 2007 water pipeline was within the license area. Thus, the judgment cannot be interpreted to grant permission for the 2007 water pipeline to remain on my client's property, assuming the trial court accepted the license affirmative defense. California law requires parties to mitigate their damages; restoration of the building site by removal of the trespass will do so, and likely reduce the damages the jury will award against KASL and T&S. I am confident the court will instruct the jury that, under *Stoner v. Zucker*, any replacement for dilapidation must be constructed in the same place as the Kaiser Siphon, and since the 2007 line was a significant distance from the license area, it was not within the license area. If GDPUD expected to gain a right to construct the 2007 pipeline, it should have filed a cross-complaint, but it did not. Now a jury would decide the scope of the license, as to KASL and T&S. Such judgment does not preclude GDPUD from acquiring a prescriptive right it has long sought, and always been denied. You know that the trial court stated, on more than one occasion, including the Statement of Decision attached to the judgment, that GDPUD had not filed a cross-complaint, which is the only means by which it could have been granted the right to maintain the 2007 pipeline on my client's property. I assume you understand basic, well-established law: the appellate court did not have the jurisdiction to grant GDPUD what the trial court did not. GDPUD is no longer a party; as a matter of law, it does not have any right to file a cross-complaint. Neither KASL Consulting Engineers nor T&S Construction has any right to file a cross-complaint to establish a right for GDPUD to maintain the 2007 trespass. GDPUD has the right to use the Kaiser Siphon; there will

be no interference with that right, as I have informed you on several occasions. If GDPUD wants to use my client's property to transmit water, as far as I am aware, it can easily re-connect the Kaiser Siphon, and, quite frankly, I expected that it would have already done so, given the notice provided several months ago. Your client does not own the property, only the limited license to use the Kaiser Siphon, and, if dilapidated, to replace it on the original footing, as held in the Stoner v. Zucker case. You have made many attempts to convince the court that the judgment gave GDPUD the right to construct the 2007 trespassing line, but all of your attempts have been rejected, including your argument to Judge Holmers at the case management conference on Friday. I am sure you recall that his response was that he understood your argument; consistent with all other judges, he did not indicate that GDPUD obtained any right to maintain the 2007 water pipeline. The 2007 materials will be removed with great care so as not to damage them; the pipes and other equipment will be placed near the permissive Kaiser Siphon, in the event your client would like to use those materials for a new pipeline, within the license area. Obviously, if my client does nothing, GDPUD will gain a prescriptive right to the 2007 water pipeline, which is simply unacceptable, as you well know; I really don't know what else you expect her to do to protect her private property rights. There will be no destruction of public property, it will be moved to the proper location. Given these facts, I doubt there will be any criminal or civil consequences to my client when she will be acting in an entirely lawful manner, within the perimeters of the judgment in removing the trespass on her property to a place where it will not constitute a trespass.

Freda D. Pechner

From: Arnold J. Wolf [<mailto:awolf@freemanfirm.com>]
Sent: Tuesday, February 05, 2019 2:13 PM
To: Freda D. Pechner
Cc: Steven Palmer; Barbara Brenner; Michael N. Morlan; Angela Yess
Subject: RE: Leow Case

Freda, apparently you are bound and determined to destroy public property that will interfere with the delivery of water used by thousands of people. As I observed in the letter I sent you last year, in addition to the criminal consequences of your threatened action, the civil liabilities you'd incur would be enormous. Judge Brooks ruled against you and found that Georgetown had the right to replace the pipeline exactly where it did. The Third District Court of Appeal ruled against you and ruled that Georgetown had the right to replace the pipeline exactly where it did. The pipeline is not "unlawful." Your threatened removal is.

From: Freda D. Pechner <mylawyer@wildblue.net>
Sent: Tuesday, February 5, 2019 1:44 PM
To: Arnold J. Wolf <awolf@freemanfirm.com>
Subject: RE: Leow Case



2/12/2019

Mr. Wolf: my client hoped that the newly elected GDPUD board would be more reasonable in resolving this dispute, and is obviously disappointed that is not the case. Therefore, as required by law, she will mitigate her damages by restoring her building site. The fire season has ended; I understand that the project to remove the unlawful water pipeline will be completed by February 15, 2019, weather permitting. I expect to be notified upon completion of the project, and will obtain a new appraisal of the damage to her property, from the date of the trespass until February 15, 2019 (or the date the building site is restored, whichever is later). She will then be in a position to provide a settlement demand, as her damages will be determinable, once the trespass has been removed. This case is set for jury trial; Plaintiff posted the required deposit on February 21, 2013. The South Lake Tahoe branch of the court is closed today; I will get a hearing date for the motion for relief from default in failing to file a motion to tax costs tomorrow. Notwithstanding the failure to serve the memorandum, my client will pay \$989.17 to your client trust account, as set forth in my October 15, 2018 letter. If the court grants the motion to strike the entire memorandum because it was not served, I will expect return of those funds from your client.

Freda D. Pechner

Attorney at Law

P.O. Box 700

Garden Valley, CA 95633

mylawyer@wildblue.net

(530) 333-1644 (message only)

From: Arnold J. Wolf [<mailto:awolf@freemanfirm.com>]

Sent: Tuesday, January 08, 2019 1:42 PM

To: Freda D. Pechner

Cc: Barbara Brenner; Steven Palmer

Subject: Leow Case

Freda, please provide a settlement demand.

Arnie



adr settlement.pdf

154.6kB

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF EL DORADO
ADR/CASE MANAGEMENT DEPARTMENT

3 JEAN LEE CHOO LEOW,)
4 Plaintiff(s)) Case No. PC20100019
5 vs.) DISPUTE RESOLUTION CONFERENCE
6 GEORGETOWN DIVIDE,) REPORT
7 Defendant(s))

8 AGREEMENT

9 The parties agree:

- 10 1. All statements made during the Dispute Resolution
11 Conference and any documents produced in the course of the
12 conference are confidential.
13 2. All parties agree that any Settlement will be enforceable.
14 The parties agree that the above referenced case is:

15 **SETTLED** A Notice to file Dismissal and/or Order to Show Cause will
16 be set for 45 days from the date of this Report, or in cases of a Conditional
17 Settlement as Set forth in Rule 3.1385, C.R.C. a "Conditional Dismissal".

18 **PARTIALLY SETTLED** (explain below)
19 **NOT SETTLED**

20 3. The substance of any Agreement reached is as follows:

21 *Defendant to pay plaintiff a total of \$20,000*
22 *within 60 days of today's date. (see pg 3)*
23 *from e. law by order*
24 *to receive, always paid*

25 Plaintiff

Defendant

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant

Attorney for Plaintiff

Attorney for Defendant

Date: Jan 27 2011

COMPLIANCE WITH CRC 201-203.5 IS REQUIRED. DO NOT WRITE ON THE BACK SIDE OF THIS FORM.

www.eldoradocourt.org

AAI

3

- ② Plaintiff will create an easement for 20' across and above existing pipeline subject to approval by GDPUD Board.
- ③ Defendant will pay for cost of survey, legal description and deed of easement for Plaintiff's signature.
- ④ This agreement may be enforced by any party pursuant to CCP § 4616 subject to #6
- ⑤ Each party will bear their own fees & costs herein.
- ⑥ Settlement funds subject to approval by board of GDPUD.
- ⑦ Defendant GDPUD shall pay \$26,350.00 of settlement.
- ⑧ Defendant KASL shall pay \$3,650.00 of settlement.
- ⑨ Settlement does not extend to J.S. Contractor and is contingent upon said defendant's agreement to waive fees & costs upon dismissal of action. If said defendant so waives, entire action against all defendants to be dismissed.

ATD 