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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of Camp Meeker Water System, a corporation, for an order authorizing it to increase rates charged for water service. | Application 83-11-54 (Filed November 14, 1983) |

William E. Geary, Attorney at Law, and John D. Reader, for Camp Meeker Water System, Inc., applicants.

Elliot Lee Daum, Attorney at Law, for Camp Meeker Residents and Property Owners, Camp Meeker Recreation and Park District; Frances S. Gallegos, for Camp Meeker Recreation and Park District; Tekla R. Broz, for We've Had Enough; Michael F. Willoughby, Attorney at Law, for Pat Chenoweth Aho and Joan Chenoweth; and B. David Clark, for the State of California, Department of Health; interested parties.

Albert Guerrero, Attorney at Law, and Thomas Thompson, Robert Penny, and Martin R. Bragen for the Commission Advisory and Compliance Division, Water Utilities Branch.

# I N D E X

## OPINION ON REHEARING

### I. Summary

The opinion determines that the November, 1951 real estate transactions at issue were proper, since they represented a commonly understood segregation of the Meeker property between public utility and private property for tax and ratemaking purposes. The November 26, 1951 deed conveyed the Camp Meeker Water System (CMWS) real estate and all water rights, easements and privileges appurtenant thereto. The November 29, 1951 deed conveyed the remaining Meeker land, variously described as watershed lands or surrounding lands. These lands are the private real estate of the Chenoweths, but are subject to the public utility water rights, easements and privileges granted by the November 26, 1951 deed.

The rights given to CMWS by the November 26, 1951 deed (and subsequently given to Camp Meeker Water System, Incorporated (CMWSI) by the August 7, 1959 deed) allow the utility to explore for and develop public utility water sources on the Chenoweth land, and to take such action as may be necessary to ensure that the Chenoweths do not jeopardize the ability of the water system to meet its public utility obligations. The Chenoweths are free, however, to use their land as they see fit so long as that use is consistent with the utility's rights and easements.

Conclusion of Law 2 of Decision (D.) 84-09-093 is rescinded.

## II. Comments on the Proposed Decision

The Commission's Water Utilities Branch, the Camp Meeker Park and Recreation District (CMPRD),[1] the Department of Health Services (DHS), the Pacific Legal Foundation (PLF), and Gene Koch filed comments on the proposed decision of the Administrative Law Judge.

The Water Utilities Branch asserts that the proposed decision improperly relies on a 1951 agreement with no probative value, that ratepayers have paid taxes on 21 well sites since 1932 and should not be penalized by CMWSI's failure to update the locations of those sites as old sites fail and are replaced by new ones, that the November 26, 1951 deed conveyed water rights and easements as well as real estate, that the administratrices of the Estate of Effie Meeker needed Commission approval to transfer the surrounding lands, that the March 3, 1982 "corrective deed" issued by the Chenoweths is invalid, that the surrounding watershed is dedicated to public service, and that the leases mandated by the proposed decision will do little to protect CMWSI's water supplies.

CMPRD asserts that early deeds fail to show the segregation of property found in the proposed decision, that this segregation was solely for tax purposes, that past Commission documents and CMWSI's articles of incorporation call for expansion of CMWSI's water sources, and that the Commission has failed to enforce its orders mandating improvements to the water system. CMPRD further asserts that the proposed decision errs by accepting a narrow definition of "appurtenant," by failing to apply the Water Code § 100 prohibition against the waste of water, by overlooking evidence that the Chenoweths intend to sell the watershed for

1 Comments on behalf of CMPRD were filed by Frances Gallegos. A separate set of comments on behalf of CMPRD was filed by Elliott Daum.

development, by inviting the Chenoweths to develop a new engineering plan for system improvement when the County of Sonoma has already done so, and by relying heavily on an unreliable agreement between the Meeker Estate and the Chenoweths.

PLF supports the proposed decision and states that "when attempts are made to restrict, take, or regulate property rights, great care must be taken to ensure that those rights are afforded adequate due process of law. Actions that may adversely affect property rights must not be taken lightly." (PLF Comments, p. 1.)

DHS comments that CMWS has been supplied with water from the surrounding lands for at least 57 years, that the November 26, 1951 deed language conveying water rights and easements conveyed to the Chenoweths the same water rights that the Meekers possessed before 1951, that the Meekers devoted water and water rights from the surrounding land to public utility service prior to 1951, that A.32820 clearly indicates that the Meekers believed the water system would suffer if the surrounding land was held by someone other than the owner of the water system, that the proposed decision fails to protect the watershed, that all wells developed by CMWSI on Chenoweth land after 1980 have been financed by ratepayers through Safe Drinking Water Bond Act loans, and that the water associated with the watershed must be preserved for public utility use regardless of land ownership. DHS urges the Commission to protect CMWSI's legal right to develop and utilize water sources on the watershed lands.

Gene Koch comments that the proposed decision reduces CMWSI's ability to function by depriving it of its its own water resources, ignores Civil Code § 805 which states that one cannot possess an easement over one's own land, ignores Water Code § 100 which prohibits waste of water, ignores evidence in the record concerning the Chenoweths' intention to develop the watershed, and fails to recognize that the August 7, 1959 deed (identical to the November 26, 1951 deed) gives CMWSI water rights and ancillary

easements over the surrounding lands. He also notes that the Chenoweths failed to introduce a title report they obtained in 1988, which he believes adversely reflects on their water rights, and suggests that we draw a conclusion from their failure to do so.

We agree that CMWSI has water rights and other easement rights to use the surrounding lands for public utility purposes, and have altered the proposed decision accordingly. We believe our resolution of the issues will satisfy the majority of concerns expressed in these comments.

We note that CMPRD referred in its comments to deeds and other material outside the record of this proceeding. Gene Koch similarly referred to a letter outside the record. While we understand the desire to ensure that the Commission has all relevant information when it makes its decision, we must point out that attempts to introduce new evidence through comments are improper. We have disregarded such material in reaching our decision.

## III. ALJ Ruling of August 4, 1989

In a ruling dated August 4, 1989, the ALJ made the PLF a party to this proceeding on the grounds that its application to file an amicus curiae brief and its comments were sufficient to make an appearance in and to become a party to this proceeding. The ALJ states that Rule 54 of the Commission's Rules of Practice and Procedure implies that an appearance may be entered by filing a pleading, and that the Commission implicitly accepted PLF's status as a party when it responded to legal arguments made by PLF in its amicus brief in support of CMWSI's petition for rehearing of D.84-09-093. The ALJ's ruling gives PLF the same rights as other parties to file comments on the proposed decision, reply comments, applications for rehearing, petitions for modification, petitions for writ of review, and other such post-decision pleadings as may

be allowed by the Commission's Rules of Practice and Procedure or by the Public Utilities Code. By issuing this ruling, the ALJ was responding to the absence of Commission rules governing the filing of amicus briefs.

While we appreciate the ALJ's efforts to fill the gaps in our rules of procedure, we do not agree with his result. PLF itself has never claimed party status or indicated a desire to become a party. In its comments on the proposed decision PLF specifically acknowledges that it is not a party and notes that it filed the comments and the prior amicus brief because of the proceeding's significant public interest implications regarding the security of private property rights. PLF has been closely monitoring this case for several years. If PLF wanted to become a party to this proceeding it could have done so by attending any hearing and filling out an appearance form. We believe that the barest minimum requirement for becoming a party to a Commission proceeding is the desire to become a party, and we decline to make PLF a party in view of its statement that it is not a party. We will, therefore, rescind the ALJ Ruling of August 4, 1989.

Even if PLF had expressed desire to become a party, it would still have faced the fact that Rule 54 does not permit one to become a party to an investigation or application proceeding based on a pleading alone. At a minimum our practice has been to require an appearance at a hearing.

While we do not find that the filing of an amicus brief and comments is adequate to make one a party to a Commission proceeding, we do find it appropriate to consider the comments PLF has filed in this proceeding. PLF has long been interested in this proceeding and has placed the parties to the proceeding on notice of its interest by filing an amicus brief which the Commission responded to in D.84-09-093. Because the Commission's rules do not address requests to file amicus briefs, persons desiring to

participate in this fashion are given little guidance in how to do so and in the procedural meaning of having done so. Although Rule 77.2 authorizes only parties to file comments on a proposed decision, we will under Rule 87 permit a deviation of this rule in order that the comments of PLF may be received and responded to.

We note that comments were also filed by Gene Koch, who is not listed as a party to this proceedings but who also has expressed deep interest in the issues it addresses. Mr. Koch has appeared at hearing and participated in this proceeding. Mr. Koch testified as a witness during the rehearing of this matter, and submitted several exhibits to support his position. At the hearing, Mr. Koch was told he could not make legal arguments unless he became a party to the proceeding and filed a brief. (TR 6: 523-529.) Although he never stated the precise words "I would like to become a party to this case," he did request permission to offer certain documents into evidence and "give a brief." (TR 6: 536.) The ALJ agreed that Mr. Koch could "tell us through argument later or through brief what you think these documents mean and how they should be interpreted." (Id.) The ALJ subsequently reminded Mr. Koch that "That's by way of legal argument, Mr. Koch. Those kinds of arguments can be made in briefs. And you can cite any law or cases or statutes or legal arguments through your legal arguments or your briefs." (TR 6: 557.) Although Mr. Koch did not fill out an appearance form to become a party to the proceeding, the ALJ treated him like one by accepting his exhibits and testimony and by authorizing him to file briefs.

We find that Mr. Koch met the Rule 54 requirements for becoming a party to this proceeding. He made an appearance at the hearing, disclosed the person on whose behalf the appearance was entered (himself; TR 6: 515, 541), stated his position fairly (TR 6: 525-527, 531-533), and limited his contentions to those reasonably pertinent to the issues already presented (TR 6: 515-558.) He lacks only the paperwork to become a party. Accordingly,

Mr. Koch is hereby deemed to be a party to this proceeding who is entitled to the same rights as other parties. We will direct the Process Office to add Mr. Gene Koch to its list of appearances; and will require other parties to this proceeding to send copies of all pleadings in this matter to Mr. Koch just as they would to any other party.

Mr. Koch's comments will be received as the comments of a party under Rule 77.2.

## IV. Petitions to Set Aside Submission

On August 24, 1989, Frances S. Gellegos petitioned the Commission to set aside the proposed decision for the taking of additional evidence, pursuant to Rule 84 of the Commission's Rules of Practice and Procedure. In support of her petition, Ms. Gallegos (who appeared in the proceeding on behalf of CMPRD) stated that the ALJ did not examine certain pre-1951 deeds mentioned in her comments on the proposed decision; that the Chenoweths failed to produce and the ALJ failed to subpoena a title search performed by First American Title Company at the Chenoweths' request which was referred to by Gene Koch during his testimony in this proceeding; and that by omitting a thorough review of the pre-1951 deeds, the Articles of Incorporation of the water company in 1959, the published brochures of intent to sell the watershed, wells, and springs used and useful to the water system, and the deposition of Dick Halsey, the ALJ rendered a skewed and injurious decision. Ms. Gallegos requests that the decision be set aside, and the proceeding reopened, for the purpose of taking into the record the title search and preliminary title report prepared by First American Title Company. She requests that the Commission subpoena both the title report and its author. Sonoma County Supervisor Ernie Carpenter, who appeared as a witness in this proceeding, similarly implored the Commission to reopen this proceeding and

give close consideration to the needs of the community of Camp Meeker.

We deny Ms. Gallegos' petition for the following reasons. First, although Ms. Gallegos testified on behalf of CMPRD, she is not herself a party to this proceeding, and thus is not entitled to file a petition to set aside submission pursuant to Rule 84 of the Commission's Rules of Practice and Procedure. Rule 84 states in pertinent part that "After conclusion of hearings, but before issuance of a decision, a party to the proceeding may serve on all other parties, and file with the Commission, a petition to set aside submission and reopen the proceeding for the taking of additional evidence."

Second, Ms. Gallegos' petition does not meet the requirements of Rule 84. Rule 84 states that petitions to set aside submission "shall specify the facts claimed to constitute grounds in justification thereof, including material changes of facts or law alleged to have occurred since the conclusion of the hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced." Ms. Gallegos' petition refers to 1) pre-1951 deeds, 2) a 1986 real estate brochure, and 3) a title report referred to in the testimony of Gene Koch during the 1988 hearings in this proceeding. All of these documents were known to Ms. Gallegos prior to the conclusion of the hearings in this proceeding. Ms. Gallegos gives no reasons why CMPRD or another party could not have subpoened the title report at issue or introduced into evidence the other documents referred to in the petition. In the absence of such reasons, we will deny the petition.

On October 3, 1989, Anne-Elizabeth filed with the Commission a petition to become a legal party to this proceeding and to set aside submission. Anne-Elizabeth is the treasurer of "We've Had Enough," a party to this proceeding previously represented by Tekla Broz. In addition to supporting the petition

of Frances Gallegos, Anne-Elizabeth requests that the proceeding be reopened for the receipt of new evidence concerning certain water rights proceedings pending before the State Water Resources Control Board. Evidently, both the Chenoweths and We've Had Enough have filed applications for rights to water from the stream feeding the Baumert Reservoir and/or for right to store water in the Baumert Reservoir or the Baumert Gulch.

Although the proceedings before the Water Resources Control Board are certainly of interest and may well be relevant to the issues in this proceeding, we do not believe it necessary for us to set aside submission of this proceeding at this time. This proceeding has been a protracted one, lasting five years thus far, and involving two sets of hearings and ample opportunity to present evidence concerning the property rights at issue. We feel we have an adequate record upon which to resolve the issues before us, and decline to exercise our discretion to reopen this proceeding.

If we were to have further hearings in this case, we would of course welcome the submission of the evidence contained in the We've Had Enough petition. We hope, however, that today's determination of the relative property rights of the Chenoweths' and CMWSI will preclude the need for such hearings.

## V. Procedural Background

On November 14, 1983, Camp Meeker Water System, Inc. (CMWSI) filed an application seeking authority to increase revenue from $34,200 to $53,800 ($19,600 or 57.3%) in test year 1984. On November 22, 1983, Resolution W-3146 granted CMWSI a 12.74% offset increase. The original hearings in this proceeding addressed the balance ($15,940 or 39.52%) of the requested increase, a request to end the existing moratorium on new connections, and a request for a 6.5% attrition increase in the two years following the initial rate increase.

Public hearings were held April 9, 10, and 11, 1984, before Administrative Law Judge (ALJ) Wright, and the matter was submitted June 6, 1984, upon the filing of concurrent briefs by the Hydraulic Branch of the Public Staff Division (now the Water Utilities Branch of the Commission's Advisory and Compliance Division)[2] and CMWSI. In D.84-09-093 (September 19, 1984) the Commission granted an increase of $7,409 (19.46%) over revenue at 1983 rate levels, continued the ban on new connections, and granted attrition increases for 1985 and 1986. In addition, the Commission found:

> "11. Members of the Meeker family, original owners of the water system at Camp Meeker, executed a deed conveying all but approximately 16 acres of the land on which the water system was located to members of the Chenoweth family on November 29, 1951 without Commission authorization."
>
> "12. The question of fact as to whether the property described in the Meeker deed of November 29, 1951 contained only private nonutility property and not public utility water resources has not been presented to the Commission for its determination." (D.84-09-093, pp. 16-17.)

The Commission concluded:

> "2. The deed from the Sonoma County Land Title Company to Hardin T. Chenoweth, William C. Chenoweth, and L. C. Chenoweth dated November 29, 1951 is void for want of authorization by the Commission." (Id., p. 17.)

2 The Hydraulic Branch is now the Water Utilities Branch of the Commission's Advisory and Compliance Division. During rehearing a witness from the Water Utilities Branch testified. To simplify matters, we will refer to both the former Hydraulic Branch and the current Water Utilities Branch as "staff."

The Commission made no order pertaining to the transaction described in the findings and conclusion quoted above.

On October 19, 1984, CMWSI filed an application for rehearing of D.84-09-093. On the same date the Pacific Legal Foundation filed a proposed amicus curiae brief in support of CMWSI's application for rehearing of D.84-09-093. Its brief addresses the issue of dedication of property adjoining the water system. On November 13, 1984, CMWSI filed a supplemental brief in support of its application for rehearing. On February 6, 1985, the Commission issued D.85-02-045, granting limited rehearing "on the issue of the appropriate treatment of the land adjoining that of the water company property." (Id., p. 2.) The Commission elaborated as follows:

> "Concerning the issue of dedication of adjoining property, our further review of the record does not convince us that we can or should at this time declare the Meeker deed of November 29, 1951 to be void." (Id.)

The Commission declared that its main goal on rehearing was to approve a mechanism or plan to protect the water resources on the adjoining property for the continuing or eventual use of the water company. It urged staff and the Chenoweths (in their dual capacities) to work together on a joint proposal to present at further hearings; and stated that if a joint proposal could not be devised, the parties could present their own proposals at hearing.

On February 13, 1985, the proceeding was reassigned to ALJ Banks for rehearing of D.84-09-093. Thereafter, the staff and the Chenoweths for more than 2 years carried on extended, but fruitless, negotiations.

In April, 1987, the Commission directed the ALJ Division to file certain correspondence from CMWSI as an application for offset rate relief (Application (A.) 87-04-062). Dry weather during the winter of 1986-1987 had made it probable that water hauling would be required during the summer of 1987. The rate

proceeding was assigned to ALJ Baer. On May 12, 1987, the rehearing of D.84-09-093 was reassigned to ALJ Baer.

Because of the water shortage in Camp Meeker during the summer of 1987, proceedings in A.87-04-062 took precedence over those in A.83-11-54. However, a prehearing conference in A.83-11-54 was held on August 17, 1987. At that conference the ALJ ruled that evidentiary hearings would be convened on November 16, 1987, and that the parties would mail their prepared testimony and documentary exhibits to each other on October 16, 1987.

On November 7, 1987 L. C. Chenoweth, Vice President of CMWSI, passed away. He was the manager primarily responsible for regulatory matters. His brother, William Chenoweth, president of CMWSI, concerned himself chiefly with operations. At the request of CMWSI hearings were continued to December 15, 1987 and again to January 5, 1988. By ruling issued December 24, 1987, ALJ Baer limited the January 5, 1988, hearing to staff evidence only, postponing CMWSI's direct showing until January 21, 1988.

Hearing was convened on January 5, 1988, at which time staff presented its evidence. Hearing reconvened on January 21, 1988, at which time CMWSI presented evidence. However, on the advice of his physician, William Chenoweth, the surviving manager of the water company, did not appear to testify and sponsor the prepared testimony of CMWSI. Hearings were therefore continued to a date to be set, pending staff efforts to take Chenoweth's testimony in the less stressful environment of a deposition. These efforts failed, so hearings were reset to April 27, 1988, at the request of staff. Within the week before April 27, 1988, Elliot Lee Daum, attorney for citizens of Camp Meeker and for the CMPRD, sought a continuance of the proceeding because he could not be present. Hearing was convened on April 27, 1988, and continued to June 9, 1988, in response to Daum's request. Hearings concluded on July 11, 1988. The proceeding was submitted on that date subject to the concurrent filing of opening briefs on August 26, 1988, and

closing briefs on September 16, 1988. This schedule slipped until September 29, 1988, when the last closing brief was filed.

Opening and closing briefs were filed by CMWSI and by staff. CMPRD submitted opening and closing briefs to the ALJ but did not file them with the Docket Office. After notice from the ALJ, CMPRD resubmitted its briefs to the Docket Office, and they were filed December 14, 1988.

## VI. Original Proceedings in A.83-11-54

In the general rate proceeding for the 1980 test year, the Commission adopted as reasonable for the expense category "Well Site Rental" the sum of $400. (D.92450.) In A.83-11-54 CMWSI sought to increase the adopted amount in this expense category to $2,850 in 1983 and to $3,850 in 1984. In support of its request CMWSI sponsored prepared testimony by its expert witness, John D. Reader, who stated:

> "Well Site Rental
>
> "There are now six horizontal and five vertical wells on Chenoweth property. The last two wells were drilled there following three unsuccessful attempts to drill productive wells on Camp Meeker Water System, Inc. land with the full knowledge and consent of the State Department of Health Services. Applicant and the two Chenoweth families have entered into five year lease agreements for access to and use of the vertical well sites for a total of $1,850 per year. In addition applicant has or will soon have entered into two lease agreements for the 1982 and 1983 horizontal well sites for [$]2,000, only $1,000 of which would apply to estimated year 1983." (CMWSI Exhibit 2, p. 9.)

Staff responded to CMWSI's request in its prepared testimony, as follows:

"M. Well Site Rental

"38. CMWS requests $3,850 for rental of non-utility properties which serve as well sites for its system. Lease agreements exist for all the well sites under consideration in this rate proceeding.

"39. The Branch believes that the property on which the well sites have been developed is and has been utility property, used and useful for purposes of providing water service and for future expansion. Therefore, since the property in question is useful, it remains as part of the company's property, and no lease is necessary.

"40. If the Commission disagrees with the Branch's position, and believes that this property is not utility property, then Branch recommends that CMWS establish a consolidated, long-term lease for these well sites." (Staff Exhibit 4, pp. 12-13.)

Based on the foregoing testimony, staff recommended that:

"I. The property on which well sites exist be declared public utility property used and useful in the public utility water service of CMWS. And, if the Commission disagrees with this recommendation then the next two should apply.

"J. Applicant be ordered to establish a consolidated lease for well sites used and useful in the public utility water service of Camp Meeker Water System, Inc.

"K. Another day of hearings be scheduled for approximately six weeks after the currently scheduled hearings for the purposes of determining proper terms and conditions of the lease mentioned in the previous paragraph." (Id., p. 20.)

Staff's basic position was that all the well sites on property claimed by the Chenoweths are located on property which was intended to be utility property. The staff witness

acknowledged that from the documents he reviewed he could point to nothing specific to support his recommendation, and that he had no evidence that CMWSI had ever owned the well sites or that they had been dedicated to public utility use. He acknowledged that the August 7, 1959 deed he reviewed did not specifically refer to watershed territory. He pointed out, however, that he also had no evidence that the water company's operations were ever limited to the specific properties described in that deed. Staff noted that CMWS obtained water from the "B" springs located on surrounding watershed, that springs rely on the surrounding land for water, and that the Commission found the "B" springs dedicated to public utility water service, and argued that the well sites located near the spring sites should also be found dedicated to public utility service. Staff also noted the potential for a conflict between the interests of the Chenoweths as owners of CMWSI and their interests as individuals.

During cross-examination it became clear that the witness had only the deed of August 7, 1959 and the Commission opinion authorizing that transfer before him when he made his recommendation.[3] He had no documents from the 1951 transactions and no pre-1951 documents.

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3 That deed transferred CMWS real properties from the Chenoweths and Chenoweths, Inc., to CMWSI, a California corporation. The transfer was made pursuant to the authority granted by the Commission in D.58847, dated August 4, 1959 in A.41313. (Exhibit 25, Appendix items A-15 and A-16). In A.41313 the applicants refer to "A.32820 and a copy of a deed placed in said file on or about the sixth day of August 1953, for a description of property constituting the water works business." The formal file for A.32820 is not available. However, Exhibit 25, Appendix A-8 is a copy of A.32820. That application contains a proposed deed wherein the Effie Meeker administratrices transfer CMWS real properties to the Chenoweths. Exhibit 16 contains an executed copy of the same deed, dated November 26, 1951. The deed of August 7, 1959, is identical to those deeds, except for grantors and grantees. (Exhibit 25, Appendix A-17.)

CMWSI introduced copies of the November 26, 1951 and November 29, 1951 deeds, and an original Declaration of L.G. Hitchcock prepared in connection with the Commission proceeding. (Exhibit 16.)

D.84-09-093 found the November 29, 1951 deed void for want of authorization by this Commission, but noted that the question of whether the property described in that deed contained only private non-utility land and not public utility water resources had not been presented for the Commission's determination. (D.84-09-093, p. 17.)

D.85-02-045 granted limited rehearing on the issue of the appropriate treatment of the land adjoining the water company property. We will now address the issues not resolved in D.84-09-093.

CMWSI and other parties have produced an abundance of documentary evidence and testimony regarding the property in dispute. We now have an adequate record to resolve the issues before us.

## VII. Issues

The issues to be decided in this proceeding are as follows:

1. What was the ownership status of the Camp Meeker property prior to 1951?

2. What property interests did the 1951 transactions convey?

   A. Background

   B. The November 26, 1951 deed

      1. What did the November 26, 1951 deed convey?

2. What is the extent of the easements benefiting CMWSI and burdening Chenoweth land?

   a. Deed language

   b. The relationship between the water rights and easements and the land to which they are attached

   c. Circumstances within the contemplation of the Meeker Estate and the Chenoweths in 1951

C. The November 29, 1951 deed

   1. Did the Effie Meeker Estate require Commission approval before it could lawfully transfer the surrounding lands?

   2. What did the November 29, 1951 deed convey?

   3. Did the November 29, 1951 deed extinguish the easements granted by the November 26, 1951 deed?

D. Is extrinsic evidence helpful in interpreting the 1951 deeds?

   1. The September, 1951 agreement between the administratrices of the Estate of Effie M. Meeker and the Chenoweths

   2. The Commission's November 6, 1951 approval of the transfer of the water system to the Chenoweths

   3. The Hitchcock Declaration

E. What was the final result of the 1951 transactions?

3. Was property dedicated to public utility use after 1951, or did CMWSI simply exercise its easement rights?

A. Well sites

B. Baumert Reservoir

4. Would use of Baumert Reservoir for non-utility purposes violate Water Code § 100 or Article 10, § 2 of the California Constitution?

5. Does our finding that CMWSI possesses easement rights adversely affect Chenoweth property rights without due process?

**1. What was the ownership status of the Camp Meeker property prior to 1951?**

Staff asserts that, despite the fact that the issue of land ownership has been before the Commission since 1984, applicants have failed to present probative evidence on the issue. Staff further asserts that the Chenoweths never provided evidence that the Meeker Estate, the original owners, had treated the land as two separate parcels of land. Moreover, staff asserts that applicant's Exhibit 25 was never admitted into evidence, is not part of this record, and should not be considered as evidence. Finally, staff asserts that the record shows that the owners prior to the Chenoweths held title to the land and the watershed in question in the name of the water company, creating a solid presumption that the watershed has historically been an integral part of CMWSI's operations.

In the appendix to Exhibit 25, CMWSI introduced a series of documents, dating as far back as 1932, which show that the Meeker family real property was for tax and ratemaking purposes segregated between water system property and other real property.

The first of these documents is D.24567, dated March 14, 1932, in C.3105 and A.17952, a complaint and a general rate application, respectively. In D.24567 the Commission summarized staff's rate base evidence as follows:

> "A field investigation of the operations of this utility [CMWS], together with an inspection of its physical properties, was made recently by H. A. Noble, one of the Commission's hydraulic engineers, and his report and detailed appraisal show a total of $13,417 for the estimated original cost of the physical properties, exclusive of lands and rights of way, and a depreciation annuity of $282 as computed by the 5% sinking fund method. Mr. H. R. Robbins, one of the Commission's land appraisers, submitted a total of $3,438 for the present value of the various lands reserved for the springs and tank sites and $250 for certain pipe line rights of way." (Exhibit 25, Appendix A-2, p. 4; 37 CRC 284, 286.)

The Commission also discussed property taxes, as follows:

> "The analysis submitted [by the staff] of...operating expenses [for the years 1928, 1929, and 1930] shows that the item of $500 for taxes includes charges incurred for applicants' private realty holdings and that the portion properly chargeable to the utility's operations should have been not in excess of $80 annually. However, the correction for this tax item is largely offset by the omission of any charge for depreciation." (Id., pp. 4-5; 37 CRC at 286.

The above quotation shows that the Commission recognized in 1932 that the applicants, Effie M. Meeker and Julia E. Meeker, doing business as Camp Meeker Water System, an unincorporated public utility, owned "properties devoted to the public use"; and that individually or as co-owners they also owned "private realty holdings." (Id., pp. 5-6.)

The appendix to Exhibit 25 also contains the staff's appraisal exhibit from A.17952. In that exhibit, staff witness Robbins inventoried and appraised the fee lands and rights of way of CMWS as of January 1, 1932. His inventory lists 21 parcels or lots. The total acreage of the 21 parcels or lots is 15.75 acres; the average area is 0.75 acre; the largest is 5 acres; and the smallest is 0.02 acre. The value of the 21 parcels is $3,438. The

staff's 1932 appraisal did not include any property except parcels or lots containing springs, diversions, or tanks actually used, or proposed for future use, in public utility service. (Exhibit 25, Appendix A-3.)

The appendix to Exhibit 25 also contains a 1935 Tax Collector's ledger sheet showing 21 properties associated with CMWS. The ledger sheet lists 7 parcels totaling 14.81 acres and 14 lots, the acreage of which is not specified. Although the 21 properties on the ledger sheet and the 21 parcels on Robbins' inventory and appraisal cannot be matched parcel for parcel, it is highly probable that they are the same properties since: 1) both documents list properties associated with the Camp Meeker Water System, 2) only three years separate the documents, and 3) the total acreages are virtually identical.[4] (Exhibit 25, Appendix A-4.)

The appendix to Exhibit 25 also contains the inventory and appraisement of the Estate of Effie M. Meeker. This document shows that the estate's appraiser inventoried the CMWS properties, parcels, and lots separately from other properties owned by the decedent Effie M. Meeker, formerly an owner and operator of CMWS. The properties associated by the estate's appraiser with the Camp Meeker Water System are virtually identical to the properties listed by the tax collector in 1935. (Exhibit 25, Appendix A-5.)

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4 The total acreage in parcels 1-7 equals 14.81 acres, the same total that appears on the Ledger Sheet. In totaling the acreages of the parcels and lots, the Tax Collector excluded the lots (8-21), then valued the parcels and lots separately. Staff witness Robbins assigned an area in acres to each of his 21 parcels, including the small parcels he identified as lots. Thus, his total acreage was 15.75 acres. Backing out the ten smallest parcels from Robbins' 15.75 acres reduces his total to 14.85 acres, only 0.04 acre more than the Tax Collector.

The four documents described above, all predating the 1951 real property transactions, show that the Commission, the property tax collector, the Commission staff, the Meekers, and the estate appraiser, all understood that the properties of the Meeker family were segregated between water system property and private real estate. We therefore conclude that the lots and parcels listed in the Inventory and Appraisement of the Effie Meeker Estate, that is, those appraised as parts of CMWS, were the real estate of the water system in the years before 1951. The Inventory and Appraisement provides the latest pre-1951 information concerning CMWS real estate.

It is equally clear from the same four documents in the appendix to Exhibit 25 that the lands surrounding the water system real estate were treated by the Commission, the Commission staff, the tax collector, the Meekers, and the estate appraiser as the private realty holdings of Meeker family members. For ad valorem tax and ratemaking purposes, the surrounding lands were identified with Meeker family members in their individual capacities and not as owners or operators of a public utility water company. Moreover, there is no evidence in the record, nor does DRA contend, that the surrounding lands were ever in rate base. The only parcels and lots identified with the water company by staff witness Robbins in 1932 were those 21 parcels and lots associated with water system tanks and facilities or explicitly held for future use as proposed tank or well sites.

We conclude that the surrounding lands were the private realty holdings of members of the Meeker family. This does not, however, mean that the surrounding lands had no legal relationship to the real estate, real property rights, and public utility operations of CMWS. This relationship will be clarified later in this decision.

2. What property interests did the 1951 transactions convey?

A. Background

Before discussing the documents pertaining to the 1951 real property transactions, we will note certain facts regarding the pre-1951 ownership of CMWS. Effie Meeker, one of the owners and operators of the water company, died July 31, 1940. Apparently, Julia Meeker, an owner and operator of the company, also died in the 1940's. Thus, for a part of that decade the responsibility to operate the water company devolved upon the administratrices of the Effie Meeker Estate and the administrator of the Julia Meeker Estate. Paul R. Edwards, the heir to the Julia Meeker Estate, succeeded to a 1/3 interest in both the water system properties and other Meeker family properties. However, Effie Meeker had 17 heirs, some of whom also died during the 1940's. Thus, the ownership and duty to operate the water company was fragmented between Edwards, with a 1/3 interest, and the administratrices, representing 17 heirs (or the estates representing deceased heirs) of Effie Meeker. It was clearly not in the public interest that public utility duties and obligations should be fragmented amongst so many or that ownership of the public utility should continue in this fashion.

In 1951 the Estate of Effie Meeker was still not settled. In September of that year the administratrices of the Estate of Effie Meeker entered into an agreement (Exhibit 27; also Exhibit 25, Appendix A-6) with the Chenoweths to sell to them for $16,196.21 a 14/17ths interest in the real property of the Effie Meeker Estate. The agreement segregated the properties to be governed by the agreement into general real estate owned by the Meeker Estate and real and personal property of CMWS. The parties agreed to cooperate to obtain the Commission's authority for the transfer of the Camp Meeker Water System properties. The agreement was expressly made contingent upon the Commission's approval of that transfer. This agreement resulted in two property transfers:

one represented by the November 26, 1951 deed (Exhibit 25, Appendix A-10), the other by the November 29, 1951 deed (Exhibit 25, Appendix A-11.)

We will review these two property transfers separately, and then address the overall impact of these transfers on the current property rights of the parties to this proceeding.

B. The November 26, 1951 deed

On October 10, 1951, the administratrices and Paul R. Edwards joined with the Chenoweths in filing an application for authority to sell and transfer the Camp Meeker Water System to the Chenoweths.

A.32820 states, among other things, that: "It is the belief of the petitioning sellers herein that the interest of said Water System will be best served by the transfer thereof to the petitioning buyers herein who are also acquiring all of the remaining real property owned by said Estate of Effie M. Meeker, deceased, and the said Paul R. Edwards in common." (Exhibit 25, Appendix A-8, p.4.)

By ex parte D.46373 the Commission granted the authority sought in the application. Several statements in the opinion show that the Commission was aware that the estate properties included more than the Camp Meeker Water System. For example, the opinion recites:

> "...[the administratrices] desire to terminate the proceedings of said estate and to dispose of the properties comprising it, including the interest in the water system."
>
> * * *
>
> "...administratrices and Paul R. Edwards have made arrangements to dispose of their interests to the Chenoweths for the sum of $24,880.28, of which the sum of $8,500 has been assigned by them as the amount of the purchase price applicable to the water system, leaving a balance of approximately $16,300 applicable to certain nonoperative lands. ...the purchasers

intend to acquire the remaining outstanding interests, which are held by other estates now pending in the County of Sonoma, to the end that they will have entire ownership of the water system properties."

The order grants authority to the administratrices and Edwards to sell and transfer their interests in the Camp Meeker Water System to the Chenoweths "under the terms and conditions set forth in this application."

1. What did the November 26, 1951 deed convey?

In the November 26, 1951 deed, Edwards and Title Company, grantors, convey to Chenoweths, grantees:

"...all of the right, title, and interest of the said grantors in that certain property situate in the County of Sonoma, State of California, and generally known as the Camp Meeker Water System, including all pipes, whether covered or on the surface, used and employed in conveying water to customers of said System, and all connections and facilities of every kind and character used and useful in the operation of said System, and also all rights, privileges, and easements had, used, and enjoyed in the operation of said System, and also all water and water rights appurtenant to said System and used and useful in its operation, and also all tanks, reservoirs, springs, spring traps, pipes, and ditches leading thereto or therefrom:

"All real property situate, lying, and being in the County of Sonoma, State of California, used in connection with the the Camp Meeker Water System, a public utility, including the following parcels of real property situate lying and being in the County of Sonoma, State of California, and more particularly described as follows: . . . " (Exhibit 25, Appendix A-10; Exhibit 16.)

The deed goes on to describe: 1) Five parcels in Section 27, totaling 5.63 acres; 2) Three parcels in Section 28, totaling 9.48 acres; and 3) Ten Lots in various Blocks of the Second Addition to Camp Meeker and all of Block 36.

This listing of particularly described parcels and lots ends with the following sentence:

> "Together with any and all other real property in said County of Sonoma now or heretofore used as springs, reservoirs, or tank sites in connection with said Camp Meeker Water System, a public utility."

The deed concludes with the following general language:

> "Together with all water and water rights appurtenant to and belonging to the above described land, and all ditches, pipes, and improvements, and all rights, privileges, and easements belonging thereto or commonly had, used, or enjoyed therewith, together with all of the personal property used in the conduct and operation of said Camp Meeker Water System and owned in common by the said grantors herein.
>
> "It is the intent and purpose of this Deed and instrument of transfer to convey not only the properties particularly described herein, but also all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System and commonly used, had, and enjoyed in the maintenance and operation thereof, whether expressly described herein or not, and this deed shall be so construed as to accomplish such purpose."

The deed was signed by Edwards and Title Company on November 26, 1951, and recorded with the County of Sonoma on December 3, 1951.

Staff contends that "the language in the deeds reflect an intent that not only specific parcels of land were to be transferred, but also any and all used or useful watershed, facilities, water rights and rights of entry." (Staff Opening Brief, p. 10.)

CMWSI, on the other hand, analyzes the three paragraphs quoted above in the following manner:

"31. Examining the first paragraph of the subject language emphasis is given to springs, reservoirs, or tank sites now or heretofore used in connection with the system (emphasis added). There is no suggestion of a grant of springs, reservoirs or tank sites which might thereafter become useful to the utility.

"32. The second paragraph grants water and water rights appurtenant to and belonging to the above-described land, etc., as well as 'all rights, privileges and easements belonging thereto' (obviously meaning belonging to said real property), 'or commonly had used or enjoyed therewith' (again, meaning used in connection with said described real property), (emphasis added). Ballentine defines 'appurtenant' as: 'belonging to'; 'a subordinate part or adjunct'; 'an incidental right attached to a principal property right'. Ballentine's Law Dictionary, 1969.

"33. The third paragraph expresses the intent of the deed to transfer not only the properties described therein but also rights, easements and privileges and facilities appurtenant to said system. Obviously there is no suggestion that real property not described in the deed is to be considered transferred but only rights, easements, privileges and facilities arising out of or connected with the said described real property.

"34. In a careful reading of the above language two things become abundantly clear. First, there is no suggestion of any intent to convey any real property not specifically described. What is readily apparent is of course the intent to preserve to the specifically described real property all water and water rights already 'belonging to the above-described land.'

"35. Nor is there any suggestion of any intent to convey any rights not already appurtenant to and belonging to the specifically described land. It should be noted that the first time use of the term 'watershed' arose or any contention asserted with respect thereto was by Staff in April, 1984, during the course of the first hearing regarding this Application.

"36. Secondly, the deed is totally devoid of any language to suggest any intent to convey to the water system

rights to operate prospectively so as to increase the water system's rights in adjacent properties as its needs might increase.

"37. What today might be needed by or deemed useful to Camp Meeker Water System to make it 'complete water system' by today's standard is a separate and distinct issue from the question of what in fact is owned by the utility." (Exhibit 25, incorporated by reference in CMWSI Opening Brief, pp. 10-12.)[5]

We believe that both parties are partly right and partly wrong in their evaluation of the property rights at issue in this proceeding. Staff is correct in asserting that CMWSI has a right to use Chenoweth land for public utility purposes, but errs in claiming that CMWSI has an ownership interest in that land. CMWSI is correct in asserting that the November 26, 1951 deed gave it no ownership interest in Chenoweth land, but errs in contending that CMWSI has no rights to use that land. We will explain.

The language of the November 26, 1951 deed states that the Estate of Effie M. Meeker and Paul R. Edwards transferred not only the real property held by the Camp Meeker Water System, but also any water rights, easements, and privileges held by the water company. Clearly, something more than real estate and the attendant rights of the owner to use that real estate was conveyed.

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5 On page 1 of its Opening Brief, Applicant incorporates Exhibit 25 by reference "as a portion of its opening brief/argument." Although the appendix to Exhibit 25 was admitted into evidence, the exhibit itself was not, since no witness testified to the facts asserted therein. (TR 5: 456-459.) To the extent that Exhibit 25 contains legal arguments which are properly included in a legal brief, we accept the incorporation of this material by reference.

We do not, of course, condone the practice of citing in a brief factual material not admitted into evidence. To the extent that CMWSI's blanket incorporation of Exhibit 25 includes the purportedly factual material in Exhibit 25, CMWSI's incorporation of this material in its brief is highly objectionable. We advise CMWSI to refrain from this improper practice in the future.

Reviewing the circumstances surrounding the transaction in light of California Civil Code provisions governing property transfers, we find that the transfer of these water rights, easements, and privileges gave CMWSI specific legal rights to use the land retained by the Meekers and subsequently transferred to the Chenoweths on November 29, 1951. A quick summary of easement law may be helpful at this point.

An easement is a property interest in the land of another which entitles the owner of the easement to use the other's land or prevent the other from using that land. (Moylan v. Dykes (1986) 181 CA 3d 561, 568; Witkin, Real Property, 9th Ed. (1987), § 434.) An easement is an interest in the land of another, but not an estate in land. (Darr v. Lone Starr Industries (1979) 94 CA 3d 895, 901.) Thus, it is a right to use land, but not to claim the land as one's own. The land to which an easement is attached is called the dominant tenement; the land burdened by the easement is called the servient tenement. (Civil Code § 803.)

Civil Code § 801 states that "The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements: ...4. The right-of-way; 5. The right of taking water...; 6. the right of transacting business upon land; 9. The right of receiving water from ...land; 10. The right of flooding land; 11. The right of having water flow without diminution or disturbance of any kind; ..."[6] (emphasis added.)

6 Because the "water and water rights" and "all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System..." conveyed by the November 26, 1951 deed and the identical August 7, 1959 deed could all be characterized as "easements" under Civil Code § 801, we will hereafter generally refer to them as "easements."

Civil Code § 662 states that "A thing is deemed to be incidental or appurtenant to land when it is used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air, or heat from or across the land of another." (emphasis added.)

Thus, an easement is a right to use, or burden, the property of another; the easement is "appurtenant" to the land it benefits.[7]

As Gene Koch pointed out in his comments on the proposed decision, an easement cannot be held by the owner of the property burdened by the easement (Civil Code § 805). The owner of an easement has rights over the land of another, not rights over his or her own land. Thus, it is clear that the easements conveyed by the November 26, 1951 deed affect property other than the land conveyed by that deed. Given the relationship of the water system to the land retained by the Estate of Effie M. Meeker, it is obvious that the retained land is the land affected by the easements.

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7 When the word "appurtenant" is used in connection with the word "easement," it does not mean that the easement is physically attached to the easement owner's land, but rather that it is legally attached to that land which it benefits. The land to which an easement is attached is called the dominant tenement; the land burdened by the easement is called the servient tenement. (Civil Code § 803.)

Easements may be either "appurtenant" or "in gross." "Appurtenant easements" are transferred along with the property they benefit, whether or not they are mentioned in the deed itself (Civil Code §§ 662, 801, 1084 and 1104; Moylan v. Dykes, supra, 181 CA 3d at 568-569). Easements "in gross" are personal rights which are not transferred when the land is sold. (Civil Code § 802.) Where it is unclear whether an easement is in gross or appurtenant, it will be assumed that the easement is appurtenant. (Continental Baking Company v. Katz (1968) 68 C 2d 512, 521-523; Elliott v. McCombs (1941) 17 C 2d 23).

In the present case, the Meekers did not as owners of the Camp Meeker Water System have a formal easement over the portion of their land that was not in their public utility water system rate base. They did not need one, since they already possessed the right to explore for and develop new water sources on that land, and to rest assured that they would not, as owners of that land, do anything contrary to their interests as operators of the Camp Meeker Water System. The public utility, however, had what is sometimes referred to as a "quasi-easement" which ripened into a formal easement when a portion of the land was conveyed to the Chenoweths by the November 26, 1951 deed. [8]

When the Estate of Effie M. Meeker and Paul R. Edwards transferred the water system to the Chenoweths by way of the November 26, 1951 deed, they expressly transferred all water rights, easements and privileges previously enjoyed by the Camp Meeker Water System. These rights, easements, and privileges benefited the water system and burdened the property of another - the remaining land held by the Meeker Estate. These water rights and easements are appurtenant to the water system property transferred by the November 26, 1951 deed.

We note that even if the November 26, 1951 deed had not mentioned easements, an implied easement would still have been

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8 The concept of a quasi-easement may be explained as follows. When two parcels of land are owned by one owner, it is not possible for that owner as owner of parcel A to have a true easement with respect to parcel B, but it is possible for that person to be using parcel B for the service of parcel A. Parcel B, for example, may have a roadway, or a water system, which benefits parcel A. In such a case, the owner of the parcels could be said to have a quasi-easement over parcel B for the benefit of parcel A. When parcel A is sold, the quasi-easement becomes a true easement possessed by the new owner of parcel A. If the owner does not gain the easement through express grant, he gains it by operation of law. (Civil Code § 1104.)

created by operation of law. Civil Code § 1104, "Easements passing with property," states that:

> "WHAT EASEMENTS PASS WITH PROPERTY. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed." (emphasis added.)

Thus, even if the November 26, 1951 deed did not explicitly mention easements, the Chenoweths, as the new owners of the Camp Meeker Water System, would have had an implied easement to use the remaining Meeker property to benefit CMWS in the same manner as it was being used when both properties were owned by the Meekers.

**2. What is the extent of the easements benefiting CMWSI and burdening Chenoweth land?**

We must now determine the extent of the easement rights possessed by CMWSI over the Chenoweth land. We will use the following guidelines.

The scope of an easement is determined by the language of the grant, or the nature of the enjoyment by which it was acquired. (Civil Code § 806). Courts "may consider the type of rights conveyed and the relationship between the easement and other real property owned by the recipient of the easement..." Moylan v. Dykes, supra, 181 CA 3d at 569.) "[C]onsideration must be given not only to the actual uses being made at the time of the severance, but also to such uses as the facts and circumstances show were within the reasonable contemplation of the parties at the time of the conveyance." (Fristoe v. Drapeau (1950) 35 C 2d 5, 10.) See also, George v. Goshgarian (1983) 139 CA 3d 856, 861-862.) And "an easement created by conveyance, having by its nature a

prospective operation, should be assumed to have been intended to accommodate future needs.'" Faus v. City of Los Angeles (1967) 67 C2d 350, 355.) Finally, easements conveyed in deeds must be interpreted in favor of the grantee - in this case, the new owners of the Camp Meeker Water System. (Civil Code § 1069.) We will therefore interpret any ambiguity in the deed to provide the water company with more, rather than less, property rights.

a. **Deed language**

Here, the deed language granting the easements reads as follows:

> "...all of the right, title, and interest of the said grantors in ...the Camp Meeker Water System, including all pipes, whether covered or on the surface, used and employed in conveying water to the customers of said System, and all connections and facilities of every kind and character used and useful in the operation of said System, and also all rights, privileges, and easements had, used, and enjoyed in the operation of said System, and also all water and water rights appurtenant to said System and used or useful in its operation, and also all tanks, reservoirs, springs, spring traps, pipes, and ditches leading thereto or therefrom:
>
> The deed concludes with the following general language:
>
> "It is the intent and purpose of this Deed and instrument of transfer to convey not only the properties particularly described herein, but also all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System and commonly used, had, and enjoyed in the maintenance and operation thereof, whether expressly described herein or not, and this Deed shall be so construed as to accomplish such purpose. (emphasis added.)

It is clear that CMWSI, as holder of the easements, has broad rights to water from the land subject to the easements. The expansive nature of the easements granted is clear from the

statement of intent that the deed be interpreted to transfer not only the property specifically described in the deed, but also all rights, easements, and privileges and facilities appurtenant to the water system, whether expressly described or not. This statement leaves no doubt that the parties to the deed intended that the water company not be harmed by the transfer, and that the new owners have every single property right enjoyed by the former owners with regard to the operation and maintenance of the water system.

**b. The relationship between the water rights and easements and the land to which they are attached**

The property to which the easements in question are attached belongs to a public utility obligated to provide safe and adequate water supplies to its customers. (California Health and Safety Code §§ 4011-4016.) A look at the relationship between the Chenoweth land and the land owned by CMWSI is helpful in our evaluation of the scope of the easements.

CMWSI witness William Chenoweth testified that none of the wells currently serving the water system are located on CMWSI land. (TR 2: 184-186.) All of the wells providing water to CMWSI were drilled on Chenoweth land after efforts to develop wells on CMWSI land failed. (TR 2: 194.) The wells on Chenoweth land provide about half the utility's total water supply. (Exhibit 20, p. 18.)

For health and safety reasons, the use of groundwater from wells is preferable to the use of surface sources of water, although DHS believes surface sources must be maintained as backup, emergency sources. (DHS witness Clark, TR 1: 18-19, 31-32, 34.) DHS witness Clark testified that DHS was concerned about the long-term yield of the wells serving the water system, because the wells drilled in the early 1980's with Safe Drinking Water Bond Act (SDWBA) funds had yet to be tested during a period of low rainfall; if the wells failed because of clogging, they could possibly be

redrilled, but if they failed because of drought conditions that might not be the case. (TR 1: 34-36; Exhibit 7.) DHS's position has always been that surface sources must be treated and additional water sources developed. (TR 1: 39, 41; See also, DHS Exhibits 28 and 36.) Clark testified that DHS had agreed with the community and the water company that additional horizontal wells should be developed so that less surface water would have to be treated. (TR 1: 41.) DHS points out that the lands affected by the easements have as a watershed fed water utility sources since at least 1932, and have provided sites for new wells to replace old wells that have become clogged or have otherwise deteriorated. (TR 1: 34-36; TR 6: 569, 586-592.) DHS notes that water from this land is vital for the continuing operation of the water system. (TR 5: 468-469.)

If the easements were limited to the use of springs or diversions on the watershed in 1951 and to the protection of surface and groundwater flow feeding utility sources in existence at that time, CMWSI would not be able to develop new water sources on Chenoweth land. Since 1951, a great many of the water sources in use at that time have deteriorated or been taken out of service.[9] The wells on Chenoweth land are CMWSI's only source of well water. New wells will be required to replace clogged or drought stricken wells, and to provide an additional supply of safe drinking water. Efforts to drill wells on CMWSI land have failed.

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9 A report prepared by staff witness Martin R. Bragen notes that: "Since 1951 there have been many water sources for the system, most of them not now in use. Seven of the springs which were used in 1951 are still active today, while twenty-nine springs and wells which were used between 1951 and the present are no longer active. Most of the sources dried up. Twelve sources added since 1951 are still active." (Exhibit 20, p. 18 (footnote omitted.) It is clear that CMWSI water sources present a moving target, and cannot be pinned down to a specific number of static locations.

Although the Chenoweths have cooperated with CMWSI with regard to the development of new water sources, they might sell the land to someone not affiliated with the water company who might be less cooperative.

When we view the water rights and easements granted in the November 26, 1951 deed in light of their relationship to the public utility land to which they are attached, we conclude that they should be interpreted so as to enable CMWSI to continue to meet its public utility obligations. CMWSI would not be able to meet its public utility obligations to provide customers with a secure and adequate source of safe water if the easements were limited to the springs in existence in 1951.

**c. Circumstances within the contemplation of the Meeker Estate and the Chenoweths in 1951**

CMWSI's assertion that there is no reason to infer that parties to the 1951 deeds intended that the non-utility land be affected by any water sources beyond those in existence in 1951 or that such water sources be expanded to serve the needs of an increased customer base is not convincing.

A Commission decision issued on June 13, 1950, just three months prior the date the Estate of Effie M. Meeker and Paul R. Edwards reached an agreement to transfer the water system to the Chenoweths, found that the Camp Meeker Water System had inadequate water sources to serve existing and future customers and ordered

numerous improvements in the water supply.[10] In D.44303, 49 CPUC 729 (1950) the Commission stated that:

> "The present owners [the Meekers] of the system have failed to recognize their responsibility as operators of a public utility, and the present proceeding and the current record only serve to emphasize that deficiencies long inherent in the system still persist. These defects may be grouped under the two general headings of supply and distribution." (p. 731.)
>
> "It is apparent that certain specific improvements should be made to the system." [These improvements included cleaning and restoration of certain springs, and installation of permanent collection boxes at others.]
>
> "Also, the company has the obligation of developing additional water supply to provide adequate service to the present customers and the anticipated further growth of the system." (Id. at 732)
>
> "We find from the evidence of record that:
>
> 1. The present facilities for procurement, storage, and distribution of water, in connection with the public utility water system owned and operated by the Estate of Effie M. Meeker and by Paul Edwards at Camp Meeker...are inadequate for the present and future needs of the consumers served by said water system.
>
> 2. The present methods of operation employed by said Estate of Effie M. Meeker and by said Paul Edwards are inadequate and insufficient to assure said consumers a reasonably continuous supply of water for domestic use.

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10 This was not the first time CMWS was ordered to improve its service and increase its water supply. The very first Commission decision concerning CMWS found that "service rendered on said Camp Meeker Water System has been inadequate, insufficient and unsatisfactory and that certain replacements and enlargements of the distribution pipe mains and further development of the spring sources of supply and improvement in operating methods and practices are necessary and required in order that adequate, sufficient and satisfactory service may be rendered to consumers." (D.24567, 37 CRC 284, 288 (1932).)

3. The installation of the facilities, as herein set forth, and the adoption of the indicated practices and procedures in connection with the operation of said water system are necessary and vital for the proper and satisfactory operation of said water system as a public utility.' (p. 733) (emphasis added.)

These findings regarding the inadequacy of current water sources, the need to restore to operation existing springs taken out of service, and the need to improve the supply and delivery of water to provide adequate service to both present and anticipated future customers show that the Commission did not assume status quo use of the non-utility land when it approved the transfer of real estate and easement rights several months later. We do not believe our predecessors were so incompetent as to approve a property transfer which could make compliance with their own orders impossible so soon after those orders were issued.

Given the fact that D.44303 pre-dated the 1951 property transfers by only a matter of months, we find that the need for an expansion of the Camp Meeker water supply was within the reasonable contemplation of the parties to those property transfers. Given the limited nature of the purely utility property, we find that the need to develop new sources of water on the non-utility land now owned by the Chenoweths was also within the reasonable contemplation of the parties.

Finally, we note that property rights can be "enjoyed" even if they are not immediately exercised. The fact that CMWSI did not actually drill wells on Chenoweth land until 1959 does not mean it did not enjoy the right to do so earlier. Such a right is like money in the bank, it is comforting, enjoyable, and useful to have the money there even if you do not immediately spend it.

We reject CMWSI's interpretation of easement rights, which would restrict its right to develop new sources of water on the land it formerly had access to through joint ownership, place such development at the mercy of the new owners of such land, and

otherwise hamper its ability to carry out its public utility obligations. Such an interpretation would be contrary to the expansive language in the deed, contrary to the Commission's expressed concerns regarding the utility's need to develop water sources for existing and future customers, and contrary to the public interest.

We will interpret the broad easements here in a manner consistent with the deed language, with their relationship to the land they benefit, with their underlying public utility purpose, with the maxim that easements are to be interpreted in favor of the grantee, and with the principle that easements by grant should be assumed to take future needs into account.

We find that the Meeker family operators of CMWS enjoyed quasi-easement rights to use the non-utility portion of their Camp Meeker property for public utility purposes by virtue of their common ownership of the utility and non-utility portions of their property. These rights included the right 1) to take all water flowing over or located under the land; 2) to enter upon the land to explore for, develop, and maintain water sources thereon; 3) to construct dams and reservoirs on the land for water storage and supply purposes; 4) to enter upon the land to maintain such dams and reservoirs; 5) to construct and maintain pipelines and rights of way necessary for the taking of water from the land; 6) to drill wells and develop springs necessary to supply water from the land; 7) to expand their use of the land as necessary to replace deteriorating or obsolete water sources and to develop new sources of water to meet the growing needs of an increased customer base; 8) to insist that no one interfere with any of these rights; 9) to rely on the maintenance of the land in a manner that would not adversely affect the utility's water supply operations; and 10) to do anything else necessary to utilize the non-utility portion of their land for public utility water service purposes.

The new owners of the Camp Meeker Water System possess these same rights.[11]

C. The November 29, 1951 deed

The deed of November 29, 1951, is entitled "Deed and Assignment." In it Title Company appears as grantor and the Chenoweths as grantees. The deed grants:

> "...all right, title and interest which [Title Company] acquired in and to the real property described under and pursuant to the terms of the Decree of Partial Distribution entered... in the Matter of the Estate of Effie M. Meeker ...made and entered in said matter on October 19, 1951, and [Title Company] does hereby further sell, assign, transfer and set over unto [Chenoweths] any and all interest which [Title Company] acquired in and to the personal property described and any and all other personal and real property in which [Title Company] may have acquired any interest by reason of said Decree of Partial Distribution. Said Decree...describes real and personal property as follows: . . . "

The deed continues with five pages of detailed descriptions of various parcels of real property, which are summarized under the following subtitles: 1) "Highland Farms and adjoining area; 2) "Timberlands and acreage;" 3) "Subdivision Lands;" and 4) "Camp Meeker Water System." The specific descriptions of property under subtitles one through three are of

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11 In Farmer v. Ukiah Water Company (1880) 56 C 11, 15, the California Supreme Court clarified the rights of the purchaser of land to which an appurtenant water right was attached: "This water was by right used with the land for its benefit when Lamar conveyed the land and its appurtenances, and it does seem to us that Lamar conveyed all the right which he had to it, to his grantee, who has a right to insist upon being supplied with all the water Lamar would have been entitled to if he had never conveyed."

little help in our property rights analysis. The subtitle four descriptions are of greater interest.

Under the subtitle "Camp Meeker Water System," the deed lists two categories of property:

1. "All parcels of land situate in the County of Sonoma, State of California and standing in the name of Camp Meeker Water System, a public utility."

2. "Church, Camp Meeker Store, Post Office, school building, library and water building sites."

Finally, under the subtitle, "Personal Property," the deed conveys all of the interest of the Estate of Effie M. Meeker in the following:

> "Camp Meeker Water System: All personal property of whatsoever kind or character, and wheresoever situate, including money in bank and accounts receivable of the Camp Meeker Water System, a public utility. Store building, all furniture, fixtures and equipment, including gasoline pumps and tanks of the Camp Meeker Grocery Store. All furniture, fixtures and equipment in the Camp Meeker post office, water system office, school building and library building.
>
> "Together with any and all other real property situate in the County of Sonoma, State of California, in which Effie M. Meeker...and her estate may have any interest."

The deed was signed November 29, 1951, by two officers of Title Company and recorded at the request of L. G. Hitchcock.

We will address three issues concerning the November 29, 1951 deed. The first issue concerns the question of whether the Effie Meeker Estate needed Commission authority to transfer the property surrounding the water system land. The second concerns the extent of the property interest conveyed by the deed. The third concerns the possible impact of the deed on the easement

rights granted by the November 26, 1951 deed. These issues will be addressed in order.

1. **Did the Effie Meeker Estate require Commission approval before it could lawfully transfer the surrounding lands?**

Public Utilities (PU) Code § 851 provides in part:

"No public utility...shall sell...the whole or any part of its...plant, system, or other property necessary or useful in the performance of its duties to the public...without first having secured from the commission an order authorizing it so to do..."

"Nothing in this section shall prevent the sale...or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser...dealing with such property in good faith for value; ..."

Under Section 851 a public utility requires Commission approval of a sale of its plant, system, or other utility properties. The owners of a public utility may own both utility property and other real property. We have concluded above that this was the case with Meeker family members, at least since 1932.

To transfer real properties dedicated to or devoted to public utility service, a public utility must first obtain the Commission's authority under Section 851. By filing A.32820 the administratrices of the Effie Meeker Estate and Paul Edwards, acting on behalf of CMWS, sought the Commission's authority to transfer the property interests they controlled to the Chenoweths. The Commission granted that authority in D.46372. The authorized transfer was consummated through the November 26, 1951 deed.

The administratrices and Paul R. Edwards needed from the Commission no authority to transfer the surrounding lands (those

that are the subject of the November 29, 1951 deed) because all the property rights associated with that land which were useful to the utility had already been transferred to CMWS as easements in the November 26, 1951 deed.

2. What did the November 29, 1951 deed convey?

The November 29, 1951 deed conveyed to the Chenoweths land which was burdened by the water rights and easements conveyed by the November 26, 1951 deed. The Chenoweths, as owners of the land conveyed by the November 29, 1951 deed, may exercise all property rights consistent with the property interests they possess as owners of the servient tenement in an easement relationship. They may not interfere with CMWSI's exercise of its easement rights to develop water sources on Chenoweth land. The November 26, 1951 easements prevent the November 29, 1951 deed from posing a threat to CMWSI's utility operations.

3. Did the November 29, 1951 deed extinguish the easements granted by the November 26, 1951 deed?

After November 29, 1951, the Chenoweths owned both the parcel of land designated as Camp Meeker Water System land and the parcel considered private real estate. Thus, the Chenoweths owned both the property benefited and the property burdened by the easements granted in the November 26, 1951 deed. This raises the question whether such joint ownership extinguished the easements, since an easement cannot be held by the owner of the land burdened by the easement (Civil Code § 805) and since an easement is extinguished by the vesting of the right to the servitude and the right to the land burdened by the easement in the same person

(Civil Code § 811 (1).)[12] For the following reasons, we conclude that it does not.

The property conveyed by the November 26, 1951 deed has since at least 1932 been treated by its owners, the Commission, and the tax assessor as public utility property separate from the private property conveyed by the November 29, 1951 deed. Because the Camp Meeker Water System has a legal identity distinct from that of the property owners as individuals, the fact that after November 29, 1951 the Chenoweths owned both the public utility and the private land does not alter this distinction.

Even if we concede that the Camp Meeker Water System and the surrounding lands are held by many of the same individuals, albeit in different legal capacities, the November 29, 1951 acquisition of the fee interest in the property burdened by the water company easement would not necessarily extinguish the easement by merger. This is especially true where the public interest is at stake. In City of Los Angeles v. Fiske (1953) 117 CA 2d 167, 172, the court ruled that in view of the city's obligation as trustee to maintain an easement over a parcel of land for highway purposes for the use of all the people in the state there could be no merger with the city's playground interest simply because it acquired the underlying fee of the same parcel for playground purposes. Since the Camp Meeker Water System easements are necessary for public utility purposes, there can similarly be no merger as a result of the Chenoweth's acquisition of the land burdened by those easements for private enterprise purposes.

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12 CMWSI does not argue that the easements were extinguished by the joint ownership by the Chenoweths of the November 26, 1951 and November 29, 1951 properties. Such an argument would, of course, be contrary to its contention that the properties conveyed by those deeds are wholly separate. We address the issue only out of an abundance of legal caution.

Even if the November 29, 1951 transaction did serve to extinguish the easements, the easements were re-created when the Chenoweths transferred the Camp Meeker Water System to a new entity - Camp Meeker Water System, Incorporated, on August 7, 1959. CMWS sought, and obtained, Commission approval for the transfer on the grounds that the transfer would make it easier for the water company to obtain resources for the improvement of the water system. (A.41313, pp. 3-4; (Exhibit 25, Appendix A-15); D.58847, pp. 2-3 (Exhibit 25, Appendix A-16).) Since corporations are "persons" with the right to own property,[13] the 1959 conveyance of Camp Meeker Water System to Camp Meeker Water System, Inc., removes any possibility that November 29, 1951 permanently extinguished the November 26, 1951 easements.[14]

As CMWSI noted in its 1984 Post-Hearing Brief, "the lands conveyed by way of the deed of August, 1959, are identical in all respects to those transferred to the Chenoweth individuals by the deed of November 26, 1951. There is no question, therefore, that the property originally sold to the Chenoweth individuals by the heirs of the Effie Meeker Estate and Paul R. Edwards as part of the

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13 Corporations Code § 207 states that corporations are legal persons who can exercise the same rights as other person. These rights include the right to own real property.

14 A March 3, 1982 deed recorded by the Chenoweths purports to "corrrect, confirm and clarify" the land described in the August 7, 1959 deed which transferred the water system to CMWSI. (Exhibit 25, Appendix A-21.) This deed omits any reference to water rights, easements, and privileges appurtenant to the water system and useful for its operation as a public utility. This deed could be viewed either as a simple correction of the earlier deed's description of land or as a substantive revision which appears to rescind the transfer of property rights useful to the utility. To the extent the March 3, 1982 deed appears designed to effect a transfer of useful property rights, it is void under PU Code § 851 since no Commission approval was obtained.

Camp Meeker Water System was that identical property conveyed by the Chenoweth individuals to the Camp Meeker Water System, Inc." (emphasis in original) [Applicant's Post-Hearing Brief, 1984, pages 10-11]

Finally, we note that even if the November 29, 1951 deed did extinguish the easements, and even if the August 1959 deed did not resuscitate the easements, CMWSI would be no worse off. Since such extinguishment could only occur if the ownership of the parcels were truly merged, we would still reach the conclusion that CMWSI had the right to develop water sources on the non-utility land owned by the Chenoweths under the quasi-easement principle described earlier. Obviously, if the same persons own both parcels of land they can use one parcel for the benefit of the other.

D. **Is extrinsic evidence helpful in interpreting the 1951 deeds?**

In interpreting ambiguous deeds, the Commission may consider extrinsic evidence. The use of extrinsic evidence in interpreting deeds, however, is not unlimited. The California Supreme Court stated in Continental Baking Company v. Katz (1968) 68 C 2d 512, 521, that "extrinsic evidence is not permitted in order to add to, detract from, or vary the terms of an integrated written agreement...." although "extrinsic evidence is admissible in order to explain what those terms are." (Id., at 521; Code of Civil Procedure § 1856, 1860, Civil Code § 1647.) The Court went on to state that "Therefore, extrinsic evidence as to the circumstances under which a written instrument was made has been held to be admissible in ascertaining the parties' express intentions, subject to the limitation that extrinsic evidence is

not admissible to give the terms of a written instrument a meaning of which they are not reasonably susceptible." (Id. at 522.)[15]

With these restrictions in mind, we will review the several pieces of extrinsic evidence offered by CMWSI to explain the 1951 real estate transactions.

1. **The September, 1951 agreement between the administratrices of the Estate of Effie M. Meeker and the Chenoweths**

The ALJ admitted the September, 1951 agreement between the Meeker Estate and the Chenoweths (Exhibit 27) over the vigorous objections of Counsel for the Camp Meeker Residents and Property Owners and the Camp Meeker Park and Recreation District. Counsel contended that the document was not sufficiently authenticated, was not relevant, was not recorded, was never before presented to the Commission, may have been superseded by later actions, predates the November, 1951 deeds, and was not supported by a proper foundation. Furthermore, he argues that the deeds speak for themselves. Staff objected on grounds of relevance.

We believe this agreement was properly admitted for the purpose of clarifying any ambiguity in the deeds. The agreement is clearly relevant and does shed some light on the intent of the parties to the 1951 land transactions at issue here. We would have preferred authentication by a signer of the agreement, and an opportunity for adverse parties to cross-examine a witness familiar with the substance of the agreement. We believe, however, that there are sufficient indications that the document is what it

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15 The parol evidence rule which operates to bar extrinsic evidence which contradicts the terms of a written contract "is not a rule of evidence but is one of substantive law..." (Estate of Gaines (1940) 15 C 2d 255, 264-265; Riley v. Bear Creek Planning Commission (1976) 17 C 3d 500, 508-509.)

purports to be to warrant its admission. [16] As far as substance is concerned, the document can speak for itself.

The agreement is of course far from the best evidence of the intent of the parties to the 1951 transactions or the effect of those transactions. The best evidence is provided by the deeds themselves. The agreement may at best clarify possible ambiguities within the deeds, but may not impart to the deeds a meaning to which they are not reasonably susceptible.

CMWSI argues that the Meeker-Chenoweth agreement (Exhibit 27) proves that the November 26, 1951 deed was never intended to convey any interest in the non-utility property transferred by the November 29, 1951 deed, and that this property was intended to be free from any "public utility associations." The Chenoweths rely on language in the agreement that:

> It is fully understood and agreed by and between the parties hereto that the parties of the first part have not joined in or been a party to the dedication of any of said property herein referred to for the purpose of the operation of the Camp Meeker Water System other than the acreage consisting of 14 acres more or less immediately surrounding the various springs now used in the operation of the Camp Meeker Water System." (Exhibit 27, p. 3.)

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16 Under oath the surviving spouse of Leslie Chenoweth authenticated the signatures of William, Leslie, and Hardin Chenoweth appearing on Exhibit 27. She also testified that Exhibit 27 was one of the original copies of the 1951 agreement, and that the handwritten notes on the document appeared to be in her husband's handwriting.

Exhibit 27 bears all the indicia of what it purports to be--an agreement written in 1951. It is clearly a duplicate original carbon copy of that agreement. It is signed in fountain pen by all the parties--the administratrices of the Efie Meeker estate and the Chenoweths. Those signatures are acknowledged by L.G. Hitchcock, acting as Notary Public. The agreement is on the printed stationery of Barrett & McConnell, Attorneys at Law, of Santa Rosa. There are even rust marks where old staples have been removed for photocopying of the document; and the pages are brittle and cracked. There can be little question about the authenticity of the document.

This argument fails for several reasons.

First, it is contrary to the explicit language in the November 26, 1951 deed which states an intent to transfer all water rights, easements, and privileges associated with the Camp Meeker Water System. As we have already made clear, this language gives the owners of the water system certain real property rights over the surrounding watershed land.

Second, it is contrary to earlier language in the agreement itself, which states in pertinent part that:

> "That the parties of the first part ...do hereby agree to sell ...the Camp Meeker Water System, and all other property both real and personal appurtenant to said system and used therefor..." (Exhibit 27, p. 3.)

This language confirms the deed language transferring the easements appurtenant to the water system.[17]

Third, it fails to recognize the difference between rights conveyed by easements and restrictions imposed by the dedication of property. The possession of an easement gives one certain rights over the property of another, whereas the dedication of one's own property to public utility service creates restrictions applicable to that property alone. Furthermore, the rights conveyed by an easement do not restrict land use completely, but merely prevent the person whose land is burdened by the easement from acting in a manner inconsistent with the easement. Dedicated land, on the other hand, can only be used for the purpose to which it is dedicated.

While we agree that the agreement clarifies the intent of the parties to transfer the Meeker Estate land in two parcels, one clearly dedicated to public utility service and one not, we do not

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17 "Real property" includes "[t]hat which is incidental or appurtenant to land." (Civil Code § 658 (3).) Thus, the water rights and easements appurtenant to the water system land are themselves "real property."

agree that this fact severs all ties between the two parcels. We have already noted that the utility has easements burdening the non-utility property. The right to an easement burdening a property is independent of the dedicated or non-dedicated status of that property. (Danielson v. Sykes (1910) 157 C. 686, 689; Tract Development Service, Inc. v. Keppler (1988) 199 CA 3d 1374, 1381-1383).[18]

In accordance with the statutory restrictions on the use of extrinsic evidence, we will give the agreement some weight in clarifying the parties intent to convey a dedicated property and a non-dedicated property as separate parcels of land, but we will give it no weight insofar as it is cited to negate other portions of the agreement or the deed itself.

2. **The Commission's November 6, 1951 approval of the transfer of the water system to the Chenoweths**

We will now address CMWSI arguments that the Commission's November 6, 1951 approval of the transfer of the water system from the Meeker Estate to the Chenoweths proves that CMWSI has no interest in the property transferred by the November 29, 1951 deed.

CMWSI contends that by approving the sale of specifically described real property belonging to the Camp Meeker Water System, the Commission confirmed its own earlier appraisal which identified all remaining property owned by the Meeker heirs as "non-operative" or as "private realty holdings." CMWSI asserts that the effect of the Commission order was a conclusive presumption that the real property not specifically included in the sale of the utility was not "useful or necessary" to the system within the meaning of PU Code Section 851. (CMWSI Opening Brief, page 12.) CMWSI concludes

18 For example, in Tract Development Service, Inc. v. Keppler, supra, 199 CA 3d at 1381-1383, the Court found that the easement holder's right to use a certain street as a right of way survived the city's abandonment of that street as a dedicated public thouroughfare.

that the property conveyed by the November 29, 1951 deed is free of all utility association, since all utility property was conveyed by the November 26, 1951 deed approved by the Commission.

While we agree that the Commission's approval of the transfer of the Camp Meeker Water System to the Chenoweths shows that the Commission did not believe that the remaining property held by the Meeker Estate was utility property, we do not agree that the remaining property is free of all utility associations. As CMWSI itself points out, the issuance of the order approving the sale of the utility and its property was predicated on the petition for approval of sale to which was attached a copy of the proposed deed containing the exact description of water system property contained in the November 26, 1951 deed. As explained above, this deed conveyed both specific parcels of land and easements, rights and privileges appurtenant to that land. These appurtenant rights and easements gave the new owners of the water system certain rights to use the land retained by the Meeker Estate.

When this retained land was transferred by the November 29, 1951 deed, it was already missing the property rights the Commission found necessary and useful for utility operations, since those rights had been conveyed as easements to the water system land transferred on November 26, 1951. CMWSI's argument that the November 29, 1951 deed did not transfer any land useful for utility purposes is irrelevant to the issue of what property rights CMWSI obtained over that land by way of the November 26, 1951 deed.

We believe that our predecessors acted wisely in 1932 when they allocated to the water system only that property fully utilized by the utility at the time in order that the Camp Meeker ratepayers would not be burdened by an excessive rate base, and again in 1951 when they approved a transfer of the water system which included expansive rights over the property not allocated to the utility. The utility retains all the property rights needed to

operate effectively, without the rate base burden of property rights not needed by the utility. The purchasers of the non-utility property remain free to develop that property so long as they take no action inconsistent with the utility's property rights. The Commission's November 6, 1951 approval of the water system transfer seems to have benefited everyone.

3. The Hitchcock Declaration

Exhibit 16, a part of the record of the initial hearings in A.83-11-54, contains a declaration of L. G. Hitchcock, signed under penalty of perjury, and dated May 21, 1984.

Hitchcock represented Hardin T., William C., and Leslie C. Chenoweth in negotiations with Edwards and representatives of the Effie M. Meeker Estate (grantors) in the purchase of CMWS, and in the acquisition of the other property previously owned by that estate and Edwards.

Hitchcock states that he prepared A.32820 which sought approval of the sale of CMWS from the Meeker Estate and Edwards to the Chenoweths. He states that he supplied the information used by Sonoma County Land Title Company in preparing the deeds involved. He states that the deed of November 29, 1951 refers to CMWS in an omnibus clause at page 5 as a precautionary measure to ensure that any CMWS lands that were not specifically described in the deed of November 26, 1951 were so conveyed by the deed of November 29, 1951.

Hitchcock alleges that the term "used and useful" in the deed of November 26, 1951, conveying CMWS, was intended by the grantors and the grantees to include conveyance of pipes, connections, and facilities "used and useful" in the operation of the system. He claims that reference to "water and water rights" appurtenant to said system and "used or useful" in its operation was intended to include only water and water rights, privileges and easements on property owned by CMWS described in the deed of November 26, 1951. According to Hitchcock, this understanding was

clear from his negotiations with the grantors on behalf of the grantees and it was his intention in terms of his instructions to the Sonoma County Land Title Company in drafting the deed.

Hitchcock states that before the purchase of the system by the Chenoweths he inquired of the Commission whether any watersheds other than contained in the express acreage owned by the water company had been dedicated for water supply purposes to the CMWS. He states that a PUC employee, Mr. Lyman Coleman, advised him in June, 1951, that he had no knowledge of watersheds or lands encumbered, encroached upon, or dedicated to serve CMWS for purposes of securing water supply, other than the express acreage owned by the system. Hitchcock claims that if there were such watersheds or dedicated lands, Coleman would have had knowledge of them. He claims that the deed of November 26, 1951 was prepared for the grantors and grantees with this understanding.

Hitchcock asserts that at no time did the grantors of CMWS indicate that other properties owned by the grantors in the vicinity of the system, but not owned by the system (what is now the Chenoweth property), were used to protect the water sources of the utility company or dedicated to public utility water service. He alleges that no other properties owned by the grantors were intended by the grantors or grantees to be impressed with a watershed easement for the benefit of the utility company.

Hitchcock states that CMWS and property owned by the water system was treated as distinct and separate by the grantors at all times from that other property which the grantors owned and conveyed to the Chenoweths.

We find that Hitchcock's assertions that the November 26, 1951 deed conveyed only water rights, easements, and privileges on the portion of the land dedicated to public utility service, and that neither the grantors nor grantees intended that any other land be impressed with a watershed easement for the benefit of the

utility company, are contradicted by the Civil Code sections which govern real property transfers.

As we noted earlier, one simply cannot have an easement to use one's own land for one's own benefit, since an easement is by definition the right to use the land of another. (Civil Code § § 801, 805).[19] Thus, the November 26, 1951 deed language conveying easement rights by necessity affects property other than the real estate conveyed by the deed itself. Given the relationship of the CMWS land to the other land retained by the sellers, it is obvious that the retained land is the land affected by the easement.

Furthermore, an easement is not "appurtenant" because it is located on a particular parcel of land, but rather because "it is by right used with the land for its benefit." (Civil Code § 662). Statutory examples of "appurtenances" include watercourses across the land of another. (Id.)

We assume that when statutorily defined words are used in a deed they have the statutory meaning and are to be interpreted in a manner consistent with the statutory scheme of which they are a part. This is especially true where the statutory scheme is well established. The terms "easement" and "appurtenance" have been defined in the Civil Code since 1872. (Civil Code §§ 662, 801.) The restriction against ownership of an easement by the person whose land is burdened with the easement is of similar longevity. (Civil Code § 805.)

Since the November 26, 1951 deed references to appurtenant rights and easements could not under California law have conveyed to CMWSI the legal interest described by Mr. Hitchcock, we find his statement regarding the parties' intentions in this regard unconvincing.

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19 The owner can use his or her land, of course, but does not need an easement to do so.

Nor do we find Mr. Hitchcock's meeting with Commission staff member Mr. Coleman to be convincing evidence of the property interests conveyed in 1951. There is no evidence that Mr. Coleman was an attorney familiar with California property law. As is amply clear from the parties' objections in this proceeding to each others' lawyer and non-lawyer witnesses' efforts to characterize the legal impact of the 1951 transactions (See, e.g., TR 5: 444-452; TR 6: 523-529, 557), it would be folly for us to rely on hearsay evidence regarding 38 year old statements allegedly made by a probable non-lawyer Commission staff member unavailable to clarify or contradict Mr. Hitchcock's recollection of the conversation. This is especially true where the statements contradict the express language of the deed at issue.

Mr. Hitchcock's statements regarding the parties' intention to treat the utility and non-utility land as separate parcels serve merely to reinforce the conclusion we drew from the fact that the Meeker property was conveyed by two deeds rather than one. This separation makes sense from a tax and ratemaking perspective, as will be discussed later in this decision. In view of the deed language referring to water rights, easements, and the need to interpret the deed to convey all property interests beneficial to the utility, however, we are not convinced that the separation was complete for all purposes.

Mr. Hitchcock's declaration is most useful in explaining the reason for the November 29, 1951 deed's conveyance of properties already described in and conveyed by the November 26, 1951 deed. While the same property cannot be transferred twice, obviously, we understand why the parties used "catch-all" language to ensure that all property was conveyed at least once.

As we have noted earlier, extrinsic evidence cannot be used to take away something explicitly granted in a deed, although it may be used to clarify the extent of the grant or other matters. We find the Hitchcock declaration useful in supporting CMWSI's

argument regarding the separate treatment of the utility and non-utility land jointly owned by the Meeker Estate and Paul Edwards, and in explaining the reason the November 29, 1951 deed describes property conveyed on November 26, 1951. We do not find it convincing in any other significant respect.

E. What was the final result of the 1951 transactions?

We are convinced by the two deeds, the agreement, A.32820, and D.46373 that the administratrices of the Estate of Effie Meeker intended to convey the Camp Meeker property in two parcels, one which was dedicated to public utility water service and one which was not. We are also convinced that the administratrices did not intend to hamstring the operation of the Camp Meeker Water System by preventing the system from maintaining or developping any water sources on the non-utility portion of the land.

By separating the original land into a public utility and a non-utility parcels, the Meeker Estate and the Chenoweths created the possibility that the non-utility land could be used for non-utility purposes. Because of the explicit non-dedication statement in Exhibit 27, and the use of two deeds to execute the transaction, we infer that the parties understood the ratemaking implications of treating both the CMWS property and the surrounding lands as a package. Because of the Commission's acquisition adjustment, the Chenoweths would not have earned a return on the part of the purchase price in excess of rate base. D.46373 reveals that only about one third of the purchase price was allocated to water system lands. Because of this policy, no reasonable purchaser would purchase the Meeker properties, as a package, unless the price was

at or near rate base.[20] On the other hand, the sellers would be disinclined to sell at such a price, when segregating the properties between utility and non-utility land would bring a much higher price. Segregation of the Meeker property into two parcels made good economic sense for both the buyer and the seller.

The economic imperative to segregate utility and non-utility land did not necessitate a disregard for the needs of the Camp Meeker Water System.

By conveying with the public utility land "all water an water rights...and all rights, privileges, and easements belonging thereto..." and stating the intent of the deed "to convey not only the properties particularly described herein, but also all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System..." the parties to the deed ensured that the water company would have the same rights to develop water on the non-utility land that it possessed when the two portions of the land were one.

We find the outcome of the 1951 transactions almost ideal. The Chenoweths are free to develop the non-utility land as they see fit, so long as they do not interfere with the easement and other property rights possessed by the water system. The water system customers are protected from the adverse effects of any non-utility development, while the Chenoweths are protected from the restrictions that would result if all the lands affecting the water system were dedicated to public utility use alone.

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20 In addition, the Commission's authority to regulate transfers of utility property under Section 851 would have provided a further disincentive to a prospective purchaser of CMWS properties and surrounding lands viewed as a package. Every attempt to sever a portion of the surrounding lands from the package would be subject to regulatory delays and potential nullification.

Although this may seem too simple an outcome for the many years of litigation this case has consumed, the result flows naturally from basic California property law.

Our analysis of the 1951 transactions, however, is not the end of the matter. We must also review CMWSI and Chenoweth activities after 1951.

3. **Was property dedicated to public utility use after 1951, or did CMWSI simply exercise its easement rights?**

The Commission has long recognized the inadequacy of the Camp Meeker water supply and has several times ordered the Camp Meeker Water System to make greater efforts to increase its water supply. See, e.g., D.24567, 37 CRC 284 (1932); D.44303, 49 CPUC 729 (1950); D.60283, 57 CPUC 710 (1960); and D.92451, 4 CPUC 2d 645 (1980). We will now review the efforts of CMWSI and the Chenoweths to increase the utility's water supply.

**A. Well sites**

In 1959 or 1960, CMWSI developed several spring fed water sources on Chenoweth land. While these springs were not in use in 1951 when the Chenoweths acquired the Camp Meeker properties, there is evidence that they had previously been used by the water system. (CMWSI witness William Chenoweth, TR 2: 203-206). In D.92451 the Commission found that "Springs designated by the water company as Spring A, Spring A-1, and Springs B-2 through B-8 have been dedicated to public utility service and are part of the water system." (D.92451, Conclusion of Law 7 (1980).)[21]

In 1959 or 1960, CMWSI drilled the two Acreage Wells and the two Dutch Bill Wells on Chenoweth land, with Chenoweth

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21 Springs A and A-1 are apparently located on the property of a Mr. Bacon, and not on Chenoweth land. (Exhibit 20, p. 17.) The B Springs are located on Chenoweth land near Haunted House Wells Nos. 1-6. (Exhibit 15.)

permission, after having tried and failed to develop water on Camp Meeker Water System property. (CMWSI witness William Chenoweth, TR 2: 194, 198-200.) These well sites are leased to CMWSI by the Chenoweths. (TR 2: 198-199).

In D.93594 (October 6, 1981) in A.60478, the Commission approved CMWSI's application for authority to borrow $247,000 of SDWBA funds. In D.86-02-006 (February 5, 1986) in A.85-10-015, the Commission approved an additional SDWBA loan of $112,620 bringing the total to $359,620. The SDWBA improvement program was to focus on drilling new wells, with subsequent improvements to be made if an adequate water supply was located. (D.93594, Ordering Paragraph 6, Findings of Fact 13 & 14). These funds have been used to develop new wells, new concrete storage tanks and associated filters, chlorination facilities, and piping, and have already led to appreciable improvements in the system. About $24,000 of SDWBA funds remain on hand, which will be used for further DHS-mandated improvements. (Exhibit 20, pp. 28-29.)

The Tower Road Well, the Acreage Lane Well, and Haunted House Wells Nos. 1 - 6 were built on Chenoweth land by CMWSI between 1981 and 1983 for water system use with Department of Water Resources Safe Drinking Water Bond Act funds with permission from the Chenoweths after unsuccessful efforts to develop wells on Camp Meeker Water System, Inc., property. [CMWSI witness Reader, TR 2: 138-139, 144-145; CMWSI witness William Chenoweth, TR 2: 197-200; See also Exhibit 3, pages 1 and 4, and Exhibit 14). These well sites are leased to CMWSI by the Chenoweths. (CMWSI witness William Chenoweth, TR 2: 184-185, 201-202.)

CMWSI's continued use of the wells on Chenoweth land is necessary for the water system to meet its public utility obligations, since these wells produce about half of CMWSI's total water supply. (Exhibit 20, pp. 18, 21.)

Evidence that the Chenoweth owners of CMWSI have been ordered numerous times to develop new water sources, that a number

of water sources have been developed by CMWSI on Chenoweth land since 1951, that most of these water sources were developed with SDWBA funds intended to provide water utilities with low cost capital, and that these water sources have been used exclusively for utility purposes, shows that CMWSI intended to use these water sources to provide public utility service.

We have already determined that CMWSI possessed broad easement rights to develop water sources on land conveyed by the November 29, 1951 deed. CMWSI thus had the right to develop water sources similar to those it did develop on land owned by the Chenoweths. It appears that CMWSI may not have been fully conscious of its easement rights, and it is clear that it did not consciously assert them as such. There would have been no "well site rentals" if it had. We find that although CMWSI may not have consciously exercised these easement rights, it exercised them nonetheless.[22] CMWSI's development of wells on Chenoweth land was an inadvertent but perfectly appropriate exercise of its easement rights to develop water sources on Chenoweth land.

Since the wells resulted from an exercise of CMWSI's easement rights to develop water sources, and not from the Chenoweths' development of any water rights they possessed as individuals, the Chenoweths could not be said to have dedicated the wells to public utility service. The Chenoweths, as owners of property subject to easements, have only the property rights left after exercise of those easements. Here, that means only the right

22 We note that mere misapprehension as to the existence of easement rights does not mean that those rights do not exist. (Tract Development Services, Inc. v. Keppler, supra.)

to the land on which the wells are based.[23] Without the wells, the land is not particularly useful for public utility purposes, and there is little reason to pursue the issue of whether the Chenoweths intended to dedicate the land to public utility service.

We note that although twelve wells on Chenoweth property have been developed for public utility use, CMWSI's right to exercise its easement rights is not limited to these particular locations. CMWSI developed these well sites over many years, as water system needs changed and expanded. A limitation to these particular sites would eliminate much of the value of CMWSI's broad easement rights to develop replacement wells and additional wells as its future needs dictate. CMWSI witness John Reader testified that there were additional potential well locations on Chenoweth land that could be developed to replace existing wells that become clogged or to provide for future water system needs if there were a financial incentive to do so (TR 2: 139). We find that CMWSI must retain the option to take advantage of such sites if they are required for public utility operations in the future.

B. Baumert Reservoir

Some time between 1960 and 1964, the Chenoweths constructed the Baumert Reservoir Dam just upstream from CMWSI water sources I, J & K. (Exhibit 37, Deposition of James Halsey, p. 16-17; Exhibits 15, 22, 23, and 24.) Staff, CMPRD, and a number of Camp Meeker residents argue that these water sources have been dedicated to public utility use. CMWSI argues the contrary. We will now resolve the matter.

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23 The distinction between dedication of wells and dedication of the land on which the wells are based is not a new one. In response to inquiries by ALJ Wright about the prior Commission decision finding dedication of the A and B spring wells, CMWSI witness Chenoweth stated that just the water, not the associated real estate, was dedicated to utility use. (TR 2: 203-204.)

In Application 41313 the Chenoweths requested authority to transfer the Camp Meeker Water System to Camp Meeker Water System, Inc. Section VIII of that application reads as follows:

> "The applicant, CHENOWETHS, INC., herein was initially formed to permit the holding by said company of all assets pertaining to Camp Meeker and the operation thereof. However, it has become necessary by reason of needed improvements in the water system, and in particular, the construction of a reservoir and dam, chlorination equipment, and the fulfillment of other requests made by your honorable commission, that the operation of the water company be conducted by a separate and distinct corporation, the ownership of who's stock, however, will be and remain in the Chenoweth family. That it will be in the public interest and will better insure the continuity and efficiency of the water distribution in Camp Meeker, Sonoma, California. Applicants do not believe a public hearing will be necessary." (emphasis added.)

The Chenoweths' application was granted by D.58847, which notes that:

> "Applicants state that required improvements in the water system have necessitated its operation as a separate and distinct enterprise, the ownership of which is to remain in the Chenoweth family (Id., p. 2) "
>
> * * *
>
> "Applicant's attorney, by letter dated July 22, 1959, alleges that a prompt transfer of the water system is imperative in view of the limited supply of water currently available, so that sufficient investments may be made to improve the water system." (Id., p. 3, emphasis added.)

A.41313 and D.58847 show that both CMWS and the Commission felt that the utility's water supply needed to be improved and understood that a reservoir would be part of such an improvement program.

D.60283, the result of a Commission investigation into the operation of the Camp Meeker Water System, notes that:

> "Exhibit number 12 shows the result of a preliminary survey made in August 1959, of a site for a retaining dam

> and storage pond which might be constructed on what is sometimes referred to as Fern Creek, south of the Baumert Springs area. This plot shows that a dam, about 38 feet high, if constructed at one location could impound about 27.50 acre-feet of water. The land on which the dam would be built is owned by Chenoweths, Inc.; however, the area flooded by such a dam would flood a portion of an acre of adjoining property. This fact and the preliminary estimated cost of $40,000 for the dam deferred further investigations of this source of supply." (D.60283, pp. 10-11, emphasis added.)

While the construction of this particular size dam at this particular location was deferred, it is clear that CMWS had contemplated the construction of a dam on Chenoweth land south (uphill) of the water company's Baumert Springs water sources, for use by the public utility water company.

D.60283 provides other evidence relevant to the public utility use of the Baumert Reservoir. On page 12, the Commission states:

> Witnesses for respondent took the position that whatever amount may be spent by Chenoweths, Inc., on behalf of Camp Meeker Water System, Inc., must be considered as money loaned, to be repaid out of earnings by the utility, which will require an increase in the rates for water service.
>
> As its parent company, it appears that the utility may have to depend on Chenoweths', Inc., to assist it in the development of an adequate water supply and the improvement of the system. Having assumed the obligations of a public utility, it is incumbent upon respondent herein to recognize its responsibility and to take whatever steps are necessary and feasible to serve the public interest.

The Commission clearly assumed a financial relationship between CMWSI and Chenoweth's, Inc., and understood that Chenoweth's, Inc. might have to work with CMWSI to develop adequate water resources.

This financial relationship between CMWSI and the Chenoweths was again recognized by the Commission in D.65119 (1963), which states that:

> "The utility has devoted all revenues obtainable from the sale of water to meet out-of-pocket expenses and in attempts to obtain more water. It has been aided substantially by the affiliated interests of its owners, which affiliations have provided increased water supplies through strictly non-utility funds." (Id., 60 CPUC 690, at 691 (1963).)

Thus, the fact that someone other than CMWSI may have funded a particular water source would not in itself compel the conclusion that the source was intended for non-utility use only.

In the current proceeding, James R. Halsey, former superintendent of the Camp Meeker Water System, stated in deposition that the Baumert Dam was constructed between 1960 and 1964; that he believes it was mandated by this Commission to provide water storage; that William Chenoweth ordered him to "bleed" the dam each summer when the utility's water sources began to dry up; that bleeding the system consisted of opening a valve located near the base of the dam; that when the valve was opened water would flow over the surface of the ground down Baumert Gulch; that the water disappeared below the surface and then resurfaced about 200 yards down the hill just above a small concrete dam across the creek which was the upper pick up point for the California Tank; that the water flowing from the reservoir fed water company sources designated Baumert, California, Woodland, and Fern Springs; that the Tower, Acreage, Gilson and Hampton locations could also be served by water from the Baumert Reservoir, and that if he had not been authorized to release water from the dam, particularly during August and September, the utility would have run out of water, since that side of the system supplied most of the water. (Exhibit 37.)

Mr. Halsey's testimony that water from Baumert Reservoir feeds utility water sources is confirmed by a look at the topographic and utility water source maps admitted in this proceeding as Exhibits 15, 22, 23 and 24. These maps show that the

Baumert Reservoir is uphill from utility water sources designated "I," "J," and "K."

Staff witness Bragen recommended that Baumert Gulch below the reservoir be found dedicated to CMWSI since it is the tributary to utility springs I, J, K and D and possibly other utility water sources. (Exhibit 20, page 38; TR 4: 392.) This recommendation supports Mr. Halsey's testimony.

The testimony of Gene Koch and Jane Concoff further confirm Mr. Halsey's testimony regarding the use of Baumert Reservoir for utility purposes. Gene Koch testified that water flows down from the Baumert Reservoir spillway to a little concrete catchment basin feeding the water system at Baumert Springs. (TR 6: 532-534, 538-541.) Jane Concoff testified that in early autumn in 1986 she noticed that the water level in the Baumert Reservoir was dropping maybe a foot or two each day and that CMWSI employee Larry Elder would be driving past her house toward the reservoir twice a day. She deduced that Mr. Elder was going to Baumert in the morning and opening up the spigot that goes through the dam and then allowing water to run out and coming back in the evening and shutting it off. By doing this, he was allowing water to go down and refresh I and J springs during a time when there was no rainfall. She testified that she was told by people who lived in the area that Mr. Elder did this every year in order to keep the tanks and I and J springs operating. (TR 6: 592-593.)

There is, on the other hand, some evidence suggesting an absence of intent to dedicate the Baumert Reservoir to public utility use. Staff witness Martin R. Bragen testified that Leslie Chenoweth told him the Baumert Reservoir had been built with federal grant money as a stock pond for watering goats, but that there were no longer any goats getting water there. (TR 4: 353.) Also, during the 1987 water shortage CMWSI agreed to use the "stock pond" for utility purposes only after Commission staff agreed not

to use that use as an indication of intent to dedicate the pond to utility use. (Exhibit 20, pp. 16-17.)

We are not persuaded by this record that the Baumert Reservoir was developed as a stock pond. Even if it was used as a stock pond at some point, it is not being used to water stock now.

Nor do we believe that the 1987 agreement can overcome the weight of the evidence showing that Baumert Reservoir has long been used for public utility purposes.

We find that the Baumert Reservoir has been used by CMWSI to provide public utility water service. The intention to build a reservoir noted in D.60283, the application requesting authority to transfer the water system to CMWSI; the Commission decision approving the application; the 1959 Commission decision ordering improvements, repairs, and new source development; the construction of the dam within four years of the Commission decision approving the application stating the need for a reservoir; the topographic maps showing the relationship between the reservoir and downstream water company sources; the deposition statements of a man who operated the CMWSI system for many years; and the testimony of Gene Koch and Jane Concoff regarding the use of water from the Baumert Reservoir for public utility purposes provide overwhelming evidence of CMWSI's use of the Baumert Reservoir. We find that CMWSI's continued use of the reservoir is necessary for the utility to meet its public utility obligations.

The construction of Baumert Reservoir on Chenoweth land and its use as a public utility water source is consistent with CMWSI's easement rights to use Chenoweth lands. Civil Code § 801, subdivision 10 lists the right to flood land as one of the rights that may attached to land as an easement. The Court in Security Pacific National Bank v. City of San Diego (1971) 19 CA 3d 421, 428, states "The right to flood land or to store water thereon may be appurtenant to ownership of water, considered as real property." Since CMWSI has all the water and water rights once possessed by

the Meekers and useful for public utility water service, including those rights to water on Chenoweth land, and since the right to flood land or store water theron may be appurtenant to ownership of water, the construction and use of the Baumert Reservoir is consistent with its real property easement rights.

Water system easements can yield broad authority to use land not owned by the water company, and we do not stretch CMWSI's easements to the limit when we find that they encompass both the wells and the Baumert Reservoir on Chenoweth land. In Security Pacific National Bank v. City of San Diego, supra, the Court noted that: "In theory the physical assets of a water system could be located wholly upon easements and rights-of-way upon land owned by someone other than the owner of the water system." (Id., 19 CA 3d at 429.)

If we found that the Chenoweths were using the Baumert Reservoir for other than public utility purposes, we would conclude that such use constituted an interference with CMWSI's easement rights. One of the most classic examples of an easement right is the right to the natural flow of water over the land of another. If the Baumert Reservoir were allowed to interrupt the flow of water to CMWSI water sources, the water company would suffer greatly. We would then order CMWSI to take action to ensure that the owners of the land burdened by CMWSI's easements did not interfere with the exercise of those easements.

"When a person interferes with the use of an easement he deprives the easement's owner of a valuable property right and the owner is entitled to compensatory damages." (Moylan v. Dykes, supra, 181 CA 3d at 574.) While this Commission does not award damages, and while we feel that the Chenoweths have not actually interfered with CMWSI's easement rights, we caution the Chenoweths against any future interference with the easement rights held by CMWSI.

4. Would use of Baumert Reservoir for non-utility purposes violate Water Code § 100 or Article 10, § 2 of the California Constitution?

Gene Koch and CMPRD assert in their comments that the failure to use Bamuert Reservoir for public utility purposes would constitute unlawful "waste" under Water Code § 100. They assert the retention of water that just sits there is unlawful.

Water Code § 100 is to a large extent identical to Article 10, § 2 of the California Constitution, which expresses the state's policy that:

> "the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use ... of water be prevented. ... The right to water ... from any natural stream or water course ... shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not extend ... to the waste or unreasonable use ... or diversion of water. ..."

Article 10, § 2 goes on to state that "nothing herein ...shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use. ..."

We agree that the Chenoweths have no right to waste water by retaining it behind the Baumert Dam for no useful purpose. Because we find that the Baumert Reservoir has in fact been used to supply CMWSI with water for public utility purposes - clearly a "beneficial use" within the meaning of the Constitution and the Water Code - we do not find any violation by the Chenoweths of the state policy against the waste of water.[24]

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24 There is no evidence in the record that the Chenoweths are using the Baumert Reservoir for any purpose other than as a public utility water supply. If the reservoir ceased to be used for public utility purposes, the existence of "waste" would again be an issue.

5. **Does our finding that CMWSI possesses easement rights adversely affect Chenoweth property rights without due process?**

Pacific Legal Foundation contends in its comments on the proposed decision that actions which restrict, take or regulate property rights must be preceded by adequate due process, and that actions that adversely affect property rights must not be taken lightly.

Does our finding that CMWSI possesses easement rights adversely affect Chenoweth property without adequate due process? The answer is clearly no.

First, our finding represents our recognition of existing legal rights and not the creation of new ones. In exercising easement rights, the easement owner is taking nothing new from the property owner burdened by the easement, since the burdened owner simply had a less than complete interest in the land in the first place.

To the extent that an easement to take water requires the development of well sites and reservoirs, and the placement of pipes over the land of the servient estate, the uses of that estate may be restricted. But this restriction results from the easement owner's exercise of rights that he possess, and not from the derogation of rights possessed by the burdened landowner.

Second, the Chenoweths themselves are responsible for the easements burdening their land. While the Estate of Effie M. Meeker and Paul R. Edwards first created the easements when they transferred the property described in the November 26, 1951 deed, the Chenoweths re-affirmed or re-created identical easements when they transferred CMWS to CMWSI by way of the August 7, 1959 deed approved by the Commission in D.58847. Since they were also parties to the November 26, 1951 deed in which the water rights and easements benefiting the Camp Meeker Water System land were expressly granted, the Chenoweths cannot argue that they purchased the property affected by the easements in good faith and for value

without knowing of the easements. The Chenoweths cannot now complain of the burden they created.

The Commission did not draft the deed language giving CMWSI the water rights and easements it now denies possessing; these rights were granted in deeds the Chenoweths were a party to. Our recognition of these rights and their relationship to the Chenoweth land is simply not an action adversely affecting property rights. Furthermore, since our recognition of these rights is the result of a proceeding initiated in 1983 which involved two complete sets of hearings on the subject of CMWSI and Chenoweth property rights, we believe adequate due process has been provided.

It might be wise to underscore just what property is at issue here. There is evidence that since 1951 12 wells have been developed on Chenoweth land. In the past, ten foot square well sites surrounding these wells have been leased to the utility by the Chenoweths. Thus, the 12 well sites cover a total of roughly 1200 square feet of land. An acre of land equals 43,560 square feet. Dividing 1,200 by 43,560, we find that the well sites cover about 2.8%, or 1/36th of an acre of land. The extent of the land inundated by the Baumert Reservoir is unclear on this record. The reservoir contains an estimated 2 to 3.5 acre feet of water. (Exhibit 20, p. 19, fn. 19.) Assuming that the reservoir is at least one foot deep, the reservoir covers at most 3.5 acres. Rounding down the 1/36 of an acre covered by the well sites, we find that the land directly burdened by CMWSI's exercise of its easement rights totals roughly 3.5 acres. Since according to the November 29, 1951 deed the Chenoweths own approximately 800 acres of land, we find that CMWSI water sources occupy 3.5/800ths, or

roughly .4% of the total.[25] The amount of Chenoweth land directly used by CMWSI for public utility purposes pursuant to its easement rights is simply not very great.

## VIII. Future Water Resources

The record shows that the utility's wells, together with surface sources, still do not supply adequate quantities of water to the system. Staff concedes that CMWSI cannot develop an adequate and dependable water supply using wells and springs alone. The amount of water available, even if all the additional water resources in the vicinity of Camp Meeker were tapped, would not be sufficient to supply the present customers. (Exhibit 20, p. 21.) But there are still areas where new wells might be developed.

Sonoma County's consulting engineer, Phillip Harris of Harris Consultants, Inc., found three areas where wells might produce additional water. Harris estimated that 6 to 10 wells might produce a total of 10 to 15 additional gallons per minute, including all likely areas for drilling. Harris believes, however, that even if this much additional water were available in the dry season, and even if the distribution system were repaired so that water losses were minimized, there would still be dry year shortages and outages unless another source of supply is found. In the short term, these additional wells would be the only way to

25 CMWSI witness William Chenoweth testified that the Chenoweths owned "in excess of 500 acres." (TR 2: 187.) His brother, Leslie Chenoweth, testified that the 800 acres referred to in the deed was incorrect, that he believed the Meekers had sold some property just prior to the 1951 transaction. (TR 2: 221.) Frances Gallegos testified that in 1983 the Chenoweths received permission from the County Board of Supervisors to subdivide 550 acres of the watershed. (TR 1: 77.) If the Chenoweths owned only 550 instead of 800 acres, the land burdened by CMWSI's exercise of its easement rights would still only cover .6% of the total.

quickly increase the water supply other than by trucking it in. Two of the three areas estimated to be good sources for additional wells are on property claimed by the Chenoweths. (Exhibit 20, pp. 21-22.)

Staff believes that the Chenoweths' ownership of two of the three areas of potential well development is a significant impediment to a quick increase in the water supply (Exhibit 20, p. 22). We disagree. We believe CMWSI's easement rights are sufficient to ensure its ability to develop wells in these areas.[26]

Even the development of new wells may not be sufficient to bring adequate water supplies on line for CMWSI. Staff believes that stored surface water may offer a solution. Staff cites a 1959 study that estimates that about 22 acre-feet of water would be required to make up the annual shortfall in well and spring production. That quantity of water could supply the average needs of the system for 1-1/2 months without additional water sources.

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26 William, Ann, and Jewel Chenoweth own CMWSI. William, Ann, Jewel, and Joan Chenoweth, and Pat Chenoweth Aho, own the Chenoweth lands. (Exhibit 20, pp. 10, 13-14; TR 2: 181; TR 4: 352.) Lester Chenoweth, a former owner of both CMWSI and the Chenoweth lands, died in 1987.

We cannot ignore the fact that the partial overlap in the ownership of CMWSI and the Chenoweth lands creates the potential for a conflict of economic interest. We know that lease payments for well sites on Chenoweth land might be more attractive than the potential return from the inclusion of well site and reservoir improvement costs in CMWSI's rate base. And we recognize that the Chenoweths' desire to develop the non-utility land could lead CMWSI to assert its easement rights less rigorously than it might if there were no ownership overlap. While we will at present assume that CMWSI's interpretation of its easement rights results from a good faith misunderstanding and not from any conflict of interest, we caution CMWSI not to underestimate our ability to regulate all those who actually control the utility. (See, e.g., Westgate-California Corporation (1971) D.78399, 72 CPUC 26; Key System Transit Lines (1953) 52 CPUC 589.)

It could also supplement well and spring production during dry periods for three months or more. (Exhibit 20, p. 23.)

Harris estimates that the hauling of water during an extraordinary dry period might be a feasible alternative to a reservoir, provided: (1) that the system's mains and services and all customer pipelines were replaced to minimize leakage; (2) that new, larger storage tanks are installed; and (3) that new, larger mains are employed to transfer water from tank to tank. Water hauling would not be a feasible alternative without a complete overhaul of the distribution and storage system.

We believe that the development of a reservoir larger than the present Baumert Reservoir may be necessary at some point to ensure the utility with an adequate water supply. Obviously, there is no room on CMWSI's roughly 14 acres for a very large reservoir, so such a reservoir would have to be constructed on other lands. DHS believes that one or more small reservoirs may have to be developed on watershed lands to resolve the water source shortage. (TR 5: 468-469.) Former CMWSI superintendent Halsey stated in his deposition that there are good reservoir sites on Chenoweth land. When asked what he would do if he were in charge of the water system, Halsey replied that he would put another dam below the present one, and perhaps also dam a valley in an area known as Five Springs. (Exhibit 37, p. 35.) CMPRD witness Ellis also testified that there were a number of potential reservoir sites in the Camp Meeker area. (TR 7: 605-622; Exhibit 38.)

The development of a new reservoir on Chenoweth land would be consistent with CMWSI's easement rights since it is something the Meekers could have done when they owned both parcels of land, and since the flooding of land is one water related right that may conveyed as an easement (Civil Code § 801, subdivision 10.) The flooding of Chenoweth land by a reservoir constructed on CMWSI land would also be consistent with the utility's easement rights. (Security Pacific National Bank v. City of San Diego (197)

19 CA 3d 421, 428.) Since no such reservoir is currently in the works, we need say nothing further on this subject at this time.

## IX. Ratemaking Implications

Due to Recommendation "I" the Commission in D.84-09-093 did not adopt as part of CMWSI's operating expenses any amount for "Well Site Rental." (Id., p. 7.)

Since an easement holder need not compensate the owner of the property burdened by the easement for his or her exercise of easement rights, CMWSI need not compensate the Chenoweths for future well site use. This is not a "taking" of the Chenoweths' property, but merely an acceptance of the fact that an easement owner has property rights too. Any recompense for the creation of the easements should have been taken into account when the easements were created. If we ordered CMWSI to pay the Chenoweths for the reasonable exercise of its easement rights, we would in fact be depriving CMWSI of its own non-possessory property rights. This might well constitute an unlawful "taking" of private property. This we decline to do.

Although we find that the Chenoweths are entitled to no compensation for the burden imposed by CMWSI's exercise of its easement rights, we note that CMWSI itself, or the Chenoweths as the parent of CMWSI,[27] might be entitled to compensation for any well or reservoir construction and maintenance costs not funded by the SDWBA loan or federal grant money. We lack evidence in this record from which we could determine the cost of any compensable well or reservoir construction and or maintenance costs. We would,

27 In D.60283 the Commission noted Chenoweths Inc.'s contention that any money spent by Chenoweths, Inc. on behalf of CMWSI must be considered a loan to be repaid by the utility. We have no objection to this, providing we are convinced the expenditures were both legitimate and prudent.

however, consider providing some form of rate relief if CMWSI could quantify its own expenditures after exclusion of any improvements funded by the SDWBA. This approach is consistent with staff's recommendation that:

> "...the Commission find that a reasonable cost for the construction and improvements of Baumert reservoir, and the costs of spring or well improvements not already included in CMWSI's rate base, ..., may be included in rate base subject to Commission approval." (Exhibit 20, p. 38-39.)

Staff does not quantify its recommendation. We do not know what the costs of construction and improvement of Baumert reservoir were, or what the costs of spring or well improvements were, or when they were incurred. We do know that at least eight of the twelve wells developed by CMWSI on Chenoweth lands were financed by SDWBA funds, and that the Commission decision approving CMWSI's application for the SDWBA loan ordered that any improvements financed with SDWBA funds be permanently excluded from rate base. (D.93594, 6 CPUC 2d 768 (1981).)

Before including in rate base the original cost of any well site or reservoir improvements not made with SDWBA funds, however, we must know the precise extent of those improvements.

We will authorize CMWSI to seek rate base treatment of these improvements in either an application or in its next general rate case. CMWSI bears the burden of proving both the extent and the cost of such improvements. We will allow staff and interested parties to participate in any proceeding in which such rate base additions are requested.

Although we have discussed the future water sources available to CMWSI, we have not discussed the cost of such improvements, since that was not the focus of this proceeding. Where could the funds come from?

We encourage CMWSI to discuss the possibility of additional SDWBA loans in connection with any significant water

system improvements. We realize that additional SDWBA loans will result in additional surcharges. In the past, the Commission has found that Camp Meeker residents are willing to pay more for water utility service if there is some indication the service quality will improve. (D.60283, p. 9.) The testimony of Sonoma County Supervisor Ernie Carpenter confirms that this is still the case today. (TR 1: 54-55.)

Staff mentions another potential source of public funding, i.e., Sonoma County's purchase of the system. Such a purchase would eliminate our jurisdiction over CMWSI. Staff asserts:

> "Although Sonoma County has been considering purchase of CMWSI, improvements to the system are not expected to occur in the near future unless property matters are settled. Sonoma County cannot take over the system and make improvements until title is clear, and the Chenoweths do not want improvements made on what they claim as their land under present conditions. A final resolution is needed to allow the water system to be improved." (Exhibit 20, p. 29.)

These conclusions overstate the County's problems and understate its powers in two critical respects. First, Sonoma County has the power of eminent domain; and it may at any time condemn CMWSI, and any Chenoweth properties it believes it requires, for a publicly owned and operated water district. The County's condemnation rights remain the same regardless of who owns the land. Second, the County is free to take over and improve this system irrespective of the Commission's consideration of ratemaking or property ownership issues in this proceeding. Such a takeover would make available to the system additional funds, through the sale of bonds and through the assessment of new property taxes and connection fees, for the major improvements needed by the system.

In any event, Sonoma County is not a party to this proceeding, and we have no concrete evidence in this record

concerning the County's take over intentions. Until the County takes positive action to indicate what its intentions are, the Commission must act as if the system will continue under private ownership and under its regulation.

## X. Protection of Surrounding Lands

The Commission indicated in D.85-02-045, its order granting limited rehearing, that its main goal on rehearing was to approve a mechanism or plan to protect the water resources on the adjoining property for the continuing or eventual use of the water company.

We believe that the CMWSI easement rights described in this decision already provide CMWSI with the power to protect water sources on the surrounding land. Civil Code § 809 gives the owner of property benefited by an easement the authority to maintain an action for the enforcement of the easement rights.

There are several other factors that further militate against development of the surrounding lands to the detriment of the water resources thereon. First, the Commission imposed a moratorium on new service connections in D.60283, dated June 20, 1960, in C.6390. That restriction is still in effect. In this proceeding, CMWSI sought the removal of that restriction. The Commission denied the request in D.84-09-093.

Second, inadequate water supplies afflict CMWSI, particularly in dry periods. In 1986 and 1987, substantial water hauling was needed to continue service to existing customers. Water hauling has been accompanied by rate surcharges to defray the cost of water hauling. (See D.87-06-059, D.87-07-094, and D.87-10-087 in A.87-04-062.) These conditions tend to discourage development of the surrounding lands.

Third, the County of Sonoma regulates development of the surrounding lands through its building permit process. We assume

that an applicant for a building permit must be able to demonstrate to the County that it has a water supply. Without a connection to CMWSI, a water supply will be difficult to demonstrate in this water poor area.

Fourth, DHS acts as a watchdog for the watershed lands. It has arrangements with the Sonoma County Planning Commission to be advised of any application that might affect the quality and quantity of water supplies in the Camp Meeker area. It interjects itself and advocates its public health concerns in different types of matters affecting water supplies and water quality. It participates in Commission hearings, Coastal Commission matters, county planning matters, and proposed subdivisions. Proposed subdivisions in watershed areas are of particular concern to DHS. The Sonoma County Planning Commission submits to DHS for its review and comment any proposed action requiring Planning Commission approval. (Tr. 6: 580.)

The concern of staff, DHS, and others for the protection of the watershed is genuine, however, and there is evidence that suggests that the Chenoweths seriously contemplate development of the watershed lands.[28] We will order CMWSI to exercise its easement rights to develop potential water sources on Chenoweth land and to prevent the Chenoweths from taking any action that could impair CMWSI's ability to meet its public utility obligations.

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28 In A.83-11-54, CMWSI earnestly sought release from the new connection moratorium imposed by D.60283 and subsequent Commission decisions, arguing that the water supply additions developed with SDWBA funds made it possible for the utility to serve new customers. See also, TR 1: 49-51, 53-54, (Testimony of Sonoma County Supervisor Ernie Carpenter); TR 1: 77 (Testimony of Frances Gallegos); TR 1: 88-92 (Testimony of Dina Angress); TR 1: 93-100 (Testimony of Joan Getchell), TR 2: 187-189 (Testimony of William Chenoweth), and Exhibit 20, p. 39).

Because it is conceivable, although unlikely, that a future purchaser of all or a portion of Chenoweth land might claim to have acquired that land without notice of the easements burdening the land, CMWSI and the Commission should take steps to avoid this occurence. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with the assistance of the Legal Division, should be ordered to send copies of this decision to all title insurance companies in the vicinity of Camp Meeker and Santa Rosa, and to take all other steps necessary to insure that any purchaser of Chenoweth land burdened by CMWSI easements has actual notice of the easement rights burdening their land and is unable to assert status as a bona fide purchaser of the land without notice of the easements.

In addition, CMWSI should be required to record a notice of intent to preserve its easements, pursuant to Civil Code § 887.060. This notice will preclude efforts to claim CMWSI has abandoned its easement rights. This notice should be renewed periodically in accordance with Section 887.060. We will order CMWSI to record such notice after consultation with the Water Utilities Branch of the Commission's Advisory and Compliance Division and the Commission's Legal Division regarding the proper language of the notice.

On April 11, 1989, the Chenoweths filed an Application to Appropriate Water by Permit (No. 29463) with the Division of Water Rights of the State Water Resources Control Board (SWRCB), seeking a determination of their right to appropriate and store water in the Baumert Reservoir. If those rights are denied, then the Baumert Reservoir will not be available to support additional development. If those rights were granted, however, contrary to our own assessment of the CMWSI and Chenoweth property rights, then CMWSI's water supply would be in serious trouble until the conflict with our sister agency was resolved. For this reason, we will order our staff to oppose the Chenoweth's request in A.29463.

We believe that the easement rights possessed by CMWSI, the restriction on new service connections imposed by D.60283, modified by D.62831 (to permit CMWSI to serve five new customers), and reiterated in D.65119, D.92451, D.84-09-093, and D.85-02-045; and the current level of regulation by the Commission, by DHS, by SWRCB, and by the County are sufficient to protect the watershed from degradation by development. As we learn of specific threats to CMWSI's water resources, we will take appropriate action.

Findings of Fact

1. In 1932 the Commission and its staff distinguished for ratemaking purposes between public utility properties of CMWS and the private realty holdings of its owners. The Commission staff designated 21 parcels and lots, totaling 15.75 acres, as the real properties of CMWS for ratemaking purposes. These parcels and lots contained springs, diversions, or tanks used to provide utility service or were held for future use.

2. In 1935 the Tax Collector listed the same 21 parcels and lots as the properties of CMWS for ad valorem tax purposes.

3. In 1941 the appraiser for the Estate of Effie M. Meeker, one of the owners of CMWS, distinguished between property of CMWS and other real property in valuing the estate's assets. The list of properties associated by the appraiser with CMWS is virtually identical to the Tax Collector's list.

4. Before 1951 the Commission, its staff, the Meekers, the estate appraiser, and the property tax collector recognized that the real properties of the Meeker family were segregated, for tax and ratemaking purposes, between the property of CMWS and the private realty holdings of the owners of CMWS.

5. In the years before 1951, the surrounding lands were improved by diversion facilities at the "B" springs. These springs were subsequently redeveloped by CMWSI and found by the Commission to be dedicated to public utility water service in D.92451, 4 CPUC 2d 645 (1980).

6. The surrounding lands were never in rate base in the years before 1951.

7. In 1951 the administratrices of the Effie M. Meeker estate agreed to sell and the Chenoweths agreed to buy: (a) all the real property of the estate (about 800 acres); and, (b) CMWS and all other real and personal property appurtenant to and used for CMWS . The agreement contains a nondedication statement as to all Camp Meeker area property, except the 14 acres, more or less, of CMWS.

8. Exhibit 27 is a duplicate original carbon copy of the 1951 sales agreement between the Chenoweths and the administratrices regarding the sale of the CMWS real properties and other real properties of the Effie M. Meeker estate.

9. The intent of the parties to the 1951 sales agreement was to transfer the CMWS properties and associated rights, easements and privileges with Commission approval in one transaction and to transfer the surrounding lands in another.

10. A.32820 states: "it is the belief of the petitioning sellers herein that the interest of said Water System will be best served by the transfer thereof to the petitioning buyers herein who are also acquiring all of the remaining real property owned by said Estate of Effie M. Meeker, deceased, and the said Paul R. Edwards in common." (Exhibit 25, Appendix item A-8.) If the sellers had intended to eliminate any association between the utility and non-utility properties, there would have been no benefit to the water company from the buyers' joint ownership of these properties.

11. In 1951 the Commission approved the sale of the CMWS properties to the Chenoweths. In its decision the Commission stated that the purchase price of $24,880.28 was allocated between the water system lands ($8,500) and the "nonoperative lands" (about $16,300).

12. The proposed deed attached to A.32820 is identical to the deed dated November 26, 1951, by which the CMWS properties were

conveyed to the Chenoweths. The properties transferred by this deed are the same properties identified by the estate's appraiser as CMWS properties.

13. By a separate deed dated November 29, 1951, the surrounding land was conveyed to the Chenoweths. General references to CMWS real properties are included in an omnibus clause at the end of this deed as a precautionary measure to ensure that any CMWS lands that were not specifically described in the November 26, 1951 deed would be conveyed by the November 29, 1951 deed. No such overlooked properties have been identified on this record.

14. In 1959, the Chenoweths obtained Commission authority to transfer the Camp Meeker Water System to the Camp Meeker Water System, Incorporated, having stated in the application for authority that "it has become necessary by reason of needed improvements in the water system, and in particular, the construction of a reservoir and dam...that the operation of the water company be conducted by a separate and distinct corporation." (Exhibit 25, Appendix A-15, pp. 3-4; Appendix A-16.)

15. The August 7, 1959 deed transferring the water system from the Chenoweths and Chenoweths, Inc. to CMWSI is identical to the November 26, 1951 deed transferring the Camp Meeker Water System to the Chenoweths, except for grantors and grantees. (Exhibit 25, Appendix A-10 and Appendix A-17.)

16. A March 3, 1982 deed recorded by the Chenoweths purports to "correct, confirm and clarify" the land described in the August 7, 1959 deed which transferred the water system to CMWSI. (Exhibit 25, Appendix A-21.) This deed omits any reference to water rights, easements, and privileges appurtenant to the Camp Meeker Water System and useful for its operation as a public utility. This deed could be viewed either as a simple correction of an earlier deed's description of land boundaries or as a substantive revision of the property transferred by that earlier

deed which purports to rescind the transfer of property rights associated with and useful for utility operations. No authority for a transfer of such useful property rights was obtained from the Commission.

17. CMWSI is owned by William, Ann and Jewel Chenoweth; the Chenoweth land is owned by William, Ann, Jewel, and Joan Chenoweth, and Pat Chenoweth Aho.

18. The Meeker family operators of CMWS enjoyed broad rights to explore for and take water from the non-utility portion of their property. These included the right 1) to take all water flowing over or located under the land; 2) to enter upon the land to explore for, develop, and maintain water sources thereon; 3) to construct dams and reservoirs on the land for water storage and supply purposes; 4) to enter upon the land to maintain such dams and reservoirs; 5) to insist that no one interfered with any of these rights; 6) to construct and maintain pipelines and rights of way necessary for the taking of water from the land; 7) to drill wells and develop springs necessary to supply water from the land; 8) to expand their use of the land as necessary to replace deteriorating or obsolescent water sources and to develop new sources of water to meet the growing needs of an increased customer base; 9) and to do anything else necessary to utilize the non-utility portion of their land for public utility water service purposes.

19. CMWSI has chronic water supply shortages, and has been ordered by numerous Commission decisions to increase its water supply. See, e.g., D.24567, 37 CRC 284 (1932); D.44303, 49 CPUC 729 (1950); D.60283, 57 CPUC 710 (1960); and D.92451, 4 CPUC 645 (1980).)

20. A Commission decision issued on June 13, 1950, just three months prior the date the Estate of Effie M. Meeker and Paul R. Edwards reached an agreement to transfer the water system to the Chenoweths, notes that "the company [CMWS] has the obligation of

developing additional water supply to provide adequate water service to the present customers and the anticipated further growth of the system." (D.44303, 49 CPUC 729, 732 (1950).)

21. A 1959 Commission investigation notes that CMWSI may have to rely on its parent, Chenoweths, Inc., for assistance in developing necessary water supplies. (D.60283.)

22. CMWSI has been "aided substantially by the affiliated interests of its owners, which affiliations have provided increased water supplies through strictly nonutility funds." (D.65119, (1963) 60 CPUC 690, 691.)

23. In 1959 and/or 1960, CMWSI drilled four producing wells on Chenoweth land with Chenoweth permission. These wells have been used exclusively for public utility water system purposes.

24. In 1981, CMWSI sought and obtained Commission authority to obtain a Safe Drinking Water Bond Act loan for a program designed to increase its water supply and its water storage capacity. The program was intended to focus first on drilling wells to increase system supply, and then to make other improvements if adequate new water supplies were developed. (D.93594.)

25. Between 1981 and 1983, CMWSI drilled at least eight wells with SDWBA funds on Chenoweth land with Chenoweth permission after it unsuccessfully tried to develop new wells on CMWSI land. These wells have been exclusively used for public utility water system purposes.

26. The wells on Chenoweth land provide about half the utility's total water supply.

27. CMWSI's continued use of the wells on Chenoweth land is necessary for the water system to meet its public utility obligations, since these wells produce about half of CMWSI's total water supply.

28. In 1987, DHS and CMWSI agreed that remaining SDWBA funds should be used to develop additional horizontal wells on Chenoweth or CMWSI land.

29. CMWSI may need to develop additional wells or spring sources on Chenoweth land in order to replace existing wells if they deteriorate or to meet the needs of present and future customers.

30. CMWSI witness John B. Reader testified that other well sites are available on Chenoweth land if the existing utility wells become clogged or if future utility needs so require.

31. A 1959 investigation into the operation of the Camp Meeker Water System refers to a preliminary survey made by the water company for a retaining dam and storage pond to be constructed on Chenoweth land south (uphill) of Baumert Springs. The pond was designed to contain 27.50 acre feet of water. Because the estimated cost of the dam was high, and because the reservoir would have flooded part of an acre of non-Chenoweth land, future investigation of this particular project was deferred. (D.60283 (1960) 57 CPUC 710.)

32. A dam was constructed south of Baumert Springs sometime between 1960 and 1964. The dam is in roughly the same location as the dam mentioned in the 1959 Commission investigation, but is considerably smaller. The reservoir contained by the dam holds between 2 and 3.5 acre feet of water.

33. Staff witness Bragen testified that Leslie Chenoweth informed him that the Baumert Reservoir was constructed with federal grant money as a stock pond for watering goats, but that there were no longer any goats getting water there.

34. No witness in this proceeding reports seeing goats near the Baumert Reservoir.

35. The Baumert Reservoir is filled by water flowing over Chenoweth land which would otherwise flow downhill to water sources on CMWSI land.

36. James R. Halsey, former superintendent of the Camp Meeker Water System, stated in deposition that the Baumert Dam was constructed between 1960 and 1964; that he believes it was mandated by this Commission to provide water storage; that William Chenoweth ordered him to "bleed" the dam each summer when the utility's water sources began to dry up; that bleeding the system consisted of opening a valve located near the base of the dam; that when the valve was opened water would flow over the surface of the ground down Baumert Gulch; that the water disappeared below the surface and the resurfaced about 200 yards down the hill just above a small concrete dam across the creek which was the upper pick up point for the California Tank; that the water flowing from the reservoir fed water company sources designated Baumert, California, Woodland, and Fern Springs; that the Tower, Acreage, Gilson and Hampton locations could also be served by water from the Baumert Reservoir, and that if he had not been authorized to release water from the dam, particularly during August and September, the utility would have run out of water, since that side of the system supplied most of the water. (Exhibit 37.)

37. Mr. Halsey's testimony that water from Baumert Reservoir feeds utility water sources is confirmed by a look at the utility water source and topographic maps admitted in this proceeding as Exhibits 15, 22, 23 and 24. These maps show that the Baumert Reservoir is uphill from utility water sources designated "I," "J," and "K."

38. Mr. Halsey's testimony is further confirmed by the testimony of Ms. Concoff and Mr. Koch that the Baumert Reservoir was used to supply water to CMWSI.

39. CMWSI insisted during the 1987 water shortage that it would use the "stock pond" for utility purposes only if Commission staff agreed not to use that use as an indication of intent to dedicate the pond to utility use.

40. The Baumert Reservoir has been used by CMWSI for public utility water service.

41. CMWSI' continued use of the Baumert Reservoir for public utility purposes is necessary to enable the water system to meet its public utility obligations.

42. Use of the Baumert Reservoir for other than public utility purposes would hamper CMWSI's ability to meet its public utility obligations.

43. CMWSI may need to develop additional reservoirs on Chenoweth land in order to meet its public utility obligations.

44. Former CMWSI Superintendent Halsey stated in his deposition that there are other promising reservoir sites on Chenoweth land; specifically, south of the current Baumert Dam, and in a valley at "Five Springs."

45. The current CMWSI well sites and the Baumert Reservoir occupy a total area of approximately 3.5 acres on Chenoweth lands. Chenoweths own between 550 and 800 acres of land. Assuming Chenoweths own 550 acres, CMWSI water sources cover .6% of the total. If 800 acres are owned, the water sources occupy .4% of the total.

46. The current level of regulation by the Commission, by DHS, by SWRCB, and by the County is sufficient to protect the watershed from degradation by development.

47. It is premature to determine the costs associated with the construction and maintenance of the Acreage and Dutch Bill Creek well sites and the Baumert Reservoir. It is also premature to determine how those improvements were funded, and whether any of these improvements are already included in CMWSI's rate base.

48. The ALJ received the appendix to Exhibit 25 into the record, although the exhibit itself was excluded.

Conclusions of Law

1. The appendix to Exhibit 25 is evidence of record in this proceeding, although the exhibit itself was excluded.

2. An easement is a property interest in the land of another which entitles the owner of the easement to use the other's land or prevent the other from using that land.

3. One cannot possess an easement over one's own land; Civil Code § 805 states that an easement cannot be held by the owner of the land burdened by the easement.

4. An easement is an interest in the land of another, but not an estate in land. It is a right to use land, but not to claim the land as one's own.

5. Easements are a type of "real property." (Civil Code § 658 (3).)

6. The type of burden that may be attached to other land as an appurtenance and characterized as an easement include 1) The right-of-way; 2) The right of taking water from land; 3) the right of transacting business upon land; 4) The right of receiving water from land; 5) The right of flooding land; 6) The right of having water flow without diminution or disturbance of any kind. (Civil Code § 801.)

7. Things are "appurtenant" to land when they are used with the land for its benefit, as in the case of a way or watercourse from or across the land of another. (Civil Code § 662.)

8. Easements may be either "appurtenant" or "in gross." Appurtenant easements are "attached to land" and are transferred along with the property they benefit, whether or not they are mentioned in the deed itself. (Civil Code §§ 662, 801, 1084, and 1104.) Easements "in gross" are personal rights which attach only to their owner. If it is unclear whether an easement is in gross or appurtenant, it will be assumed to be appurtenant.

9. When the word "appurtenant" is used to modify the word "easement," it does not mean that the easement is physically attached to or located on the easement owner's land, but rather that it is legally attached to that land. All appurtenant easements burden one parcel of land for the benefit of another

parcel of land. The property benefited by the easement is called the "dominant tenement;" the property burdened by the easement is called the "servient tenement." (Civil Code §§ 662, 801, 803 and 805.)

10. The right to an easement burdening a property is independent of the dedicated or non-dedicated status of that property.

11. An easement does not restrict land use completely, but merely prevents the owner of the land burdened by the easement from acting in a manner inconsistent with the easement.

12. Misapprehension as to the existence of easement rights does not mean those rights do not exist.

13. In exercising easement rights, the easement owner is taking nothing new from the owner whose property is burdened by the easement, since that owner simply had a less than complete interest in the land in the first place.

14. When the Meekers owned both the portion of their property conveyed by the November 26, 1951 deed and the portion conveyed by the November 29, 1951 deed they had the right to use one portion for the benefit of the other. Although they did not need and could not legally have possessed an easement to use the non-utility portion for the benefit of the Camp Meeker Water System portion, they did possess "quasi-easement" rights to do so. These rights included the right 1) to take all water flowing over or located under the land; 2) to enter upon the watershed land to explore for, develop, and maintain water sources thereon; 3) to construct dams and reservoirs on the land for water storage and supply purposes; 4) to enter upon the land to maintain such dams and reservoirs; 5) to construct and maintain pipelines and rights of way necessary for the taking of water from the watershed lands; 6) to drill wells and develop springs necessary to supply water from the those lands; 7) to expand their use of those lands as necessary to replace deteriorating or obsolete water sources and to develop new sources

of water to meet the growing needs of an increased customer base; 8) to insist that no one interfere with any of these rights; 9) to rely on the maintenance of the non-utility property in a manner that would not adversely affect the utility's water supply operations; and 10) to do anything else necessary to utilize the watershed for public utility water service purposes.

15. The rights set forth in Conclusion of Law 14 benefited the property of the Camp Meeker Water System and burdened the property of another - the remaining land held by the Meeker Estate. These rights are among the water rights, rights, easements, and privileges appurtenant to the water system land which were transferred along with that land by the November 26, 1951 deed.

16. The rights set forth in Conclusion of Law 14 and referred to in Conclusion of Law 15 were enjoyed by the owners of the Camp Meeker Water System in their operation of the water system, and were dedicated to public utility service.

17. The language of a deed constitutes the best evidence of the meaning of the deed. While extrinsic evidence may be used to clarify the meaning of ambiguous language in a deed it may not be used to negate the grant of property in a deed or to impart to the deed a meaning to which it is not reasonably susceptible.

18. The language of the November 26, 1951 deed is not ambiguous and clearly conveys rights, easements and privileges in addition to specific parcels of land.

19. The "water, water rights, rights, easements, and privileges appurtenant to the Camp Meeker Water System" which were conveyed by the August 26, 1951 deed may all be characterized as "easements" under Civil Code § 801.

20. Because one cannot possess an easement over one's own land, the grant of easements in the November 26, 1951 deed must have conveyed the right to use lands other than those conveyed in the deed.

21. The Commission should reject an interpretation of easement rights which would restrict the utility's right to develop new sources of water on the land it formerly had access to through joint ownership, place such development at the mercy of the new owners of such land, and otherwise hamper the ability of CMWSI to carry out its public utility obligations. Such an interpretation would be contrary to the expansive language in the deed, contrary to the Commission's expressed concerns regarding the utility's need to develop water sources for existing and future customers, and contrary to the public interest.

22. The Commission should determine the extent of the easement rights granted by the August 26, 1951 deed in light of the deed language granting the easements, the easements' relationship to the land they benefit, the easements' underlying public utility purpose, the maxim that easements are to be interpreted in favor of the grantee, and the principle that easements by grant should be assumed to take future needs into account.

23. The November 26, 1951 deed conveyed to the Chenoweths the rights possessed by the Estate of Effie M. Meeker and Paul R. Edwards to use the non-utility portion of their land for the benefit of the water system. When the transaction occurred, the "quasi-easement" rights possessed by the Meekers ripened into full easement rights in the hands of the Chenoweths. These easement rights were just as extensive as the quasi-easement rights possessed by the Estate of Effie M. Meeker and Paul R. Edwards.

24. Property rights can be "enjoyed" even if they are not immediately exercised. The fact that CMWSI did not actually drill wells on Chenoweth land until 1959 does not mean it did not enjoy the right to do so earlier. Property rights are like money in the bank, enjoyable and useful even if not immediately spent.

25. The August 7, 1959 deed conveying the Camp Meeker Water System from the Chenoweths and Chenoweths' Inc., to the Camp Meeker Water System, Incorporated (CMWSI) was identical to the August 26,

1951 deed except for grantors and grantees, and conveyed the same property as was conveyed by the August 26, 1951 deed. CMWSI, therefore, possesses the same easement rights as did the Chenoweths.

26. The September, 1951 agreement between the Estate of Effie M. Meeker and Paul R. Edwards and the Chenoweths is consistent with the our conclusion that the parties to the 1951 transactions intended to convey 1) one parcel of non-utility real estate and 2) one parcel of utility real estate together with all rights and easements appurtenant to that real estate.

27. The Commission's approval of the transfer of The Camp Meeker Water System from the Estate of Effie M. Meeker and Paul R. Edwards to the Chenoweths was based on the Commission's review of a draft deed identical to the November 26, 1951 deed and is consistent with our interpretation of that deed as providing the water system with broad rights to develop and maintain public utility water sources on the surrounding lands subsequently conveyed by the November 29, 1951 deed.

28. The Declaration of L.G. Hitchcock imparts to the November 26, 1951 deed a meaning to which it is not reasonably susceptible, since it effectively negates the deed's grant of easement rights by stating that the parties intended that the easement language gave only rights to use the property described in the deed itself.

29. In D.46373 the administratrices of the Estate of Effie M. Meeker and Paul R. Edwards obtained the authority they required to transfer the real properties of CMWS and the associated rights, easements and privileges to the Chenoweths. They needed no authority to transfer the surrounding lands conveyed by the November 29, 1951 deed.

30. CMWSI's development of wells on Chenoweth land is consistent with, and represents an exercise of, the easement rights

the utility obtained through the November 26, 1951 and August 7, 1959 deeds. Lease payments are not appropriate.

31. CMWSI's use of the Baumert Reservoir to provide public utility water service is consistent with, and represents an exercise of, the easement rights the utility obtained through the November 26, 1951 and August 7, 1959 deeds. Lease payments are not appropriate.

32. Because the Baumert Reservoir was used to supply CMWSI with water for public utility purposes - clearly a "beneficial use" within the meaning of the California Constitution and the Water Code - the Chenoweths did not violate the state policy against the waste of water.

33. The development of additional reservoirs on Chenoweth land would be consistent with CMWSI's easement rights since it is something the Meekers could have done when they owned both parcels of land, and since the flooding of land is one water related right that may conveyed as an easement (Civil Code § 801, subdivision 10). The flooding of Chenoweth land by a reservoir constructed on CMWSI land would also be consistent with the utility's easement rights.

34. CMWSI should be authorized to file in its next general rate case a proposal for placing in rate base the costs of developing and maintaining well sites, and the Baumert Reservoir, on Chenoweth land, but only to the extent such improvements were not financed with Safe Drinking Water Bond Act loan funds or federal money, and are not already included in CMWSI's rate base. In accordance with Commission practice, these properties and improvements should enter rate base at original cost.

35. CMWSI should be ordered to exercise its easement rights to the full extent necessary to meet its public utility obligations.

36. CMWSI should be required to record a notice of intent to preserve its easements, pursuant to Civil Code § 887.060, in order

to preclude any efforts to claim CMWSI has abandoned its easement rights. This notice should be renewed periodically in accordance with Section 887.060. CMWSI should be required to consult with the Water Utilities Branch of the Commission's Advisory and Compliance Division and the Commission's Legal Division regarding the proper language of the notice.

37. The Water Utilities Branch of the Commission's Advisory and Compliance Division should be ordered to intervene in State Water Resources Control Board proceedings on A.29463 in order to prevent the Chenoweths from obtaining water rights contrary to those possessed by CMWSI.

38. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with the assistance of the Legal Division, should be ordered to send copies of this decision to all title insurance companies in the vicinity of Camp Meeker and Santa Rosa, and to take all other steps necessary to insure that any purchaser of Chenoweth land burdened by CMWSI easements has actual notice of the easement rights burdening their land and is unable to assert status as a bona fide purchaser of the land without notice of the easements.

39. No additional orders are required to protect the watershed at this time.

40. Conclusion of Law 2 in D.84-09-093, declaring that the deed of November 29, 1951 is void for want of Commission authorization, should be rescinded.

41. To the extent that the March 3, 1982 deed appears designed to effect a transfer of property rights useful to CMWSI, it is void under PU Code § 851 since no Commission approval was obtained.

42. The ALJ Ruling of August 4, 1989 should be rescinded.

43. Mr. Gene Koch met the requirements of Rule 54 of the Commission's Rules of Practice and Procedure and should be made a party to this proceeding. Mr. Koch's comments should be accepted

as the comments of a party under Rule 77.2 of the Commission's Rules of Practice and Procedure.

44. Pacific Legal Foundation is not a party to this proceeding, although it has filed an amicus brief and comments.

45. Pacific Legal Foundation has not met the requirements of Rule 54 of the Commission's Rules of Practice and Procedure and should not be made a party to this proceeding.

46. Pacific Legal Foundation's past participation and long standing interest in this proceeding, and the absence of any harm to the parties, provide good cause under Rule 87 of the Commission's Rules of Practice and Procedure for the Commission to deviate from the Rule 77.2 requirement that only parties are permitted to file comments on proposed decisions in order that the Commission may receive and respond to Pacific Legal Foundation's comments.

47. The petition of Frances S. Gallegos and the request of Sonoma County Supervisor Ernie Carpenter that the Commission reopen this proceeding for the receipt of additional evidence should be denied, since neither Ms. Gallegos nor Mr. Carpenter offer any new evidence that was not available and could not have been presented during the hearings in this proceeding. The failure of the parties to present existing evidence during the hearings is not sufficient reason to reopen the record.

48. The petition of Anne-Elizabeth to become a legal party to the proceeding and to set aside submission should be denied because the record in this proceeding, developed after two sets of hearings, contains ample evidence upon which to base our determination of the relative property rights of CMWSI and the Chenoweths, and there is no reason to delay further the issuance of this decision.

## O R D E R

IT IS ORDERED that:

1. Conclusion of Law 2 in D.84-09-093 is rescinded.
2. The ALJ Ruling of August 4, 1989 is rescinded.
3. Mr. Gene Koch is a party to this proceeding, with all the attendant rights and responsibilities. Mr. Koch's comments on the proposed decision are received as the comments of a party under Rule 77.2 of the Commission's Rules of Practice and Procedure.
4. A deviation from Rule 77.2 of the Commission's Rules of Practice and Procedure is granted on the Commission's own motion, pursuant to Rule 87, in order that Pacific Legal Foundation's comments on the proposed decision may be received and responded to.
5. CMWSI shall enforce its easement rights as necessary to meet its public utility obligations.
6. CMWSI shall record a notice of intent to preserve its easements, pursuant to Civil Code § 887.060, in order to preclude any efforts to claim CMWSI has abandoned its easement rights. CMWSI shall renew this notice periodically in accordance with Section 887.060. CMWSI shall consult with the Water Utilities Branch of the Commission's Advisory and Compliance Division and the Commission's Legal Division regarding the proper language of the notice.
7. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with assistance from the Legal Division, shall intervene in State Water Resources Control Board proceedings on A.29463 in order to prevent the Chenoweths from obtaining water rights contrary to those possessed by CMWSI.
8. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with the assistance of the Legal Division, shall send copies of this decision to all title insurance companies in the vicinity of Camp Meeker and Santa Rosa, and to take all other steps necessary to insure that any purchaser of Chenoweth

land burdened by CMWSI easements has actual notice of the easement rights burdening their land and is unable to assert status as a bona fide purchaser of the land without notice of the easements.

9. CMWSI may file in its next general rate case a proposal for placing in rate base the costs of developing and maintaining well sites, and the Baumert Reservoir, on Chenoweth land, but only to the extent such improvements were not financed with Safe Drinking Water Bond Act loan funds or federal money and are not already included in CMWSI's rate base. In accordance with Commission practice, these improvements will enter rate base at original cost.

10. The petitions of Frances S. Gallegos and Anne-Elizabeth, and the request of Ernie Carpenter, to set aside the proposed decision and to reopen the record for the taking of additional evidence are denied.

11. The rehearing of D.84-09-093 is concluded.

This order becomes effective 30 days from today.

Dated October 12, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Wesley Franklin

- 97 -WESLEY FRANKLIN, Acting Executive Director

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Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of Camp Meeker Water System, a corporation, for an order authorizing it to increase rates charged for water service. | Application 83-11-54 (Filed November 14, 1983) |

William E. Geary, Attorney at Law, and John D. Reader, for Camp Meeker Water System, Inc., applicants.
Elliot Lee Daum, Attorney at Law, for Camp Meeker Residents and Property Owners, Camp Meeker Park and Recreation District; Frances S. Gallegos, for Camp Meeker Park and Recreation District; Tekla R. Broz, for We've Had Enough; Michael F. Willoughby, Attorney at Law, for Pat Chenoweth Aho and Joan Chenoweth; and B. David Clark, for the State of California, Department of Health; interested parties.
Albert Guerrero, Attorney at Law, and Thomas Thompson, for the Division of Ratepayer Advocates; and Robert Penny, for the Commission Advisory and Compliance Division, Water Utilities Branch.

# I N D E X

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## OPINION ON REHEARING

### I. Summary

The opinion determines that the November, 1951 real estate transactions at issue were proper, since they represented a commonly understood segregation of the Meeker property between public utility and private property for tax and ratemaking purposes. The November 26, 1951 deed conveyed the Camp Meeker Water System (CMWS) real estate and all water rights, easements and privileges appurtenant thereto. The November 29, 1951 deed conveyed the remaining Meeker land, variously described as watershed lands or surrounding lands. These lands are the private real estate of the Chenoweths, but are subject to the public utility water rights, easements and privileges granted by the November 26, 1951 deed.

The rights given to CMWS by the November 26, 1951 deed (and subsequently given to Camp Meeker Water System, Incorporated (CMWSI) by the August 7, 1959 deed) allow the utility to explore for and develop public utility water sources on the Chenoweth land, and to take such action as may be necessary to ensure that the Chenoweths do not jeopardize the ability of the water system to meet its public utility obligations. The Chenoweths are free, however, to make use of their land as they see fit so long as that use is consistent with the utility's rights and easements.

Conclusion of Law 2 of Decision (D.) 84-09-093 is rescinded.

### II. Comments on the Proposed Decision

The Commission's Water Utilities Branch, the Camp Meeker Recreation and Park District (CMRPD)[1], the Department of Health Services (DHS), the Pacific Legal Foundation (PLF), and Gene Koch filed comments on the proposed decision of the Administrative Law Judge.

The Water Utilities Branch asserts that the proposed decision improperly relies on a 1951 agreement with no probative value, that ratepayers have paid taxes on 21 well sites since 1932 and should not be penalized by CMWSI's failure to update the locations of those sites as old sites fail and are replaced by new ones, that the November 26, 1951 deed conveyed water rights and easements as well as real estate, that the administratrices of the Estate of Effie Meeker needed Commission approval to transfer the surrounding lands, that the March 3, 1982 "corrective deed" issued by the Chenoweths is invalid, that the surrounding watershed is dedicated to public service, and that the leases mandated by the proposed decision will do little to protect CMWSI's water supplies.

CMRPD asserts that early deeds fail to show the segregation of property found in the proposed decision, that this segregation was solely for tax purposes, that past Commission documents and CMWSI's articles of incorporation call for expansion of CMWSI's water sources, and that the Commission has failed to enforce its orders mandating improvements to the water system. CMRPD further asserts that the proposed decision errs by accepting a narrow definition of "appurtenant," by failing to apply the Water Code § 100 prohibition against the waste of water, by overlooking evidence that the Chenoweths intend to sell the watershed for development, by inviting the Chenoweths to develop a new engineering plan for system improvement when the County of Sonoma

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1 Comments on behalf of CMRPD were filed by Frances Gallegos. A seperate set of comments on behalf of CMRPD was filed by Elliott Daum.

has already done so, and by relying heavily on an unreliable agreement between the Meeker Estate and the Chenoweths.

PLF supports the proposed decision and states that "when attempts are made to restrict, take, or regulate property rights, great care must be taken to ensure that those rights are afforded adequate due process of law. Actions that may adversely affect property rights must not be taken lightly." (PLF Comments, p. 1.)

DHS comments that CMWS has been supplied with water from the surrounding lands for at least 57 years, that the November 26, 1951 deed language conveying water rights and easements conveyed to the Chenoweths the same water rights that the Meekers possessed before 1951, that the Meekers devoted water and water rights from the surrounding land to public utility service prior to 1951, that A.32820 clearly indicates that the Meekers believed the water system would suffer if the surrounding land was held by someone other than the owner of the water system, that the proposed decision fails to protect the watershed, that all wells developed by CMWSI on Chenoweth land after 1980 have been financed by ratepayers through Safe Drinking Water Bond Act loans, and that the water associated with the watershed must be preserved for public utility use regardless of land ownership. DHS urges the Commission to protect CMWSI's legal right to develop and utilize water sources on the watershed lands.

Gene Koch comments that the proposed decision reduces CMWSI's ability to function by depriving it of its its own water resources, ignores Civil Code § 805 which states that one cannot possess an easement over one's own land, ignores Water Code § 100 which prohibits waste of water, ignores evidence in the record concerning the Chenoweths' intention to develop the watershed, and fails to recognize that the August 7, 1959 deed (identical to the November 26, 1951 deed) gives CMWSI water rights and ancillary easements over the surrounding lands. He also notes that the Chenoweths failed to introduce a title report they obtained in

1988, which he believes adversely reflects on their water rights, and suggests that we draw a conclusion from their failure to do so.

We agree that CMWSI has water rights and other easement rights to use the surrounding lands for public utility purposes, and have altered the proposed decision accordingly. We believe our resolution of the issues will satisfy the majority of concerns expressed in these comments.

We note that CMRPD referred in its comments to deeds and other material outside the record of this proceeding. Gene Koch similarly referred to a letter outside the record. While we understand the desire to ensure that the Commission has all relevant information when it makes its decision, we must point out that attempts to introduce new evidence through comments are improper. We have disregarded such material in reaching our decision.

## III. ALJ Ruling of August 4, 1989

In a ruling dated August 4, 1989, the ALJ made the PLF a party to this proceeding on the grounds that its application to file an amicus curiae brief and its comments were sufficient to make an appearance in and to become a party to this proceeding. The ALJ states that Rule 54 of the Commission's Rules of Practice and Procedure implies that an appearance may be entered by filing a pleading, and that the Commission implicitly accepted PLF's status as a party when it responded to legal arguments made by PLF in its amicus brief in support of CMWSI's petition for rehearing of D.84-09-093. The ALJ's ruling gives PLF the same rights as other parties to file comments on the proposed decision, reply comments, applications for rehearing, petitions for modification, petitions for writ of review, and other such post-decision pleadings as may be allowed by the Commission's Rules of Practice and Procedure or by the Public Utilities Code. By issuing this ruling, the ALJ was

responding to the absence of Commission rules governing the filing of amicus briefs.

While we appreciate the ALJ's efforts to fill the gaps in our rules of procedure, we do not agree with his result. PLF itself has never claimed party status or indicated a desire to become a party. In its comments on the proposed decision PLF specifically acknowledges that it is not a party and notes that it filed the comments and the prior amicus brief because of the proceeding's significant public interest implications regarding the security of private property rights. PLF has been closely monitoring this case for several years. If PLF wanted to become a party to this proceeding it could have done so by attending any hearing and filling out an appearance form. We believe that the barest minimum requirement for becoming a party to a Commission proceeding is the desire to become a party, and we decline to make PLF a party in view of its statement that it is not a party. We will, therefore, rescind the ALJ Ruling of August 4, 1989.

Even if PLF had expressed desire to become a party, it would still have faced the fact that Rule 54 does not expressly permit one to become a party to an investigation or application proceeding based on a pleading alone. At a minimum our practice has been to require an appearance at a hearing.

While we do not find that the filing of an amicus brief and comments is adequate to make one a party to a Commission proceeding, we do find it appropriate to consider the comments PLF has filed in this proceeding. PLF has long been interested in this proceeding and has placed the parties to the proceeding on notice of its interest by filing an amicus brief which the Commission responded to in D.84-09-093. Because the Commission's rules do not address requests to file file amicus briefs, persons desiring to participate in this fashion are given little guidance in how to do so and in the procedural meaning of having done so. Although Rule 77.2 authorizes only parties to file comments on a proposed

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decision, we will under Rule 87 permit a deviation of this rule in order that the comments of PLF may be received and responded to.

We note that comments were also filed by Gene Koch, who is not listed as a party to this proceedings but who also has expressed deep interest in the issues it addresses. Mr. Koch has appeared at hearing and participated in this proceeding. Mr. Koch testified as a witness during the rehearing of this matter, and submitted several exhibits to support his position. At the hearing, Mr. Koch was told he could not make legal arguments unless he became a party to the proceeding and filed a brief. (TR 6: 528-529.) Although he never stated the precise words "I would like to become a party to this case," he did request permission to offer certain documents into evidence and "give a brief." (TR 6: 536.) The ALJ agreed that Mr. Koch could "tell us through argument later or through brief what you think these documents mean and how they should be interpreted." (Id.) The ALJ subsequently reminded Mr. Koch that "That's by way of legal argument, Mr. Koch. Those kinds of arguments can be made in briefs. And you can cite any law or cases or statutes or legal arguments through your legal arguments or your briefs." (TR 6: 557.) Although Mr. Koch did not fill out an appearance form to become a party to the proceeding, the ALJ treated him like one by accepting his exhibits and testimony and by authorizing him to file briefs.

We find that Mr. Koch has meet the Rule 54 requirements for becoming a party to this proceeding. He made an appearance at the hearing, disclosed the person on whose behalf the appearance was entered (himself; TR 6: 515, 541), stated his position fairly (TR 6: 525-527, 531-533), and limited his contentions to those reasonably pertinent to the issues already presented (TR 6: 515-558.) He lacks only the paperwork to become a party. Accordingly, Mr. Koch is hereby deemed to be a party to this proceeding who is entitled to the same rights as other parties. We will direct the Process Office to add Mr. Gene Koch to its list of appearances; and

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will require other parties to this proceeding to send copies of all pleadings in this matter to Mr. Koch just as they would to any other party.

Mr. Koch's comments will be received as the comments of a party under Rule 77.2.

## IV. Procedural Background

On November 14, 1983, Camp Meeker Water System, Inc. (CMWSI) filed an application seeking authority to increase revenue from $34,200 to $53,800 ($19,600 or 57.3%) in test year 1984. On November 22, 1983, Resolution W-3146 granted CMWSI a 12.74% offset increase. The original hearings in this proceeding addressed the balance ($15,940 or 39.52%) of the requested increase, a request to end the existing moratorium on new connections, and a request for a 6.5% attrition increase in the two years following the initial rate increase.

Public hearings were held April 9, 10, and 11, 1984, before Administrative Law Judge (ALJ) Wright, and the matter was submitted June 6, 1984, upon the filing of concurrent briefs by the Public Staff Division (now the Division of Ratepayer Advocates or DRA)[2] of the Commission and CMWSI. In D.84-09-093 (September 19, 1984) the Commission granted an increase of $7,409 (19.46%) over revenue at 1983 rate levels, continued the ban on new connections, and granted attrition increases for 1985 and 1986. In addition, the Commission found:

> "11. Members of the Meeker family, original owners of the water system at Camp Meeker, executed a deed conveying all but approximately 16 acres of the land on which the water system

2 During rehearing a witness from the Water Utilities Branch testified. Thus, some references to the Commission staff will be to DRA and some to Branch.

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Mr. Koch's comments will be received as the comments of a party under Rule 77.2.

## IV. Petitions to Set Aside Submission

On August 24, 1989, Frances S. Gellegos petitioned the Commission to set aside the proposed decision for the taking of additional evidence, pursuant to Rule 84 of the Commission's Rules of Practice and Procedure. In support of her petition, Ms. Gallegos (who appeared in the proceeding on behalf of CMRPD) stated that the ALJ did not examine certain pre-1951 deeds mentioned in her comments on the proposed decision; that the Chenoweths failed to produce and the ALJ failed to subpoena a title search performed by First American Title Company at the Chenoweths' request which was referred to by Gene Koch during his testimony in this proceeding; and that by omitting a thorough review of the pre-1951 deeds, the Articles of Incorporation of the water company in 1959, the published brochures of intent to sell the watershed, wells, and springs used and useful to the water system, and the deposition of Dick Halsey, the ALJ rendered a skewed and injurious decision. Ms. Gallegos requests that the decision be set aside, and the proceeding reopened, for the purpose of taking into the record the title search and preliminary title report prepared by First American Title Company. She requests that the Commission subpoena both the title report and its author. Sonoma County Supervisor Ernie Carpenter, who appeared as a witness in this proceeding, similarly implored the Commission to reopen this proceeding and give close consideration to the needs of the community of Camp Meeker.

We deny Ms. Gallegos' petition for the following reasons. First, although Ms. Gallegos testified on behalf of CMRPD, she is not herself a party to this proceeding, and thus is not entitled to file a petition to set aside submission pursuant to Rule 84 of the Commission's Rules of Practice and Procedure. Rule 84 states in pertinent part that "After conclusion of hearings, but before issuance of a decision, a party to the proceeding may serve on all other parties, and file with the Commission, a petition to set aside submission and reopen the proceeding for the taking of additional evidence."

Second, Ms. Gallegos' petition does not meet the requirements of Rule 84. Rule 84 states that petitions to set aside submission "shall specify the facts claimed to constitute grounds in justification thereof, including material changes of facts or law alleged to have occurred since the conclusion of the hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced." Ms. Gallegos' petition refers to 1) pre-1951 deeds, 2) a 1986 real estate brochure, and 3) a title report referred to in the testimony of Gene Koch during the 1988 hearings in this proceeding. All of these documents were known to Ms. Gallegos prior to the conclusion of the hearings in this proceeding. Ms. Gallegos gives no reasons why CMRPD or another party could not have subpoened the title report at issue or introduced into evidence the other documents referred to in the petition. In the absence of such reasons, we will deny the petition.

On October 3, 1989, Anne-Elizabeth filed with the Commission a petition to become a legal party to this proceeding and to set aside submission. Anne-Elizabeth is the treasurer of "We've Had Enough," a party to this proceeding previously represented by Tekla Broz. In addition to supporting the petition of Frances Gallegos, Anne-Elizabeth requests that the proceeding be reopened for the receipt of new evidence concerning certain water

rights proceedings pending before the State Water Resources Control Board. Evidently, both the Chenoweths and We've Had Enough have filed applications for rights to water from the stream feeding the Baumert Reservoir and/or for right to store water in the Baumert Reservoir or the Baumert Gulch.

Although the proceedings before the Water Resources Control Board are certainly of interest and may well be relevant to the issues in this proceeding, we do not believe it necessary for us to set aside submission of this proceeding at this time. This proceeding has been a protracted one, lasting five years thus far, and involving two sets of hearings and ample opportunity to present evidence concerning the property rights at issue. We feel we have an adequate record upon which to resolve the issues before us, and decline to exercise our discretion to reopen this proceeding.

If we were to have further hearings in this case, we would of course welcome the submission of the evidence contained in the We've Had Enough petition. We hope, however, that today's determination of the relative property rights of the Chenoweths' and CMWSI will preclude the need for such hearings.

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submitted June 6, 1984, upon the filing of concurrent briefs by the Hydraulic Branch of the Public Staff Division (now the Water Utilities Branch of the Commission's Advisory and Compliance Division)[2] and CMWSI. In D.84-09-093 (September 19, 1984) the Commission granted an increase of $7,409 (19.46%) over revenue at 1983 rate levels, continued the ban on new connections, and granted attrition increases for 1985 and 1986. In addition, the Commission found:

> "11. Members of the Meeker family, original owners of the water system at Camp Meeker, executed a deed conveying all but approximately 16 acres of the land on which the water system

2 The Hydrualic Branch is now the Water Utilities Branch of the Commission's Advisory and Compliance Division. During rehearing a witness from the Water Utilities Branch testified. To simplify matters, we will refer to both the former Hydraulic Branch and the current Water Utilities Branch as "staff."

> was located to members of the Chenoweth family on November 29, 1951 without Commission authorization."
>
> "12. The question of fact as to whether the property described in the Meeker deed of November 29, 1951 contained only private nonutility property and not public utility water resources has not been presented to the Commission for its determination." (D.84-09-093, pp. 16-17.)

The Commission concluded:

> "2. The deed from the Sonoma County Land Title Company to Hardin T. Chenoweth, William C. Chenoweth, and L. C. Chenoweth dated November 29, 1951 is void for want of authorization by the Commission." (Id., p. 17.)

The Commission made no order pertaining to the transaction described in the findings and conclusion quoted above.

On October 19, 1984, CMWSI filed an application for rehearing of D.84-09-093. On the same date the Pacific Legal Foundation filed a proposed amicus curiae brief in support of CMWSI's application for rehearing of D.84-09-093. Its brief addresses the issue of dedication of property adjoining the water system. On November 13, 1984, CMWSI filed a supplemental brief in support of its application for rehearing. On February 6, 1985, the Commission issued D.85-02-045, granting limited rehearing "on the issue of the appropriate treatment of the land adjoining that of the water company property." (Id., p. 2.) The Commission elaborated as follows:

> "Concerning the issue of dedication of adjoining property, our further review of the record does not convince us that we can or should at this time declare the Meeker deed of November 29, 1951 to be void." (Id.)

The Commission declared that its main goal on rehearing was to approve a mechanism or plan to protect the water resources

on the adjoining property for the continuing or eventual use of the water company. It urged DRA and the Chenoweths (in their dual capacities) to work together on a joint proposal to present at further hearings; and stated that if a joint proposal could not be devised, the parties could present their own proposals at hearing.

On February 13, 1985, the proceeding was reassigned to ALJ Banks for rehearing of D.84-09-093. Thereafter, the staff and the Chenoweths for more than 2 years carried on extended, but fruitless, negotiations.

In April, 1987, the Commission directed the ALJ Division to file certain correspondence from CMWSI as an application for offset rate relief (Application (A.) 87-04-062). Dry weather during the winter of 1986-1987 had made it probable that water hauling would be required during the summer of 1987. The rate proceeding was assigned to ALJ Baer. On May 12, 1987, the rehearing of D.84-09-093 was reassigned to ALJ Baer.

Because of the water shortage in Camp Meeker during the summer of 1987, proceedings in A.87-04-062 took precedence over those in A.83-11-54. However, a prehearing conference in A.83-11-54 was held on August 17, 1987. At that conference the ALJ ruled that evidentiary hearings would be convened on November 16, 1987, and that the parties would mail their prepared testimony and documentary exhibits to each other on October 16, 1987.

On November 7, 1987 L. C. Chenoweth, Vice President of CMWSI, passed away. He was the manager primarily responsible for regulatory matters. His brother, William Chenoweth, president of CMWSI, concerned himself chiefly with operations. At the request of CMWSI hearings were continued to December 15, 1987 and again to January 5, 1988. By ruling issued December 24, 1987, ALJ Baer limited the January 5, 1988, hearing to staff evidence only, postponing CMWSI's direct showing until January 21, 1988.

Hearing was convened on January 5, 1988, at which time staff presented its evidence. Hearing reconvened on January 21,

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Opening and closing briefs were filed by CMWSI and by DRA. CMRPD submitted opening and closing briefs to the ALJ but did not file them with the Docket Office. After notice from the ALJ, CMRPD resubmitted its briefs to the Docket Office, and they were filed December 14, 1988.

## V. Original Proceedings in A.83-11-54

In the general rate proceeding for the 1980 test year, the Commission adopted as reasonable for the expense category "Well Site Rental" the sum of $400. (D.92450.) In A.83-11-54 CMWSI sought to increase the adopted amount in this expense category to $2,850 in 1983 and to $3,850 in 1984. In support of its request CMWSI sponsored prepared testimony by its expert witness, John D. Reader, who stated:

"Well Site Rental

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"Well Site Rental

"There are now six horizontal and five vertical wells on Chenoweth property. The last two wells were drilled there following three unsuccessful attempts to drill productive wells on Camp Meeker Water System, Inc. land with the full knowledge and consent of the State Department of Health Services. Applicant and the two Chenoweth families have entered into five year lease agreements for access to and use of the vertical well sites for a total of $1,850 per year. In addition applicant has or will soon have entered into two lease agreements for the 1982 and 1983 horizontal well sites for [$]2,000, only $1,000 of which would apply to estimated year 1983." (CMWSI Exhibit 2, p. 9.)

DRA responded to CMWSI's request in its prepared testimony, as follows:

"M. Well Site Rental

"38. CMWS requests $3,850 for rental of non-utility properties which serve as well sites for its system. Lease agreements exist for all the well sites under consideration in this rate proceeding.

"39. The Branch believes that the property on which the well sites have been developed is and has been utility property, used and useful for purposes of providing water service and for future expansion. Therefore, since the property in question is useful, it remains as part of the company's property, and no lease is necessary.

"40. If the Commission disagrees with the Branch's position, and believes that this property is not utility property, then Branch recommends that CMWS establish a consolidated, long-term lease for these well sites." (DRA Exhibit 4, pp. 12-13.)

Based on the foregoing testimony, the DRA recommended that:

"I. The property on which well sites exist be declared public utility property used and useful in the public utility water service of

"There are now six horizontal and five vertical wells on Chenoweth property. The last two wells were drilled there following three unsuccessful attempts to drill productive wells on Camp Meeker Water System, Inc. land with the full knowledge and consent of the State Department of Health Services. Applicant and the two Chenoweth families have entered into five year lease agreements for access to and use of the vertical well sites for a total of $1,850 per year. In addition applicant has or will soon have entered into two lease agreements for the 1982 and 1983 horizontal well sites for [$]2,000, only $1,000 of which would apply to estimated year 1983." (CMWSI Exhibit 2, p. 9.)

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"M. Well Site Rental

"38. CMWS requests $3,850 for rental of non-utility properties which serve as well sites for its system. Lease agreements exist for all the well sites under consideration in this rate proceeding.

"39. The Branch believes that the property on which the well sites have been developed is and has been utility property, used and useful for purposes of providing water service and for future expansion. Therefore, since the property in question is useful, it remains as part of the company's property, and no lease is necessary.

"40. If the Commission disagrees with the Branch's position, and believes that this property is not utility property, then Branch recommends that CMWS establish a consolidated, long-term lease for these well sites." (Staff Exhibit A, pp. 12-13.)

Based on the foregoing testimony, staff recommended that:

"I. The property on which well sites exist be declared public utility property used and useful in the public utility water service of

CMWS. And, if the Commission disagrees with this recommendation then the next two should apply.

"J. Applicant be ordered to establish a consolidated lease for well sites used and useful in the public utility water service of Camp Meeker Water System, Inc.

"K. Another day of hearings be scheduled for approximately six weeks after the currently scheduled hearings for the purposes of determining proper terms and conditions of the lease mentioned in the previous paragraph." (Id., p. 20.)

DRA's basic position was that all the well sites on property claimed by the Chenoweths are located on property which was intended to be utility property. The DRA witness acknowledged that from the documents he reviewed he could point to nothing specific to support his recommendation, and that he had no evidence that CMWSI had ever owned the well sites or that they had been dedicated to public utility use. He acknowledged that the August 7, 1959 deed he reviewed did not specifically refer to watershed territory. He pointed out, however, that he also had no evidence that the water company's operations were ever limited to the specific properties described in that deed. DRA noted that CMWS obtained water from the "B" springs located on surrounding watershed, that springs rely on the surrounding land for water, and that the Commission found the "B" springs dedicated to public utility water service, and argued that the well sites located near the spring sites should also be found dedicated to public utility service. DRA also noted the potential for a conflict between the interests of the Chenoweths as owners of CMWSI and their interests as individuals.

During cross-examination it became clear that the witness had only the deed of August 7, 1959 and the Commission opinion authorizing that transfer before him when he made his

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recommendation.[3] He had no documents from the 1951 transactions and no pre-1951 documents.

CMWSI introduced copies of the November 26, 1951 and November 29, 1951 deeds, and an original Declaration of L.G. Hitchcock prepared in connection with the Commission proceeding. (Exhibit 16.)

D.84-09-093 found the November 29, 1951 deed void for want of authorization by this Commission, but noted that the question of whether the property described in that deed contained only private non-utility land and not public utility water resources had not been presented for the Commission's determination. (D.84-09-093, p. 17.)

D.85-02-045 granted limited rehearing on the issue of the appropriate treatment of the land adjoining the water company property. We will now address the issues not resolved in D.84-09-093.

CMWSI and other parties have produced an abundance of documentary evidence and testimony regarding the property in dispute. We now have an adequate record to resolve the issues before us.

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3 That deed transferred CMWS real properties from the Chenoweths and Chenoweths, Inc., to CMWSI, a California corporation. The transfer was made pursuant to the authority granted by the Commission in D.58847, dated August 4, 1959 in A.41313. (Exhibit 25, Appendix items A-15 and A-16). In A.41313 the applicants refer to "A.32820 and a copy of a deed placed in said file on or about the sixth day of August 1953, for a description of property constituting the water works business." The formal file for A.32820 is not available. However, Exhibit 25, Appendix A-8 is a copy of A.32820. That application contains a proposed deed wherein the Effie Meeker administratrices transfer CMWS real properties to the Chenoweths. Exhibit 16 contains an executed copy of the same deed, dated November 26, 1951. The deed of August 7, 1959, is identical to those deeds, except for grantors and grantees. (Exhibit 25, Appendix A-17.)

## V. Issues

The issues to be decided in this proceeding are as follows:

1. What was the ownership status of the Camp Meeker property prior to 1951?

2. What property interests did the 1951 transactions convey?

   A. Background

   B. The November 26, 1951 deed

      1. What did the November 26, 1951 deed convey?

      2. What is the extent of the easements benefiting CMWSI and burdening Chenoweth land?

         a. Deed language

         b. The relationship between the water rights and easements and the land to which they are attached

         c. Circumstances within the contemplation of the Meeker Estate and the Chenoweths in 1951

   C. The November 29, 1951 deed

      1. Did the Effie Meeker Estate require Commission approval before it could lawfully transfer the surrounding lands?

      2. What did the November 29, 1951 deed convey?

      3. Did the November 29, 1951 deed extinguish the easements granted by the November 26, 1951 deed?

D. Is extrinsic evidence helpful in interpreting the 1951 deeds?

1. The September, 1951 agreement between the administratrices of the Estate of Effie M. Meeker and the Chenoweths

2. The Commission's November 6, 1951 approval of the transfer of the water system to the Chenoweths

3. The Hitchcock Declaration

E. What was the final result of the 1951 transactions?

3. Was property dedicated to public utility use after 1951, or did CMWSI simply exercise its easement rights?

A. Well sites

B. Baumert Reservoir

4. Would use of Baumert Reservoir for non-utility purposes violate Water Code § 100 or Article 10, § 2 of the California Constitution?

5. Does our finding that CMWSI possesses easement rights adversely affect Chenoweth property rights without due process?

1. What was the ownership status of the Camp Meeker property prior to 1951?

Staff asserts that, despite the fact that the issue of land ownership has been before the Commission since 1984, applicants have failed to present probative evidence on the issue. Staff further asserts that the Chenoweths never provided evidence that the Meeker Estate, the original owners, had treated the land as two separate parcels of land. Moreover, staff asserts that applicant's Exhibit 25 was never admitted into evidence, is not

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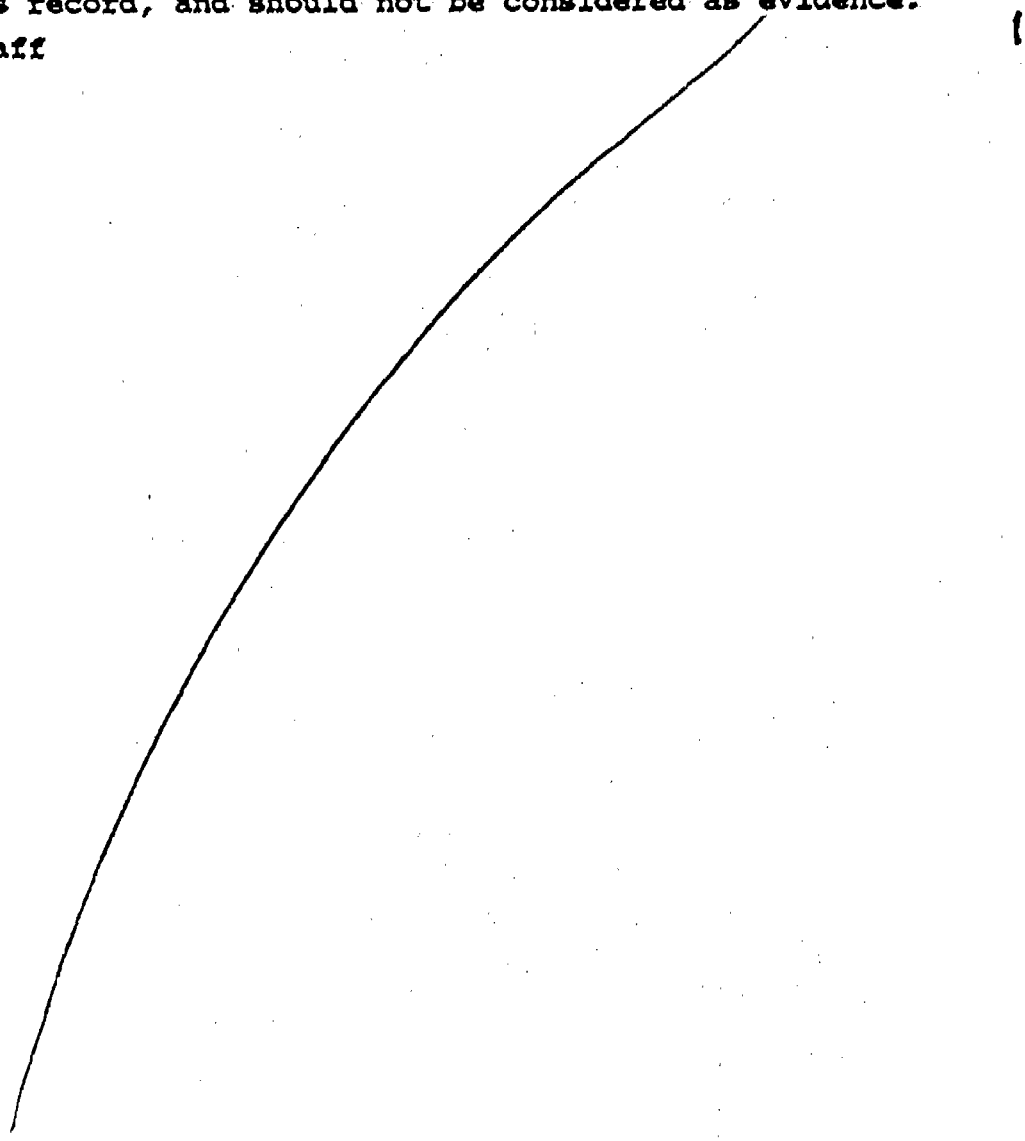

asserts that the record shows that the owners prior to the Chenoweths held title to the land and the watershed in question in the name of the water company, creating a solid presumption that the watershed has historically been an integral part of CMWS' operations.

In the appendix to Exhibit 25, CMWSI introduced a series of documents, dating as far back as 1932, which show that the Meeker family real property was for tax and ratemaking purposes segregated between water system property and other real property.

The first of these documents is D.24567, dated March 14, 1932, in C.3105 and A.17952, a complaint and a general rate application, respectively. In D.24567 the Commission summarized the staff's rate base evidence as follows:

> "A field investigation of the operations of this utility [CMWS], together with an inspection of its physical properties, was made recently by H. A. Noble, one of the Commission's hydraulic engineers, and his report and detailed appraisal show a total of $13,417 for the estimated original cost of the physical properties, exclusive of lands and rights of way, and a depreciation annuity of $282 as computed by the 5% sinking fund method. Mr. H. R. Robbins, one of the Commission's land appraisers, submitted a total of $3,438 for the present value of the various lands reserved for the springs and tank sites and $250 for certain pipe line rights of way." (Exhibit 25, Appendix A-2, p. 4; 37 CRC 284, 286.)

The Commission also discussed property taxes, as follows:

> "The analysis submitted [by the staff] of...operating expenses [for the years 1928, 1929, and 1930] shows that the item of $500 for taxes includes charges incurred for applicants' private realty holdings and that the portion properly chargeable to the utility's operations should have been not in excess of $80 annually. However, the correction for this tax item is largely offset by the omission of any charge for depreciation." (Id., pp. 4-5; 37 CRC at 286.

The above quotation shows that the Commission recognized in 1932 that the applicants, Effie M. Meeker and Julia E. Meeker, doing business as Camp Meeker Water System, an unincorporated public utility, owned "properties devoted to the public use"; and that individually or as co-owners they also owned "private realty holdings." (Id., pp. 5-6.)

The appendix to Exhibit 25 also contains the staff's appraisal exhibit from A.17952. In that exhibit, staff witness Robbins inventoried and appraised the fee lands and rights of way of CMWS as of January 1, 1932. His inventory lists 21 parcels or lots. The total acreage of the 21 parcels or lots is 15.75 acres; the average area is 0.75 acre; the largest is 5 acres; and the smallest is 0.02 acre. The value of the 21 parcels is $3,438. The staff's 1932 appraisal did not include any property except parcels or lots containing springs, diversions, or tanks actually used, or proposed for future use, in public utility service. (Exhibit 25, Appendix A-3.)

The appendix to Exhibit 25 also contains a 1935 Tax Collector's ledger sheet showing 21 properties associated with CMWS. The ledger sheet lists 7 parcels totaling 14.81 acres and 14 lots, the acreage of which is not specified. Although the 21 properties on the ledger sheet and the 21 parcels on Robbins' inventory and appraisal cannot be matched parcel for parcel, it is highly probable that they are the same properties since: 1) both documents list properties associated with the Camp Meeker Water System, 2) only three years separate the documents, and 3) the total acreages are virtually identical.[4] (Exhibit 25, Appendix A-

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4 The total acreage in parcels 1-7 equals 14.81 acres, the same total that appears on the Ledger Sheet. In totaling the acreages of the parcels and lots, the Tax Collector excluded the lots

(Footnote continues on next page)

4.)

The appendix to Exhibit 25 also contains the inventory and appraisement of the Estate of Effie M. Meeker. This document shows that the estate's appraiser inventoried the CMWS properties, parcels, and lots separately from other properties owned by the decedent Effie M. Meeker, formerly an owner and operator of CMWS. The properties associated by the estate's appraiser with the Camp Meeker Water System are virtually identical to the properties listed by the tax collector in 1935. (Exhibit 25, Appendix A-5.)

The four documents described above, all predating the 1951 real property transactions, show that the Commission, the property tax collector, the Commission staff, the Meekers, and the estate appraiser, all understood that the properties of the Meeker family were segregated between water system property and private real estate. We therefore conclude that the lots and parcels listed in the Inventory and Appraisement of the Effie Meeker Estate, that is, those appraised as parts of CMWS, were the real estate of the water system in the years before 1951. The Inventory and Appraisement provides the latest pre-1951 information concerning CMWS real estate.

It is equally clear from the same four documents in the appendix to Exhibit 25 that the lands surrounding the water system real estate were treated by the Commission, the Commission staff, the tax collector, the Meekers, and the estate appraiser as

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(Footnote continued from previous page)

(8-21), then valued the parcels and lots separately. Staff witness Robbins assigned an area in acres to each of his 21 parcels, including the small parcels he identified as lots. Thus, his total acreage was 15.75 acres. Backing out the ten smallest parcels from Robbins' 15.75 acres reduces his total to 14.85 acres, only 0.04 acre more than the Tax Collector.

the private realty holdings of Meeker family members. For ad valorem tax and ratemaking purposes, the surrounding lands were identified with Meeker family members in their individual capacities and not as owners or operators of a public utility water company. Moreover, there is no evidence in the record, nor does DRA contend, that the surrounding lands were ever in rate base. The only parcels and lots identified with the water company by staff witness Robbins in 1932 were those 21 parcels and lots associated with water system tanks and facilities or explicitly held for future use as proposed tank or well sites.

We conclude that the surrounding lands were the private realty holdings of members of the Meeker family. This does not, however, mean that the surrounding lands had no legal relationship to the real estate, real property rights, and public utility operations of CMWS. This relationship will be clarified later in this decision.

2. What property interests did the 1951 transactions convey?

A. Background

Before discussing the documents pertaining to the 1951 real property transactions, we will note certain facts regarding the pre-1951 ownership of CMWS. Effie Meeker, one of the owners and operators of the water company, died July 31, 1940. Apparently, Julia Meeker, an owner and operator of the company, also died in the 1940's. Thus, for a part of that decade the responsibility to operate the water company devolved upon the administratrices of the Effie Meeker Estate and the administrator of the Julia Meeker Estate. Paul R. Edwards, the heir to the Julia Meeker Estate, succeeded to a 1/3 interest in both the water system properties and other Meeker family properties. However, Effie Meeker had 17 heirs, some of whom also died during the 1940's. Thus, the ownership and duty to operate the water company was

fragmented between Edwards, with a 1/3 interest, and the administratrices, representing 17 heirs (or the estates representing deceased heirs) of Effie Meeker. It was clearly not in the public interest that public utility duties and obligations should be fragmented amongst so many or that ownership of the public utility should continue in this fashion.

In 1951 the Estate of Effie Meeker was still not settled. In September of that year the administratrices of the Estate of Effie Meeker entered into an agreement (Exhibit 27; also Exhibit 25, Appendix A-6) with the Chenoweths to sell to them for $16,196.21 a 14/17ths interest in the real property of the Effie Meeker Estate. The agreement segregated the properties to be governed by the agreement into general real estate owned by the Meeker Estate and real and personal property of CMWS. The parties agreed to cooperate to obtain the Commission's authority for the transfer of the Camp Meeker Water System properties. The agreement was expressly made contingent upon the Commission's approval of that transfer. This agreement resulted in two property transfers: one represented by the November 26, 1951 deed (Exhibit 25, Appendix A-10), the other by the November 29, 1951 deed (Exhibit 25, Appendix A-11.)

We will review these two property transfers separately, and then address the overall impact of these transfers on the current property rights of the parties to this proceeding.

B. The November 26, 1951 deed

On October 10, 1951, the administratrices and Paul R. Edwards joined with the Chenoweths in filing an application for authority to sell and transfer the Camp Meeker Water System to the Chenoweths.

A.32820 states, among other things, that: "It is the belief of the petitioning sellers herein that the interest of said Water System will be best served by the transfer thereof to the

petitioning buyers herein who are also acquiring all of the remaining real property owned by said Estate of Effie M. Meeker, deceased, and the said Paul R. Edwards in common." (Exhibit 25, Appendix A-8, p.4.)

By ex parte D.46373 the Commission granted the authority sought in the application. Several statements in the opinion show that the Commission was aware that the estate properties included more than the Camp Meeker Water System. For example, the opinion recites:

> "...[the administratrices] desire to terminate the proceedings of said estate and to dispose of the properties comprising it, including the interest in the water system."
>
> * * *
>
> "...administratrices and Paul R. Edwards have made arrangements to dispose of their interests to the Chenoweths for the sum of $24,880.28, of which the sum of $8,500 has been assigned by them as the amount of the purchase price applicable to the water system, leaving a balance of approximately $16,300 applicable to certain nonoperative lands. ...the purchasers intend to acquire the remaining outstanding interests, which are held by other estates now pending in the County of Sonoma, to the end that they will have entire ownership of the water system properties."

The order grants authority to the administratrices and Edwards to sell and transfer their interests in the Camp Meeker Water System to the Chenoweths "under the terms and conditions set forth in this application."

1. What did the November 26, 1951 deed convey?

In the November 26, 1951 deed, Edwards and Title Company, grantors, convey to Chenoweths, grantees:

> "...all of the right, title, and interest of the said grantors in that certain property situate in the County of Sonoma, State of California,

> and generally known as the Camp Meeker Water System, including all pipes, whether covered or on the surface, used and employed in conveying water to customers of said System, and all connections and facilities of every kind and character used and useful in the operation of said System, and also all rights, privileges, and easements had, used, and enjoyed in the operation of said System, and also all water and water rights appurtenant to said System and used and useful in its operation, and also all tanks, reservoirs, springs, spring traps, pipes, and ditches leading thereto or therefrom:
>
> "All real property situate, lying, and being in the County of Sonoma, State of California, used in connection with the the Camp Meeker Water System, a public utility, including the following parcels of real property situate lying and being in the County of Sonoma, State of California, and more particularly described as follows: . . . ." (Exhibit 25, Appendix A-10; Exhibit 16.)

The deed goes on to describe: 1) Five parcels in Section 27, totaling 5.63 acres; 2) Three parcels in Section 28, totaling 9.48 acres; and 3) Ten Lots in various Blocks of the Second Addition to Camp Meeker and all of Block 36.

This listing of particularly described parcels and lots ends with the following sentence:

> "Together with any and all other real property in said County of Sonoma now or heretofore used as springs, reservoirs, or tank sites in connection with said Camp Meeker Water System, a public utility."

The deed concludes with the following general language:

> "Together with all water and water rights appurtenant to and belonging to the above described land, and all ditches, pipes, and improvements, and all rights, privileges, and easements belonging thereto or commonly had, used, or enjoyed therewith, together with all

> of the personal property used in the conduct and operation of said Camp Meeker Water System and owned in common by the said grantors herein.
>
> "It is the intent and purpose of this Deed and instrument of transfer to convey not only the properties particularly described herein, but also all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System and commonly used, had, and enjoyed in the maintenance and operation thereof, whether expressly described herein or not, and this deed shall be so construed as to accomplish such purpose."

The deed was signed by Edwards and Title Company on November 26, 1951, and recorded with the County of Sonoma on December 3, 1951.

DRA contends that "the language in the deeds reflect an intent that not only specific parcels of land were to be transferred, but also any and all used or useful watershed, facilities, water rights and rights of entry." (DRA Opening Brief, p. 10.)

CMWSI, on the other hand, analyzes the three paragraphs quoted above in the following manner:

> "31. Examining the first paragraph of the subject language emphasis is given to springs, reservoirs, or tank sites <u>now</u> or <u>heretofore</u> used in connection with the system (emphasis added). There is no suggestion of a grant of springs, reservoirs or tank sites which might thereafter become useful to the utility.
>
> "32. The second paragraph grants water and water rights <u>appurtenant</u> to and <u>belonging</u> to the above-described land, etc., as well as 'all rights, privileges and easements <u>belonging thereto</u>' (obviously meaning belonging to said real property), 'or commonly <u>had</u> <u>used</u> or <u>enjoyed</u> therewith' (again, meaning used in connection with said described real property), (emphasis added). Ballentine defines 'appurtenant' as: '<u>belonging to</u>'; '<u>a subordinate part or adjunct</u>'; '<u>an incidental right attached to a principal property right</u>'. <u>Ballentine's Law Dictionary, 1969</u>.

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"33. The third paragraph expresses the intent of the deed to transfer not only the properties described therein but also rights, easements and privileges and facilities appurtenant to said system. Obviously there is no suggestion that real property not described in the deed is to be considered transferred but only rights, easements, privileges and facilities arising out of or connected with the said described real property.

"34. In a careful reading of the above language two things become abundantly clear. First, there is no suggestion of any intent to convey any real property not specifically described. What is readily apparent is of course the intent to preserve to the specifically described real property all water and water rights already 'belonging to the above-described land.'

"35. Nor is there any suggestion of any intent to convey any rights not already appurtenant to and belonging to the specifically described land. It should be noted that the first time use of the term 'watershed' arose or any contention asserted with respect thereto was by Staff in April, 1984, during the course of the first hearing regarding this Application.

"36. Secondly, the deed is totally devoid of any language to suggest any intent to convey to the water system rights to operate prospectively so as to increase the water system's rights in adjacent properties as its needs might increase.

"37. What today might be needed by or deemed useful to Camp Meeker Water System to make it 'complete water system' by today's standard is a separate and distinct issue from the question of what in fact is owned by the utility." (Exhibit 25, incorporated by reference in CMWSI Opening Brief, pp. 10-12.)

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5 On page 1 of its Opening Brief, Applicant incorporates Exhibit 25 by reference "as a portion of its opening brief/argument." Although the appendix to Exhibit 25 was admitted into evidence, the exhibit itself was not, since no witness testified to the facts asserted therein. (TR 5: 456-459.) To the extent that Exhibit 25 contains legal arguments which are properly

(Footnote continues on next page)

We believe that both parties are partly right and partly wrong in their evaluation of the property rights at issue in this proceeding. DRA is correct in asserting that CMWSI has a right to use Chenoweth land for public utility purposes, but errs in claiming that CMWSI has an ownership interest in that land. CMWSI is correct in asserting that the November 26, 1951 deed gave it no ownership interest in Chenoweth land, but errs in contending that CMWSI has no rights to use that land. We will explain.

The language of the November 26, 1951 deed states that the Estate of Effie M. Meeker and Paul R. Edwards transferred not only the real property held by the Camp Meeker Water System, but also any water rights, easements, and privileges held by the water company. Clearly, something more than real estate and the attendant rights of the owner to use that real estate was conveyed.

Reviewing the circumstances surrounding the transaction in light of California Civil Code provisions governing property transfers, we find that the transfer of these water rights, easements, and privileges gave CMWSI specific legal rights to use the land retained by the Meekers and subsequently transferred to the Chenoweths on November 29, 1951. A quick summary of easement law may be helpful at this point.

An easement is a property interest in the land of another which entitles the owner of the easement to use the other's land or prevent the other from using that land. (Moylan v. Dykes (1986)

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included in a legal brief, we accept the incorporation of this material by reference.

We do not, of course, condone the practice of citing in a brief factual material not admitted into evidence. To the extent that CMWSI's blanket incorporation of Exhibit 25 includes the purportedly factual material in Exhibit 25, CMWSI's incorporation of this material in its brief is highly objectionable. We advise CMWSI to refrain from this improper practice in the future.

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181 CA 3d 561, 568; Witkin, Real Property, 9th Ed. (1987), $ 434.) An easement is an interest in the land of another, but not an estate in land. (Darr v. Lone Starr Industries (1979) 94 CA 3d 895, 901.) Thus, it is a right to use land, but not to claim the land as one's own. The land to which an easement is attached is called the dominant tenement; the land burdened by the easement is called the servient tenement. (Civil Code $ 803.)

Civil Code $ 801 states that "The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements: ...4. The right-of-way; 5. The right of taking water...; 6. the right of transacting business upon land; 9. The right of receiving water from ...land; 10. The right of flooding land; 11. The right of having water flow without diminution or disturbance of any kind; ..."[6] (emphasis added.)

Civil Code $ 662 states that "A thing is deemed to be incidental or appurtenant to land when it is used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air, or heat from or across the land of another." (emphasis added.)

Thus, an easement is a right to use, or burden, the property of another; the easement is "appurtenant" to the land it

6 Because the "water and water rights" and "all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System..." conveyed by the November 26, 1951 deed and the identical August 7, 1959 deed could all be characterized as "easements" under Civil Code $ 801, we will hereafter generally refer to them as "easements."

benefits.[7]

As Gene Koch pointed out in his comments on the proposed decision, an easement cannot be held by the owner of the property burdened by the easement (Civil Code § 805). The owner of an easement has rights over the land of another, not rights over his or her own land. Thus, it is clear that the easements conveyed by the November 26, 1951 deed affect property other than the land conveyed by that deed. Given the relationship of the water system to the land retained by the Estate of Effie M. Meeker, it is obvious that the retained land is the land affected by the easements.

In the present case, the Meekers did not as owners of the Camp Meeker Water System have a formal easement over the portion of their land that was not in their public utility water system rate base. They did not need one, since they already possessed the right to explore for and develop new water sources on that land, and to rest assured that they would not, as owners of that land, do anything contrary to their interests as operators of the Camp Meeker Water System. The public utility, however, had what is

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7 When the word "appurtenant" is used in connection with the word "easement," it does not mean that the easement is physically attached to the easement owner's land, but rather that it is legally attached to that land which it benefits. The land to which an easement is attached is called the dominant tenement; the land burdened by the easement is called the servient tenement. (Civil Code § 803.)

Easements may be either "appurtenant" or "in gross." "Appurtenant easements" are transferred along with the property they benefit, whether or not they are mentioned in the deed itself (Civil Code §§ 662, 801, 1084 and 1104; Moylan v. Dykes, supra, 181 CA 3d at 568-569). Easements "in gross" are personal rights which are not transferred when the land is sold. (Civil Code § 802.) Where it is unclear whether an easement is in gross or appurtenant, it will be assumed that the easement is appurtenant. (Continental Baking Company v. Katz (1968) 68 C 2d 512, 521-523; Elliott v. McCombs (1941) 17 C 2d 23.)

benefits.[7]

As Gene Koch pointed out in his comments on the proposed decision, an easement cannot be held by the owner of the property burdened by the easement (Civil Code § 805). The owner of an easement has rights over the land of another, not rights over his or her own land. Thus, it is clear that the easements conveyed by the November 26, 1951 deed affect property other than the land conveyed by that deed. Given the relationship of the water system to the land retained by the Estate of Effie M. Meeker, it is obvious that the retained land is the land affected by the easements.

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sometimes referred to as a "quasi-easement" which ripened into a formal easement when a portion of the land was conveyed to the Chenoweths by the November 26, 1951 deed.[8]

When the Estate of Effie M. Meeker and Paul R. Edwards transferred the water system to the Chenoweths by way of the November 26, 1951 deed, they expressly transferred all water rights, easements and privileges previously enjoyed by the Camp Meeker Water System. These rights, easements, and privileges benefited the water system and burdened the property of another - the remaining land held by the Meeker Estate. These water rights and easements are appurtenant to the water system property transferred by the November 26, 1951 deed.

We note that even if the November 26, 1951 deed had not mentioned easements, an implied easement would still have been created by operation of law. Civil Code § 1104, "Easements passing with property," states that:

> "WHAT EASEMENTS PASS WITH PROPERTY. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit

8 The concept of a quasi-easement may be explained as follows. When two parcels of land are owned by one owner, it is not possible for that owner as owner of parcel A to have a true easement with respect to parcel B, but it is possible for that person to be using parcel B for the service of parcel A. Parcel B, for example, may have a roadway, or a water system, which benefits parcel A. In such a case, the owner of the parcels could be said to have a quasi-easement over parcel B for the benefit of parcel A. When parcel A is sold, the quasi-easement becomes a true easement possessed by the new owner of parcel A. If the owner does not gain the easement through express grant, he gains it by operation of law. (Civil Code § 1104.)

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> thereof, at the time when the transfer was agreed upon or completed." (emphasis added.)

Thus, even if the November 26, 1951 deed did not explicitly mention easements, the Chenoweths, as the new owners of the Camp Meeker Water System, would have had an implied easement to use the remaining Meeker property in the same manner as it was being used when both properties were owned by the Meekers.

2. **What is the extent of the easements benefiting CMWSI and burdening Chenoweth land?**

We must now determine the extent of the easement rights possessed by CMWSI over the Chenoweth land. We will use the following guidelines.

The scope of an easement is determined by the language of the grant, or the nature of the enjoyment by which it was acquired. (Civil Code § 806). Courts "may consider the type of rights conveyed and the relationship between the easement and other real property owned by the recipient of the easement..." Moylan v. Dykes, supra, 181 CA 3d at 569.) "[C]onsideration must be given not only to the actual uses being made at the time of the severance, but also to such uses as the facts and circumstances show were within the reasonable contemplation of the parties at the time of the conveyance." (Fristoe v. Drapeau (1950) 35 C 2d 5, 10.) See also, George v. Goshgarian (1983) 139 CA 3d 856, 861-862.) And "an easement created by conveyance, having by its nature a prospective operation, should be assumed to have been intended to accommodate future needs.'" Faus v. City of Los Angeles (1967) 67 C2d 350,355.) Finally, easements conveyed in deeds must be interpreted in favor of the grantee - in this case, the new owners of the Camp Meeker Water System. (Civil Code § 1069.) We will therefore interpret any ambiguity in the deed to provide the water company with more, rather than less, property rights.

a. **Deed language**

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a. Deed language

Here, the deed language granting the easement reads as follows:

> "...all of the right, title, and interest of the said grantors in ...the Camp Meeker Water System, including all pipes, whether covered or on the surface, used and employed in conveying water to the customers of said System, and all connections and facilities of every kind and character used and useful in the operation of said System, and also all rights, privileges, and easements had, used, and enjoyed in the operation of said System, and also all water and water rights appurtenant to said System and used or useful in its operation, and also all tanks, reservoirs, springs, spring traps, pipes, and ditches leading thereto or therefrom:

The deed concludes with the following general language:

> "It is the intent and purpose of this Deed and instrument of transfer to convey not only the properties particularly described herein, but also all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System and commonly used, had, and enjoyed in the maintenance and operation thereof, whether expressly described herein or not, and this Deed shall be so construed as to accomplish such purpose. (emphasis added.)

It is clear that CMWSI, as holder of the easement, has broad rights to water from the land subject to the easement. The expansive nature of the easement granted is clear from the statement of intent that the deed be interpreted to transfer not only the property specifically described in the deed, but also all rights, easements, and privileges and facilities appurtenant to the water system, whether expressly described or not. This statement leaves no doubt that the parties to the deed intended that the water company not be harmed by the transfer, and that the new

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owners have every single property right enjoyed by the former owners with regard to the operation and maintenance of the water system.

b. **The relationship between the water rights and easements and the land to which they are attached**

The property to which the easement in question is attached belongs to a public utility obligated to provide safe and adequate water supplies to its customers. (California Health and Safety Code $$ 4011-4016.) A look at the relationship between the Chenoweth land and the land owned by CMWSI is helpful in our evaluation of the scope of the easement.

CMWSI witness William Chenoweth testified that none of the wells currently serving the water system are located on CMWSI land. (TR 2: 184-186.) All of the wells providing water to CMWSI were drilled on Chenoweth land after efforts to develop wells on CMWSI land failed. (TR 2: 194.) The wells on Chenoweth land provide about half the utility's total water supply. (Exhibit 20, p. 18.)

For health and safety reasons, the use of groundwater from wells is preferable to the use of surface sources of water, although DHS believes surface sources must be maintained as backup, emergency sources. (DHS witness Clark, TR 1: 18-19, 31-32, 34.) DHS witness Clark testified that DHS was concerned about the long-term yield of the wells serving the water system, because the wells drilled in the early 1980's with Safe Drinking Water Bond Act (SDWBA) funds had yet to be tested during a period of low rainfall; if the wells failed because of clogging, they could possibly be redrilled, but if they failed because of drought conditions that might not be the case. (TR 1: 34-36; Exhibit 7.) DHS's position has always been that surface sources must be treated and additional water sources developed. (TR 1: 39, 41; See also, DHS Exhibits 28 and 36.) Clark testified that DHS had agreed with the community

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and the water company that additional horizontal wells should be developed so that less surface water would have to be treated. (TR 1: 41.) DHS points out that the lands affected by the easement have as a watershed fed water utility sources since at least 1932, and have provided sites for new wells to replace old wells that have become clogged or have otherwise deteriorated. (TR 1: 34-36; TR 6: 569, 586-592.) DHS notes that water from this land is vital for the continuing operation of the water system. (TR 5: 468-469.)

If the easement were limited to the use of springs or diversions on the watershed in 1951 and to the protection of surface and groundwater flow feeding utility sources in existence at that time, CMWSI would not be able to develop new water sources on Chenoweth land. Since 1951, a great many of the water sources in use at that time have deteriorated or been taken out of service.[9] The wells on Chenoweth land are CMWSI's only source of well water. New wells will be required to replace clogged or drought stricken wells, and to provide an additional supply of safe drinking water. Efforts to drill wells on CMWSI land have failed. Although the Chenoweths have cooperated with CMWSI with regard to the development of new water sources, they might sell the land to someone not affiliated with the water company who might be less cooperative.

When we view the water rights and easement granted in the November 26, 1951 deed in light of their relationship to the public

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9 A report prepared by Branch witness Martin R. Bragen notes that: "Since 1951 there have been many water sources for the system, most of them not now in use. Seven of the springs which were used in 1951 are still active today, while twenty-nine springs and wells which were used between 1951 and the present are no longer active. Most of the sources dried up. Twelve sources added since 1951 are still active." (Exhibit 20, p. 18 (footnote omitted).) It is clear that CMWSI water sources present a moving target, and cannot be pinned down to a specific number of static locations.

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When we view the water rights and easements granted in the November 26, 1951 deed in light of their relationship to the public 1

utility land to which they are attached, we conclude that they should be interpreted so as to enable CMWSI to continue to meet its public utility obligations. CMWSI would not be able to meet its public utility obligations to provide customers with a secure and adequate source of safe water if the easement were limited to the springs in existence in 1951.

c. **Circumstances within the contemplation of the Meeker Estate and the Chenoweths in 1951**

CMWSI's assertion that there is no reason to infer that parties to the 1951 deeds intended that the non-utility land be affected by any water sources beyond those in existence in 1951 or that such water sources be expanded to serve the needs of an increased customer base is not convincing.

A Commission decision issued on June 13, 1950, just three months prior the date the Estate of Effie M. Meeker and Paul R. Edwards reached an agreement to transfer the water system to the Chenoweths, found that the Camp Meeker Water System had inadequate water sources to serve existing and future customers and ordered numerous improvements in the water supply.[10] In D.44303, 49 CPUC 729 (1950) the Commission stated that:

> "The present owners [the Meekers] of the system have failed to recognize their responsibility as operators of a public utility, and the present proceeding and the current record only serve to emphasize that deficiencies long inherent in the system still persist. These defects

10 This was not the first time CMWS was ordered to improve its service and increase its water supply. The very first Commission decision concerning CMWS found that "service rendered on said Camp Meeker Water System has been inadequate, insufficient and unsatisfactory and that certain replacements and enlargements of the distribution pipe mains and further development of the spring sources of supply and improvement in operating methods and practices are necessary and required in order that adequate, sufficient and satisfactory service may be rendered to consumers." (D.24567, 37 CRC 284, 288 (1932).)

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may be grouped under the two general headings of supply and distribution." (p. 731.)

"It is apparent that certain specific improvements should be made to the system." [These improvements included cleaning and restoration of certain springs, and installation of permanent collection boxes at others.]

"Also, the company has the obligation of developing additional water supply to provide adequate service to the present customers and the anticipated further growth of the system." (Id. at 732)

"We find from the evidence of record that:

1. The present facilities for procurement, storage, and distribution of water, in connection with the public utility water system owned and operated by the Estate of Effie M. Meeker and by Paul Edwards at Camp Meeker...are inadequate for the present and future needs of the consumers served by said water system.

2. The present methods of operation employed by said Estate of Effie M. Meeker and by said Paul Edwards are inadequate and insufficient to assure said consumers a reasonably continuous supply of water for domestic use.

3. The installation of the facilities, as herein set forth, and the adoption of the indicated practices and procedures in connection with the operation of said water system are necessary and vital for the proper and satisfactory operation of said water system as a public utility." (p. 733) (emphasis added.)

These findings regarding the inadequacy of current water sources, the need to restore to operation existing springs taken out of service, and the need to improve the supply and delivery of water to provide adequate service to both present and anticipated future customers show that the Commission did not assume status quo use of the non-utility land when it approved the transfer of real estate and easement rights several months later. We do not believe our predecessors were so incompetent as to approve a property transfer which could make compliance with their own orders impossible so soon after those orders were issued.

Given the fact that D.44303 pre-dated the 1951 property transfers by only a matter of months, we find that the need for an expansion of the Camp Meeker water supply was within the reasonable contemplation of the parties to those property transfers. Given the limited nature of the purely utility property, we find that the need to develop new sources of water on the non-utility land now owned by the Chenoweths was also within the reasonable contemplation of the parties.

Finally, we note that property rights can be "enjoyed" even if they are not immediately exercised. The fact that CMWSI did not actually drill wells on Chenoweth land until 1959 does not mean it did not enjoy the right to do so earlier. Such a right is like money in the bank, it is comforting, enjoyable, and useful to have the money there even if you do not immediately spend it.

We will reject CMWSI's interpretation of easement rights, which would restrict its right to develop new sources of water on the land it formerly had access to through joint ownership, place such development at the mercy of the new owners of such land, and otherwise hamper its ability to carry out its public utility obligations. Such an interpretation would be contrary to the expansive language in the deed, contrary to the Commission's expressed concerns regarding the utility's need to develop water sources for existing and future customers, and contrary to the public interest.

We will interpret the broad easements here in a manner consistent with the deed language, with their relationship to the land benefited by the easement, with their underlying public utility purpose, with the maxim that easements are to be interpreted in favor of the grantee, and with the principle that easements by grant should be assumed to take future needs into account.

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We find that the Meeker family operators of CMWS enjoyed quasi-easement rights to use the non-utility portion of their Camp Meeker property for public utility purposes by virtue of their

Meeker property for public utility purposes by virtue of their common ownership of the utility and non-utility portions of their property. These rights included the right 1) to take all water flowing over or located under the land; 2) to enter upon the land to explore for, develop, and maintain water sources thereon; 3) to construct dams and reservoirs on the land for water storage and supply purposes; 4) to enter upon the land to maintain such dams and reservoirs; 6) to construct and maintain pipelines and rights of way necessary for the taking of water from the land; 7) to drill wells and develop springs necessary to supply water from the land; 8) to expand their use of the land as necessary to replace deteriorating or obsolete water sources and to develop new sources of water to meet the growing needs of an increased customer base; 5) to insist that no one interfere with any of these rights; 9) to rely on the maintenance of the land in a manner that would not adversely affect the utility's water supply operations; and 10) to do anything else necessary to utilize the non-utility portion of their land for public utility water service purposes.

The new owners of the Camp Meeker Water System possess these same rights.[11]

C. The November 29, 1951 deed

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11 In Farmer v. Ukiah Water Company (1880) 56 C 11, 15, the California Supreme Court clarified the rights of the purchaser of land to which an appurtenant water right was attached: "This water was by right used with the land for its benefit when Lamar conveyed the land and its appurtenances, and it does seem to us that Lamar conveyed all the right which he had to it, to his grantee, who has a right to insist upon being supplied with all the water Lamar would have been entitled to if he had never conveyed."

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11 In Farmer v. Ukiah Water Company (1880) 56 C 11, 15, the California Supreme Court clarified the rights of the purchaser of land to which an appurtenant water right was attached: "This water was by right used with the land for its benefit when Lamar conveyed the land and its appurtenances, and it does seem to us that Lamar conveyed all the right which he had to it, to his grantee, who has a right to insist upon being supplied with all the water Lamar would have been entitled to if he had never conveyed."

The deed of November 29, 1951, is entitled "Deed and Assignment." In it Title Company appears as grantor and the Chenoweths as grantees. The deed grants:

> "...all right, title and interest which [Title Company] acquired in and to the real property described under and pursuant to the terms of the Decree of Partial Distribution entered... in the Matter of the Estate of Effie M. Meeker ...made and entered in said matter on October 19, 1951, and [Title Company] does hereby further sell, assign, transfer and set over unto [Chenoweths] any and all interest which [Title Company] acquired in and to the personal property described and any and all other personal and real property in which [Title Company] may have acquired any interest by reason of said Decree of Partial Distribution. Said Decree...describes real and personal property as follows: . . . "

The deed continues with five pages of detailed descriptions of various parcels of real property, which are summarized under the following subtitles: 1) "Highland Farms and adjoining area; 2) "Timberlands and acreage;" 3) "Subdivision Lands;" and 4) "Camp Meeker Water System." The specific descriptions of property under subtitles one through three are of little help in our property rights analysis. The subtitle four descriptions are of greater interest.

Under the subtitle "Camp Meeker Water System," the deed lists two categories of property:

1. "All parcels of land situate in the County of Sonoma, State of California and standing in the name of Camp Meeker Water System, a public utility."

2. "Church, Camp Meeker Store, Post Office, school building, library and water building sites."

Finally, under the subtitle, "Personal Property," the deed conveys all of the interest of the Estate of Effie M. Meeker in the following:

"Camp Meeker Water System: All personal property of whatsoever kind or character, and wheresoever situate, including money in bank and accounts receivable of the Camp Meeker Water System, a public utility. Store building, all furniture, fixtures and equipment, including gasoline pumps and tanks of the Camp Meeker Grocery Store. All furniture, fixtures and equipment in the Camp Meeker post office, water system office, school building and library building.

"Together with any and all other real property situate in the County of Sonoma, State of California, in which Effie M. Meeker...and her estate may have any interest."

The deed was signed November 29, 1951, by two officers of Title Company and recorded at the request of L. G. Hitchcock.

We will address three issues concerning the November 29, 1951 deed. The first issue concerns the question of whether the Effie Meeker Estate needed Commission authority to transfer the property surrounding the water system land. The second concerns the extent of the property interest conveyed by the deed. The third concerns the possible impact of the deed on the easement rights granted by the November 26, 1951 deed. These issues will be addressed in order.

1. **Did the Effie Meeker Estate require Commission approval before it could lawfully transfer the surrounding lands?**

Public Utilities (PU) Code § 851 provides in part:

"No public utility...shall sell...the whole or any part of its...plant, system, or other property necessary or useful in the performance of its duties to the public...without first having secured from the commission an order authorizing it so to do..."

> "Nothing in this section shall prevent the sale...or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser...dealing with such property in good faith for value; ..."

Under Section 851 a public utility requires Commission approval of a sale of its plant, system, or other utility properties. The owners of a public utility may own both utility property and other real property. We have concluded above that this was the case with Meeker family members, at least since 1932.

To transfer real properties dedicated to or devoted to public utility service, a public utility must first obtain the Commission's authority under Section 851. By filing A.32820 the administratrices of the Effie Meeker Estate and Paul Edwards, acting on behalf of CMWS, sought the Commission's authority to transfer the property interests they controlled to the Chenoweths. The Commission granted that authority in D.46372. The authorized transfer was consummated through the November 26, 1951 deed.

The administratrices and Paul R. Edwards needed from the Commission no authority to transfer the surrounding lands (those that are the subject of the November 29, 1951 deed) because all the property rights associated with that land which were useful to the utility had already been transferred to CMWS as easements in the November 26, 1951 deed.

2. <u>What did the November 29, 1951 deed convey?</u>

The November 29, 1951 deed conveyed to the Chenoweths land which was burdened by the water rights and easements conveyed by the November 26, 1951 deed. The Chenoweths, as owners of the land conveyed by the November 29, 1951 deed, may exercise all

property rights consistent with the property interests they possess as owners of the servient tenement in an easement relationship. They may not interfere with CMWSI's exercise of its easement rights to develop water sources on Chenoweth land. The November 26, 1951 easements prevent the November 29, 1951 deed from posing a threat to CMWSI's utility operations.

3. Did the November 29, 1951 deed extinguish the easements granted by the November 26, 1951 deed?

After November 29, 1951, the Chenoweths owned both the parcel of land designated as Camp Meeker Water System land and the parcel considered private real estate. Thus, the Chenoweths owned both the property benefited and the property burdened by the easements granted in the November 26, 1951 deed. This raises the question whether such joint ownership extinguished the easements, since an easement cannot be held by the owner of the land burdened by the easement (Civil Code § 805) and since an easement is extinguished by the vesting of the right to the servitude and the right to the land burdened by the easement in the same person (Civil Code § 811 (1).)[12] For the following reasons, we conclude that it does not.

The property conveyed by the November 26, 1951 deed has since at least 1932 been treated by its owners, the Commission, and the tax assessor as public utility property separate from the private property conveyed by the November 29, 1951 deed. Because the Camp Meeker Water System has a legal identity distinct from that of the property owners as individuals, the fact that after

12 CMWSI does not argue that the easements were extinguished by the joint ownership by the Chenoweths of the November 26, 1951 and November 29, 1951 properties. Such an argument would, of course, be contrary to its contention that the properties conveyed by those deeds are wholly seperate. We address the issue only out of an abundance of legal caution.

November 29, 1951 the Chenoweths owned both the public utility and the private land does not alter this distinction.

Even if we concede that the Camp Meeker Water System and the surrounding lands are held by many of the same individuals, albeit in different legal capacities, the November 29, 1951 acquisition of the fee interest in the property burdened by the water company easement would not necessarily extinguish the easement by merger. This is especially true where the public interest is at stake. In City of Los Angeles v. Fiske (1953) 117 CA 2d 167, 172, the court ruled that in view of the city's obligation as trustee to maintain an easement over a parcel of land for highway purposes for the use of all the people in the state there could be no merger with the city's playground interest simply because it acquired the underlying fee of the same parcel for playground purposes. Since the Camp Meeker Water System easements are necessary for public utility purposes, there can similarly be no merger as a result of the Chenoweth's acquisition of the land burdened by those easements for private enterprise purposes.

Even if the November 29, 1951 transaction did serve to extinguish the easements, the easements were re-created when the Chenoweths transferred the Camp Meeker Water System to a new entity - Camp Meeker Water System, Incorporated, on August 7, 1959. CMWS sought, and obtained, Commission approval for the transfer on the grounds that the transfer would make it easier for the water company to obtain resources for the improvement of the water system. (A.41313, pp. 3-4; (Exhibit 25, Appendix A-15); D.58847, pp. 2-3 (Exhibit 25, Appendix A-16).) Since corporations are "persons" with the right to own property,[13] the 1959 conveyance of

13 Corporations Code § 207 states that corporations are legal persons who can exercise the same rights as other person. These rights include the right to own real property.

Camp Meeker Water System to Camp Meeker Water System, Inc., removes any possibility that November 29, 1951 permanently extinguished the November 26, 1951 easements.[14]

As CMWSI noted in its 1984 Post-Hearing Brief, "the lands conveyed by way of the deed of August, 1959, are identical in all respects to those transferred to the Chenoweth individuals by the deed of November 26, 1951. There is no question, therefore, that the property originally sold to the Chenoweth individuals by the heirs of the Effie Meeker Estate and Paul R. Edwards as part of the Camp Meeker Water System was that identical property conveyed by the Chenoweth individuals to the Camp Meeker Water System, Inc." (emphasis in original) [Applicant's Post-Hearing Brief, 1984, pages 10-11]

Finally, we note that even if the November 29, 1951 deed did extinguish the easements, and even if the August 1959 deed did not resuscitate the easements, CMWSI would be no worse off. Since such extinguishment could only occur if the ownership of the parcels were truly merged, we would still reach the conclusion that CMWSI had the right to develop water sources on the non-utility land owned by the Chenoweths under the quasi-easement principle described earlier. Obviously, if the same persons own both parcels of land they can use one parcel for the benefit of the other.

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14 A March 3, 1982 deed recorded by the Chenoweths purports to "corrrect, confirm and clarify" the land described in the August 7, 1959 deed which transferred the water system to CMWSI. (Exhibit 25, Appendix A-21.) This deed omits any reference to water rights, easements, and privileges appurtenant to the water system and useful for its operation as a public utility. This deed could be viewed either as a simple correction of the earlier deed's description of land or as a substantive revision which appears to rescind the transfer of property rights useful to the utility. To the extent the March 3, 1982 deed appears designed to effect a transfer of useful property rights, it is void under PU Code § 851 since no Commission approval was obtained.

D. Is extrinsic evidence helpful in interpreting the 1951 deeds?

In interpreting ambiguous deeds, the Commission may consider extrinsic evidence. The use of extrinsic evidence in interpreting deeds, however, is not unlimited. The California Supreme Court stated in Continental Baking Company v. Katz (1968) 68 C 2d 512, 521, that "extrinsic evidence is not permitted in order to add to, detract from, or vary the terms of an integrated written agreement...." although "extrinsic evidence is admissible in order to explain what those terms are." (Id., at 521; Code of Civil Procedure § 1856, 1860, Civil Code § 1647.) The Court went on to state that "Therefore, extrinsic evidence as to the circumstances under which a written instrument was made has been held to be admissible in ascertaining the parties' express intentions, subject to the limitation that extrinsic evidence is not admissible to give the terms of a written instrument a meaning of which they are not reasonably susceptible." (Id. at 522.)[15]

With these restrictions in mind, we will review the several pieces of extrinsic evidence offered by CMWSI to explain the 1951 real estate transactions.

1. The September, 1951 agreement between the administratrices of the Estate of Effie. M. Meeker and the Chenoweths

The ALJ admitted the September, 1951 agreement between the Meeker Estate and the Chenoweths (Exhibit 27) over the vigorous objections of Counsel for the Camp Meeker Residents and Property Owners and the Camp Meeker Park and Recreation District. Counsel

15 The parol evidence rule which operates to bar extrinsic evidence which contradicts the terms of a written contract "is not a rule of evidence but is one of substantive law..." (Estate of Gaines (1940) 15 C 2d 255, 264-265; Riley v. Bear Creek Planning Commission (1976) 17 C 3d 500, 508-509.)

contended that the document was not sufficiently authenticated, was not relevant, was not recorded, was never before presented to the Commission, may have been superseded by later actions, predates the November, 1951 deeds, and was not supported by a proper foundation. Furthermore, he argues that the deeds speak for themselves. DRA objected on grounds of relevance.

We believe this agreement was properly admitted for the purpose of clarifying any ambiguity in the deeds. The agreement is clearly relevant and does shed some light on the intent of the parties to the 1951 land transactions at issue here. We would have preferred authentication by a signer of the agreement, and an opportunity for adverse parties to cross-examine a witness familiar with the substance of the agreement. We believe, however, that there are sufficient indications that the document is what it purports to be to warrant its admission. [16] As far as substance is concerned, the document can speak for itself.

The agreement is of course far from the best evidence of the intent of the parties to the 1951 transactions or the effect of those transactions. The best evidence is provided by the deeds themselves. The agreement may at best clarify possible ambiguities

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16 Under oath the surviving spouse of Leslie Chenoweth authenticated the signatures of William, Leslie, and Hardin Chenoweth appearing on Exhibit 27. She also testified that Exhibit 27 was one of the original copies of the 1951 agreement, and that the handwritten notes on the document appeared to be in her husband's handwriting.

Exhibit 27 bears all the indicia of what it purports to be--an agreement written in 1951. It is clearly a duplicate original carbon copy of that agreement. It is signed in fountain pen by all the parties--the administratrices of the Effie Meeker estate and the Chenoweths. Those signatures are acknowledged by L.G. Hitchcock, acting as Notary Public. The agreement is on the printed stationery of Barrett & McConnell, Attorneys at Law, of Santa Rosa. There are even rust marks where old staples have been removed for photocopying of the document; and the pages are brittle and cracked. There can be little question about the authenticity of the document.

contended that the document was not sufficiently authenticated, was not relevant, was not recorded, was never before presented to the Commission, may have been superseded by later actions, predates the November, 1951 deeds, and was not supported by a proper foundation. Furthermore, he argues that the deeds speak for themselves. Staff objected on grounds of relevance.

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within the deeds, but may not impart to the deeds a meaning to which they are not reasonably susceptible.

CMWSI argues that the Meeker-Chenoweth agreement (Exhibit 27) proves that the November 26, 1951 deed was never intended to convey any interest in the non-utility property transferred by the November 29, 1951 deed, and that this property was intended to be free from any "public utility associations." The Chenoweths rely on language in the agreement that:

> It is fully understood and agreed by and between the parties hereto that the parties of the first part have not joined in or been a party to the dedication of any of said property herein referred to for the purpose of the operation of the Camp Meeker Water System other than the acreage consisting of 14 acres more or less immediately surrounding the varibus springs now used in the operation of the Camp Meeker Water System." (Exhibit 27, p. 3.)

This argument fails for several reasons.

First, it is contrary to the explicit language in the November 26, 1951 deed which states an intent to transfer all water rights, easements, and privileges associated with the Camp Meeker Water System. As we have already made clear, this language gives the owners of the water system certain real property rights over the surrounding watershed land.

Second, it is contrary to earlier language in the agreement itself, which states in pertinent part that:

> "That the parties of the first part ...do hereby agree to sell .. the Camp Meeker Water System, and all other property both real and personal appurtenant to said system and used therefor..." (Exhibit 27, p. 3.)

This language confirms the deed language transferring the easements appurtenant to the water system.[17]

Third, it fails to recognize the difference between rights conveyed by easements and restrictions imposed by the dedication of property. The possession of an easement gives one certain rights over the property of another, whereas the dedication of one's own property to public utility service creates restrictions applicable to that property alone. Furthermore, the rights conveyed by an easement do not restrict land use completely, but merely prevent the person whose land is burdened by the easement from acting in a manner inconsistent with the easement. Dedicated land, on the other hand, can only be used for the purpose to which it is dedicated.

While we agree that the agreement clarifies the intent of the parties to transfer the Meeker Estate land in two parcels, one clearly dedicated to public utility service and one not, we do not agree that this fact severs all ties between the two parcels. We have already noted that the utility has easements burdening the non-utility property. The right to an easement burdening a property is independent of the dedicated or non-dedicated status of that property. (Danielson v. Sykes (1910) 157 C. 686, 689; Tract Development Service, Inc. v. Keppler (1988) 199 CA 3d 1374, 1381-1383).[18]

In accordance with the statutory restrictions on the use of extrinsic evidence, we will give the agreement some weight

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17 "Real property" includes "[t]hat which is incidental or appurtenant to land." (Civil Code § 658 (3).) Thus, the water rights and easements appurtenant to the water system land are themselves "real property."

18 For example, in Tract Development Service, Inc. v. Keppler, supra, 199 CA 3d at 1381-1383, the Court found that the easement holder's right to use a certain street as a right of way survived the city's abandonment of that street as a dedicated public thouroughfare.

in clarifying the parties intent to convey a dedicated property and a non-dedicated property as separate parcels of land, but we will give it no weight insofar as it is cited to negate other portions of the agreement or the deed itself.

2. The Commission's November 6, 1951 approval of the transfer of the water system to the Chenoweths

We will now address CMWSI arguments that the Commission's November 6, 1951 approval of the transfer of the water system from the Meeker Estate to the Chenoweths proves that CMWSI has no interest in the property transferred by the November 29, 1951 deed.

CMWSI contends that by approving the sale of specifically described real property belonging to the Camp Meeker Water System, the Commission confirmed its own earlier appraisal which identified all remaining property owned by the Meeker heirs as "non-operative" or as "private realty holdings." CMWSI asserts that the effect of the Commission order was a conclusive presumption that the real property not specifically included in the sale of the utility was not "useful or necessary" to the system within the meaning of PU Code Section 851. (CMWSI Opening Brief, page 12.) CMWSI concludes that the property conveyed by the November 29, 1951 deed is free of all utility association, since all utility property was conveyed by the November 26, 1951 deed approved by the Commission.

While we agree that the Commission's approval of the transfer of the Camp Meeker Water System to the Chenoweths shows that the Commission did not believe that the remaining property held by the Meeker Estate was utility property, we do not agree that the remaining property is free of all utility associations. As CMWSI itself points out, the issuance of the order approving the sale of the utility and its property was predicated on the petition for approval of sale to which was attached a copy of the proposed deed containing the exact description of water system property contained in the November 26, 1951 deed. As explained above, this

deed conveyed both specific parcels of land and easements, rights and privileges appurtenant to that land. These appurtenant rights and easements gave the new owners of the water system certain rights to use the land retained by the Meeker Estate.

When this retained land was transferred by the November 29, 1951 deed, it was already missing the property rights the Commission found necessary and useful for utility operations, since those rights had been conveyed as easements to the water system land transferred on November 26, 1951. CMWSI's argument that the November 29, 1951 deed did not transfer any land useful for utility purposes is irrelevant to the issue of what property rights CMWSI obtained over that land by way of the November 26, 1951 deed.

We believe that our predecessors acted wisely in 1932 when they allocated to the water system only that property fully utilized by the utility at the time in order that the Camp Meeker ratepayers would not be burdened by an excessive rate base, and again in 1951 when they approved a transfer of the water system which included expansive rights over the property not allocated to the utility. The utility retains all the property rights needed to operate effectively, without the rate base burden of property rights not needed by the utility. The purchasers of the non-utility property remain free to develop that property so long as they take no action inconsistent with the utility's property rights. The Commission's November 6, 1951 approval of the water system transfer seems to have benefited everyone.

3. The Hitchcock Declaration

Exhibit 16, a part of the record of the initial hearings in A.83-11-54, contains a declaration of L. G. Hitchcock, signed under penalty of perjury, and dated May 21, 1984.

Hitchcock represented Hardin T., William C., and Leslie C. Chenoweth in negotiations with Edwards and representatives of the Effie M. Meeker Estate (grantors) in the purchase of CMWS, and

in the acquisition of the other property previously owned by that estate and Edwards.

Hitchcock states that he prepared A.32820 which sought approval of the sale of CMWS from the Meeker Estate and Edwards to the Chenoweths. He states that he supplied the information used by Sonoma County Land Title Company in preparing the deeds involved. He states that the deed of November 29, 1951 refers to CMWS in an omnibus clause at page 5 as a precautionary measure to ensure that any CMWS lands that were not specifically described in the deed of November 26, 1951 were so conveyed by the deed of November 29, 1951.

Hitchcock alleges that the term "used and useful" in the deed of November 26, 1951, conveying CMWS, was intended by the grantors and the grantees to include conveyance of pipes, connections, and facilities "used and useful" in the operation of the system. He claims that reference to "water and water rights" appurtenant to said system and "used or useful" in its operation was intended to include only water and water rights, privileges and easements on property owned by CMWS described in the deed of November 26, 1951. According to Hitchcock, this understanding was clear from his negotiations with the grantors on behalf of the grantees and it was his intention in terms of his instructions to the Sonoma County Land Title Company in drafting the deed.

Hitchcock states that before the purchase of the system by the Chenoweths, he inquired of the Commission whether any watersheds other than contained in the express acreage owned by the water company had been dedicated for water supply purposes to the CMWS. He states that a PUC employee, Mr. Lyman Coleman, advised him in June, 1951, that he had no knowledge of watersheds or lands encumbered, encroached upon, or dedicated to serve CMWS for purposes of securing water supply, other than the express acreage owned by the system. Hitchcock claims that if there were such watersheds or dedicated lands, Coleman would have had knowledge of

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them. He claims that the deed of November 26, 1951 was prepared for the grantors and grantees with this understanding.

Hitchcock asserts that at no time did the grantors of CMWS indicate that other properties owned by the grantors in the vicinity of the system, but not owned by the system (what is now the Chenoweth property), were used to protect the water sources of the utility company or dedicated to public utility water service. He alleges that no other properties owned by the grantors were intended by the grantors or grantees to be impressed with a watershed easement for the benefit of the utility company.

Hitchcock states that CMWS and property owned by the water system was treated as distinct and separate by the grantors at all times from that other property which the grantors owned and conveyed to the Chenoweths.

We find that Hitchcock's assertions that the November 26, 1951 deed conveyed only water rights, easements, and privileges on the portion of the land dedicated to public utility service, and that neither the grantors nor grantees intended that any other land be impressed with a watershed easement for the benefit of the utility company, are contradicted by the Civil Code sections which govern real property transfers.

As we noted earlier, one simply cannot have an easement to use one's own land for one's own benefit, since an easement is by definition the right to use the land of another. (Civil Code § § 801, 805).[19] Thus, the November 26, 1951 deed language conveying easement rights by necessity affects property other than the real estate conveyed by the deed itself. Given the relationship of the CMWS land to the other land retained by the sellers, it is obvious that the retained land is the land affected by the easement.

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19 The owner can use his or her land, of course, but does not need an easement to do so.

Furthermore, an easement is not "appurtenant" because it is located on a particular parcel of land, but rather because "it is by right used with the land for its benefit." (Civil Code § 662). Statutory examples of "appurtenances" include watercourses across the land of another. (Id.)

We assume that when statutorily defined words are used in a deed they have the statutory meaning and are to be interpreted in a manner consistent with the statutory scheme of which they are a part. This is especially true where the statutory scheme is well established. The terms "easement" and "appurtenance" have been defined in the Civil Code since 1872. (Civil Code §§ 662, 801.) The restriction against ownership of an easement by the person whose land is burdened with the easement is of similar longevity. (Civil Code § 805.)

Since the November 26, 1951 deed references to appurtenant rights and easements could not under California law have conveyed to CMWSI the legal interest described by Mr. Hitchcock, we find his statement regarding the parties' intentions in this regard unconvincing.

Nor do we find Mr. Hitchcock's meeting with Commission staff member Mr. Colomen to be convincing evidence of the property interests conveyed in 1951. There is no evidence that Mr. Coleman was an attorney familiar with California property law. As is amply clear from the parties' objections in this proceeding to each others' lawyer and non-lawyer witnesses' efforts to characterize the legal impact of the 1951 transactions (See, e.g., TR 5: 444-452; TR 6: 523-529, 557), it would be folly for us to rely on hearsay evidence regarding 38 year old statements allegedly made by a probable non-lawyer Commission staff member unavailable to clarify or contradict Mr. Hitchcock's recollection of the conversation. This is especially true where the statements contradict the express language of the deed at issue.

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Mr. Hitchcock's statements regarding the parties' intention to treat the utility and non-utility land as separate parcels serve merely to reinforce the conclusion we drew from the fact that the Meeker property was conveyed by two deeds rather than one. This separation makes sense from a tax and ratemaking perspective, as will be discussed later in this decision. In view of the deed language referring to water rights, easements, and the need to interpret the deed to convey all property interests beneficial to the utility, however, we are not convinced that the separation was complete for all purposes.

Mr. Hitchcock's declaration is most useful in explaining the reason for the November 29, 1951 deed's conveyance of properties already described in and conveyed by the November 26, 1951 deed. While the same property cannot be transferred twice, obviously, we understand why the parties used "catch-all" language to ensure that all property was conveyed at least once.

As we have noted earlier, extrinsic evidence cannot be used to take away something explicitly granted in a deed, although it may be used to clarify the extent of the grant or other matters. We find the Hitchcock declaration useful in supporting CMWSI's argument regarding the separate treatment of the utility and non-utility land jointly owned by the Meeker Estate and Paul Edwards, and in explaining the reason the November 29, 1951 deed describes property conveyed on November 26, 1951. We do not find it convincing in any other significant respect.

E. <u>What was the final result of the 1951 transactions?</u>

We are convinced by the two deeds, the agreement, A.32820, and D.46373 that the administratrices of the Estate of Effie Meeker intended to convey the Camp Meeker property in two parcels, one which was dedicated to public utility water service and one which was not. We are also convinced that the administratrices did not intend to hamstring the operation of the

Camp Meeker Water System by preventing the system from maintaining or developing any water sources on the non-utility portion of the land.

By separating the original land into a public utility and a non-utility parcels, the Meeker Estate and the Chenoweths created the possibility that the non-utility land could be used for non-utility purposes. Because of the explicit non-dedication statement in Exhibit 27, and the use of two deeds to execute the transaction, we infer that the parties understood the ratemaking implications of treating both the CMWS property and the surrounding lands as a package. Because of the Commission's acquisition adjustment, the Chenoweths would not have earned a return on the part of the purchase price in excess of rate base. D.86373 reveals that only about one third of the purchase price was allocated to water system lands. Because of this policy, no reasonable purchaser would purchase the Meeker properties, as a package, unless the price was at or near rate base.[20] On the other hand, the sellers would be disinclined to sell at such a price, when segregating the properties between utility and non-utility land would bring a much higher price. Segregation of the Meeker property into two parcels made good economic sense for both the buyer and the seller.

The economic imperative to segregate utility and non-utility land did not necessitate a disregard for the needs of the Camp Meeker Water System.

By conveying with the public utility land "all water an water rights...and all rights, privileges, and easements belonging

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20 In addition, the Commission's authority to regulate transfers of utility property under Section 851 would have provided a further disincentive to a prospective purchaser of CMWS properties and surrounding lands viewed as a package. Every attempt to sever a portion of the surrounding lands from the package would be subject to regulatory delays and potential nullification.

thereto..." and stating the intent of the deed "to convey not only the properties particularly described herein, but also all rights, easements, and privileges and facilities appurtenant to said Camp Meeker Water System..." the parties to the deed ensured that the water company would have the same rights to develop water on the non-utility land that it possessed when the two portions of the land were one.

We find the outcome of the 1951 transactions almost ideal. The Chenoweths are free to develop the non-utility land as they see fit, so long as they do not interfere with the easement and other property rights possessed by the water system. The water system customers are protected from the adverse effects of any non-utility development, while the Chenoweths are protected from the restrictions that would result if all the lands affecting the water system were dedicated to public utility use alone.

Although this may seem too simple an outcome for the many years of litigation this case has consumed, the result flows naturally from basic California property law.

Our analysis of the 1951 transactions, however, is not the end of the matter. We must also review CMWSI and Chenoweth activities after 1951.

3. **Was property dedicated to public utility use after 1951, or did CMWSI simply exercise its easement rights?**

The Commission has long recognized the inadequacy of the Camp Meeker water supply and has several times ordered the Camp Meeker Water System to make greater efforts to increase its water supply. See, e.g., D.24567, 37 CRC 284 (1932); D.44303, 49 CPUC 729 (1950); D.60283, 57 CPUC 710 (1960); and D.92451, 4 CPUC 2d 645 (1980). We will now review the efforts of CMWSI and the Chenoweths to increase the utility's water supply.

A. Well sites

In 1959 or 1960, CMWSI developed several spring fed water sources on Chenoweth land. While these springs were not in use in 1951 when the Chenoweths acquired the Camp Meeker properties, there is evidence that they had previously been used by the water system. (CMWSI witness William Chenoweth, TR 2: 203-206). In D.92451 the Commission found that "Springs designated by the water company as Spring A, Spring A-1, and Springs B-2 through B-8 have been dedicated to public utility service and are part of the water system." (D.92451, Conclusion of Law 7 (1980).)[21]

In 1959 or 1960, CMWSI drilled the two Acreage Wells, and the two Dutch Bill Wells on Chenoweth land, with Chenoweth permission, after having tried and failed to develop water on Camp Meeker Water System property. (CMWSI witness William Chenoweth, TR 2: 194, 198-200.) These well sites are leased to CMWSI by the Chenoweths. (TR 2: 198-199).

In D.93594 (October 6, 1981) in A.60478, the Commission approved CMWSI's application for authority to borrow $247,000 of SDWBA funds. In D.86-02-006 (February 5, 1986) in A.85-10-015, the Commission approved an additional SDWBA loan of $112,620 bringing the total to $359,620. The SDWBA improvement program was to focus on drilling new wells, with subsequent improvements to be made if an adequate water supply was located. (D.93594, Ordering Paragraph 6, Findings of Fact 13 & 14). These funds have been used to develop new wells, new concrete storage tanks and associated filters, chlorination facilities, and piping, and have already led to appreciable improvements in the system. About $24,000 of SDWBA funds remain on hand, which will be used for further DHS-mandated improvements. (Exhibit 20, pp. 28-29.)

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21 Springs A and A-1 are apparently located on the property of a Mr. Bacon, and not on Chenoweth land. (Exhibit 20, p. 17.) The B Springs are located on Chenoweth land near Haunted House Wells Nos. 1-6. (Exhibit 15.)

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The Tower Road Well, the Acreage Lane Well, and Haunted House Wells Nos. 1 - 6 were built on Chenoweth land by CMWSI between 1981 and 1983 for water system use with Department of Water Resources Safe Drinking Water Bond Act funds with permission from the Chenoweths after unsuccessful efforts to develop wells on Camp Meeker Water System, Inc., property. [CMWSI witness Reader, TR 2: 138-139, 144-145; CMWSI witness William Chenoweth, TR 2: 197-200 ; See also Exhibit 3, pages 1 and 4, and Exhibit 14). These well sites are leased to CMWSI by the Chenoweths. (CMWSI witness William Chenoweth, TR 2: 184-185, 201-202.)

CMWSI's continued use of the wells on Chenoweth land is necessary for the water system to meet its public utility obligations, since these wells produce about half of CMWSI's total water supply. (Exhibit 20, pp. 18, 21.)

Evidence that the Chenoweth owners of CMWSI have been ordered numerous times to develop new water sources, that a number of water sources have been developed by CMWSI on Chenoweth land since 1951, that most of these water sources were developed with SDWBA funds intended to provide water utilities with low cost capital, and that these water sources have been used exclusively for utility purposes, shows that CMWSI intended to use these water sources to provide public utility service.

We have already determined that CMWSI possessed broad easement rights to develop water sources on land conveyed by the November 29, 1951 deed. CMWSI thus had the right to develop water sources similar to those it did develop on land owned by the Chenoweths. It appears that CMWSI may not have been fully conscious of its easement rights, and it is clear that it did not consciously assert them as such. There would have been no "well site rentals" if it had. We find that although CMWSI may not have consciously exercised these easement rights, it exercised them

nonetheless.[22] CMWSI's development of wells on Chenoweth land was an inadvertent but perfectly appropriate exercise of its easements rights to develop water sources on Chenoweth land.

Since the wells resulted from an exercise of CMWSI's easements rights to develop water sources, and not from the Chenoweths' development of any water rights they possessed as individuals, the Chenoweths could not be said to have dedicated the wells to public utility service. The Chenoweths, as owners of property subject to an easement, have only the property rights left after exercise of the easement. Here, that means only the right to the land on which the wells are based.[23] Without the wells, the land is not particularly useful for public utility purposes, and there is little reason to pursue the issue of whether the Chenoweths intended to dedicate the land to public utility service.

We note that although twelve wells on Chenoweth property have been developed for public utility use, CMWSI's right to exercise its easement rights is not limited to these particular locations. CMWSI developed these well sites over many years, as water system needs changed and expanded. A limitation to these particular sites would eliminate much of the value of CMWSI's broad easement rights to develop replacement wells and additional wells as its future needs dictate. CMWSI witness John Reader testified that there were additional potential well locations on Chenoweth land that could be developed to replace existing wells that become

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22 We note that mere misapprehension as to the existence of easement rights does not mean that those rights do not exist. (Tract Development Services, Inc. v. Kepplex, supra.)

23 The distinction between dedication of wells and dedication of the land on which the wells are based is not a new one. In response to inquiries by ALJ Wright about the prior Commission decision finding dedication of the A and B spring wells, CMWSI witness Chenoweth stated that just the water, not the associated real estate, was dedicated to utility use. (TR 2: 203-204.)

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clogged or to provide for future water system needs if there were a financial incentive to do so (TR 2: 139). We find that CMWSI must retain the option to take advantage of such sites if they are required for public utility operations in the future.

B. Baumert Reservoir

Some time between 1960 and 1964, the Chenoweths constructed the Baumert Reservoir Dam, just upstream from CMWSI water sources I, J & K. (Exhibit 37, Deposition of James Halsey, p. 16-17; Exhibits 15, 22, 23, and 24.) DRA, CMRPD, and a number of Camp Meeker residents argue that these water sources have been dedicated to public utility use. CMWSI argues the contrary. We will now resolve the matter.

In Application 41313 the Chenoweths requested authority to transfer the Camp Meeker Water System to Camp Meeker Water System, Inc. Section VIII of that application reads as follows:

> The applicant, CHENOWETHS, INC., herein was initially formed to permit the holding by said company of all assets pertaining to Camp Meeker and the operation thereof. However, it has become necessary by reason of needed improvements in the water system, and in particular, the construction of a reservoir and dam, chlorination equipment, and the fulfillment of other requests made by your honorable commission, that the operation of the water company be conducted by a separate and distinct corporation, the ownership of who's stock, however, will be and remain in the Chenoweth family. That it will be in the public interest and will better insure the continuity and efficiency of the water distribution in Camp Meeker, Sonoma, California. Applicants do not believe a public hearing will be necessary." (emphasis added.)

The Chenoweths' application was granted by D.58847, which notes that:

> "Applicants state that required improvements in the water system have necessitated its operation as a separate and

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...

"Applicant's attorney, by letter dated July 22, 1959, alleges that a prompt transfer of the water system is imperative in view of the limited supply of water currently available, so that sufficient investments may be made to improve the water system." (Id., p. 3, emphasis added.)

A.41313 and D.58847 show that both CMWS and the Commission felt that the utility's water supply needed to be improved and understood that a reservoir would be part of such an improvement program.

D.60283, the result of a Commission investigation into the operation of the Camp Meeker Water System, notes that:

"Exhibit number 12 shows the result of a preliminary survey made in August 1959, of a site for a retaining dam and storage pond which might be constructed on what is sometimes referred to as Fern Creek, south of the Baumert Springs area. This plot shows that a dam, about 38 feet high, if constructed at one location could impound about 27.50 acre-feet of water. The land on which the dam would be built is owned by Chenoweths, Inc.; however, the area flooded by such a dam would flood a portion of an acre of adjoining property. This fact and the preliminary estimated cost of $40,000 for the dam deferred further investigations of this source of supply." (D.60283, pp. 10-11, emphasis added.)

While the construction of this particular size dam at this particular location was deferred, it is clear that CMWS had contemplated the construction of a dam on Chenoweth land south (uphill) of the water company's Baumert Springs water sources, for use by the public utility water company.

D.60283 provides other evidence relevant to the public utility use of the Baumert Reservoir. On page 12, the Commission states:

> Witnesses for respondent took the position that whatever amount may be spent by Chenoweths, Inc., on behalf of Camp Meeker Water System, Inc., must be considered as money loaned, to be repaid out of earnings by the utility, which will require an increase in the rates for water service.
>
> As its parent company, it appears that the utility may have to depend on Chenoweths', Inc., to assist it in the development of an adequate water supply and the improvement of the system. Having assumed the obligations of a public utility, it is incumbent upon respondent herein to recognize its responsibility and to take whatever steps are necessary and feasible to serve the public interest.

The Commission clearly assumed a financial relationship between CMWSI and Chenoweth's, Inc., and understood that Chenoweth's, Inc. might have to work with CMWSI to develop adequate water resources.

This financial relationship between CMWSI and the Chenoweths was again recognized by the Commission in D.65119 (1963), which states that:

> "The utility has devoted all revenues obtainable from the sale of water to meet out-of-pocket expenses and in attempts to obtain more water. It has been aided substantially by the affiliated interests of its owners, which affiliations have provided increased water supplies through strictly non-utility funds." (Id., 60 CPUC 690, at 691 (1963).)

Thus, the fact that someone other than CMWSI may have funded a particular water source would not in itself compel the conclusion that the source was intended for non-utility use only.

In the current proceeding, James R. Halsey, former superintendent of the Camp Meeker Water System, stated in deposition that the Baumert Dam was constructed between 1960 and 1964; that he believes it was mandated by this Commission to provide water storage; that William Chenoweth ordered him to "bleed" the dam each summer when the utility's water sources began to dry up; that bleeding the system consisted of opening a valve

located near the base of the dam; that when the valve was opened water would flow over the surface of the ground down Baumert Gulch; that the water disappeared below the surface and then resurfaced about 200 yards down the hill just above a small concrete dam across the creek which was the upper pick up point for the California Tank; that the water flowing from the reservoir fed water company sources designated Baumert, California, Woodland, and Fern Springs; that the Tower, Acreage, Gilson and Hampton locations could also be served by water from the Baumert Reservoir, and that if he had not been authorized to release water from the dam, particularly during August and September, the utility would have run out of water, since that side of the system supplied most of the water. (Exhibit 37.)

Mr. Halsey's testimony that water from Baumert Reservoir feeds utility water sources is confirmed by a look at the topographic and utility water source maps admitted in this proceeding as Exhibits 15, 22, 23 and 24. These maps show that the Baumert Reservoir is uphill from utility water sources designated "I", "J" and "K."

Branch witness Bragen recommended that Baumert Gulch below the reservoir be found dedicated to CMWSI since it is the tributary to utility springs I, J, K and D and possibly other utility water sources. (Exhibit 20, page 38; TR 4: 392.) This recommendation supports Mr. Halsey's testimony.

The testimony of Gene Koch and Jane Concoff further confirm Mr. Halsey's testimony regarding the use of Baumert Reservoir for utility purposes. Gene Koch testified that water flows down from the Baumert Reservoir spillway to a little concrete catchment basin feeding the water system at Baumert Springs. (TR 6: 532-534, 538-541.) Jane Concoff testified that in early autumn in 1986 she noticed that the water level in the Baumert Reservoir was dropping maybe a foot or two each day and that CMWSI employee Larry Elder would be driving past her house toward the reservoir twice a

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day. She deduced that Mr. Elder was going to Baumert in the morning and opening up the spigot that goes through the dam and then allowing water to run out and coming back in the evening and shutting it off. By doing this, he was allowing water to go down and refresh I and J springs during a time when there was no rainfall. She testified that she was told by people who lived in the area that Mr. Elder did this every year in order to keep the tanks and I and J springs operating. (TR 6: 592-593.)

There is, on the other hand, some evidence suggesting an absence of intent to dedicate the Baumert Reservoir to public utility use. Water Branch witness Martin R. Bragen testified that Les Chenoweth told him the Baumert Reservoir had been built with federal grant money as a stock pond for watering goats, but that there were no longer any goats getting water there. (TR 4: 353.) And in 1987, CMWSI agreed to use the "stock pond" for utility purposes only after Commission staff agreed not to use that use as an indication of intent to dedicate the pond to utility use. Exhibit 20, pp. 16-17.)

We are not persuaded by this record that the Baumert Reservoir was developed as a stock pond. Even if it was used as a stock pond at some point, it is not being used to water stock now.

Nor do we believe that the 1987 agreement can overcome the weight of the evidence showing that Baumert Reservoir has long been used for public utility purposes.

We find that the Baumert Reservoir has been used by CMWSI to provide public utility water service. The intention to build a reservoir noted in D.60283, the application requesting authority to transfer the water system to CMWSI; the Commission decision approving the application; the 1959 Commission decision ordering improvements, repairs, and new source development; the construction of the dam within four years of the Commission decision approving the application stating the need for a reservoir; the topographic maps showing the relationship between the reservoir and downstream

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There is, on the other hand, some evidence suggesting an absence of intent to dedicate the Baumert Reservoir to public utility use. Staff witness Martin R. Bragan testified that Leslie Chenoweth told him the Baumert Reservoir had been built with federal grant money as a stock pond for watering goats, but that there were no longer any goats getting water there. (TR 4: 353.) Also, during the 1987 water shortage CMWSI agreed to use the "stock pond" for utility purposes only after Commission staff agreed not to use that use as an indication of intent to dedicate the pond to utility use. Exhibit 20, pp. 16-17.)

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water company sources; the deposition statements of a man who operated the CMWSI system for many years; and the testimony of Gene Koch and Jane Concoff regarding the use of water from the Baumert Reservoir for public utility purposes provide overwhelming evidence of CMWSI's use of the Baumert Reservoir. We find that CMWSI's continued use of the reservoir is necessary for the utility to meet its public utility obligations.

The construction of Baumert Reservoir on Chenoweth land and its use as a public utility water source is consistent with CMWSI's easement rights to use Chenoweth lands. Civil Code § 801, subdivision 10 lists the right to flood land as one of the rights that may attached to land as an easement. The Court in Security Pacific National Bank v. City of San Diego (1971) 19 CA 3d 421, 428, states "The right to flood land or to store water thereon may be appurtenant to ownership of water, considered as real property." Since CMWSI has all the water and water rights once possessed by the Meekers and useful for public utility water service, including those rights to water on Chenoweth land, and since the right to flood land or store water theron may be appurtenant to ownership of water, the construction and use of the Baumert Reservoir is consistent with its real property easement rights.

Water system easements can yield broad authority to use land not owned by the water company, and we do not stretch CMWSI's easement to the limit when we find that it encompasses both the wells and the Baumert Reservoir on Chenoweth land. In Security Pacific National Bank v. City of San Diego, supra, the Court noted that: "In theory the physical assets of a water system could be located wholly upon easements and rights-of-way upon land owned by someone other than the owner of the water system." (Id., 19 CA 3d at 429.)

If we found that the Chenoweths were using the Baumert Reservoir for other than public utility purposes, we would conclude that such use constituted an interference with CMWSI's easement

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If we found that the Chenoweths were using the Baumert Reservoir for other than public utility purposes, we would conclude that such use constituted an interference with CMWSI's easement

rights. One of the most classic examples of an easement right is the right to the natural flow of water over the land of another. If the Baumert Reservoir were allowed to interrupt the flow of water to CMWSI water sources, the water company would suffer greatly. We would then order CMWSI to take action to ensure that the owners of the land burdened by the easement did not interfere with the exercise of the easement.

"When a person interferes with the use of an easement he deprives the easement's owner of a valuable property right and the owner is entitled to compensatory damages." (Moylan v. Dykes, supra, 181 CA 3d at 574.) While this Commission does not award damages, and while we feel that the Chenoweths have not actually interfered with CMWSI's easement rights, we caution the Chenoweths against any future interference with the easement rights held by CMWSI.

**4. Would use of Baumert Reservoir for non-utility purposes violate Water Code § 100 or Article 10, § 2 of the California Constitution?**

Gene Koch and CMRPD assert in their comments that the failure to use Bamuert Reservoir for public utility purposes would constitute unlawful "waste" under Water Code § 100. They assert the retention of water that just sits there is unlawful.

Water Code § 100 is to a large extent identical to Article 10, § 2 of the California Constitution, which expresses the state's policy that:

> "the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use ... of water be prevented. ... The right to water ... from any natural stream or water course ... shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not extend ... to the waste or unreasonable use ... or diversion of water. ..."

rights. One of the most classic examples of an easement right is the right to the natural flow of water over the land of another. If the Baumert Reservoir were allowed to interrupt the flow of water to CMWSI water sources, the water company would suffer greatly. We would then order CMWSI to take action to ensure that the owners of the land burdened by CMWSI's easements did not interfere with the exercise of those easements.

"When a person interferes with the use of an easement he deprives the easement's owner of a valuable property right and the owner is entitled to compensatory damages." (Moylan v. Dykes, supra, 181 CA 3d at 574.) While this Commission does not award damages, and while we feel that the Chenoweths have not actually interfered with CMWSI's easement rights, we caution the Chenoweths against any future interference with the easement rights held by CMWSI.

4. Would use of Baumert Reservoir for non-utility purposes violate Water Code § 100 or Article 10, § 2 of the California Constitution?

Gene Koch and CMRPD assert in their comments that the failure to use Bamuert Reservoir for public utility purposes would constitute unlawful "waste" under Water Code § 100. They assert the retention of water that just sits there is unlawful.

Water Code § 100 is to a large extent identical to Article 10, § 2 of the California Constitution, which expresses the state's policy that:

> "the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use ... of water be prevented. ... The right to water ... from any natural stream or water course ... shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not extend ... to the waste or unreasonable use ... or diversion of water. ..."

Article 10, § 2 goes on to state that "nothing herein ...shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use. ..."

We agree that the Chenoweths have no right to waste water by retaining it behind the Baumert Dam for no useful purpose. Water that "just sits" without being used for any beneficial use is wasted. There is, however, no evidence in this record that the Chenoweths are using the Baumert Reservoir for any beneficial use other than as a public utility water supply. No witness in this proceeding testified to ever seeing goats taking water from the reservoir, although Les Chenoweth told Mr. Bragen that this is why the reservoir was built. Even if the reservoir was at some point used to water goats, it is not used for this purpose now.

Because we find that the Baumert Reservoir has in fact been used to supply CMWSI with water for public utility purposes - clearly a "beneficial use within the meaning of the Constitution and the Water Code - we do not find any violation by the Chenoweths of the state policy against the waste of water.

5. Does our finding that CMWSI possesses easement rights adversely affect Chenoweth property rights without due process?

Pacific Legal Foundation contends in its comments on the proposed decision that actions which restrict, take or regulate property rights must be preceded by adequate due process, and that actions that adversely affect property rights must not be taken lightly.

Does our finding that CMWSI possesses easement rights adversely affect Chenoweth property without adequate due process? The answer is clearly no.

First, our finding represents our recognition of existing legal rights and not the creation of new ones. In exercising easement rights, the easement owner is taking nothing new from the

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property owner burdened by the easement, since the burdened owner simply had a less than complete interest in the land in the first place.

To the extent that an easement to take water requires the development of well sites and reservoirs, and the placement of pipes over the land of the servient estate, the uses of that estate may be restricted. But this restriction results from the easement owner's exercise of rights that he possess, and not from the derogation of rights possessed by the burdened landowner.

Second, the Chenoweths themselves are responsible for the easement burdening their land. While the Estate of Effie M. Meeker and Paul R. Edwards first created the easement when they transferred the property described in the November 26, 1951 deed, the Chenoweths re-affirmed or re-created the identical easement when they transferred CMWS to CMWSI by way of the August 7, 1959 deed approved by the Commission in D.58847. Since they were also parties to the November 26, 1951 deed in which the water rights and easements benefiting the Camp Meeker Water System land are expressly granted, the Chenoweths cannot argue that they purchased the property affected by the easement in good faith and for value without knowing of the easement. The Chenoweths cannot now complain of the burden they created.

The Commission did not draft the deed language giving CMWSI the water rights and easements it now denies possessing; these rights were granted in deeds the Chenoweths were a party to. Our recognition of these rights and their relationship to the Chenoweth land is simply not an action adversely affecting property rights. Furthermore, since our recognition of these rights is the result of a proceeding initiated in 1983 which involved two complete sets of hearings on the subject of CMWSI and Chenoweth property rights, we believe adequate due process has been provided.

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It might be wise to underscore just what property is at issue here. There is evidence that since 1951 12 wells have been developed on Chenoweth land. In the past, ten foot square well sites surrounding these wells have been leased to the utility by the Chenoweths. Thus, the 12 well sites cover a total of roughly 1200 square feet of land. An acre of land equals 43,560 square feet. Dividing 1,200 by 43,560, we find that the well sites cover about 2.8%, or 1/36th of an acre of land. The extent of the land inundated by the Baumert Reservoir is also unclear on this record. The reservoir contains an estimated 2 to 3.5 acre feet of water. (Exhibit 20, p. 19, fn. 19.) Assuming that the reservoir is at least one foot deep, the reservoir covers at most 3.5 acres. Rounding down the 1/36 of an acre covered by the well sites, we find that the land directly burdened by CMWSI's exercise of its easement rights totals roughly 3.5 acres. According to the November 29, 1951 deed, the Chenoweths own approximately 800 acres of land, we find that CMWSI water sources occupy 3.5/800ths, or roughly .4% of the total.[24] The amount of Chenoweth land directly used by CMWSI for public utility purposes pursuant to its easement rights is simply not very great.

## VII. Future Water Resources

The record shows that the utility's wells, together with surface sources, still do not supply adequate quantities of water

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24 CMWSI witness William Chenoweth testified that the Chenoweths owned "in excess of 500 acres." (TR 2: 187.) His brother, Leslie Chenoweth, testified that the 800 acres referred to in the deed was incorrect, that he believed the Meekers had sold some property just prior to the 1951 transaction. (TR 2: 221.) Frances Gallegos testified that in 1983 the Chenoweths received permission from the County Board of Supervisors to subdivide 550 acres of the watershed. (TR 1: 77.) If the Chenoweths owned only 550 instead of 800 acres, the land burdened by CMWSI's exercise of its easement rights would still only cover .6% of the total.

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Sonoma County's consulting engineer, Phillip Harris of Harris Consultants, Inc., found three areas where wells might produce additional water. Harris estimated that 6 to 10 wells might produce a total of 10 to 15 additional gallons per minute, including all likely areas for drilling. Harris believes, however, that even if this much additional water were available in the dry season, and even if the distribution system were repaired so that water losses were minimized, there would still be dry year shortages and outages unless another source of supply is found. In the short term, these additional wells would be the only way to quickly increase the water supply other than by trucking it in. Two of the three areas estimated to be good sources for additional wells are on property claimed by the Chenoweths. (Exhibit 20, pp. 21-22.)

Branch believes that the Chenoweths' ownership of two of the three areas of potential well development is a significant impediment to a quick increase in the water supply (Exhibit 20, p. 22). We disagree. We believe CMWSI's easement rights are sufficient to ensure its ability to develop wells in these areas.[25]

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25 William, Ann, and Jewel Chenoweth own CMWSI. William, Ann, Jewel, and Joan Chenoweth, and Pat Chenoweth Aho, own the Chenoweth lands. (Exhibit 20, pp. 10, 13-14; TR 2: 181; TR 4: 352.) Lester Chenoweth, a former owner of both CMWSI and the Chenoweth lands, died in 1987.

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Even the development of new wells may not be sufficient to bring adequate water supplies on line for CMWSI. Branch believes that stored surface water may offer a solution. Branch cites a 1959 study that estimates that about 22 acre-feet of water would be required to make up the annual shortfall in well and spring production. That quantity of water could supply the average needs of the system for 1-1/2 months without additional water sources. It could also supplement well and spring production during dry periods for three months or more. (Exhibit 20, p. 23.)

Harris estimates that the hauling of water during an extraordinary dry period might be a feasible alternative to a reservoir, provided: (1) that the system's mains and services and all customer pipelines were replaced to minimize leakage; (2) that new, larger storage tanks are installed; and (3) that new, larger mains are employed to transfer water from tank to tank. Water hauling would not be a feasible alternative without a complete overhaul of the distribution and storage system.

We believe that the development of a reservoir larger than the present Baumert Reservoir may be necessary at some point

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We cannot ignore the fact that the partial overlap in the ownership of CMWSI and the Chenoweth lands creates the potential for a conflict of economic interest. We know that lease payments for well sites on Chenoweth land might be more attractive than the potential return from the inclusion of well site and reservoir improvement costs in CMWSI's rate base. And we recognize that the Chenoweths' desire to develop the non-utility land could lead CMWSI to assert its easement rights less rigorously than it might if there were no ownership overlap. While we will at present assume that CMWSI's interpretation of its easement rights results from a good faith misunderstanding and not from any conflict of interest, we caution CMWSI not to underestimate our ability to regulate all those who actually control the utility. (See, e.g., Westgate-California Corporation (1971) D.78399, 72 CPUC 26; Key System Transit Lines (1953) 52 CPUC 589.)

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to ensure the utility with an adequate water supply. Obviously, there is no room on CMWSI's roughly 14 acres for a very large reservoir, so such a reservoir would have to be constructed on other lands. DHS believes that one or more small reservoirs may have to be developed on watershed lands to resolve the water source shortage. (TR 5: 468-469.) Former CMWSI superintendent Halsey stated in his deposition that there are good reservoir sites on Chenoweth land. When asked what he would do if he were in charge of the water system, Halsey replied that he would put another dam below the present one, and perhaps also dam a valley in an area known as Five Springs. (Exhibit 37, p. 35.) CMRPD witness Ellis also testified that there were a number of potential reservoir sites in the Camp Meeker area. (TR 7: 605-622; Exhibit 38.)

The development of a new reservoir on Chenoweth land would be consistent with CMWSI's easement rights since it is something the Meekers could have done when they owned both parcels of land, and since the flooding of land is one water related right that may conveyed as an easement. (Civil Code § 801, subdivision 10.) The flooding of Chenoweth land by a reservoir constructed on CMWSI land would also be consistent with the utility's easement rights. ( Security Pacific National Bank v. City of San Diego (197 ) 19 CA 3d 421, 428, Since no such reservoir is currently in the works, we need say nothing further on this subject at this time.

## VIII. Ratemaking Implications

Due to Recommendation "I" the Commission in D.84-09-093 did not adopt as part of CMWSI's operating expenses any amount for "Well Site Rental." (Id., p. 7.)

Since an easement holder need not compensate the owner of the property burdened by the easement for his or her exercise of easement rights, CMWSI need not compensate the Chenoweths for future well site use. This is not a "taking" of the Chenoweths' property, but merely an acceptance of the fact that an easement

owner has property rights too. Any recompense for the creation of the easement should have been taken into account when the easement was created. If we ordered CMWSI to pay the Chenoweths for the reasonable exercise of its easement rights, we would in fact be depriving CMWSI of its own non-possessory property rights. This might well constitute an unlawful "taking" of private property. This we decline to do.

Although we find that the Chenoweths are entitled to no compensation for the burden imposed by CMWSI's exercise of its easement rights, we note that CMWSI itself, or the Chenoweths as the parent of CMWSI,[26] might be entitled to compensation for any well or reservoir construction and maintenance costs not funded by the SDWBA loan or federal grant money. We lack evidence in this record from which we could determine the cost of any compensable well or reservoir construction and or maintenance costs. We would, however, consider providing some form of rate relief if CMWSI could quantify its own expenditures after exclusion of any improvements funded by the SDWBA. This approach is consistent with Branch's recommendation that:

> "...the Commission find that a reasonable cost for the construction and improvements of Baumert reservoir, and the costs of spring or well improvements not already included in CMWSI's rate base, ..., may be included in rate base subject to Commission approval." (Exhibit 20, p. 38-39.)

The Branch does not quantify its recommendation. We do not know what the costs of construction and improvement of Baumert reservoir were, or what the costs of spring or well improvements were, or

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26 In D.60283 the Commission noted Chenoweths Inc.'s contention that any money spent by Chenoweths, Inc. on behalf of CMWSI must be considered a loan to be repaid by the utility. We have no objection to this, providing we are convinced the expenditures were both legitimate and prudent.

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when they were incurred. We do know that at least eight of the twelve wells developed by CMWSI on Chenoweth lands were financed by SDWBA funds, and that the Commission decision approving CMWSI's application for the SDWBA loan ordered that any improvements financed with SDWBA funds be permanently excluded from rate base. (D.93594, 6 CPUC 2d 768 (1981).)

Before including in rate base the original cost of any well site or reservoir improvements not made with SDWBA funds, however, we must know the precise extent of those improvements.

We will authorize CMWSI to seek rate base treatment of these improvements in either an application or in its next general rate case. CMWSI bears the burden of proving both the extent and the cost of such improvements. We will allow staff and interested parties to participate in any proceeding in which such rate base additions are requested.

Although we have discussed the future water sources available to CMWSI, we have not discussed the cost of such improvements, since that was not the focus of this proceeding. Where could the funds come from?

We encourage CMWSI to discuss the possibility of additional SDWBA loans in connection with any significant water system improvements. We realize that additional SDWBA loans will result in additional surcharges. In the past, the Commission has found that Camp Meeker residents are willing to pay more for water utility service if there is some indication the service quality will improve. (D.60283, p. 9.) The testimony of Sonoma County Supervisor Ernie Carpenter confirms that this is still the case today. (TR 1: 54-55.)

Branch mentions another potential source of public funding, i.e., Sonoma County's purchase of the system. Such a purchase would eliminate our jurisdiction over CMWSI. The Branch asserts:

> "Although Sonoma County has been considering purchase of CMWSI, improvements to the system

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> "Although Sonoma County has been considering purchase of CMWSI, improvements to the system

> are not expected to occur in the near future unless property matters are settled. Sonoma County cannot take over the system and make improvements until title is clear, and the Chenoweths do not want improvements made on what they claim as their land under present conditions. A final resolution is needed to allow the water system to be improved." (Exhibit 20, p. 29.)

These conclusions overstate the County's problems and understate its powers in two critical respects. First, Sonoma County has the power of eminent domain, and it may at any time condemn CMWSI, and any Chenoweth properties it believes it requires, for a publicly owned and operated water district. The County's condemnation rights remain the same regardless of who owns the land. Second, the County is free to take over and improve this system irrespective of the Commission's consideration of ratemaking or property ownership issues in this proceeding. Such a takeover would make available to the system additional funds, through the sale of bonds and through the assessment of new property taxes and connection fees, for the major improvements needed by the system.

In any event, Sonoma County is not a party to this proceeding, and we have no concrete evidence in this record concerning the County's take over intentions. Until the County takes positive action to indicate what its intentions are, the Commission must act as if the system will continue under private ownership and under its regulation.

## IX. Protection of Surrounding Lands

The Commission indicated in D.85-02-045, its order granting limited rehearing, that its main goal on rehearing was to approve a mechanism or plan to protect the water resources on the adjoining property for the continuing or eventual use of the water company.

We believe that the CMWSI easement rights described in this decision already provide CMWSI with the power to protect water sources on the surrounding land. Civil Code § 809 gives the owner of property benefited by an easement the authority to maintain an action for the enforcement of the easement rights.

There are several other factors that further militate against development of the surrounding lands to the detriment of the water resources thereon. First, the Commission imposed a moratorium on new service connections in D.60283, dated June 20, 1960, in C.6390. That restriction is still in effect. In this proceeding, CMWSI sought the removal of that restriction. The Commission denied the request in D.84-09-093.

Second, inadequate water supplies afflict CMWSI, particularly in dry periods. In 1986 and 1987, substantial water hauling was needed to continue service to existing customers. Water hauling has been accompanied by rate surcharges to defray the cost of water hauling. (See D.87-06-059, D.87-07-094, and D.87-10-087 in A.87-04-062.) These conditions tend to discourage development of the surrounding lands.

Third, the County of Sonoma regulates development of the surrounding lands through its building permit process. We assume that an applicant for a building permit must be able to demonstrate to the County that it has a water supply. Without a connection to CMWSI, a water supply will be difficult to demonstrate in this water poor area.

Fourth, DHS acts as a watchdog for the watershed lands. It has arrangements with the Sonoma County Planning Commission to be advised of any application that might affect the quality and quantity of water supplies in the Camp Meeker area. It interjects itself and advocates its public health concerns in different types of matters affecting water supplies and water quality. It participates in Commission hearings, Coastal Commission matters, county planning matters, and proposed subdivisions. Proposed

subdivisions in watershed areas are of particular concern to DHS. The Sonoma County Planning Commission submits to DHS for its review and comment any proposed action requiring Planning Commission approval. (Tr. 6: 580.)

The concern of DRA, DHS, and others for the protection of the watershed is genuine, however, and there is evidence that suggests that the Chenoweths seriously contemplate development of the watershed lands.[27] We will order CMWSI to exercise its easement rights to develop potential water sources on Chenoweth land and to prevent the Chenoweths from taking any action that could impair CMWSI's ability to meet its public utility obligations.

On April 11, 1989, the Chenoweths filed an Application to Appropriate Water by Permit (No. 29463) with the Division of Water Rights of the State Water Resources Control Board (SWRCB), seeking a determination of their right to appropriate and store water in the Baumert Reservoir. If those rights are denied, then the Baumert Reservoir will not be available to support additional development. If those rights were granted, however, contrary to our own assessment of the CMWSI and Chenoweth property rights, then CMWSI's water supply would be in serious trouble until the conflict with our sister agency was resolved. For this reason, we will order our staff to oppose the Chenoweth's request in A.29463.

We believe that the easement rights possessed by CMWSI, the restriction on new service connections imposed by D.60283,

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27 In A.83-11-54, CMWSI earnestly sought release from the new connection moratorium imposed by D.60283 and subsequent Commission decisions, arguing that the water supply additions developed with SDWBA funds made it possible for the utility to serve new customers. See also, TR 1: 49-51, 53-54, (Testimony of Sonoma County Supervisor Ernie Carpenter); TR 1: 77 (Testimony of Frances Gallegos); TR 1: 88-92 (Testimony of Dina Angress); TR 1: 93-100 (Testimony of Joan Getchell), TR 2: 187-189 (Testimony of William Chenoweth), and Exhibit 20, p. 39.).

subdivisions in watershed areas are of particular concern to DHS. The Sonoma County Planning Commission submits to DHS for its review and comment any proposed action requiring Planning Commission approval. (Tr. 6: 580.)

The concern of staff, DHS, and others for the protection of the watershed is genuine, however, and there is evidence that suggests that the Chenoweths seriously contemplate development of the watershed lands.[28] We will order CMWSI to exercise its easement rights to develop potential water sources on Chenoweth land and to prevent the Chenoweths from taking any action that could impair CMWSI's ability to meet its public utility obligations.

Because it is conceivable, although unlikely, that a future purchaser of all or a portion of Chenoweth land might claim to have acquirred that land without notice of the easements burdening the land, CMWSI and the Commission should take steps to avoid this occurence. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with the assistance of the Legal Division, should be ordered to send copies of this decision to all title insurance companies in the vicinity of Camp Meeker and Santa Rosa, and to take all other steps necessary to insure that any purchaser of Chenoweth land burdened by CMWSI easements has actual notice of the easement rights burdening their land and is unable to assert status as a bona fide purchaser of the land without notice of the easements.

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In addition, CMWSI should be required to record a notice of intent to preserve its easements, pursuant to Civil Code § 887.060. This notice will preclude efforts to claim CMWSI has abandoned its easement rights. This notice should be renewed periodically in accordance with Section 887.060. We will order CMWSI to record such notice after consultation with the Water Utilities Branch of the Commission's Advisory and Compliance Division and the Commission's Legal Division regarding the proper language of the notice.

On April 11, 1989, the Chenoweths filed an Application to Appropriate Water by Permit (No. 29463) with the Division of Water Rights of the State Water Resources Control Board (SWRCB), seeking a determination of their right to appropriate and store water in the Baumert Reservoir. If those rights are denied, then the Baumert Reservoir will not be available to support additional development. If those rights were granted, however, contrary to our own assessment of the CMWSI and Chenoweth property rights, then CMWSI's water supply would be in serious trouble until the conflict with our sister agency was resolved. For this reason, we will order our staff to oppose the Chenoweth's request in A.29463.

We believe that the easement rights possessed by CMWSI, the restriction on new service connections imposed by D.60283,

modified by D.62831 (to permit CMWSI to serve five new customers), and reiterated in D.65119, D.92451, D.84-09-093, and D.85-02-045; and the current level of regulation by the Commission, by DHS, by SWRCB, and by the County are sufficient to protect the watershed from degradation by development. As we learn of specific threats to CMWSI's water resources, we will take appropriate action.

Findings of Fact

1. In 1932 the Commission and its staff distinguished for ratemaking purposes between public utility properties of CMWS and the private realty holdings of its owners. The Commission staff designated 21 parcels and lots, totaling 15.75 acres, as the real properties of CMWS for ratemaking purposes. These parcels and lots contained springs, diversions, or tanks used to provide utility service or were held for future use.

2. In 1935 the Tax Collector listed the same 21 parcels and lots as the properties of CMWS for ad valorem tax purposes.

3. In 1941 the appraiser for the Estate of Effie M. Meeker, one of the owners of CMWS, distinguished between property of CMWS and other real property in valuing the estate's assets. The list of properties associated by the appraiser with CMWS is virtually identical to the Tax Collector's list.

4. Before 1951 the Commission, its staff, the Meekers, the estate appraiser, and the property tax collector recognized that the real properties of the Meeker family were segregated, for tax and ratemaking purposes, between the property of CMWS and the private realty holdings of the owners of CMWS.

5. In the years before 1951, the surrounding lands were improved by diversion facilities at the "B" springs. These springs were subsequently redeveloped by CMWSI and found by the Commission to be dedicated to public utility water service in D.92451, 4 CPUC 2d 645 (1980).

6. The surrounding lands were never in rate base in the years before 1951.

7. In 1951 the administratrices of the Effie M. Meeker estate agreed to sell and the Chenoweths agreed to buy: (a) all the real property of the estate (about 800 acres); and, (b) CMWS and all other real and personal property appurtenant to and used for CMWS . The agreement contains a nondedication statement as to all Camp Meeker area property, except the 14 acres, more or less, of CMWS.

8. Exhibit 27 is a duplicate original carbon copy of the 1951 sales agreement between the Chenoweths and the administratrices regarding the sale of the CMWS real properties and other real properties of the Effie M. Meeker estate.

9. The intent of the parties to the 1951 sales agreement was to transfer the CMWS properties and associated rights, easements and privileges with Commission approval in one transaction and to transfer the surrounding lands in another.

10. A.32820 states: "it is the belief of the petitioning sellers herein that the interest of said Water System will be best served by the transfer thereof to the petitioning buyers herein who are also acquiring all of the remaining real property owned by said Estate of Effie M. Meeker, deceased, and the said Paul R. Edwards in common." (Exhibit 25, Appendix item A-8). If the sellers had intended to eliminate any association between the utility and non-utility properties, there would have been no benefit to the water company from the buyers' joint ownership of these properties.

11. In 1951 the Commission approved the sale of the CMWS properties to the Chenoweths. In its decision the Commission stated that the purchase price of $24,880.28 was allocated between the water system lands ($8,500) and the "nonoperative lands" (about $16,300).

12. The proposed deed attached to A.32820 is identical to the deed dated November 26, 1951, by which the CMWS properties were conveyed to the Chenoweths. The properties transferred by this

deed are the same properties identified by the estate's appraiser as CMWS properties.

13. By a separate deed dated November 29, 1951, the surrounding land was conveyed to the Chenoweths. General references to CMWS real properties are included in an omnibus clause at the end of this deed as a precautionary measure to ensure that any CMWS lands that were not specifically described in the November 26, 1951 deed would be conveyed by the November 29, 1951 deed. No such overlooked properties have been identified on this record.

14. In 1959, the Chenoweths obtained Commission authority to transfer the Camp Meeker Water System to the Camp Meeker Water System, Incorporated, having stated in the application for authority that "it has become necessary by reason of needed improvements in the water system, and in particular the construction of a reservoir and dam...that the operation of the water company be conducted by a separate and distinct corporation." (Exhibit 25, Appendix A-15, pp. 3-4; Appendix A-16.)

15. The August 7, 1959 deed transferring the water system from the Chenoweths and Chenoweths, Inc. to CMWSI is identical to the November 26, 1951 deed transferring the Camp Meeker Water System to the Chenoweths, except for grantors and grantees. (Exhibit 25, Appendix A-10 and Appendix A-17.)

16. A March 3, 1982 deed recorded by the Chenoweths purports to "correct, confirm and clarify" the land described in the August 7, 1959 deed which transferred the water system to CMWSI. (Exhibit 25, Appendix A-21.) This deed omits any reference to water rights, easements, and privileges appurtenant to the Camp Meeker Water System and useful for its operation as a public utility. This deed could be viewed either as a simple correction of an earlier deed's description of land boundaries or as a substantive revision of the property transferred by that earlier deed which purports to rescind the transfer of property rights associated with and useful for

utility operations. No authority for a transfer of such useful property rights was obtained from the Commission.

17. CMWSI is owned by William, Ann and Jewel Chenoweth; the Chenoweth land is owned by William, Ann, Jewel, and Joan Chenoweth, and Pat Chenoweth Aho.

18. The Meeker family operators of CMWS enjoyed broad rights to explore for and take water from the non-utility portion of their property. These included the right 1) to take all water flowing over or located under the land; 2) to enter upon the land to explore for, develop, and maintain water sources thereon; 3) to construct dams and reservoirs on the land for water storage and supply purposes; 4) to enter upon the land to maintain such dams and reservoirs; 5) to insist that no one interfered with any of these rights; 6) to construct and maintain pipelines and rights of way necessary for the taking of water from the land; 7) to drill wells and develop springs necessary to supply water from the land; 8) to expand their use of the land as necessary to replace deteriorating or obsolescent water sources and to develop new sources of water to meet the growing needs of an increased customer base; 9) and to do anything else necessary to utilize the non-utility portion of their land for public utility water service purposes.

19. CMWSI has chronic water supply shortages, and has been ordered by numerous Commission decisions to increase its water supply. See, e.g., D.24567, 37 CRC 284 (1932); D.44303, 49 CPUC 729 (1950); D.60283, 57 CPUC 710 (1960); and D.92451, 4 CPUC 645 (1980).)

20. A Commission decision issued on June 13, 1950, just three months prior the date the Estate of Effie M. Meeker and Paul R. Edwards reached an agreement to transfer the water system to the Chenoweths, notes that "the company [CMWS] has the obligation of developing additional water supply to provide adequate water

service to the present customers and the anticipated further growth of the system." (D.44303, 49 CPUC 729, 732 (1950).)

21. A 1959 Commission investigation notes that CMWSI may have to rely on its parent, Chenoweths, Inc., for assistance in developing necessary water supplies. (D.60283.)

22. CMWSI has been "aided substantially by the affiliated interests of its owners, which affiliations have provided increased water supplies through strictly nonutility funds." (D.65119, (1963) 60 CPUC 690, 691.)

23. In 1959 and/or 1960, CMWSI drilled four producing wells on Chenoweth land with Chenoweth permission. These wells have been used exclusively for public utility water system purposes.

24. In 1981, CMWSI sought and obtained Commission authority to obtain a Safe Drinking Water Bond Act loan for a program designed to increase its water supply and its water storage capacity. The program was intended to focus first on drilling wells to increase system supply, and then to make other improvements if adequate new water supplies were developed. (D.93594.)

25. Between 1981 and 1983, CMWSI drilled at least eight wells with SDWBA funds on Chenoweth land with Chenoweth permission after it unsuccessfully tried to develop new wells on CMWSI land. These wells have been exclusively used for public utility water system purposes.

26. The wells on Chenoweth land provide about half the utility's total water supply.

27. CMWSI's continued use of the wells on Chenoweth land is necessary for the water system to meet its public utility obligations, since these wells produce about half of CMWSI's total water supply.

28. In 1987, DHS and CMWSI agreed that remaining SDWBA funds should be used to develop additional horizontal wells on Chenoweth or CMWSI land.

29. CMWSI may need to develop additional wells or spring sourc30 on Chenoweth land in order to replace existing wells if they deteriorate or to meet the needs of present and future customers.

29. CMWSI witness John B. Reader testified that other well sites are available on Chenoweth land if the existing utility wells become clogged or if future utility needs so require.

31. A 1959 investigation into the operation of the Camp Meeker Water System refers to a preliminary survey made by the water company for a retaining dam and storage pond to be constructed on Chenoweth land south (uphill) of Baumert Springs. The pond was designed to contain 27.50 acre feet of water. Because the estimated cost of the dam was high, and because the reservoir would have flooded part of an acre of non-Chenoweth land, future investigation of this particular project was deferred. (D.60283 (1960) 57 CPUC 710.)

32. A dam was constructed south of Baumert Springs sometime between 1960 and 1964. The dam is in roughly the same location as the dam mentioned in the 1959 Commission investigation, but is considerably smaller. The reservoir contained by the dam holds between 2 and 3.5 acre feet of water.

33. Water Utilities Branch witness Bragen testified that Leslie Chenoweth informed him that the Baumert Reservoir was constructed with federal grant money as a stock pond for watering goats, but that there were no longer any goats getting water there.

34. No witness in this proceeding reports seeing goats near the Baumert Reservoir.

35. The Baumert Reservoir is filled by water flowing over Chenoweth land which would otherwise flow downhill to water sources on CMWSI land.

36. James R. Halsey, former superintendent of the Camp Meeker Water System, stated in deposition that the Baumert Dam was

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34. No witness in this proceeding reports seeing goats near the Baumert Reservoir.

35. The Baumert Reservoir is filled by water flowing over Chenoweth land which would otherwise flow downhill to water sources on CMWSI land.

36. James R. Halsey, former superintendent of the Camp Meeker Water System, stated in deposition that the Baumert Dam was

constructed between 1960 and 1964; that he believes it was mandated by this Commission to provide water storage; that William Chenoweth ordered him to "bleed" the dam each summer when the utility's water sources began to dry up; that bleeding the system consisted of opening a valve located near the base of the dam; that when the valve was opened water would flow over the surface of the ground down Baumert Gulch; that the water disappeared below the surface and the resurfaced about 200 yards down the hill just above a small concrete dam across the creek which was the upper pick up point for the California Tank; that the water flowing from the reservoir fed water company sources designated Baumert, California, Woodland, and Fern Springs; that the Tower, Acreage, Gibson and Hampton locations could also be served by water from the Baumert Reservoir, and that if he had not been authorized to release water from the dam, particularly during August and September, the utility would have run out of water, since that side of the system supplied most of the water. (Exhibit 37.)

37. Mr. Halsey's testimony that water from Baumert Reservoir feeds utility water sources is confirmed by a look at the utility water source and topographic maps admitted in this proceeding as Exhibits 15, 22, 23 and 24. These maps show that the Baumert Reservoir is uphill from utility water sources designated "I", "J" and "K."

38. Mr. Halsey's testimony is further confirmed by the testimony of Ms. Concoff and Mr. Koch that the Baumert Reservoir was used to supply water to CMWSI.

39. CMWSI insisted during the 1987 water shortage that it would use the "stock pond" for utility purposes only if Commission staff agreed not to use that use as an indication of intent to dedicate the pond to utility use.

40. The Baumert Reservoir has been used by CMWSI for public utility water service.

41. CMWSI' continued use of the Baumert Reservoir for public utility purposes is necessary to enable the water system to meet its public utility obligations.

42. Use of the Baumert Reservoir for other than public utility purposes would hamper CMWSI's ability to meet its public utility obligations.

43. CMWSI may need to develop additional reservoirs on Chenoweth land in order to meet its public utility obligations.

44. Former CMWSI Superintendent Halsey stated in his deposition that there are other promising reservoir sites on Chenoweth land; specifically, south of the current Baumert Dam, and in a valley at "Five Springs."

45. The current CMWSI well sites and the Baumert Reservoir occupy a total area of approximately 3.5 acres on Chenoweth lands. Chenoweths own between 550 and 800 acres of land. Assuming Chenoweths own 550 acres, CMWSI water sources cover .6% of the total. If 800 acres are owned, the water sources occupy .4% of the total.

46. The current level of regulation by the Commission, by DHS, by SWRCB, and by the County is sufficient to protect the watershed from degradation by development.

47. It is premature to determine the costs associated with the construction and maintenance of the Acreage and Dutch Bill Creek well sites and the Baumert Reservoir. It is also premature to determine how those improvements were funded, and whether any of these improvements are already included in CMWSI's rate base.

48. The ALJ received the appendix to Exhibit 25 into the record, although the exhibit itself was excluded.

Conclusions of Law

1. The appendix to Exhibit 25 is evidence of record in this proceeding, although the exhibit itself was excluded.

2. An easement is a property interest in the land of another which entitles the owner of the easement to use the other's land or prevent the other from using that land.

3. One cannot possess an easement over one's own land; Civil Code § 805 states that an easement cannot be held by the owner of the land burdened by the easement.

4. An easement is an interest in the land of another, but not an estate in land. It is a right to use land, but not to claim the land as one's own.

5. Easements are a type of "real property." (Civil Code § 658 (3).)

6. The type of burden that may be attached to other land as an appurtenance and characterized as an easement include 1) The right-of-way; 2) The right of taking water from land; 3) the right of transacting business upon land; 4) The right of receiving water from land; 5) The right of flooding land; 6) The right of having water flow without diminution or disturbance of any kind. (Civil Code § 801.)

7. Things are "appurtenant" to land when they are used with the land for its benefit, as in the case of a way or watercourse from or across the land of another. (Civil Code § 662.)

8. Easements may be either "appurtenant" or "in gross." Appurtenant easements are "attached to land" and are transferred along with the property they benefit, whether or not they are mentioned in the deed itself. (Civil Code §§ 662, 801, 1084, and 1104.) Easements "in gross" are personal rights which attach only to their owner. If it is unclear whether an easement is in gross or appurtenant, it will be assumed to be appurtenant.

9. When the word "appurtenant" is used to modify the word "easement," it does not mean that the easement is physically attached to or located on the easement owner's land, but rather that it is legally attached to that land. All appurtenant easements burden one parcel of land for the benefit of another

parcel of land. The property benefited by the easement is called the "dominant tenement;" the property burdened by the easement is called the "servient tenement." (Civil Code $$ 662, 801, 803 and 805.)

10. The right to an easement burdening a property is independent of the dedicated or non-dedicated status of that property.

11. An easement does not restrict land use completely, but merely prevents the owner of the land burdened by the easement from acting in a manner inconsistent with the easement.

12. Misapprehension as to the existence of easement rights does not mean those rights do not exist.

13. In exercising easement rights, the easement owner is taking nothing new from the owner whose property is burdened by the easement, since that owner simply had a less than complete interest in the land in the first place.

14. When the Meekers owned both the portion of their property conveyed by the November 26, 1951 deed and the portion conveyed by the November 29, 1951 deed they had the right to use one portion for the benefit of the other. Although they did not need and could not legally have possessed an easement to use the non-utility portion for the benefit of the Camp Meeker Water System portion, they did possess "quasi-easement" rights to do so. These rights included the right 1) to take all water flowing over or located under the land; 2) to enter upon the watershed land to explore for, develop, and maintain water sources thereon; 3) to construct dams and reservoirs on the land for water storage and supply purposes; 4) to enter upon the land to maintain such dams and reservoirs; 6) to construct and maintain pipelines and rights of way necessary for the taking of water from the watershed lands; 7) to drill wells and develop springs necessary to supply water from the those lands; 8) to expand their use of those lands as necessary to replace deteriorating or obsolete water sources and to develop new sources

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of water to meet the growing needs of an increased customer base; 5) to insist that no one interfere with any of these rights; 9) to rely on the maintenance of the non-utility property in a manner that would not adversely affect the utility's water supply operations; and 10) to do anything else necessary to utilize the watershed for public utility water service purposes.

15. The rights set forth in Conclusion of Law 14 benefited the property of the Camp Meeker Water System and burdened the property of another - the remaining land held by the Meeker Estate. These rights are among the water rights, rights, easements, and privileges appurtenant to the water system land which were transferred along with that land by the November 26, 1951 deed.

16. The rights set forth in Conclusion of Law 11 and referred to in Conclusion of Law 12 were enjoyed by the owners of the Camp Meeker Water System in their operation of the water system, and were dedicated to public utility service.

17. The language of a deed constitutes the best evidence of the meaning of the deed, and while extrinsic evidence may be used to clarify the meaning of ambiguous language in a deed it may not be used to negate the grant of property in a deed or to impart to the deed a meaning to which it is not reasonably susceptible.

18. The language of the November 26, 1951 deed is not ambiguous and clearly conveys rights, easements and privileges in addition to specific parcels of land.

19. The "water, water rights, rights, easements, and privileges appurtenant to the Camp Meeker Water System" which were conveyed by the August 26, 1951 deed may all be characterized as "easements" under Civil Code § 801.

20. Because one cannot possess and easement over one's own land, the grant of easements in the November 26, 1951 deed must have conveyed the right to use lands other than those conveyed in the deed.

of water to meet the growing needs of an increased customer base; 8) to insist that no one interfere with any of these rights; 9) to rely on the maintenance of the non-utility property in a manner that would not adversely affect the utility's water supply operations; and 10) to do anything else necessary to utilize the watershed for public utility water service purposes.

15. The rights set forth in Conclusion of Law 14 benefited the property of the Camp Meeker Water System and burdened the property of another - the remaining land held by the Meeker Estate. These rights are among the water rights, rights, easements, and privileges appurtenant to the water system land which were transferred along with that land by the November 26, 1951 deed.

16. The rights set forth in Conclusion of Law 14 and referred to in Conclusion of Law 15 were enjoyed by the owners of the Camp Meeker Water System in their operation of the water system, and were dedicated to public utility service.

17. The language of a deed constitutes the best evidence of the meaning of the deed. While extrinsic evidence may be used to clarify the meaning of ambiguous language in a deed it may not be used to negate the grant of property in a deed or to impart to the deed a meaning to which it is not reasonably susceptible.

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19. The "water, water rights, rights, easements, and privileges appurtenant to the Camp Meeker Water System" which were conveyed by the August 26, 1951 deed may all be characterized as "easements" under Civil Code § 801.

20. Because one cannot possess an easement over one's own land, the grant of easements in the November 26, 1951 deed must have conveyed the right to use lands other than those conveyed in the deed.

21. The Commission should reject an interpretation of easement rights which would restrict the utility's right to develop new sources of water on the land it formerly had access to through joint ownership, place such development at the mercy of the new owners of such land, and otherwise hamper the ability of CMWSI to carry out its public utility obligations. Such an interpretation would be contrary to the expansive language in the deed, contrary to the Commission's expressed concerns regarding the utility's need to develop water sources for existing and future customers, and contrary to the public interest.

22. The Commission should determine the extent of the easement rights granted by the August 26, 1951 deed in light of the deed language granting the easements, the easements' relationship to the land benefited by the easement, the easements' underlying public utility purpose, the maxim that easements are to be interpreted in favor of the grantee, and the principle that easements by grant should be assumed to take future needs into account.

23. The November 26, 1951 deed conveyed to the Chenoweths the rights possessed by the Estate of Effie M. Meeker and Paul R. Edwards to use the non-utility portion of their land for the benefit of the water system. When the transaction occurred, the "quasi-easement" rights possessed by the Meekers ripened into full easement rights in the hands of the Chenoweths. These easement rights were just as extensive as the quasi-easement rights possessed by the Estate of Effie M. Meeker and Paul R. Edwards.

24. Property rights can be "enjoyed" even if they are not immediately exercised. The fact that CMWSI did not actually drill wells on Chenoweth land until 1959 does not mean it did not enjoy the right to do so earlier. Property rights are like money in the bank, enjoyable and useful even if not immediately spent.

25. The August 7, 1959 deed conveying the Camp Meeker Water System from the Chenoweths and Chenoweths' Inc., to the Camp Meeker

Water System, Incorporated (CMWSI) was identical to the August 26, 1951 deed except for grantors and grantees, and conveyed the same property as was conveyed by the August 26, 1951 deed. CMWSI, therefore, possesses the same easement rights as did the Chenoweths.

26. The September, 1951 agreement between the Estate of Effie M. Meeker and Paul R. Edwards and the Chenoweths is consistent with the our conclusion that the parties to the 1951 transactions intended to convey 1) one parcel of non-utility real estate and 2) one parcel of utility real estate together with all rights and easements appurtenant to that real estate.

27. The Commission's approval of the transfer of The Camp Meeker Water System from the Estate of Effie M. Meeker and Paul R. Edwards to the Chenoweths was based on the Commission's review of a draft deed identical to the November 26, 1951 deed and is consistent with our interpretation of that deed as providing the water system with broad rights to develop and maintain public utility water sources on the surrounding lands subsequently conveyed by the November 29, 1951 deed.

28. The Declaration of L.G. Hitchcock imparts to the November 26, 1951 deed a meaning to which it is not reasonably susceptible, since it effectively negates the deed's grant of easement rights by stating that the parties intended that the easement language gave only rights to use the property described in the deed itself.

29. In D.46373 the administratrices of the Estate of Effie M. Meeker and Paul R. Edwards obtained the authority they required to transfer the real properties of CMWS and the associated rights, easements and privileges to the Chenoweths. They needed no authority to transfer the surrounding lands conveyed by the November 29, 1951 deed.

30. CMWSI's development of wells on Chenoweth land is consistent with, and represents an exercise of, the easement rights

the utility obtained through the November 26, 1951 and August 7, 1959 deeds. Lease payments are not appropriate.

31. CMWSI's use of the Baumert Reservoir to provided public utility water service is consistent with, and represents an exercise of, the easement rights the utility obtained through the November 26, 1951 and August 7, 1959 deeds. Lease payments are not appropriate.

32. Because the Baumert Reservoir was used to supply CMWSI with water for public utility purposes - clearly a "beneficial use within the meaning of the California Constitution and the Water Code - the Chenoweths did not violate the state policy against the waste of water.

33. The development of additional reservoirs on Chenoweth land would be consistent with CMWSI's easement rights since it is something the Meekers could have done when they owned both parcels of land, and since the flooding of land is one water related right that may conveyed as an easement (Civil Code $ 801, subdivision 10.) The flooding of Chenoweth land by a reservoir constructed on CMWSI land would also be consistent with the utility's easement rights.

34. CMWSI should be authorized to file in its next general rate case a proposal for placing in rate base the costs of developing and maintaining well sites, and the Baumert Reservoir, on Chenoweth land, but only to the extent such improvements were not financed with Safe Drinking Water Bond Act loan funds or federal money, and are not already included in CMWSI's rate base. In accordance with Commission practice, these properties and improvements should enter rate base at original cost.

35. CMWSI should be ordered to exercise its easement rights to the full extent necessary to meet its public utility obligations.

36. The Water Utilities Branch of the Commission's Compliance and Advisory Division should be ordered to intervene in State Water

the utility obtained through the November 26, 1951 and August 7, 1959 deeds. Lease payments are not appropriate.

31. CMWSI's use of the Baumert Reservoir to provide public utility water service is consistent with, and represents an exercise of, the easement rights the utility obtained through the November 26, 1951 and August 7, 1959 deeds. Lease payments are not appropriate.

32. Because the Baumert Reservoir was used to supply CMWSI with water for public utility purposes - clearly a "beneficial use" within the meaning of the California Constitution and the Water Code - the Chenoweths did not violate the state policy against the waste of water.

33. The development of additional reservoirs on Chenoweth land would be consistent with CMWSI's easement rights since it is something the Meekers could have done when they owned both parcels of land, and since the flooding of land is one water related right that may conveyed as an easement (Civil Code § 801, subdivision 10.) The flooding of Chenoweth land by a reservoir constructed on CMWSI land would also be consistent with the utility's easement rights.

34. CMWSI should be authorized to file in its next general rate case a proposal for placing in rate base the costs of developing and maintaining well sites, and the Baumert Reservoir, on Chenoweth land, but only to the extent such improvements were not financed with Safe Drinking Water Bond Act loan funds or federal money, and are not already included in CMWSI's rate base. In accordance with Commission practice, these properties and improvements should enter rate base at original cost.

35. CMWSI should be ordered to exercise its easement rights to the full extent necessary to meet its public utility obligations.

36. CMWSI should be required to record a notice of intent to preserve its easements, pursuant to Civil Code § 887.060, in order

Resources Control Board proceedings on A.29463 in order to prevent the Chenoweths from obtaining water rights contrary to those possessed by CMWSI.

37. No additional orders are required to protect the watershed at this time.

38. Conclusion of Law 2 in D.84-09-093, declaring that the deed of November 29, 1951 is void for want of Commission authorization, should be rescinded.

39. To the extent that the March 3, 1982 deed appears designed to effect a transfer of property rights useful to CMWSI, it is void under PU Code § 851 since no Commission approval was obtained.

40. The ALJ Ruling of August 4, 1989 should be rescinded.

41. Mr. Gene Koch met the requirements of Rule 54 of the Commission's Rules of Practice and Procedure and should be made a party to this proceeding. Mr. Koch's comments should be accepted as the comments of a party under Rule 77.2 of the Commission's Rules of Practice and Procedure.

42. Pacific Legal Foundation is not a party to this proceeding, although it has filed an amicus brief and comments.

43. Pacific Legal Foundation has not met the requirements of Rule 54 of the Commission's Rules of Practice and Procedure and should not be made a party to this proceeding.

44. Pacific Legal Foundation's past participation and long standing interest in this proceeding, and the absence of any harm to the parties, provide good cause under Rule 87 of the Commission's Rules of Practice and Procedure for the Commission to deviate from the Rule 77.2 requirement that only parties are permitted to file comments on proposed decisions in order that the Commission may receive and respond to Pacific Legal Foundation's comments.

to preclude any efforts to claim CMWSI has abandoned its easement rights. This notice should be renewed periodically in accordance with Section 887.060. CMWSI should be required to consult with the Water Utilities Branch of the Commission's Advisory and Compliance Division and the Commission's Legal Division regarding the proper language of the notice.

37. The Water Utilities Branch of the Commission's Advisory and Compliance Division should be ordered to intervene in State Water Resources Control Board proceedings on A/29463 in order to prevent the Chenoweths from obtaining water rights contrary to those possessed by CMWSI.

38. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with the assistance of the Legal Division, should be ordered to send copies of this decision to all title insurance companies in the vicinity of Camp Meeker and Santa Rosa, and to take all other steps necessary to insure that any purchaser of Chenoweth land burdened by CMWSI easements has actual notice of the easement rights burdening their land and is unable to assert status as a bona fide purchaser of the land without notice of the easements.

39. No additional orders are required to protect the watershed at this time.

40. Conclusion of Law 2 in D.84-09-093, declaring that the deed of November 29, 1951 is void for want of Commission authorization, should be rescinded.

41. To the extent that the March 3, 1982 deed appears designed to effect a transfer of property rights useful to CMWSI, it is void under PU Code § 851 since no Commission approval was obtained.

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as the comments of a party under Rule 77.2 of the Commission's Rules of Practice and Procedure.

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46. Pacific Legal Foundation's past participation and long standing interest in this proceeding, and the absence of any harm to the parties, provide good cause under Rule 87 of the Commission's Rules of Practice and Procedure for the Commission to deviate from the Rule 77.2 requirement that only parties are permitted to file comments on proposed decisions in order that the Commission may receive and respond to Pacific Legal Foundation's comments.

47. The petition of Frances S. Gallegos and the request of Sonoma County Supervisor Ernie Carpenter that the Commission reopen this proceeding for the receipt of additional evidence should be denied, since neither Ms. Gallegos nor Mr. Carpenter offer any new evidence that was not available and could not have been presented during the hearings in this proceeding. The failure of the parties to present existing evidence during the hearings is not sufficient reason to reopen the record.

48. The petition of Anne-Elizabeth to become a legal party to the proceeding and to set aside submission should be denied because the record in this proceeding, developed after two sets of hearings, contains ample evidence upon which to base our determination of the relative property rights of CMWSI and the Chenoweths, and there is no reason to delay further the issuance of this decision.

## O R D E R

IT IS ORDERED that:

1. Conclusion of Law 2 in D.84-09-093 is rescinded.
2. The ALJ Ruling of August 4, 1989 is rescinded.
3. Mr. Gene Koch is a party to this proceeding, with all the attendant rights and responsibilities. Mr. Koch's comments on the proposed decision are received as the comments of a party under Rule 77.2 of the Commission's Rules of Practice and Procedure.
4. A deviation from Rule 77.2 of the Commission's Rules of Practice and Procedure is granted on the Commission's own motion, pursuant to Rule 87, in order that Pacific Legal Foundation's comments on the proposed decision may be received and responded to.
~~3. CMWSI shall enforce its easement rights as necessary to~~ meet its public utility obligations.
4. CMWSI may file in its next general rate case a proposal for placing in rate base the costs of developing and maintaining well sites, and the Baumert Reservoir, on Chenoweth land, but only to the extent such improvements were not financed with Safe Drinking Water Bond Act loan funds or federal money and are not already included in CMWSI's rate base. In accordance with Commission practice, these improvements will enter rate base at original cost.
5. The Water Utilities Branch of the Commission's Compliance and Advisory Division, with assistance from the Legal Division, is ordered to intervene in State Water Resources Control Board proceedings on A.29463 in order to prevent the Chenoweths from obtaining water rights contrary to those possessed by CMWSI.
6. The rehearing of D.84-09-093 is concluded.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.

## O R D E R

IT IS ORDERED that:

1. Conclusion of Law 2 in D.84-09-093 is rescinded.
2. The ALJ Ruling of August 4, 1989 is rescinded.
3. Mr. Gene Koch is a party to this proceeding, with all the attendant rights and responsibilities. Mr. Koch's comments on the proposed decision are received as the comments of a party under Rule 77.2 of the Commission's Rules of Practice and Procedure.
4. A deviation from Rule 77.2 of the Commission's Rules of Practice and Procedure is granted on the Commission's own motion, pursuant to Rule 87, in order that Pacific Legal Foundation's comments on the proposed decision may be received and responded to.
5. CMWSI shall enforce its easement rights as necessary to meet its public utility obligations.
6. CMWSI shall record a notice of intent to preserve its easements, pursuant to Civil Code § 887.060, in order to preclude any efforts to claim CMWSI has abandoned its easement rights. CMWSI shall renew this notice periodically in accordance with Section 887.060. CMWSI shall consult with the Water Utilities Branch of the Commission's Advisory and Compliance Division and the Commission's Legal Division regarding the proper language of the notice.
7. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with assistance from the Legal Division, shall intervene in State Water Resources Control Board proceedings on A.29463 in order to prevent the Chenoweths from obtaining water rights contrary to those possessed by CMWSI.
8. The Water Utilities Branch of the Commission's Advisory and Compliance Division, with the assistance of the Legal Division, should be ordered to send copies of this decision to all title insurance companies in the vicinity of Camp Meeker and Santa Rosa,

and to take all other steps necessary to insure that any purchaser of Chenoweth land burdened by CMWSI easements has actual notice of the easement rights burdening their land and is unable to assert status as a bona fide purchaser of the land without notice of the easements.

9. CMWSI may file in its next general rate case a proposal for placing in rate base the costs of developing and maintaining well sites, and the Baumert Reservoir, on Chenoweth land, but only to the extent such improvements were not financed with Safe Drinking Water Bond Act loan funds or federal money and are not already included in CMWSI's rate base. In accordance with Commission practice, these improvements will enter rate base at original cost.

10. The petitions of Frances S. Gallegos and Anne-Elizabeth, and the request of Ernie Carpenter, to set aside the proposed decision and to reopen the record for the taking of additional evidence are denied.

11. The rehearing of D.84-09-093 is concluded.

This order becomes effective 30 days from today.

Dated OCT 12 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners