

## Jury acquits Ventura landowner

*John Appel was accused of filling a nearby river with dirt, cement blocks*

By Henry Meier  
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**L**OS ANGELES — The old adage, “the third time’s the charm” gets thrown around a lot, but in some instances there’s a bit of truth to the saying.

After twice being found liable for violations related to the Clean Water Act, a federal jury acquitted Ventura landowner John Appel on all counts after a seven-day criminal trial Thursday that also touched on thorny environmental questions.

The trial proceedings themselves before U.S. District Judge George H. Wu also featured an array of eyebrow-raising situations. A former federal judge took the witness stand to testify for the government about her decision in an earlier case; another witness was accused by the defense of offering perjured testimony; and the government’s lead investigator was called by the defense, not by the prosecution.

It all led up to a not-guilty verdict for Appel. After more

than 20 years of being involved in litigation over his property in the Ojai Valley — mostly unsuccessfully — it was a rare moment of triumph for the landowner, according to his attorney Reuven L. Cohen, a partner at Dordi Williams Cohen LLP.

“It was great to finally beat back the government’s charges and prove what Mr. Appel has known all along: that he’s done nothing wrong,” Cohen said. “After almost 25 years it’s nice to know justice has been served.”

Central District Assistant U.S. Attorney Heather C. Gorman, who was co-counsel for the government in the matter, said she did not anticipate an appeal of the verdict and that the government respects the outcome of the trial.

“We respect the jury’s decision,” Gorman said. “We obviously had a different view of what the evidence said, but in the end we are just pursuing justice.”

Outside of the odd details of the trial — it’s not every day that Lourdes G. Baird, a retired federal court judge, takes the witness stand to testify about a ruling in an earlier case involving similar issues — the case dealt with some particularly topical issues related to environmental law.

The main question in the case was whether Appel had put so-called “dredge or fill material”

— in this instance dirt and cement blocks — into the Ventura River, which runs adjacent to his property. The defendant did not deny that truckloads of dirt and thousands of pounds of cement blocks were brought to his property, but Cohen argued that the government was expanding the definition of where the high-water mark of the river was outside of its jurisdictional limitation. Experts testified on both sides and, based on the not guilty verdict, the jury apparently sided with the defense.

The jurisdictional debate underscores the larger environmental law question. Currently, the Army Corps of Engineers — the body that helps designate what areas are covered by the Clean Water Act — is working to install new rules that may clear up some of the ambiguity that plagued the *Appel* case. A 300-plus page proposal released in late March addressed the issue head on, according to Paul S. Weiland, a partner at Nossaman LLP in Irvine who focuses on water, environment and land use law.

“The scope of regulatory authority under the Clean Water Act extends to only the ‘waters of the United States’ by statute,” he said. “But for legal purposes, where do you draw that line?”

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