

Developer Sues Over Nipomo Supplemental Water Fees: Community Services District Nipomo Oaks Paid More Than \$300,000 In Fees Under Protest

By Nick Wilson The Tribune, San Luis Obispo, Calif.

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Sep. 3--The developer of a 24-home project in Nipomo has sued the town's services district, accusing the agency of illegally charging more than \$300,000 in fees for supplemental water.

But the Nipomo Community Services District is confident it has a legal basis for the fees. And officials said

Nipomo's services district has won two similar lawsuits.

The developer -- Nipomo Oaks, a partnership between Carey Geihs and James Bednar-- has begun construction on the single-family home development on Hill Street, designed to provide affordable rental housing.

"Basically, we're seeking a refund on the supplemental water fees that we're claiming were unlawful and unreasonable," said lawyer Stephen G. Geihs, Carey Geihs' brother.

The lawsuit claims that the services district violated the state's Mitigation Fee Act by imposing \$301,550 in supplemental water fee charges that the developer paid under protest.

The fees make up 63 percent of those the district has assessed for the project, Stephen G. Geihs said.

The lawsuit alleges the district exceeded the purported cost of providing the service of supplemental water.

And the legal filing also claims the district is charging for an uncertain new water source and has provided no record for the basis of the charge, and that the agency acted in an "arbitrary and capricious manner."

The fees are designed to help pay for a new water source for Nipomo, including the planned \$20 million pipeline to bring water from Santa Maria. That project is set for completion in 2010, according to district officials.

"Their project might come into fruition or it might not," Geihs said.

District General Manager Bruce Buel said the agency's board established the fee in an ordinance approved three years ago to levy the charge on new developments.

It has prevailed in two lawsuits filed by developers over the same issue, Buel said.

Buel estimates that 50 payments have been made for supplemental water fees to the district by developers already.

Jon Seitz, the district's lawyer, couldn't comment on the lawsuit when reached last week because the district had not yet been served with it. Buel said Tuesday the district still hadn't received a copy of the suit.

Stephen G. Geihs said he's looking into more legal issues and might add to the complaint.

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