

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MT. SAN JACINTO COMMUNITY
COLLEGE DISTRICT,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF RIVERSIDE,

Respondent;

AZUSA PACIFIC UNIVERSITY,

Real Party in Interest.

E035868

(Super.Ct.No. RIC349900)

**ORDER MODIFYING OPINION
AND DENIAL OF PETITION
FOR REHEARING
[NO CHANGE IN JUDGMENT]**

Real party in interest's petition for rehearing is denied. The opinion filed in this matter on February 4, 2005, is modified as follows:

1. The last paragraph on page 17 is deleted and replaced with the following paragraphs:

“In our view, having to leave funds on deposit is a reasonable condition to place on a condemnee’s statutory right to further litigate the right to take issue, or pursue a final adjudication of the issue on appeal. In enacting section 1255.260, the Legislature could have reasonably concluded that a condemnee who denies the condemner’s right to take should not be able to withdraw the probable amount of its just compensation. A condemnee who denies the condemner’s right to take cannot have it both ways. He cannot withdraw the deposit *and* challenge the right to take. It is reasonable to require him to choose one or the other.

“Indeed, it would be inconsistent for Azusa Pacific to insist on adjudicating Mt. San Jacinto’s right to take its property, while it enjoys the use and benefit of the probable amount of its just compensation. If Azusa Pacific prevails on the right to take issue, then it will keep its property. In this event, it will not matter whether the property has appreciated in value since the commencement of the proceeding. But, if Azusa Pacific loses the right to take issue, then Mt. San Jacinto will have had the right to take the property since the commencement of the action. In this event, Azusa Pacific should not be able to recover the substantially appreciated fair market value of its property following entry of a final judgment in favor of Mt. San Jacinto. Instead, it should be entitled to the fair market value of its property on the date of the deposit; the date the probable amount of its just compensation was tendered.”

Except for this modification, the opinion remains unchanged. This modification does not effect a change in the judgment.

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/s/ King
J.

We concur:

/s/ McKinster
Acting P.J.

/s/ Gaut
J.