

## Landowner's Diligence Pays Off

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Weighing in at 18,000 pages, the detailed history of the Salinas Valley Water Project can make for dry reading. But Kevin Piearcy slogged through every page. Piearcy is one of more than three dozen Salinas Valley property owners who prevailed in their lawsuit against Monterey County over the assessments they were being charged to pay for the water project. And Piearcy worked doggedly to assist in the lawsuit, absorbing the contents of all 18,000 pages.

"I was incredibly impressed with Kevin Piearcy's endurance," said Andrew Hitchings, a Sacramento attorney representing the Salinas Valley Property Owners for Lawful Assessments. "He put in an incredible amount of work." The work paid off when Superior Court Judge Michael Fields signed a stipulated agreement this month that resulted in lowered assessments for Piearcy and his neighboring property owners.

"We were told it was a waste of time, that it had no merit," said Piearcy. "I think they were surprised anyone would be willing to take it as far as we did. The county attacked me personally and attacked our group. They told us we should just go away and stop jeopardizing the project." While they won the lawsuit, their fight is not finished. The group is now trying to find out exactly how much the county spent trying to defend itself in the legal action. As part of the settlement, the county agreed to pay the group's own legal fees, a total of \$265,000.

In January, the group filed a Freedom of Information Action request for county records related to the lawsuit, but Piearcy said the county has not yet provided all the information. The Herald has also sought an accounting of the county's costs through the Monterey County Auditor-Controller's Office, but the numbers were not available by Friday. Based on the information his group has received so far, Piearcy said he believes the county spent more than \$1 million in legal fees and for consultants to defend itself.

At the heart of the complicated legal issue were the annual fees charged to Salinas Valley landowners to pay for the Salinas Valley Water Project, a program that would reconfigure the dam at Lake Nacimiento and install an inflatable dam on the Salinas River near Marina. The project would allow the Monterey County Water Management Agency to store water downriver for use during dry summer months. The project is considered a solution to the seawater intrusion problems that plague the underground water supplies in the northern end of the Salinas Valley. The project was approved in 2003 when a majority of property owners in the valley voted to accept the assessments.

But Piearcy and his neighbors, most of them farmers in the area between Chualar and Gonzales, claimed the assessments they were being charged were unfair. The cost-per-acre assessments vary throughout the Salinas Valley, depending on where properties are located. The size of the assessment is supposed to be based on the level of "benefit" the property owners would gain when the water project is built. Piearcy and his neighbors said the underground water supplies beneath their properties are not threatened by seawater intrusion, yet many of them were paying the higher assessments.

### Landowners' action

Soon after the ballot measure was approved, the landowners banded together and sued the county.

"What was difficult about this case is that, typically, a court is going to defer to the agency because their decision was a legislative decision," said Hitchings. And, given the lengthy and complicated documents presented to the court, Fields could have simply ruled that water agency officials did the best they could to draw up the assessment formula. But in his final statement of decision, Fields ruled that state election laws require a more detailed parcel-by-parcel analysis for new assessments.

Given that the property owners "live 20 miles inland, experience no seawater intrusion, and have plenty of groundwater, the court is unable to say that their assessments are 'proportional to and no greater than' the benefits they receive from the project," Fields said. Bottom line, Fields ordered the county to stop collecting the assessments at the current rate from the property owners who sued the county, recalculate a fair assessment, and reimburse the property owners the amount of excessive assessment they have already paid. He also ordered the county to pay for the group's legal costs.

### 'Joe Blow citizen' triumphs

Piearcy, 48, refers to himself as a 'Joe Blow citizen.' As the owner of an industrial pump shop in Salinas, he has some specialized knowledge in water issues and has been active in agricultural issues, serving for three years as president of the Monterey County Farm Bureau. In the case against the water assessments, he took it upon himself to read the

"administrative record" presented to the court by county water officials because, he said, "I thought I'd be able to catch stuff quicker than an attorney doing a word search on the documents."

Over the course of three years, he read environmental impact reports, draft environmental impact reports, engineering reports, minutes from meetings. In all, the body of work represented reams of exceedingly dry material. "My main goal was to find something that showed that (the county) was right," he said. "That's all I was looking for, but I couldn't do it. I tried to find something somewhere in all those documents that actually showed how we benefited from the project. We couldn't find it."

His work paid off. Several weeks before the trial, Fields ordered representatives from both sides to meet in an effort to negotiate a settlement. Piearcy's group refused the county's offer. "A couple of days later, I found a 400-page report that turned things around for us," he said. "I couldn't believe I was actually reading it. I thought to myself that it was a good thing we didn't accept the settlement." The report indicated that county water officials did have the ability to analyze potential project benefits for smaller geographical areas. Up until then, the county asserted it did not have the capability to analyze benefits on a parcel-by-parcel basis so they were forced to assess the fees on a broader regional level. But the report, written years earlier for the water agency, showed otherwise.

Piearcy said he is disappointed that other neighboring property owners were not included in the settlement. While the plaintiffs were organizing, he said, county officials assured many of the property owners that the lawsuit was specious, that the county had done everything possible to ensure fair assessments to everyone. "They trusted the county," Piearcy said. "We didn't like the idea of suing, but if we didn't do it by a certain date we would have lost our right. And once we lost our rights, we knew the county wouldn't talk to us at all. To me, the government is supposed to be here to protect us against scams and cons. But the majority of people in this were scammed and conned. By the government."

Piearcy said that pursuit of the legal action was an eye-opening experience. "I always say I never know enough," he said. "I'm not a big know-it-all, but I always want to learn more. One thing for sure: I don't think I'll read again for at least another five years."