

**CONFORMED AGENDA
REGULAR MEETING
JOINT MEETING OF
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT FINANCE COMMITTEE
AND
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT BOARD OF DIRECTORS
6425 MAIN STREET, GEORGETOWN, CALIFORNIA 95634
TUESDAY, FEBRUARY 12, 2019
2:00 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 2:16 P.M.

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

Finance Committee Members Present: *Rick Gillespie, Tom Crawford, Sierra Nyokka.*

Staff Present: *General Manager Steven Palmer; Management Analyst Christina Cross; Operations Manager Darrell Creeks; Board Assistant Diana Michaelson. Legal Counsel: Barbara Brenner, Churchwell White, LLP.*

The Pledge of Allegiance was led by Director Saunders.

2. ADOPTION OF AGENDA

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

Director Garcia asked if there was an item on the agenda that speaks to the Finance Committee.

Public Comment: *Steven Proe asked if the audit was available for the public.*

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. The Board will hear communications on matters not on the agenda, but no action will be taken. 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.

*Steven Proe restated his comments from the 1:00 P.M. and submitted some emails which are included as **Attachment 1** to these Minutes. Special Meeting. He noted a discrepancy on the District website link to email addresses of Board Members.*

Phyllis Polito spoke regarding irrigation water.

*Cherie Carlyon read a letter to the Board, which is included as **Attachment 2** to these Minutes.*

Mr. Proe spoke regarding the rate study.

4. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations or presentations.

- 5. CONSENT CALENDAR** – Any member of the public may contact a Board member prior to the meeting to request that an item be pulled from the Consent Calendar.

Director Garcia requested that Items 5.A.2. and 5.D. be pulled from the Consent Calendar. Director Wadle requested that Items 5.A.1. and 5.B.1. and 5.B.2. be pulled.

A. Approval of Minutes

1. Regular Meeting of December 11, 2018

Mr. Proe stated that the acronym CASL should be corrected to KASL.

Motion by Director Halpin to approve the December 11, 2018 Minutes with the correction noted. Second by Director Souza.

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.

2. Special Meeting of January 8, 2019

Director Garcia pointed out corrections as follows: 1) Darrell Creeks was not in attendance at the meeting; 2) the document listed as the year 2000 should be 2011; 3) the name Phil Wright should be Bill Wright.

Motion by Director Halpin to approve the Minutes as corrected. Second by Director Garcia.

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. Regular Meeting of January 8, 2019

Approved on Consent.

B. Financial Reports

1. Statement of Cash Balances

Management Analyst Christina Cross presented the staff report.

Ms. Carlyon had some questions regarding the report.

Motion by Director Garcia to approve the Statement of Cash Balances. Second by Director Saunders.

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.

2. Month-End Cash Disbursements Report

Ms. Christina Cross described the report. She noted that the report shows the checks that were cut from the last Board meeting through the end of January.

Motion by Director Halpin to approve the Month-End Cash Disbursements Report. Second by Director Garcia.

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.

C. Accept Water Conservation, Supply Reliability, and Environmental Protection Project and Direct Filing of the Notice of Completion

Possible Board Action: Adopt Resolution 2019-10.

Approved on Consent.

D. Remove Cynthia Garcia and Michael Saunders from Finance Committee

Possible Board Action: Adopt Resolution 2019-11.

General Manager Steve Palmer presented the staff report.

Director Garcia requested that the item be revised to reflect that the Board accepts the resignations of Directors Garcia and Saunders from the Finance Committee. She also asked that the resolution be corrected to reflect that her term on the Finance Committee began on October 11, 2017.

Public Comment:

Mr. Proe asked for clarification regarding the role of Director Saunders as Board Liaison to the Finance Committee.

Bonnie Neeley commented regarding efficiencies at the Board meetings.

Sierra Nyokka and Steve Proe had suggestion regarding availability of Board packets for the public.

Motion by Director Saunders to approve as corrected Resolution 2019-11 accepting the resignations of Directors Garcia and Saunders from the Finance Committee. Second by Director Garcia.

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.

E. Approve Expense Reimbursement for Directors to Attend CSDA California Environmental Quality Act Training

Possible Board Action: Adopt Resolution 2019-12.

Approved on Consent.

Motion by Director Halpin to approve Consent Calendar Items 5.A.3., 5.C., and 5.E. Second by Director Garcia.

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.

6. INFORMATIONAL ITEMS

A. Board Reports

Director Saunders reported that he attended the recent Gold Country CSDA workshop and found it beneficial. He also reported that he attended a hearing at the Capitol for water taxes. He said that there would be a meeting at the Grange in Coloma the next day hosted by the Sierra Institute, and that GDPUD would have its Strategic Workshop at the Cool Hall on February 16.

Director Garcia reported that she also attended the CSDA workshop and found it very well run and informative. She said the town hall meeting is going to be on February 17 at the IOOF Hall in Georgetown. She also reported attending the Orenco training in Napa regarding portable wastewater solutions saying that she had sent some information to the General Manager. She received continuing education credits for participating in the training.

Director Wadle said that he's watching legislation, especially around capacity charges and development impact fees that could potentially impact the District.

B. General Manager's Report

Mr. Palmer noted the upcoming Board goal-setting workshop scheduled for February 16. He reported that his nomination to serve on the ACWA Region 3 board was accepted.

Ms. Carlyon, Ms. Neeley, and Mr. Proe commented regarding workshops.

C. Operation Manager's Report

Darrell Creeks presented the Operation Manager's Report stating that things are going well and Stumpy has been spilling.

Water Resources Manager Adam Brown explained the new Zone Report and said that the Annual Wastewater Report has been submitted to the State.

Mr. Proe and Ms. Carlyon had questions and comments.

D. ALT Treatment Plant Update

Engineering Consultant George Sanders gave a status report of work done at the plant in January and provided a slide show of recent photos. He reported on the status of the latest payments from the State Water Board.

7. NEW BUSINESS

A. Award Construction Contract for Recoating Garden Park Water Storage Tank to Olympus and Associates in the Amount of \$114,565

Possible Board Action: Adopt Resolution 2019-15.

Mr. Creeks presented the staff report.

Director Saunders commented regarding posting RFPs.

Director Garcia commented regarding the water that is released prior to maintenance on storage tanks. She asked who does the construction inspection and management, and Mr. Creeks said that an RFP was posted for that service.

Director Wadle commented that this project is an example of planned maintenance with funds set aside for a specific requirement.

Public Comment:

Mr. Proe asked how to find closed projects on the GDPUD website.

Ms. Carlyon inquired regarding the difference between the cost of the last recoating project and this one.

Motion by Director Halpin to award the contract for the Garden Park Water Storage Tank recoating project to Olympus and Associates. Second by Director Garcia.

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.

- B. Approve Amendment No. 1 to the Professional Services Agreement with NEXGEN Utility Management in the Amount of \$77,880 for Construction Management Services for Fifty-Three (53) Additional Working Days at the Auburn Lake Trails Water Treatment Plant Construction Project**

Possible Board Action: Adopt Resolution 2019-13.

Mr. Sanders presented the staff report.

Director Saunders asked if this would be the maximum time needed to complete the project, and Mr. Sanders said that he expects that it will be.

Director Wadle commented that this amendment is still within budget and there was no need to touch the contingency.

Public Comment: *There was no public comment.*

Motion by Director Halpin to approve Resolution 2019-13. Second by Director Souza.

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.

- C. Receive and File FY 2017-18 Audited Financial Statements**

Possible Board Action: Receive and File.

Mr. Palmer introduced Brandon Young of LSL who presented a synopsis of the audit report. The only issue noted was the ALT Water Treatment Plant project costs which should have been capitalized, requiring a material journal entry.

Director Saunders asked if the mid-year corrections regarding processes were made. Mr. Young responded that the auditor had no formal mid-year recommendations. The recommendations that were not reportable conditions were corrected at year-end.

Director Souza commented that there were no red flags other than the required journal entry.

Director Wadle noted that there were no deficiencies in internal controls other than the one noted.

Rick Gillespie, chair of the Finance Committee, was pleased that there were very few suggestions by the auditor, a clear change from prior years.

Director Wadle was also pleased saying that the difference between this report and previous years was like night and day and commended staff.

Director Garcia expressed appreciation for LSL and District staff.

Public Comment:

Ms. Carlyon inquired regarding the audit process and testing.

Mr. Proe commented regarding the item that required the journal entry.

The Board received the report.

D. Adopt a Resolution Freezing the 2019 Treated and Untreated Water Rates at the 2018 Rates, and Provide Direction on a Review of the Capital Replacement Program

Possible Board Action: Adopt Resolution 2019-14 and Provide Direction.

Mr. Palmer presented the staff report.

Director Souza commented that rate payers had requested the freeze and the Board is responding.

Director Saunders commented regarding irrigation costs and suggested looking at changing the tax ratio.

Director Halpin commented that the GM brought something back to the Board that was responsive to the direction provided at the last Board meeting.

Director Garcia stated that she felt this discussion was outside the scope of the agenda and the Board should simply take action on the Resolution without discussing second

steps laid out by the GM. Barbara Brenner, District Legal Counsel, commented that the agenda includes “provide direction on a review of the Capital Replacement Program” and allows for such discussion.

There was some discussion by Board members and Finance Committee members on the type of entity to do the audit, an engineering firm versus accounting firm. The discussion included the issue of capital replacement numbers.

Public Comment:

An audience member spoke in favor of a team of subject matter experts.

Phyllis Polito spoke regarding items on the list.

Ms. Carlyon spoke regarding formulas used in the spreadsheet.

Ms. Neeley asked that discussions stick to the facts.

Mr. Proe had numerous comments.

Director Saunders said the first part of the discussion is whether the rates can be lowered and if so, how much. The second part of the discussion is how best to determine what the actual replacement costs will be without spending a lot of money in the process, or whether something else besides capital replacement should be looked at.

Motion by Director Saunders to approve Resolution 2019-14. Second by Director Garcia.

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

Garcia: Aye
Halpin: Aye
Saunders: Aye
Souza: Aye
Wadle: No

The motion passed 4-1.

There was much discussion regarding what direction should be given to staff at this point. It was agreed that the General Manager would post an RFP (Request for Proposals) for an engineering firm to calculate capital replacement cost. Staff will rank the proposals and bring them back to the Board for review.

- 8. BOARD MEMBER COMMENTS, REQUESTS FOR ADDITIONS TO FUTURE MEETING AGENDAS AND REQUESTS FOR INFORMATION OR RESEARCH TO BE COMPLETED BY STAFF** – Opportunity for Board members to discuss matters of interest to them and provide input for future meetings as well as report on their District-related meeting attendance.

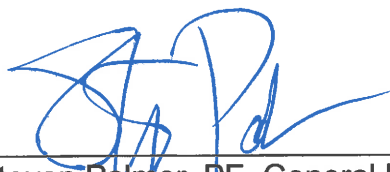
Director Saunders requested that a Management Analyst report be added to the agenda. He also asked that the Finance Committee continue to be involved in the accounting software bid evaluation process. He then commented that the Board needs to work together to resolve issues and speak as a Board and not as individuals. He asked that budget information be provided more than 72 hours prior to the Board meeting. Request for agenda topics: inactive meter policy, including the current policy; update Finance Committee resolution, including adding language that the term of office automatically expires when a member is elected to the Board of Directors.

In response to a request from the General Manager at the last Board meeting, Director Garcia provided a handout (**Attachment 3**) listing the financial reports she would like to see included at Board meetings. She asked Mr. Palmer where the cost of the strategic planning workshop is shown in the budget. He stated that it is within the budget and falls under Outside Services. She asked that the Finance Committee resolution be put on a future agenda and asked that a draft agenda packet be provided a week earlier.

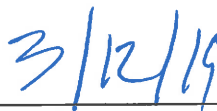
9. **NEXT MEETING DATE AND ADJOURNMENT** – Next Regular Meeting is March 12, 2019, at 2:00 P.M. at the Georgetown Divide Public Utility District, 6425 Main Street, Georgetown, California 95634.

The meeting adjourned at 5:14 P.M.

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

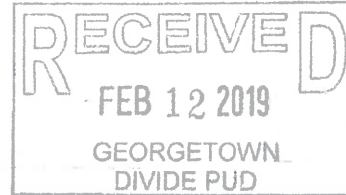


Date

February 12, 2019 Regular 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, jhanschid@gd-pud.org is still not assigned to Mr. Michael Saunders it reads " jhanschid@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 <mylawyor@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
 vs.) DISPUTE RESOLUTION CONFERENCE
 5) REPORT
 GEORGETOWN DIVIDE,)
 6 Defendant(s))
 7)

8 AGREEMENT

9 The parties agree:

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

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

15 **PARTIALLY SETTLED** (explain below)
 NOT SETTLED

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

17 *Defendant to pay plaintiff a total of \$20,000*
within 60 days of today's date. (see pg 3)
from e. law in order
to receive attorney's fee

19 Plaintiff

Defendant

20 Plaintiff

Defendant

21 *Fred Deane*
 22 Attorney for Plaintiff

M. J. W. S.
 22 Attorney for Defendant

23 Attorney for Plaintiff

Attorney for Defendant


24 Date: Jan 27 2011

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

ATI

3

- ② Plaintiff will create an easement for 20' across and above existing pipeline subject to approval by GSDPD 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 § 1462 subject to #6
- ⑤ Each party will bear their own fees & costs herein.
- ⑥ Settlement funds subject to approval by board of GSDPD.
- ⑦ Defendant GSDPD shall pay \$26,350.00 of settlement.
- ⑧ Defendant KASL shall pay \$3,650.00 of settlement.
- ⑨ Settlement does not extend to P/S Contractor and is contingent upon said defendant's agreement to waive fees & costs upon dismissal of action. If said defendant so occurs, entire action against all defendants to be dismissed.

HIT 

Please make this A PART
OF the Record

February 12, 2019 Regular Board Mtg. Minutes
Attachment 2

GDPUD Board of Directors meeting Feb 12, 2019 2pm Public comments.

As of today, I have not received a response to my presentation to the board on Dec 11th concerning the VDT contract and my Jan 8th questions on the \$90,000 in Legal fees that were over the budget.

The public should be able to get their concerns answered when they take the time to come before the board to ask questions.

Also, I am very concerned about my latest PRA request for information on the Rate Study Capital Replacement Program spreadsheet. I have been told by the GM that I can not have this spreadsheet because it is the proprietary property of RCAC, the rate study consultant. I ask, what is GDPUD hiding by not giving me the spreadsheet? So much for an honest rate study report, when a customer cannot determine how the rates were calculated and therefore, how the rate study was completed. I guess Steve Proe's attorney will need to subpoena the spreadsheet.

Thank you,

Cherie Carlyon

Director Garcia's list of financial reports requested to be included in the monthly BOD's meeting materials. February 12, 2019

At the January 2019 Board meeting, our General Manager, Steven Palmer requested input from the Board members as to what to include in his monthly Financial Reports. Here is my list.

1. In addition to the Cash Flow Statement, an up to date Financial Statement, with Income Statement and Balance Sheet, presented in the accrual method, covering from the first day to the last day of the previous month.
2. An Income Statement with the year-to-date budget comparison.
3. A list of the reports: financial, compliance, operations, and personnel that were filed during the month, with the name of the agency, due date, and filing date.
4. A detail of assets purchased and assets sold or disposed of during the month with the detail of resulting fund balance changes.