

Bill Bookout

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Sent: Thursday, October 14, 2010 3:19 PM

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Cc: 'landandclam@gmail.com'; 'Lt.governor@ltgov.ca.gov'; 'Senator.Blakeslee@senate.ca.gov'; 'velie@calcoastnews.com'; 'rmiller@newtimesslo.com'

October 14, 2010

Boston.com

Dear Mrs. Tara-Nicholle Nelson

Please add the photos exhibits below to your story as California Laws have changed with the Second Appellate Courts published California case law decision Bookout v. State of California. Thank you for your article October 13, 2010. This California Case law decision is now being appealed to the California Supreme Court as seen at www.secondappellatecourt.com Judge Martin J. Tangeman and the Second Appellate Court allow this type of government use of our storm water drainages channels as now seen in California Case Law Bookout v. State of California!

Senator Sam Blakeslee and Lieutenant Governor Abel Maldonado www.governorablemaldonado.com are both aware of Caltrans actions in Caltrans raising of State Highway 1 and then shoveling and grading debris into this storm water drainage channel as seen on Youtube under Caltrans and at www.senatorsamblakeslee.com

[The Second Appellate Court Justices--Steven Z. Perren, Arthur Gilbert and Kenneth R. Yegan are fully aware of Judge Martin J. Tangemans statements in his August 5, 2008 inverse condemnation decision on P. 7 per photo exhibits # 1278-1337 and 1338 of this OCSD pipe directly inside the Railroad Culvert! They now allow Government to block and dam storm water drainages systems as seen in these photos that Judge Martin J. Tangeman talks about! Photo Evidence/Exhibits presented to Judge Martin J. Tangeman 1278-1337-1338 pdf...](#)



Time runs out on flooding lawsuit

Law of the Land

By Tara-Nicholle Nelson

October 13, 2010

10/14/2010

William Bookout owned a parcel of land on which he ran a nursery in Oceano, a community in California's San Luis Obispo County. Highway 1, owned and operated by the state Department of Transportation, ran next to and across one tip of Bookout's land.

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On the other side of the highway ran a railroad track on a raised bed of land; the railroad and land were owned and operated by the Union Pacific Railroad. The Pismo Oceano Vegetable Exchange owned the land on the opposite side of the railroad.

When it rained, the water ran off Bookout's property and into a drainage channel on the railroad's parcel, through an iron pipe that discharged into a junction box on the Exchange's land.

The Oceano Community Services District operated a water well that occasionally discharged into this system, and this junction box was inadequate to contain the outflow from the pipe, so that when it rained the drainage system would flood Bookout's property.

This drainage system had been revised in 1977; Bookout purchased his land in 2000, and discovered the problem in 2002, after which he repeatedly complained to the Exchange and once reported the problem on a county drainage study questionnaire.

Bookout eventually filed suit against the Exchange, the railroad, the state, the county and the district, alleging that the parties, in various ways, all contributed to the flooding that ruined his business and constituted inverse condemnation of his property.

Bookout and the Exchange settled early on, but at trial against the other defendants, the trial court granted the defendants' motion for nonsuit, finding that Bookout's claims were barred either by the statute of limitations or by the fact that the railroad was not a public entity that could even be found to have committed inverse condemnation.

Bookout appealed, but the Second Circuit Court of Appeals affirmed the trial court's ruling.

First, the appellate court rejected Bookout's argument that the trial court applied the incorrect three-year statute of limitations for property damage, when it ought to have used the five-year statute that applies to adverse possession.

Because none of the defendants had actually physically entered or occupied Bookout's property, the appellate

court found, the three-year property damage statute of limitations was correctly applied by the trial court.

Additionally, the Court of Appeals failed to accept Bookout's alternative arguments that (a) the statute of limitations should not have begun running until the damage was stabilized or (b) that it should have begun anew every time it rained.

As none of the defendants had significantly altered the drainage system since the 1970s, and "the flooding problem was relatively consistent and static for several years prior to the time Bookout purchased his property in 2000," the trial court's finding that Bookout's statute of limitations began running in 2002 -- and thus barred many of his claims -- was upheld.

The trial court's finding that Bookout had failed to carry his burden of proving a "substantial causal relationship between the defendant's act or omission and the injury" was also affirmed, on the basis that even the uncontroverted testimony of Bookout's expert acknowledged that the Exchange's inadequate handling of the discharge junction box was an "obvious cause" of Bookout's damages.

In the final analysis, the Court of Appeals rejected Bookout's appeal, affirming the trial court's ruling on grounds that Bookout's claims were either or both barred by the statute of limitations and/or failed to show that the defendants caused his damages. The lower court's judgment was affirmed and Bookout was ordered to pay the defendants' costs of defending the appeal. *Tara-Nicholle Nelson is author of "The Savvy Woman's Homebuying Handbook" and "Trillion Dollar Women: Use Your Power to Make Buying and Remodeling Decisions."* Tara is also the Consumer Ambassador and Educator for real estate listings search site Trulia.com. Ask her a real estate question [online](#) or visit her website, www.rethinkrealestate.com.

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