



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: March 12, 2019

DATE: Thursday, March 07, 2019

TO: Board of County Commissioners

FROM: Nathan Edwards, Deputy Washoe County District Attorney,
337-5700, nedwards@da.washoecounty.us

THROUGH: Cathy Hill, Washoe County Comptroller and ex officio Risk Manager,
328-2563, chill@washoecounty.us, and Paul Lipparelli, Assistant
Washoe County District Attorney, Civil Division, 337-5700,
plipparelli@da.washoecounty.us

SUBJECT: Recommendation to approve a settlement of Dudley vs. Steamboat Canal & Irrigation Co. and Washoe County, CV17-00714, a case concerning allegations of water escaping from the Steamboat Ditch in 2016-2017 and causing damage to a residential property at 35 Francovich Ct. This settlement follows a mediation that occurred between the parties in October 2018, after nearly 2 years of litigation and hundreds of thousands of dollars in legal and expert fees expended by the parties. If approved, the settlement would require both the county and Steamboat to each pay [\$50,000] to the Dudleys and would result in the dismissal of Steamboat and the county from the litigation with prejudice, the parties bearing their own costs and attorney's fees. It also requires Steamboat to make certain improvements in the ditch near the Dudleys' property. The settlement would not be an admission of fault or wrongdoing by any of the parties but would instead be a compromise to bring about an end to the case. If approved, authorize the Chair to sign the proposed settlement agreement. (Commission District 1)

SUMMARY

This is a possible settlement, attached as Exhibit A to this staff report, of a lawsuit filed by John and Kathryn Dudley against Washoe County and the Steamboat Canal and Irrigation Company (Steamboat) in 2017. The gist of the case is that the ditch flooded between the spring of 2016 and the spring of 2017, causing damage to the plaintiffs' property at 35 Francovich Ct. Plaintiffs seek a judgment for damages and equitable relief as follows: trespass, nuisance, unlawful taking, quiet title, strict liability, negligence, attorney's fees, and negligent misrepresentation/promissory estoppel. The lawsuit has gone on for nearly 2 years at this point.

AGENDA ITEM # _____

Washoe County Strategic Objective supported by this item: Stewardship of our Community

PREVIOUS ACTION

None

BACKGROUND

Unless otherwise specified, the following is based on the allegations of the plaintiffs. In or around May of 2016, they first began to notice water in the ground in their backyard and in the crawl space underneath their home at 35 Francovich Ct next to the Steamboat Ditch. This occurred shortly after Steamboat had conducted its annual ditch maintenance in 2016, during which a tracked vehicle driven by Steamboat had slid down the ditch wall next to the plaintiffs' property, damaging the wall. Prior to this, the plaintiffs had not noticed water saturating the ground near their house and under it since they bought the land and had the house built in or around 1992. With the onset of the mega winter of 2016-17 and the unprecedented series of atmospheric rivers that hit the area in that time, the saturation of the ground and underneath their house was exacerbated. Major repairs and/or modifications were done to the property in order to stop the flow of water under their house, including reconstruction of drainage features, the removal of a large backyard concrete patio, and the construction of retaining walls.

In or around 2005, Washoe County entered into a ditch maintenance agreement with Steamboat. In or around 2013, the county entered into a second agreement with Steamboat that ostensibly superseded the original agreement. Under the first agreement, the county represented that it was responsible for maintenance costs incurred by Steamboat for storm water entering into the ditch during the non-irrigation season (i.e., fall and winter). Under the second agreement, the county revised its stance, asserting that any storm water directed into the ditch by the county was done by right as a result of the ditch's long history of intercepting storm water run-off along its course at the base of the Sierras. However, Steamboat maintained its position in the second agreement that the county owed Steamboat money for the privilege of directing water into the ditch. The county agreed to continue paying a share of the cost of the maintenance for the ditch based on the percentage of the ditch that runs through unincorporated county jurisdiction, which includes the plaintiffs' property in this case.

Washoe County denies liability in this case, as does Steamboat. Both the county and Steamboat assert that the magnitude of the 2016-17 winter led to the exacerbation of the problem at the plaintiffs' property. The county also claims that the damage to the ditch wall caused by Steamboat in the spring of 2016 was what started the problem. Steamboat and the county each claim that the other is responsible for any damages suffered by the plaintiffs, if there is in fact any legal fault in the case.

To date, the parties collectively have spent hundreds of thousands of dollars in legal fees and expert fees, including complex hydrological and geotechnical engineering reports and analyses. Multiple depositions have occurred. Thousands of pages of documents have been exchanged during discovery.

The proposed settlement entails payments of \$50,000 by both the county and Steamboat to the plaintiffs, plus certain in-kind improvements to the ditch structure by Steamboat near the plaintiffs' property. The lawsuit will be dismissed with prejudice and the parties will bear their own costs and attorney's fees. No parties admit fault, wrongdoing, or liability.

FISCAL IMPACT

The potential fiscal impact could be the amount of the damages to the property, including alleged diminution in value, plus attorney's fees. The plaintiffs claim approximately \$400,000 in damages.

Sufficient budget authority is available in fund 619 – cost center 195053 to pay the claim of \$50,000.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve a settlement of Dudley vs. Steamboat Canal & Irrigation Co. and Washoe County, CV17-00714, a case concerning allegations of water escaping from the Steamboat Ditch in 2016-2017 and causing damage to a residential property at 35 Francovich Ct. The settlement requires both the county and Steamboat to each pay \$50,000 to the Dudleys in exchange for the dismissal of Steamboat and the county from the litigation with prejudice, the parties bearing their own costs and attorney's fees. It also requires Steamboat to make certain improvements in the ditch near the Dudleys' property. The settlement would not be an admission of fault or wrongdoing by any of the parties but would instead be a compromise to bring about an end to the case. Further, I move to authorize the Chair to sign the proposed settlement agreement.

POSSIBLE MOTION

The following motion is offered for consideration:

I move to approve a settlement of Dudley vs. Steamboat Canal & Irrigation Co. and Washoe County, CV17-00714, a case concerning allegations of water escaping from the Steamboat Ditch in 2016-2017 and causing damage to a residential property at 35 Francovich Ct. The settlement requires both the county and Steamboat to each pay \$50,000 to the Dudleys in exchange for the dismissal of Steamboat and the county from the litigation with prejudice, the parties bearing their own costs and attorney's fees. It also requires Steamboat to make certain improvements in the ditch near the Dudleys' property. The settlement would not be an admission of fault or wrongdoing by any of the parties but would instead be a compromise to bring about an end to the case. Further, I move to authorize the Chair to sign the proposed settlement agreement.