

RESOLUTION NO. 78-03
TUOLUMNE UTILITIES DISTRICT
ADOPTING POSITION STATEMENT
REGARDING PUBLIC ACCESS TO THE
TUOLUMNE DITCH SYSTEM

BACKGROUND RECITALS

1. Periodically members of the public have inquired as to the stated position of the Tuolumne Utilities District (TUD) with regard to public access to the trails and pathways adjacent to the ditches and canals of the Tuolumne Ditch System and appurtenant facilities. Upon review of this issue with legal counsel and with consideration of the historical background surrounding the ditch system and with due respect for private property, it is the intent of this statement to clearly state the District's position on the issue.

2. The Tuolumne Ditch System originated in the mid 1850's as a series of reservoirs, ditches and canals to divert and transport water primarily for mining purposes. Over many years the uses of water has been converted to agricultural and domestic uses. Near the turn of the 20th century the predecessor of the Pacific Gas and Electric Company (PG&E) acquired the Tuolumne Ditch System from the Tuolumne County Water and Electric Power Company, whose predecessors had over the years absorbed and acquired numerous properties and systems of other ditch and water companies in the County. In it's efforts to develop improved water storage and facilities to also provide for the increased generation of hydroelectricity, PG&E completed the new Strawberry Reservoir in 1916 and enlarged Lyons Reservoir in 1930, and made other improvements to the system. The portion of the ditch system providing a water supply to the County, sometimes known as the "Tuolumne Water System," was sold by PG&E to the County of Tuolumne in 1983. The County operated the Tuolumne Water System until its operation was consolidated with the Tuolumne Regional Water District and all assets were transferred to the newly formed Tuolumne Utilities District in 1992.

3. The Acts of Congress of 1866 and 1870 gave recognition to water rights developed by diversion and usage on public lands of the United States and also recognized the right to construct ditches, flumes and reservoirs on and over public lands for the diversion, storage, conveyance and use of water. These Acts validated easements and rights-of-way for ditches, including those that had been built upon public lands by the Tuolumne Water and Electric Power Company and its predecessors.

4. In addition, and in view of the long history and use of the existing ditches, the right of easement by prescription has been established on all of those lands in which the ditch system and appurtenant facilities are located, including lands which may have been in private ownership when the ditches were first constructed, thereby creating the existence of a ditch easement for the purposes of operation, maintenance, inspection and repair of the ditches, including ingress and egress and the right of entry to the extent it is necessary for the purpose of operation, maintenance, inspection and repair. It is also established by judicial case law that the owner of the property upon which the ditch exists cannot obstruct or hinder or install obstructions that hinder the right of access by the District for such purposes.

5. Judicial case law and the Acts of Congress of 1866 and 1870 provide the primary legal basis for the District and its representatives, when acting in an official capacity for the District and which can be directly related to the operation, maintenance, inspection and repair of the ditch system and its appurtenant facilities, to have access for those purposes.

6. The right of access to or along the ditch system by members of the general public has not been granted to the District nor does the District have any authority to grant, convey, or transfer a right of access to the public or any portion of the public.

7. Where the ditch system exists on lands which are still in public ownership, the public may have legal access if so authorized under applicable Federal regulations and subject to any management restrictions imposed by the federal agency charged with oversight responsibilities of that public land, such as the Forest Service or Bureau of Land Management. TUD has no objection to public access along its ditches where they cross public lands providing access is in conformance with the management requirements and provided that the same does not interfere with TUD's use and operation of the ditches for the conveyance of water.

8. On private lands, the matter of access to and along the Tuolumne Water System ditches and canals by other than TUD personnel (or PG&E personnel with respect to the main canal) is an issue between the person or public desiring the access and the private property owner.

NOW, THEREFORE, AND UPON THE BASIS OF THE FOREGOING, BE IT RESOLVED that the Board of Directors of Tuolumne Utilities District, hereby adopts as its position on access to the Tuolumne Ditch System as follows:

1. The District owns rights of way and easements for all existing ditches within the District's Tuolumne Water System, and the District and its representatives have the right of access to the ditch system and its appurtenant facilities for the purposes of operation, maintenance, inspection and repair of the same.
2. The District does *not* have the right or authority to grant, convey, or transfer any right of access to any other person or to the general public for any general public use or enjoyment, or for any purpose not specifically related to the District's use, operation, maintenance, inspection and repair of the ditch system.

PASSED AND ADOPTED by the Board of Directors of Tuolumne Utilities District on August 26, 2003 by the following vote:

AYES: Giersch, Carroll, Delbon, Retherford, Walter

NOES: None

ABSENT: None

ABSTAINED: None

Signature on file
Louise Giersch, President
Board of Directors

ATTEST:

Signature on file
Casey Prunchak, District Secretary