2001

Utah State Road Commission v. The Steele Ranch, a Utah Corporation, et al. : Brief of Appellant

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

UTAH STATE ROAD COMMISSION,
Plaintiff-Appellant,

vs.

THE STEELE RANCH, a Utah Corporation, et al.,
Defendant-Respondent.

Case No. 13544

BRIEF OF PLAINTIFF-APPELLANT

Appeal from Judgment of the Fifth Judicial District Court of Juab County, Honorable J. Harlan Burns, Presiding

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NATURE OF THE CASE

This is a condemnation action by the Utah State Road Commission to acquire certain real property in Juab County for the purpose of constructing a Project of the I-15 Freeway.

DISPOSITION IN THE LOWER COURT

After the trial of this matter the State Road Commission made a motion for a new trial which was denied by the District Court.

RELIEF SOUGHT ON APPEAL

The Utah State Road Commission, Plaintiff-Appellant in the action seeks a reversal of the court's denial together with an order that the case be remanded for new trial before a neutral jury.

STATEMENT OF FACTS

By this action in Eminent Domain the State of Utah sought to acquire 66.33 acres in fee and 5.45 acres in temporary easement from the Steele Ranch Corporation lands of about 2500 acres total in northern Juab County for the I-15 freeway. At the time of condemnation a portion of the ranch lands were being purchased from McPhersons and Howards resulting in the initial filing of three separate lawsuits (State v. Steele Ranch Corporation, Civil No. 4632; State v. McPherson, et al., Civil No. 4634 and State v. Howard, et al., Civil No. 4633). The three cases were consolidated as one case for trial and also for appeal under State v. Steele Ranch Corporation, et al., Supreme Court No. 13544.

Defendant Steele Ranch Corporation is owned by Dr. John G. Steele, M.D., a Nephi physician who lives at his home, a small plot of approximately one acre adjoining the ranch but reserved in personal ownership for his house and adjoining swimming pool. The non-access freeway divided the ranch into an east portion and west portion with access through the freeway provided by an underpass on the east-west ¼ section line in Section 27.

A map illustrating the pertinent portion of the ranch and freeway is included at the end of this brief as a reference for the convenience of the court.

After the pre-trial order and just before trial, the court granted defendant's motion to join John G. Steele and his wife Thelma personally as defendants (File 4634 at P. 68) but failed to expressly rule on plaintiff's Motion in Limine (File No. 4634 at P. 56), both motions being heard on the same day and taken under advisement.

At trial on September 19, 20 and 21, 1973, the range of testimony was presented as follows:

Mr. Victor Smith for the State (T. 220-224)

Land taken	$ 18,245.50
Severance	21,057.70
Total	$ 39,303.20

Mr. Wilbur Harding for Defendant (T. 153-157, 172)

Land taken	$ 20,518.50
Severance (approximately)	47,781.25
Total	$ 68,299.75

John G. Steele owner (T. 115, 117)

Land taken	$ 27,852.00
Severance	100,000.00
Total	$127,852.00

The jury award was $21,164.50 for land taken and

$75,000 for severance damage or a total of $96,164.50 (File No. 4634 at P. 150) almost $30,000 more than the testimony of defendant's own witness. After the Judgment on the Verdict was entered the state made a motion for new trial which was denied resulting in this appeal.

ARGUMENT

POINT I.

THE COURT ERRED IN ALLOWING EVIDENCE OF A SEPARATE PARCEL AS PART OF THE TOTAL TRACT OF SUBJECT PROPERTY WHERE NEITHER THE OWNERSHIP NOR THE USE OF THE SEPARATE PARCEL WERE THE SAME AS THE SUBJECT PROPERTY.

The land acquired by the state for highway purposes was a portion of a 2500 acre tract owned by Steele Ranch Corporation. John G. Steele was the sole owner of the stock of the corporation (Tr. 90). Adjacent to the ranch property is a one acre tract which is not owned by the corporation but which is separately owned by Dr. Steele as an individual (Tr. 90). This one acre tract contains only Steele's home and swimming pool. None of the out buildings or corrals which may be associated with the operation of the ranch are located on the one acre (Defendant's Exhibits 9-1, 9-2, 9-23). Evidence concerning the effect of the freeway on the separate home area was adduced at trial over the state's objection (Tr. 91, 93,

119). Appellant submits that the objection was proper and that the evidence should not have been admitted.

First, severance damages are not allowed to land which has a different owner than that of the tract from which property was condemned.

> It is, of course, essential to constitute a single parcel that it be owned in its entirety by one owner or one set of owners. *Nichols on Eminent Domain* § 14.31(2).

In this case, the owner of the tract from which property was condemned is not the same as the owner of the home area. The corporation owned the condemned property while Dr. Steele himself owned the home area. Therefore, the two parcels cannot constitute a single tract for the purpose of awarding severance damages for the latter. The corporation is the only party from which land was acquired. It is recognized by the law as a legal person. Steele, although he owns 100% of the stock of the Steele Ranch, has no interest in the land. The land is owned by the corporation, a separate legal entity. His personal ownership is limited to the corporate stock. The stockholder has created the corporation and the separate legal ownership of the property. He cannot waive the existence of that entity when the chosen form works to his disadvantage.

The leading case on the matter of severance damages when there is a separation of ownership between individuals and a private corporation created by them is

Jonas v. *State,* 19 Wis. 2d 638, 121 N. W. 2d 235, 95 A. L. R. 2d 880 (1963). The facts in that case are similar to those in the Steele Ranch case. In the *Jonas* case, the taking was of land owned by the individuals. They sought to have adjoining land owned by a corporation which they controlled considered as part of the same parcel. The court refused to allow such consideration, saying:

> A corporation is treated as an entity separate from its stockholders under all ordinary circumstances. Although courts have made exceptions under some circumstances, this has been done where applying the corporate fiction "would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong equitable claim . . . ." Those who are responsible for the existence of the corporation are, in those situations, prevented from using its separate existence to accomplish an unconscionable result. In the present case, those who created the corporation in order to enjoy its advantages flowing from its existence as a separate entity are asking that such existence be disregarded where it works a disadvantage to them. We do not consider it good policy to do so. *Id.*, 121 N. W. 2d 235.

The *Jonas* case was recently cited by the Nebraska court as authority for refusing to disregard the corporate entity in a condemnation action. The court said that there had been no showing of any of the factors listed in *Jonas* as grounds for disregarding the corporation. *Verzani* v. *State,* 195 N. W. 2d 762 (Neb. 1972). The Nebraska court concluded that a corporation and its

stockholders are not considered as one and the same in a condemnation action because the different legal personality of the corporate entity cannot be disregarded.

Utah law is clear that a defendant cannot recover damages to land it does not own even though it may be used in connection with adjoining land. *State* v. *LeSourd*, 24 Utah 2d 383, 472 P. 2d 939 (1970). The corporation does not own the home area, the owner of the ranch and the owners of the home are different persons, and the result is that there is no unity of title as required to include the home area as part of the subject property.

Secondly, to be included in the subject tract the separate parcel must be used in a way which is inseperably connected with the subject tract before the parcel can be designated as a part of the tract.

> . . . implicit in the definition of unity of use is the connotation that both parcels are so completely integrated, inseparable and inter-dependent so as to make the operation of one impossible without the operation of the other. *Sams* v. *Redevelopment Authority*, 431 Pa. 240, 244 A. 2d 779 (1968).

Such connection does not exist in this case. The home and swimming pool are the residence of a physician. While the home is near the subject tract the ranch operation is not dependent upon the location of a doctor's home. The day to day operation of the ranch is conducted by the foreman who lives in the "ranch house" at the end of the county road east of the freeway (T.

121). The ranch house "over east" is also where the equipment is stored and maintained (T. 132). John Steele could live in any nearby city without affecting the value or the operation of the ranch. He could sell either the ranch or his home independently of the other. The fact is that the nearness of his home is not necessary to the ranch and just because he chooses to live close to the ranch does not compel the conclusion that the ranch is dependent upon his home.

It is submitted that the court erred in allowing testimony regarding a separate parcel where there was insufficient unity of title and usage.

POINT II.

THE COURT ERRED IN DENYING PLAINTIFF'S CHALLENGES FOR CAUSE WHICH RESULTED IN AN EXCESSIVE VERDICT AND ONE GIVEN UNDER PREJUDICE.

The basic rule of law relative to any jury trial is that the jury must be fair and impartial to both parties. 50 C. J. S. Juries, Sec. 226. It is submitted that a fair trial was not had in this matter.

As the jury was selected at the outset of the trial many of the jurors knew Dr. Steele and several stated that he was their family doctor. Mr. Linton, presumably a patient, was excused without motion from either party (T. 18), as was Mr. Laird, the forest ranger (T. 14). Two other jurors were challenged for cause by the state. Mrs.

Howard was challenged because Dr. Steele was her family doctor (T. 15), and who would be her doctor if "needed in a minute" (T. 27), also because her husband was currently Dr. Steele's insurance agent (T. 27), and because she seemed to have a reservation about the law of eminent domain (T. 28). Mr. Jenkins was challenged because Dr. Steele was his family doctor (T. 19), because his mother was currently a patient seeing the doctor (T. 19) and because he was not sure whether that relationship might influence his judgment (T. 20).

The court at first granted the state's challenges, as was proper (T. 31), then promptly reversed itself and denied the same challenges (T. 32). This reversal and denial of its challenges was prejudicial to the state since the state was then compelled to utilize the pre-emptory challenges for those jurors which the court would not remove for cause. The result was that four jurors were left who held a family doctor relationship with Dr. Steele and were called to pass judgment on the defendant's case: Mr. Mackey (T. 16), Mrs. Ballow (T. 17), Mr. Pickering, whose daughter was Dr. Steele's patient (T. 23) and Mr. Jones who owed a bill to Dr. Steele (T. 26). If Mr. Laird and Mr. Linton were removed for cause so should these others have been removed by the court.

The court's error resulted in a situation where persons with an extremely close relationship with Dr. Steele had to pass judgment on him and his case. While the family doctor relationship may not be specified in statutes, it is one founded on high trust and one which by

its very nature is extremely close and intimate, in some respects more so than the relation between family members or husband and wife; yet a relative or a spouse would never be allowed to sit in judgment. To ask those with such a close relation to pass judgment is error.

> The trend of authority is to exclude from juries all persons who by reason of their business or social relations past or present, with either of the parties, could be suspected of possible bias, even though the particular status or relation is not enumerated in the statutes declaring the qualifications of jurors and the grounds of challenge. 47 Am. Jur. 2d Jury, Sec. 321.

The state submits that the court erred and that its error was prejudicial to the state. The bias of the jury becomes clear when viewed in the perspective of the verdict almost $30,000 over the defendant's own witness. Where a verdict is clearly excessive and results from such bias and prejudice it is reversible.

> Where we can say, as a matter of law, that the verdict was so excessive as to appear to have been given under the influence of passion or prejudice, and the trial court abused its discretion or acted arbitrarily or capriciously in denying a motion for new trial, we may order the verdict set aside and a new trial granted. *State* v. *Silliman*, 22 Utah 2d 33, 448 P. 2d 347 (1968).

The state submits that under the circumstances of the trial of this matter the state was prevented from having a fair trial, and the Judgment on the Verdict ought

to be reversed and presented before a new and neutral panel of jurors.

POINT III.

THE VERDICT WAS EXCESSIVE AND CONTRARY TO THE CLEAR PREPONDERANCE OF THE EVIDENCE AND THEREFORE SHOULD BE REVERSED.

Two expert valuation witnesses submitted their opinions at trial. Mr. Wilbur Harding testified for defendant, approximately $20,518.50 for land taken and approximately $47,781.25 for severance damage for a rounded total of $68,300 (T. 153-157, 172). Mr. Victor Smith testified for the state that $18,245.50 was for land taken and $21,057.70 for severance damage for a total of $39,303.20 (T. 220-224). The defendant testified to $27,852.00 for land taken and $100,000.00 for severance damage, for a total of $127,852.00 (T. 115, 117).

The jury awarded $21,164.50 for land taken and $75,000 for severance damage for a total of $96,164.50 (file 4634, P. 150). In making the award the jury chose to completely ignore the testimony of either expert appraiser and awarded about $30,000 in excess of the testimony of defendant's own witness as to market value and damage. In so doing the jury chose the personal, inexpert, unobjective feelings of Dr. Steele himself rather than the clear preponderance of expert opinion based on market values and experience.

It is submitted that under the circumstances of this trial, when the special relation of family doctor to some of the jurors is taken together with the excessive award made by the jury, the obvious and inescapable conclusion is that the award was made under bias and prejudice. A verdict excessive or arrived at under prejudice must be set aside. A verdict might be allowed to stand. . . .

> unless it is clearly and palpably, or flagrantly, against the weight of the evidence; or unless it appears that the jury have committed gross and palpable error, or have acted under improper bias, influence, or prejudice, or have mistaken the rules of law stating the measure of damages, or have rendered a verdict so excessive as to shock the enlightened conscience of the court. 27 Am. Jur. 2d *Eminent Domain*, 471.

The state submits that the verdict in the instant case was excessive, was arrived at under prejudice and was against the clear preponderance of the evidence at trial and therefore cannot be allowed to stand.

In the case of *State* v. *Barnes*, 443 P. 2d 16 (Mont. 1968), the Montana Supreme Court reversed a lower court and held that a new trial was proper when the jury returned a land value above the expert's opinion, even though the total award of $44,379 was well under the highest total testimony of $92,000 by Mr. Barnes the landowner. The court in *Barnes* said:

> It is a fundamental and well established rule of law that the burden of proof as to the

> amount of damages in condemnation proceedings is upon the property owner. Here, by expert testimony, the highest figure for the land and improvements taken was $9,856 and the trial court erred in denying a motion for new trial when the jury failed to find in this or a lesser amount. *State* v. *Barnes*, 443 P. 2d 16 (Mont. 1968).

Utah law reveals one case where the verdict was higher than the expert testimony as to severance damages. The district court denied a new trial, but the Supreme Court reversed and remanded the case to be heard again because the verdict was excessive. The court said:

> *It is true that the verdict might be so grossly excessive and disproportionate to the injury that we could say from that fact alone that as a matter of law the verdict must have been arrived at by passion or prejudice.* (Emphasis added.) But the facts must be such that the excess can be determined as a matter of law, or the verdict must be so excessive as to be shocking to one's conscience and to clearly indicate passion, prejudice, or corruption on the part of the jury. *State* v. *Silliman*, 448 P. 2d 347, 22 Utah 2d 33 (1968).

It is submitted that the instant case is also a case where the verdict cannot stand because it is grossly excessive, and also because it is contrary to the evidence and because of the bias on the part of the jury.

In a second Utah case, *State* v. *Dillree*, 25 Utah 2d 184, 478 P. 2d 507 (1970), which has considered the question this court affirmed an award of $35,075, slightly over

$1,600 more (about 5%) than testified to by the defendant's expert witness. But that case is clearly distinguishable because there the "single fact that the verdict was in excess" was the only item considered by the court, whereas in the instant case jurors had a close relationship with defendant, the verdict was grossly excessive over the expert's opinion (more than 40% higher) and clearly contrary to the preponderance of the evidence. In the *Dillree* case Justice Henriod dissented arguing that the defendant should be bound by the testimony of his own expert witness. His logic is instructive in this case:

> He called this witness and should accept his figure, since his evidence is no stronger than his strongest link, much less its weakest, and his own testimony obviously self-serving even by the facts related in the main opinion, not based on the accepted test for damages, should be restricted to the test of his own chosen expert witness based on market, not opinion value . . . It would be unthinkable to affirm a jury's verdict based on the value to the owner of his pride of production that may be quite unattractive to one cruising in the market overt. *State* v. *Dillree*, 25 Utah 2d 184, 478 P. 2d 507 (1970).

It is submitted here that because of the circumstances of the instant case the defendant must also be bound by his own expert and that to affirm such a grossly excessive award is to permit the jury to speculate on the landowner's own biased statement of what he thinks he

ought to be awarded and to disregard any considered opinion of value as actually reflected in the market.

POINT IV.

THE COURT ERRED IN ALLOWING EVIDENCE OF THE ORIGINAL APPRAISAL AND AMOUNT OF DEPOSIT BEFORE THE JURY CONTRARY TO LAW.

During cross-examination of the state's expert appraiser, counsel for defendant asked Mr. Smith about Exhibit D-12, the original appraisal which was the basis for the deposit made at the time of the Order of Occupancy in this matter. Over objection the trial court allowed defendant's counsel to proceed with the line of questioning (T. 238-241) and subsequently allowed Exhibit D-12 to be received in evidence, again over objection (T. 245). To do so is clearly contrary to Utah Law:

> If the motion (for Order of Occupancy) is granted, the court or judge shall enter its order requiring the plaintiff as a condition precedent to occupancy to file with the clerk of the court, a sum equivalent to at least 75% of the condemning authority's appraised valuation of the property sought to be condemned. The amount thus fixed shall be for the purposes of the motion only, and *shall not be admissible in evidence on final hearing.* 78-34-9 U. C. A. as Amended. (Emphasis added.)

The legislature obviously chose to consider the

amount of deposit as not being relevant to the court proceeding and by statute expressly instructed the court that the amount "shall not be admitted in evidence on final hearing." The court allowed the figure and exhibit into evidence in direct contravention of the statute thereby allowing the jury to consider an irrelevant, immaterial and highly confusing figure.

CONCLUSION

The verdict in this case exceeded the defendant's own expert witness by almost $30,000. The court's error in denying the state's challenges for cause prevented the removal from the jury of those jurors having a close and personal family doctor relation. Moreover, the verdict was clearly grossly excessive over the defendant's own expert witness and contrary to the preponderance of this evidence. Such a verdict is given under prejudice and must be reversed.

The court also erred in allowing evidence that the separate parcel was part of an integrated ranch operation where the ownership and usage of this separate parcel are not the same. The erroneous admissions of that evidence before the jury caused the jury to speculate as to severance damage to property not inseparably connected with the ranch and therefore to property irrelevant and immaterial to this lawsuit.

Moreover, the jury was confused by the erroneous admission of evidence of the original appraisal and de-

posit figure which was in no way relevant or material to the issue of value at trial.

The state submits that the district court's errors are substantial and that when considered in light of the special relation between some members of this jury and Dr. Steele and when taken together with the grossly excessive award, the verdict is found to have been given under prejudice. The verdict must be reversed and the case remanded for new trial.

Respectfully submitted,

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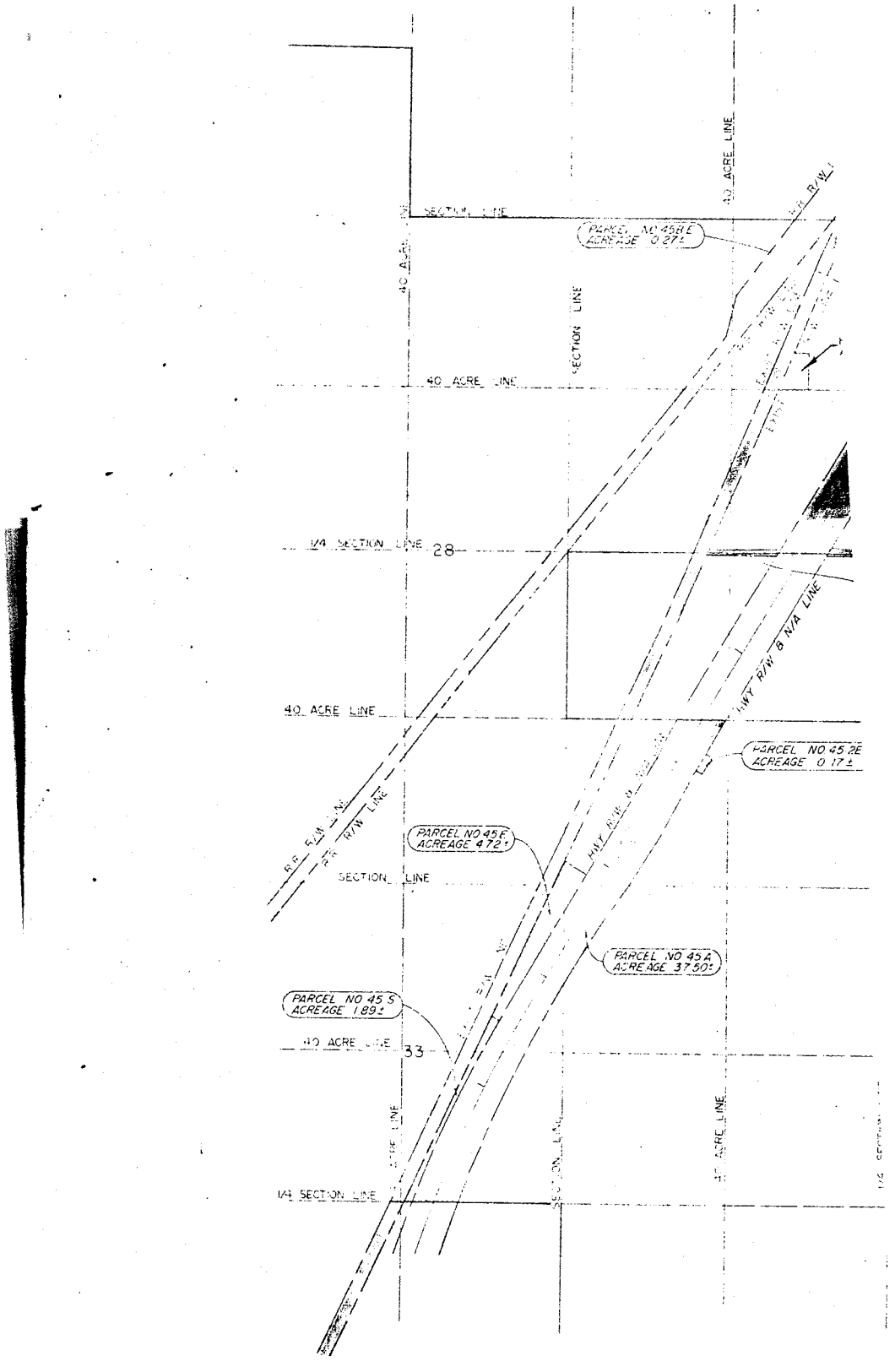

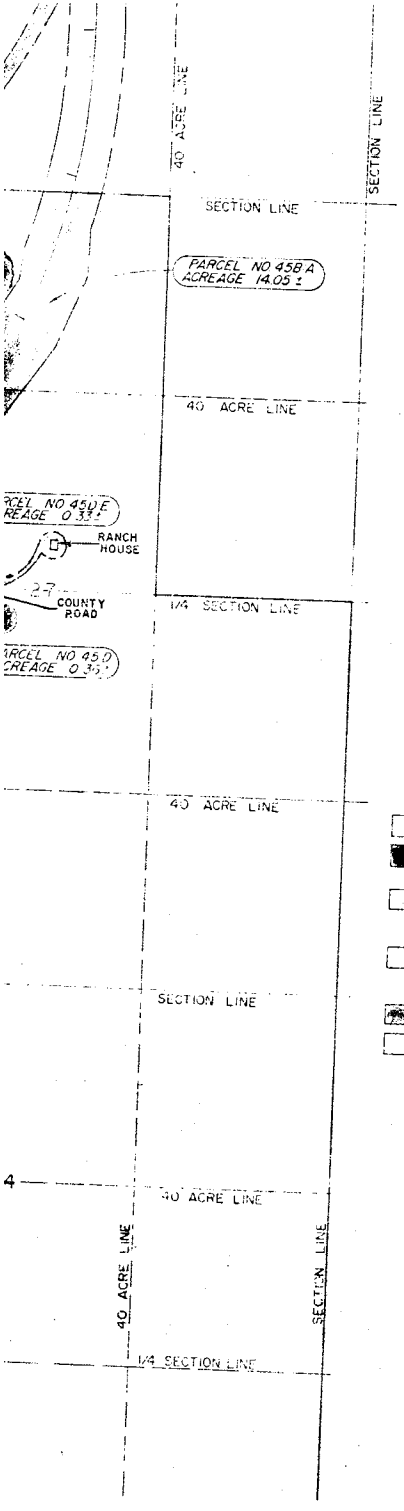

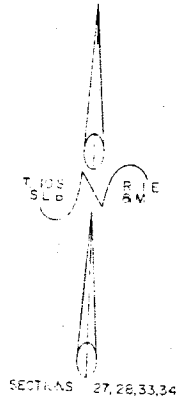

EXHIBIT

MAP SHOWING THE PROPERTY OF STEELE RANCH CORPORATION AND THAT PORTION REQUIRED FOR HIGHWAY PURPOSES

PROJECT NO I-6-[illegible]
LOCATION NO NETH TO JUAB-UTAH COUNTY LINE
COUNTY JUAB
DRAWN BY ROBERT PONCE
CHECKED BY A B GUFFIN

TOTAL TRACT	2474.65 Acs
LESS LAND FOR HIGHWAY	66.37 Acs
REMAINING LAND	2408.32 Acs
EASEMENTS	5.45 Acs

EXISTING ROADS
RAILROADS