



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

FILED by order
of the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held FEB 8 1994

40635

9-24

Darwin E. Doff
Executive Secretary

February 1, 1994

To: Board of Directors (Land Committee--Information)
From: General Manager
Subject: Response to Burkel January 1994 Board Presentation

Report

Historical Perspective of Acquisition Process with Attached Legal Proceedings Chronology

Parcel 144-1-137 was originally appraised on June 1, 1992, at \$580,000 (Land \$245,000; Improvements \$335,000) by Kim Pasquariello. Subsequently, an Offer to Purchase, dated July 6, 1992 was made and rejected by the then Burkel representatives, the law firm of McMurry, Russ & de Recat.

On October 15, 1992, Real Estate Representative Domingo Cadiz, was assigned to the parcel. Mr. Cadiz met with the Burkels to discuss the offer on 11/3/92, 2/13/93, 3/3/93, 3/4/93, 3/26/93, 5/9/93, and 9/12/93.

On February 2, 1993, the parcel was re-appraised by Kim Pasquariello at \$604,500 (Land \$245,000; Improvements \$359,500). A revised Offer to Purchase, dated February 23, 1993 was presented and subsequently rejected.

In hopes of corroborating the appraised values staff contracted a second independent appraiser Mark Linnnes. On July 13, 1993, Linnnes appraised the Parcel at \$566,000 (Land \$235,000; Improvements \$331,000), \$38,500 less than Pasquariello's revised value. No revised Purchase Offer was made based on this appraised value.

During the process of the negotiations, two estimates of reproduction cost of the improvements (not including land value) were requested. The Welch Construction Co. estimate, dated 12/9/92, was \$620,701. (undepreciated value of all improvements); and Ivan Korsund General Contracting estimate, dated 12/14/92 was \$684,644. (undepreciated value for all improvements).

In addition to meetings with owners, there have been numerous telephone contacts. Both Mr. and Mrs. Burkels' availability has been limited due to their work schedules. As such, telephone calls were made late in the evening, on Saturdays, and even Sundays.

Mr. Cadiz had no problem arranging meetings with the Burkels; however, they were extremely unhappy with our different offers but were cordial.

Acquisition and relocation assistance was again fully explained on 3/26/93 by Principal Real Estate Representative, Ms. Cogan. The Burkels continually cited other negotiated settlements that they believed should be used as a basis for their case.

The Burkels have ownership interests in two adjacent parcels and they have indicated they would like to finalize the sale of these parcels before making a final decision to sell Parcel 144-1-137. They are, however, willing to sell Parcel 144-1-137 if Metropolitan will seriously consider their verbal counter-offer of \$1,500,000.

See attachment Exhibit "A" for legal proceedings chronology.

Relocation Assistance Program Information

As to compliance with the relocation assistance program laws and guidelines, it can be stated that every means of assistance possible was made available to the Burkels family.

Our consultants provided personal service to the Burkels from the time the first written offer to purchase was made in July 1992. There have been over 50 personal contacts, including telephone conversations, regarding relocation assistance with them.

At the present time, legal counsel on both sides are finalizing an agreement to relocate the Burkels' personal property onto nearby land not required for the project.

Relocation advisory services were made available to the Burkels and the relocation assistance program and applicable monetary benefits explained and discussed with them on more than one occasion. Matters pertaining to available benefits have been confirmed with the Burkels in writing. Moreover, Mrs. Burkel attended a public meeting pertaining to relocation assistance and acquisition procedures held by staff and consultants at a field office in Domenigoni Valley in October 1992.

As to the eligibility of a nephew (i.e. may actually be oldest son) of Mrs. Burkell who was allegedly living on an adjacent property, an investigation is currently being conducted by our consultants to determine eligibility. Additional evidence is required before a determination of eligibility can be made as sufficient information has not yet been provided by the claimant.

Under the Relocation Assistance Program the following monetary benefits have been paid or are being processed:

One-half of the estimated moving costs amounting to \$21,655 were paid to the Burkels on August 12, 1993. The check covering the other one-half of the moving costs will be forwarded to the Burkels' attorneys; the applicable check was not released to the Burkels as most of their personal property was never moved from the acquired parcel. Metropolitan has recently forwarded a check in the amount of \$4,278 for the escrow costs incurred related to the purchase of the replacement residence.

A purchase differential amounting to \$141,900 was transferred to the escrow company on July 23, 1993, in order to enable the closing of the escrow on the replacement house. In connection with this payment, the Burkels signed an agreement specifying that, if the final compensation for the acquired property is higher than the offer forming the basis for said differential, Metropolitan will be repaid any corresponding reduction in such differential. It should be noted that the Burkels did not inform the relocation consultant or Metropolitan until one week before the closing date of escrow that they had purchased replacement property.

Response to Allegations made at the January 1994 Board Meeting

On February 9, 1993, Mrs. Burkell appeared at the Board of Directors meeting at which she challenged the findings of Metropolitan's appraisal and also expressed concerns about Metropolitan's failure to negotiate meaningfully. We responded to these allegations by letter explaining the appraisal and acquisition process, but apparently Mrs. Burkell was unhappy with the written reply, calling it a two page irrelevancy. See attached Exhibit "B".

On March 3, 1993, an Order for Possession, effective in 90 days, was served on the Burkels. At all times before and after service of the Order of Possession, staff was in continual contact with the Burkels attempting to settle the acquisition and relocation. The Burkels are represented by legal counsel.

February 1, 1994

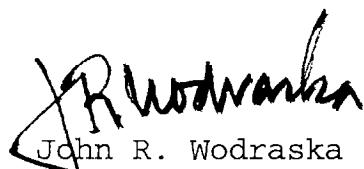
The trespassing issue was brought up at the February 1993 Board meeting. These allegations are without any basis except that at one time, our field personnel helped Mrs. Burkel's mother clean up the adjacent property owned by the Burkels and Mrs. Burkel's mother. Mrs. Burkel's mother permitted the removal of an old camper shell. Mrs. Burkel, who appeared not to be on good terms with her mother, claimed the shell belonged to her. On the same day the shell was returned to Mrs. Burkel. Our response to the allegations made by Mrs. Burkel at the February 1993 Board meeting is attached as Exhibit "C".

Board Committee Assignment

This letter is referred for information to the Land Committee because of its authority to study, advise, and make recommendations with regard to policies for the fixing of purchase prices, and the initiation and conduct of condemnation and other proceedings relating to the purchase of land or interest in property and related negotiations, pursuant to Administrative Code Section 2451 (g).

Recommendation

For Information only.



John R. Wodraska

PRS/wbetb42

Attachments

EXHIBIT A

This chronology relates to three cases filed by the district against the Burkels: MWD v. Robert and Robin Burkel; RSC Case No. 225371 (Parcel 137); MWD v. Robert Burkel, et al.; RSC Case No. 225369 (Parcel 305); MWD v. BSW Ranch; RSC Case No. 225370 (Parcel 185);

Complaint filed (**Parcel 137, 185 and 305 case**) 10/22/92

Hill, Farrer & Burrill associated as counsel (**Parcel 137 and 185 case**) 11/09/92

Probable compensation deposited by MWD (**Parcel 305 case**) 11/12/93

Hill, Farrer & Burrill associated as counsel (**Parcel 305 case**) 11/16/92

Notice of Deposit filed (**Parcel 305 case**) 12/15/92

Order For Possession filed (order will become effective 90 days after service) (**Parcel 305 case**) 12/15/92

Probable compensation deposited by MWD (**Parcel 137 and 185 case**) 1/11/93

Service of summons and complaint on BSW Ranch (**Parcel 185 case**) 1/12/93

Service of Summons, Complaint, Notice of Pendency of Action, Notice of Deposit, Ex Parte Application for OIP, Order for Possession on Burkels (**Parcel 305 case**) 1/26/93

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Service of Summons and Complaint on Burkels (Parcel 137 case)	1/29/93
Notice of Deposit filed (Parcel 137 and 185 case)	2/8/93
Order For Possession filed (order will become effective 90 days after service) (Parcel 137 and 185 case)	2/8/93
Answer of Robin and Robert Burkel and BSW Ranch served on MWD (Parcel 137, 185 and 305 case)	3/2/93
Order For Possession served on Burkels (Parcel 137 case)	3/3/93
Answer of Robin and Robert Burkel to First Amended Complaint served on MWD (Parcel 305 case)	3/30/93
Effective Date for the Order For Possession (Parcel 305 case)	4/26/93
Pancake sends letter to Gresham (Burkels' attorney) and Wright (Pat Sawyer's attorney) advising them of the upcoming and past OIP effective dates and offering to stipulate to an extension of the OIP date to 7/1/93; sent out draft stipulation (Parcel 137, 185 and 305 case)	5/20/93
Dudley Wright signs stipulations to extend OIPs and forwards to Gresham with request to sign	5/27/93
First Amended Complaint in Eminent Domain (Parcel 305 case)	6/26/93
Effective Date for the Order For Possession (Parcel 137 case)	6/1/93
Application to Withdraw served by McMurry Russ, August & Kabat (former lawyers of the Burkels) (Parcel 137 case)	6/9/93

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Application to Withdraw served by Burkels (Parcel 137 case)	6/14/93
Pat Sawyer files Cross-Complaint against Robert Gene Burkel, Robin Sawyer Burkel and Patricia Kim Sawyer for cancellation of instruments, fraud and declaratory relief (Parcel 305)	6/22/93
MWD files statutory objection to McMurry's application (Parcel 137 case)	6/30/93
MWD files statutory objection to Burkels' application (Parcel 137 case)	7/5/93
McMurry serves objection to Burkels' application (Parcel 137 case)	7/7/93
Stipulation For Withdrawal (prepared by MWD) filed with court (Parcel 137 case)	7/8/93
Certified copy of stipulation sent up to State Treasurer with request for payment (Parcel 137 case)	7/8/93
Ex Parte Application For Writ of Assistance; Pancake goes into court to get enforcement of the Order For Possession (Parcel 137 case)	7/13/93
Court issues writ; stays enforcement of writ "until August 15, 1993 or relocation of personal property has been accomplished, whichever is later. Burkels have authorized plaintiff entry for relocation." (Parcel 137 case)	7/13/93
Burkels find new house for relocation; \$141,900 price differential calculated (Parcel 137 case)	7/15/93
Burkels/Kim Sawyer serve answer to Cross-Complaint (Parcel 305 case)	7/27/93
Application to Withdraw served by Burkels (Parcel 305 case)	8/24/93

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MWD files statutory objection to Burkels' application (Parcel 305 case)	9/2/93
MWD is denied access to the property by Robin and Bob Burkel because their personal property (airplane engines, etc.) is still on the property (Parcel 137 case)	early October 1993
Parties begin discussing relocation deal whereby Pat Sawyer can relocate onto portion of Parcel 185 remainder and Bob Burkel can relocate his personal property onto portion of Parcel 185. Prior to this time the partners of BSW ranch (Pat, Robin and Bob) have been infighting. The various factions of which would not allow each other to move onto the BSW Ranch land. JP advised MWD not to participate in any relocations onto the BSW Ranch property unless we obtained the consent of the BSW Ranch partners. (All parcels)	early October 1993
JP notifies Gresham of drop dead date of Oct. 15 for relocation of personal property/ agreement with Pat Sawyer to move onto BSW Ranch land/ prepared to move personal property into warehouse in Hemet (temporary storage). (All parcels)	10/9/93
Ibarra (relocation consultant) requests payment of incidental expenses re: MWD Parcel No. 144-1-137 to Burkels in the total amount of \$8,018.30 (Parcel 137)	10/15/93
Wright on vacation until 10/12/1993 (All parcels)	
Gresham on vacation until 10/21/1993 (All parcels)	

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Meeting at MWD headquarters with Pancake, Brogan, Vanderhorst, Gresham, Wright, Ibarra and Burkel. Parties agree to allow each other (ie, Pat and the Burkels) to move onto the remainder of Parcel 185)	11/2/93
Preliminary Draft of Entry and Relocation Agreement sent to Gresham, Vanderhorst & Case subject to comments from MWD Legal and Right of Way	11/2/93
Preliminary Draft of Entry and Relocation Agreement hand delivered to Wright subject to comments from MWD Legal and Right of Way	11/3/93
Hearing on Burkels' Application for Withdrawal of Deposit (Parcel 305 case)	11/3/93
Revising Stipulation re: Entry and Relocation	11/5/93 to 11/29/93
Incidental expense request will be included in the stipulation--except there will be no payment for rent at \$170 per day (All parcels)	11/5/93
Ibarra provides cost analysis for stipulation/move onto remainder of Parcel 185 (All parcels)	11/10/93
Ibarra provides revised cost estimate for stipulation/move onto remainder of Parcel 185 (All parcels)	11/11/93
Order re: Burkels' Application to Withdraw (Parcel 305 case) filed with the court	1/11/94
Ibarra provides second revised cost estimate for stipulation/move onto remainder of Parcel 185 (All parcels)	11/12/93
Draft of Order re: Application to Withdraw faxed to all counsel (includes	11/16/93

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7 judgment creditors and 2 tax
creditors) (**Parcel 305 case**)

After MWD makes revisions as suggested by the parties, final draft of Application to Withdraw mailed out for signatures of counsel (Parcel 305 case)	11/22/93
Stipulation for Entry and Relocation sent out to Gresham and Wright	11/29/93
All counsel except Dudley Wright consent to terms of order re: application for withdrawal; Wright will not sign until stipulation is reached regarding payment of remaining creditors from funds on deposit in the parcel 185 case (Parcel 305 case)	11/30/93
Draft of Stipulation For Withdrawal faxed to all counsel (Parcel 185)	12/9/94
Gresham requests information regarding the cost of the well re: relocation agreement; According to Ibarra, the well estimate was obtained from Robert Burkel	12/16/93
MWD obtains payoff figures from Bank of Hemet (Parcel 185 case)	12/30/93
MWD obtains payoff figures from State Labor Commissioner (Parcel 185 case)	12/31/93
Revised stipulation for withdrawal sent out to all counsel (Parcel 185 case)	1/3/94
MWD files Order re: Application for Withdrawal (Parcel 305 case) and Stipulation for Withdrawal (Parcel 185 case)	1/10/93
Order re: Application for Withdrawal signed by Judge Sullivan (Parcel 305 case)	1/11/93
Meeting at Gresham's office to resolve relocation agreement (All parcels)	1/14/93

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Reissue of check for moving expenses requested (to be made payable to Gresham's trust account)	1/19/93
Gresham on vacation 1/18/94 to	1/29/94
MWD obtains certified copy of Order re: Application for Withdrawal (Parcel 305 case) and Stipulation for Withdrawal (Parcel 185 case)	1/18/94
MWD forwards certified copy of Order re: Application for Withdrawal and Stipulation for Withdrawal to state treasurer for payments (Parcel 305 and 185 case)	1/20/94
Gresham advised that \$588 engineering cost has already been paid in October	1/26/94

EXHIBIT B

48625

bcc: M. J. Gage
C. Boronkay
R. W. Balcerzak
N. G. Taylor
T. A. Drescher

D. G. Majors
J. A. Vanderhorst
R. F. Triggiani
R. L. Case
File Copy

March 23, 1993

Domenigoni Valley Reservoir
Project
Parcel 144-1-137, 305 & 185

Mrs. Robin S. Burkel
P. O. Box 764
Hemet, California 92343

Dear Mrs. Burkel:

Your Public Testimony at the February 9, 1993, Board Meeting
About Metropolitan Staff Actions with Respect to Land
Acquisition and Preconstruction Activities in the
Domenigoni Valley Reservoir Project

You will recall at the February 9 meeting that our
Board took your comments so seriously that we directed our staff
to respond to us about the many concerns raised.

Detailed records with regard to the concerns raised by
all people testifying show that our personnel acted properly amid
an admittedly difficult environment of disputes about the fair
market value of some property still to be acquired and of people
still living in the project area feeling that our preconstruction
activities are adversely affecting them.

We heard your frustration that you and Metropolitan's
negotiators have not been able to agree on a purchase price for
your property. The California Code of Civil Procedure (Section
1263.320) requires an appraiser to consider all relevant
valuation approaches to determine the fair market value of a
property: direct market comparison, depreciated replacement cost
new plus site value, or income capitalization. The appraiser's
task is to estimate a sale price consistent with the definition
of market value after considering all applicable appraisal
methods. Metropolitan does not influence the appraiser's opinion
in any way, but only provides information for the appraiser's
consideration. After considering all appropriate approaches to
value, the independent appraiser reconciled the value indicators
to conclude a fair market value for your property. As you know,
every affected property owner can ultimately use the courts to
determine what the fair market value of his or her property
actually is.

Mrs. Robin S. Burkel

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March 23, 1993

With respect to the other concerns you presented on February 9, we are very sensitive to complaints that our preconstruction activities are inconveniencing people still living in the project area. We are convinced, however, that our personnel have taken every reasonable step to avoid adverse effects. We point out, for example, that we have obtained written permission from each property owner before working on his or her property, promptly given property owners permission to cross Metropolitan's land to reach their property, and, during this season's torrential rains, kept Newport Road and its intersections with cross streets open, erected temporary barricades at hazardous locations to protect public safety, and routinely assisted people stuck on road shoulders. The February 9 Board meeting was the first time that our staff heard your allegations about stolen bicycles and disturbing parties. We encourage all residents to promptly report such incidents to our security personnel and/or to the Sheriff Department.

We thank you for taking the time to address the Board. We assure you that we will continue to monitor our staff to ensure that you are treated with fairness and respect.

Very truly yours,

Coe
Treggiani
Michael J. Gage
Chairman

EXHIBIT C

2/25/93 DRAFT, Staff Report to the Board re Domenigoni Valley Reservoir Public Concerns

2

48 to conceal a hand gun (possibly a Beretta) partially drawn from its holster. Our staff has noted
49 other occasions when Mr. Peterson has verbally threatened to use a gun.

50 **The December 23, 1992, Incident.** On that date, staff were posting "no trespassing"
51 signs on all Metropolitan-owned property in order to limit Metropolitan's liability should anyone
52 on the property become injured. The California Penal Code requires this posting prior to
53 enforcement by law enforcement agencies. At about 12:00 NOON on December 23, staff posted
54 three "no trespassing signs" on Metropolitan property near Mr. Peterson's property. Two hours
55 later, Mr. Peterson entered the project field office carrying one of the recently posted signs and
56 demanded an explanation as to why it had been posted. When told, Mr. Peterson said that no one
57 was going to stop him from going wherever he wanted to go and that he would deal with anyone
58 who tried to stop him. He left the office, depositing the sign on the floor.

59 Given Mr. Peterson's previous behavior and the December 23 incident, staff decided to
60 contact the Riverside County Sheriff Department to make a complaint. For the staff, Mr.
61 Peterson's trespassing on Metropolitan's property became an issue only because of his threats
62 and prior behavior, including his display of a gun. Staff feared for their personal safety and for
63 that of other Metropolitan employees working in the area.

64 On December 28, five days after the complaint, Sheriff Department personnel spoke by
65 telephone with Mr. Peterson about the alleged trespass. He admitted removing the "no trespass"
66 sign from Metropolitan's property, alleging that Metropolitan had posted that and other signs to
67 harass him. He added that he had had an ongoing conflict with Metropolitan for 2½ years about
68 his property. The Sheriff Department, after a senior officer review of the investigating officer's
69 report and comments from both Mr. Peterson and Metropolitan, forwarded the report to the
70 Riverside County District Attorney for evaluation. On February 17, 1993, the District
71 Attorney—at Metropolitan's request—suspended any filing of charges against Mr. Peterson for
72 trespassing. Normal Sheriff Department procedure is to hold the report in suspension for one
73 year, after which time it will be removed from the files. At no time were criminal charges filed
74 against Mr. Peterson. He was not arrested.

75 **A Subsequent Event.** The above incident may, or may not have, concluded the threat to
76 the personal safety of Metropolitan's field staff. On February 5, 1993, we had to remove an
77 archaeological field crew from a hill near Mr. Peterson's house when we heard gunfire (perhaps
78 15 to 20 rounds from two to four weapons). We could not, however, adequately ascertain the
79 location of the discharge. While we released the crew for the day, we filed no complaint with
80 police authorities.

Exhibit C

81 The Land Appraisal/Acquisition Concerns of Property Owner Robin Burkel

82 Ms. Burkel states her concerns as Metropolitan's dragging out the process, being
83 unwilling to negotiate meaningfully, constantly changing its mind and direction, and using
84 different appraisal methods.

85 The latter seems to be her main concern, since she and Metropolitan have not been able to
86 agree on a purchase price for her property. The California Code of Civil Procedure (Section
87 1263.320) requires an appraiser to consider all relevant valuation approaches to determine the
88 fair market value of a property: direct market comparison, depreciated replacement cost new plus
89 site value, or income capitalization. The appraiser's task is to estimate a probable sale price
90 consistent with the definition of market value after considering all appropriate appraisal methods.
91 Metropolitan cannot influence the method an appraiser uses to estimate the value of a property.
92 In Ms. Burkel's case, she seeks for her residential property a price based on the depreciated
93 replacement cost new plus site value. The independent appraiser, after considering all three
94 approaches to value, concluded that the market approach was the most appropriate one for her
95 property.

2/25/93 DRAFT, Staff Report to the Board re Domenigoni Valley Reservoir Public Concerns

3

96 **The Other Concerns of Property Owner Robin Burkel**

97 Ms. Burkel says that Metropolitan has trespassed on her property without a permit, that
98 security guards and Metropolitan employees have harassed her and her family, that bicycles have
99 been stolen, that house renters of Metropolitan's houses have thrown disturbing parties, and that
100 her family is not now able to use a county road because Metropolitan has plowed it.

101 **The trespassing issue.** Our policy is to obtain written permits before we enter any
102 private property. We have complete records for all permits. We have no record to confirm any
103 Metropolitan trespass, nor do we have any record of a complaint at any time that such an entry
104 might have occurred.

105 **The harassment issue.** Our decision to use security personnel to protect Metropolitan
106 people and property clearly changed the lives of people still living in Domenigoni Valley. Our
107 security personnel are sensitive to potential problems and may indeed ask people where they are
108 going—especially when they appear to be entering Metropolitan's property where vandalism and
109 theft have occurred. We acknowledge that our concern for security may appear restricting to
110 current residents who have long enjoyed free movement in the area. At the same time, we feel
111 that the presence of our security personnel in an area where many former residents have already
112 left gives current residents new security against people from the outside. Nevertheless, we have
113 instructed our personnel to go out of their way to respect the rights of remaining residents. They
114 must drive only on the main roads and abide by speed limits especially near residential property.

115 **Bicycles stolen.** While such thefts may have occurred, Ms. Burkel's statement is the first
116 time we have heard the allegation. We encourage all residents to promptly report such incidents
117 to us and/or to the Sheriff Department.

118 **Wild disturbing parties.** Ms. Burkel's complaint is the first time we heard it. Her
119 property is at least one-half mile from any house occupied by a Metropolitan employee. We
120 encourage all residents to promptly report incidents such as "wild parties" to us and/or to the
121 Sheriff Department.

122 **Inability to use a county road.** We do not know the road to which Ms. Burkel refers.
123 We have gone out of our way, at Metropolitan's expense, to improve the road conditions from
124 what they were prior to our operations in the valley. We have graded the roads that we use.
125 Since Newport Road is "a terrible mess," especially during and after all the recent storms, we
126 have placed barricades at hazardous locations and have often assisted people stuck on the road's
127 shoulders. A major storm drainage problem exists at two Newport Road intersections: at
128 McKernie Street and at Rawson Road. The runoff causes major ponding that makes both
129 intersections unusable. In every storm incident, we have put up protective barricades and detour
130 signs and, after each storm, cleaned out the undersized culverts that created the ponding in the
131 first place.

132 **The LandAppraisal/Acquisition Concerns of Property Owner Steve Swain**

133 Mr. Swain states his concerns as Metropolitan's dragged-out process and the fact that he
134 has yet to receive an offer after several appraisals.

135 Mr. Swain's concerns are valid. Of about 150 completed appraisal reports, his is among
136 three percent that we have not yet approved. The reason is that the first independent appraisal of
137 his property did not meet professional and legal standards. In such cases, we have to order a new
138 appraisal. Unfortunately, the second report also failed to meet the standards. An approved report
139 is now available, and an offer will be made immediately to Mr. Swain.

140 **The Other Concern of Property Owner Steve Swain**

141 Mr. Swain says that Engineering Program Manager Dennis Majors has not returned his
142 phone calls. While that's possible, an exhaustive review of staff and automated telephone line
143 records reveal no telephone request from Mr. Swain.