

36

3/20/69

Memorandum 69-61

Subject: Study 36 - Condemnation (Condemnation for Exchange Purposes)

Attached as Exhibit I is a draft statute that incorporates the staff's recommendations relating to condemnation for exchange purposes. Also attached is a background research study on substitute condemnation.

The draft statute is based on the assumption that the resolution of necessity in a condemnation action will be conclusive on the issue of necessity but not on the issue of public use.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

DRAFT STATUTE--CONDEMNATION FOR EXCHANGE PURPOSES

Section 1. Section 1238.8 is added to the Code of Civil Procedure, to read:

1238.8. Where a public entity acquires property for a public use and exercises or could have exercised the right of eminent domain to acquire such property for such use, the public entity may exercise the right of eminent domain to acquire such additional property as is reasonably necessary to provide access to an existing public road from any property which is not acquired for such public use but which is deprived of access to a public road as a result of the acquisition by the public entity.

Sec. 2. Section 1238.9 is added to the Code of Civil Procedure, to read:

1238.9. If a public entity is required by agreement or by a judgment in a condemnation action to relocate any street, road, highway, railroad, canal, public utility facility, or other property subject to or devoted to public use, the public entity may exercise the right of eminent domain to acquire such property as is reasonably necessary to permit it to comply with such agreement or judgment.

Sec. 3. Section 1265.3 is added to the Code of Civil Procedure, to read:

1265.3. (a) As used in this section:

(1) "Necessary property" means property to be used for a public use for which the public entity is authorized to acquire property by eminent domain.

(2) "Property to be exchanged" means property to be exchanged for necessary property.

(b) A public entity may acquire by eminent domain property to be exchanged if:

(1) The person with whom the property is to be exchanged has agreed in writing to such exchange; and

(2) The property for which the exchange is to be made is devoted to or held for some public use for which the power of eminent domain might be exercised either by the person with whom the property is to be exchanged or by the public entity that is acquiring the property to be exchanged.

(c) A public entity may acquire by eminent domain property to be exchanged if:

(1) The person with whom the property is to be exchanged has agreed in writing to such exchange; and

(2) The property to be exchanged is to be exchanged for property needed for a public improvement and is adjacent to or in the immediate vicinity of the public improvement and a significant economy in the acquisition of the necessary property can be effected by making such exchange.

(d) If the public entity has adopted a resolution of necessity which contains an express finding that the property to be exchanged is necessary for the purpose specified in subdivision (b), the resolution is conclusive.

(e) The public entity has the burden of proof to establish the facts that justify the taking of the property to be exchanged under subdivision (c). However, if the public entity has adopted a resolution of necessity which contains an express finding that the property to be exchanged is necessary for the purpose specified in subdivision (c), it is presumed that the taking of the property to be exchanged is justified. This presumption is a presumption affecting the burden of producing evidence.

(f) This section does not limit any authority a public entity may have under any other provision of law to acquire property for exchange purposes nor does it limit any authority a public entity may have to acquire, other than by eminent domain, property for exchange purposes.

§ 15858

Sec. 4. Section 15858 of the Government Code is repealed.

~~15858.--Whenever property which is devoted to or held for some other public use for which the power of eminent domain may be exercised is taken for state purposes pursuant to this part, with the consent of the person or agency in charge of such other public use, the board may condemn other real property and exchange it with such other person or agency for the real property to be taken for state purposes.--Transfer of the property so acquired shall be made in accordance with the stipulation entered into pursuant to Section 15857.~~

§ 30405

Sec. 5. Section 30405 of the Government Code is repealed.

~~30405. The department may condemn and take, in fee or otherwise as the authority determines, in the name of the State, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

~~Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby. The determination of the authority is conclusive evidence of all matters set forth in this section.~~

Sec. 6. Section 104.2 of the Streets and Highways Code is repealed.

~~104.2. --Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state highway purposes, the department may, with the consent of the person or agency in charge of such other public use, condemn in the name of the people of the State of California, real property to be exchanged with such person or agency for the real property so to be taken for state highway purposes. --This section does not limit the authorization to the department to acquire, other than by condemnation, property for such purposes.~~

§ 943.

Sec. 7. Section 943 of the Streets and Highways Code is amended to read:

943. Such board may:

(a) Acquire any real property or interest therein for the uses and purposes of county highways ~~,-including-real property-adjacent-to-property-being-condemned-for-the-purpose-of-exchanging-the-same-for-other-real-property-to-be-used-for widening-county-highways-.~~ When eminent domain proceedings are necessary, the board shall require the district attorney to institute such proceedings. The expense of and award in such proceedings may be paid from the road fund or the general fund of the county, or the road fund of any district benefited.

(b) Lay out, construct, improve, and maintain county highways.

(c) Incur a bonded indebtedness for any of such purposes, subject to the provisions of Section 944.

(d) Construct and maintain stock trails approximately paralleling any county highway, retain and maintain for stock trails the right-of-way of any county highway which is superseded by relocation. Such stock trails shall not be included in the term "maintained mileage of county roads" as that term is used in Chapter 3 of Division 3 of this code.

Sec. 8. Section 943.2 of the Streets and Highways Code is repealed.

~~943.2.--Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for county highway purposes, the county may, with the consent of the person or agency in charge of such other public use, condemn, in the name of the people of the county, real property to be exchanged with such person or agency for the real property so to be taken for county highway purposes.--This section does not limit the authorization to the county to acquire, other than by condemnation property for such purposes.~~

Sec. 9. Section 943.4 of the Streets and Highways Code is repealed.

~~943.4. Whenever real property is sought to be taken for the purpose of county highway widening which is devoted to or held for some other public use by a person or public agency that has the power of eminent domain, the county may, with the consent of the person or public agency, condemn in the name of the county the real property to be exchanged with such person or public agency for the real property so to be taken for county highway purposes. This section does not limit the authorization of the county to acquire, other than by condemnation, property for such purposes.~~

§ 31004

Sec. 10. Section 31004 of the Streets and Highways Code is repealed.

~~31004.--The authority may condemn and take, in fee or otherwise as the authority determines, in the name of the authority, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

~~Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby.--The determination of the authority is conclusive evidence of all matters set forth in this section.~~

Sec. 11. Section 255 of the Water Code is repealed.

~~255.--Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state dam or water purposes, the department may, with the consent of the person or agency in charge of such other public use, condemn, in the name of the people of the State of California, real property to be exchanged with such person or agency for the real property so to be taken for state dam or water purposes.--This section does not limit the authorization to the department to acquire, other than by condemnation, property for such purposes.~~

Sec. 12. Section 8590 of the Water Code is amended to

read:

8590. The board may do any of the following:

(a) Acquire either within or without the boundaries of the drainage district, by purchase, condemnation or by other lawful means in the name of the drainage district, all lands, rights of way, easements, property or material necessary or requisite for the purpose of bypasses, weirs, cuts, canals, sumps, levees, overflow channels and basins, reservoirs and other flood control works, and other necessary purposes, including drainage purposes.

(b) Construct, clear, and maintain bypasses, levees, canals, sumps, overflow channels and basins, reservoirs and other flood control works.

(c) Construct, maintain, and operate ditches, canals, pumping plants, and other drainage works.

(d) Make contracts in the name of the drainage district to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this division, or arising out of the use, taking, or damage of any property for any of the purposes of this division.

~~(e) -- Whenever real property which is devoted to or held for some other public or quasi-public use is required by the drainage district for any of the purposes set forth in this part, the board may acquire in fee or in any lesser estate in interest in the name of the drainage district real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the drainage district as aforesaid for the purposes set forth in this part.~~

§ 74555

Sec. 13. Section 74555 of the Water Code is repealed.

~~74555.--Whenever real property which is devoted to or held for some other public or quasi-public use is required by a district for any purpose authorized by this division,--the district may acquire by condemnation or agreement real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

§ 28-16 1/2

Sec. 14. Section 28-16 1/2 of the Water Code Appendix is amended to read:

28-16 1/2. The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district either the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of the fee simple or easement, as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood control or water conservation purposes, the district may condemn the fee simple or easement in real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Sec. 15. Section 43-25 of the Water Code Appendix is amended to read:

43-25. In case any street, road, highway, railroad, canal, or other property subject or devoted to public use shall become subject to flooding or other interference by reason of the construction or proposed construction of any works of the district or project, the board of supervisors of the district may acquire by agreement or condemnation the right so to flood or otherwise interfere with such property, within or without the district whether it be publicly or privately owned, and if such right be acquired by condemnation, the judgment may, if the court shall find that public necessity or convenience so requires, direct the district to relocate such street, road, highway, railroad, canal, or other property in accordance with plans prescribed by the court. and-if-by-such-judgment-or-by-agreement-the-district-shall-be required-to-relocate-any-such-street,-road,-highway,-railroad, canal-or-other-property-subject-or-devoted-to-public-use,-the board-shall-have-power-to-acquire-in-the-name-of-the-district,-by agreement-or-condemnation,-all-rights-of-way-and-other-property necessary-or-proper-for-compliance-with-said-agreement-or-said judgment-of-condemnation-and-thereafter-to-make-such-conveyance-of such-relocated-street,-road,-highway,-railroad,-canal,-or-other property-as-may-be-proper-to-comply-with-said-agreement-or-judgment.

Sec. 16. Section 46-7 of the Water Code Appendix is amended

to read:

46-7. The objects and purposes of this act are to provide for the control of the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof flow into said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining and causing to percolate into the soil within said district, or without such district, such waters, or to save or conserve in any manner all or any of such waters and protect from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district.

Ventura County Flood Control District is hereby declared to be a body corporate and politic and as such shall have power:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, or otherwise, and to hold, use, enjoy and to lease or dispose of real or personal property of every kind within or without the district necessary or convenient to the full exercise of its powers.
5. To acquire, by purchase, lease, construction, or otherwise, or contract to acquire, lands, right of way, easements, privileges and property of every kind, whether real or personal, and to construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements or property acquired by it as authorized by this act.
6. To store water in surface or underground reservoirs within or outside of the district for the common benefit of a zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, same for any useful purpose to the district; to commence, maintain, intervene in and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within the district used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights within the boundaries of the district and which do not involve taking water outside of or away from the district or wasteful use of water.
7. To control the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes within said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district.

8. To have and exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise and to condemn any existing works or improvements in said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless previous compensation be first ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public use.

The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district either the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of any interest in land is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipe lines, roadways and other rights of way; to acquire by purchase, lease, contract, condemnation, gift, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, water works, franchises, concessions or rights; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Ventura County Flood Control District; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number

of them for the transfer, sale or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured for the use of the Ventura County Flood Control District or any zone thereof, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the Government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To carry on technical and other investigations of all kinds, make measurements, collect data, and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for this purpose said district shall have the right of access through its authorized representative to all properties within said district.

11. To incur indebtedness and to issue bonds in the manner herein provided.

12. To cause taxes and assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

13. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof, by this act.

Sec. 17. Section 47-7 of the Water Code Appendix is

amended to read:

7-7. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further that notwithstanding any other provision of this act, or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or waterfalls which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

The power of eminent domain vested in the district shall include the power to condemn to the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Sec. 18. Section 48-9 of the Water Code Appendix is

amended to read:

48-9. The objects and purposes of this act are to provide for the control of the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the said waters thereof flow into said district, and to conserve such waters for beneficial and useful purposes by retarding, spreading, storing, retaining and causing to percolate into the soil within said district, or without said district, such waters, or to save or conserve in any manner all or any of such waters and protect from such flood or storm waters, the watercourses, watersheds, public highways, life and property in said district, and to prevent waste of water or diminution of the water supply in, or unlawful exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district.

Riverside County Flood Control and Water Conservation District is hereby declared to be a body corporate and politic and as such shall have power:

1. To have perpetual succession.
2. To adopt a seal and alter it at pleasure.
3. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
4. To acquire, by purchase, lease, construction or otherwise, or contract to acquire, lands, rights of way, easements, privileges and property of any kind, whether real, personal or mixed, and to construct, maintain and operate any and all works or improvements within or without the district necessary, convenient or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements or property acquired by it as authorized by this act; to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this act.
5. To take by grant, purchase, gift, devise or lease, or otherwise, to hold, use, enjoy and to lease or dispose of real, personal or mixed property of every kind within or without the district necessary or convenient to the full exercise of its powers, and to lease its property to public agencies, or to grant any interest therein to public agencies, which lease or grant does not interfere with the use of the property for the purposes of the district.
6. To incur indebtedness, and to issue bonds in the manner herein provided.
7. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or a zone or zones thereof; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside the district, water for any useful purpose to the district; to commence, maintain, intervene in and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of water or water rights within the district used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings hereafter begun; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in the district; provided, however, that the said district shall not have the power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights within the boundaries of the district and which do not involve taking water outside or away from the district.
8. To control the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes within said district by retarding, spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save and conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district; provided, that water rights now existing be not thereby infringed upon.

9. To have and exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and to condemn, any existing works or improvements in said district now or hereafter used to control flood or storm waters or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act, is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the injury or detriment of any person, or persons, having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation be first ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public use; and provided further, that no right shall exist in behalf of said district to take by condemnation any property, including water rights, that is now devoted to beneficial use in Orange County; nor to take by condemnation any water rights or property necessary for exercising said water rights that are now devoted to beneficial use, or are now in the process of being devoted to beneficial use in Orange County, within an area along and adjacent to the trunk channel of the Santa Ana River extending from the easterly boundary of Orange County to the Jurupa Narrows and lying between the bluffs on either side of said river, but excluding therefrom any part of the Corona underground water basin as said basin is defined in that certain action in the Superior Court of the State of California, in and for the County of Riverside, numbered 22046, and entitled the Corona Foothill Lemon Company, a corporation, et al. vs. Charles E. Lillbridge, et al.

The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district with the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of the fee simple or any lesser es-

tate or interest in such property, as the case may be,

in necessary. Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.

10. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines of channels, conduits, canals, pipelines, roadways and other rights of way; to acquire by purchase, lease, contract, condemnation, gift or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, whether in this or in another state, including works constructed and being constructed by private owners, lands for reservoirs, for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, water works, power plants, franchises, concessions or rights; to enter into and to do any and all acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Riverside County Flood Control and Water Conservation District; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant any owner or lessee the right to the use of any water or the right to store such water in any reservoir of the district or to carry such water through any tunnels, canal, ditch or conduit of the district; to enter into and to do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired, or secured for the use of the Riverside County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with, and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the Government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any such works, acts, or purpose provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose as authorized herein.

11. To cause taxes and assessments to be levied and collected for the purpose of paying any obligation of the district and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district.

13. To carry on a program of artificial nucleation for the purpose of increasing and controlling rainfall within, or in the immediate vicinity of, any watershed located wholly or partially within the district.

The total amount of taxes levied for the purpose of carrying on any program under this subdivision shall not be in excess of five cents (\$0.05) for each one hundred dollars (\$100) of assessed valuation of the taxable property within the district, nor in any event shall the district spend more than a total of five thousand dollars (\$5,000) annually for the purpose of carrying on any program under this subdivision.

The authority of the district to carry on any program under this subdivision shall terminate on October 1, 1957.

14. To make contracts and to employ labor and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof by this act.

Sec. 20. Section 51-3.4 of the Water Code Appendix is amended to read:

51-3.4. The agency shall have the power of eminent domain to acquire within or outside the agency by condemnation in the manner and to the extent prescribed in Article 1, Section 14 of the Constitution and Title 7, Part 3 of the Code of Civil Procedure, as now existing or hereafter amended, all property or interests therein necessary or convenient for carrying out the powers and purposes of the agency except that the agency shall not have power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use; and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the state in the manner prescribed by law. The district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the agency for any purpose authorized by this act, the agency may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the agency.~~

The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board of directors by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution, adopted by a two-thirds vote of all its members, shall be conclusive evidence of all of the following:

(a) The public necessity for the proposed public improvement.
(b) The property or property interest being acquired is necessary for the proposed public use.

(c) Such proposed public improvement is planned or located in the manner which will be compatible with the greatest public good and the least private injury.

Whenever a part only of a parcel is required by the agency for any purpose authorized by this act, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the agency may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for agency purposes. Or, in lieu of such acquisition of the remainder, the agency may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.

Sec. 21. Section 52-6 of the Water Code Appendix is amended to read:

52-6. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Sec. 22. Section 55-5 of the Water Code Appendix is

amended to read:

55-5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and consistent to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers

of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

7. To co-operate, and to act in conjunction with or contribute funds to, the United States or the State of California or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Alameda, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with or necessary to comply with an act of authorization of the United States, or any state, county, district of any kind, or necessary and proper for the performance of any agreement with any public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Alameda County Flood Control and Water Conservation District; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Alameda County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

13. To exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary.

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Alameda County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

No action in eminent domain to acquire water rights outside the boundaries of the County of Alameda shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

14. To plan, improve, operate, maintain, and keep in a sanitary condition, a system of public parks, playgrounds, beaches, swimming areas and other facilities for public recreation, for the use and enjoyment of all inhabitants of the district, as an incident to the carrying out of the projects of the district and on land acquired or used for the flood control, drainage and water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic benches and tables, bathhouses, golf courses, tennis courts, or other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the board shall not, for the purposes specified in this subdivision, interfere with control or operation of any existing public park, playground, beach, swimming area, parkway, recreational ground, or other public property, owned or controlled by any other district or municipality, except with the consent of the governing body of such district or municipality, and upon terms as may be mutually agreed upon between the board and the governing body.

15. The powers hereinabove granted shall include the design, construction, or maintenance of any levees, seawalls, groins, breakwaters, jetties, outlets, channels, harbors, basins, or other work pertaining thereto, in such manner as to render them adaptable and useful to shoreline, beach, harbor, navigation, park or marina development or use, and to do such work in co-operation with any other public or quasi-public agency or corporation concerned with such development or use.

16. To establish and maintain building setback lines along the banks of any river, creek, stream or other waterway, in any case where the board determines that such setback line is necessary for any of the following reasons:

- (a) To prevent impediment of the natural flow of water;
- (b) To protect life and property;
- (c) To prevent damage from flooding, bank caving, or erosion;
- (d) To prevent the pollution of waters.

Sec. 23. Section 60-6 of the Water Code Appendix is

amended to read:

60-6. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

Nothing in this act shall authorize the district to condemn any of the properties, structures or works, now owned or hereafter to be constructed or acquired, by any water conservation district within the County of Santa Clara.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Sec. 24. Section 61-6 of the Water Code Appendix is

amended to read:

61-6. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasipublic use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Sec. 25. Section 62-5 of the Water Code Appendix is

amended to read:

62-5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, water and water rights, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to construct, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To conserve all waters within said district, and to control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and protect them from damage from such flood or storm waters the watercourses, waterfalls, harbors, public highways, life and property in said district, and the water courses outside of the district of streams flowing into the district, and to develop waters within or without said district for domestic, irrigation, industrial and recreational uses, and to construct works therefor, including works for the storage and delivery of water; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.
6. To co-operate and to act in conjunction with the federal government, the State of California, or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Lake or adjacent counties, or with any other agencies, in the construction of any work for the storage or delivery of all waters within or without the district for domestic, irrigation, industrial and recreational uses and for the conservation of waters within said district, for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein.
7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to the beneficial use of waters within or without the district, including domestic, irrigation, industrial and recreational uses and to the conservation of water and to the control of floods both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.
8. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district or any kind, public or private corporation, association, firm or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district.
9. To incur indebtedness and to issue bonds in the manner herein provided.
10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.
11. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

12. To exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which its board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the vicinity thereof to be exchanged for the real property so required by the district.~~

The district shall not condemn property within the County of Lake unless the consent of the governing board of the county in which the property to be condemned is located, has first been obtained.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to exercise for a water supply for such city and county or municipal utility district as an exercise of the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Lake County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

13. To provide for the operation and maintenance of any works of any kind or channelways, which may be built or operated by the State of California or the federal government without cost to the district, for the control or disposition of flood and storm waters within the district whether such waters originate within or without the district.

14. To contract with the County of Lake, because of the interest of the County of Lake in the general welfare and preservation and promotion of land values in the county and in the maintenance, construction and improvement of public roads, bridges and other county property within any zone which may be damaged or destroyed by such flood and storm waters and which will be protected by proper control and disposition of such waters, for the participation by such county, on a percentage or other appropriate basis, in the amount of amounts that may be taxed or assessed from time to time against any lands in any zone by any taxing or assessing agency or authority, including the district, to provide funds for the operation and maintenance of any works of any kind or channelways which may be built, maintained or operated by the State of California or the federal government or the district for the benefit of such zone; and the County of Lake is hereby authorized to enter into any such contract with the Lake County Flood Control and Water Conservation District.

15. To levy assessments in any zone, on the basis of benefits as provided in Section 13.1 hereof, to raise funds for payment of expenses of operation and maintenance of works or channelways in any such zone and the cost of levying, calling and collecting such assessments.

Sec. 26. Section 63-5 of the Water Code Appendix is

amended to read:

63-5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.

4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights of way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and transport water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any

action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to protect rights in the natural flow of any stream or surface or subsurface supply of waters used or useful for any purpose of the district or of common benefit to lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise hindering such for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to interfere or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by capturing, storing, retaining and causing to percolate into the soil within or without said district, or to any reservoir in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

7. To co-operate and to act in conjunction with the State of California or any of its engineers, officers, boards, commissions, departments, or agencies, the United States of America, or any federal department or agency, or with any public or private corporation, or with the County of Contra Costa or adjacent counties, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and

other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the district, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

13. To exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, or any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than

that to which it has already been appropriated; and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-

of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Contra Costa County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

14. To make contracts with the County of Contra Costa, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for each proposed new subdivision in the County of Contra Costa.

15. To construct, accept, maintain, repair, or otherwise improve structures or channels for any purpose, in whole or in part, related to the purposes and powers of the district, or perform any act necessary or incidental to the complete exercise and effect of any of its powers.

Sec. 27. Section 69-7 of the Water Code Appendix is

amended to read:

§ 69-7. The district shall have and may exercise the right of eminent domain within the district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, which is required to be moved to a new location; and provided further, that, notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in the district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing county, city or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in the district, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for its purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district for its purposes.~~

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing county, city or municipal utility district to provide for a water supply for such county, city or municipal utility district or as affecting the absolute control of any properties of such county, city or municipal utility district necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in said Contra Costa County Storm Drain District or in any officer thereof or in any person referred to in this act.

Sec. 28. Section 70-8 of the Water Code Appendix is

amended to read:

70-8. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of directors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Nothing in this act shall authorize the district to condemn any of the properties, structures or works now owned or hereafter to be constructed or acquired by the Pacheco Pass Water District.

Sec. 29. Section 72-7 of the Water Code Appendix is

amended to read:

§ 72-7. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act, or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Sec. 39. Section 74-5 of the Water Code Appendix is

amended to read:

§ 74-5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

6. To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Santa Barbara, in the construction of any work for the controlling of

flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of storm waters and floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

8. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and

improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances; to enter into contracts and agreements with, and do any acts necessary or proper for the performance of any such contracts and agreements with the United States, or any state, county, district of any kind, public or private or municipal corporation, association, firm, or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the district or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water or water supply to be delivered to said district by the other party to said agreement.

9. To incur indebtedness and to issue bonds in the manner herein provided.

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

12. To exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district.

The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the state in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of directors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution, adopted by a two-thirds vote of all its members, shall be conclusive evidence of all of the following:

- (a) The public necessity for the proposed public improvement.
- (b) The property or property interest being acquired is necessary for the proposed public use.
- (c) Such proposed public improvement is planned or located in the manner which will be compatible with the greatest public good and the least private injury.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district or other district or public agency to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Santa Barbara County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

12.1. Whenever a part only of a parcel is required by the district for any purpose authorized by this act, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.

13. To make contracts with the County of Santa Barbara and with municipalities and public agencies, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for each proposed new subdivision in the County of Santa Barbara.

Sec. 31. Section 79-5 of the Water Code Appendix is amended to read:

79-5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and

personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for present and future use within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision which owns property or facilities of a type that may be owned by the district may, by written agreement with the district, provide for the use, or joint use, of such property or facilities, or for the use or joint use, of property or facilities in which said district has an interest.

7. To co-operate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public district, or with any public or private corporation, or with any city, city and county, or county, in the construction

of any works for the controlling of flood or storm waters of or flowing into said district or for the protection of life or property therein, or for the purpose of conserving any waters whatsoever for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the district, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

13. To exercise the right of eminent domain within said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or

relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that, notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest, as the case may be, is necessary.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such San Joaquin County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

14. To make contracts with the County of San Joaquin, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for each proposed new subdivision in the County of San Joaquin.

15. To purchase, or to contract for the purpose of purchasing, water, from the United States, or any of its agencies, from the State, or any of its agencies, from any other public district, agency or organization, from any private firm, corporation, entity, or organization, or from any person.

16. To have power to co-operate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting co-operation or contract for the purposes of contracting works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation, or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made.

17. To sell or distribute, and to contract for such sale or distribution water to any person, firm, corporation, entity, or organization within the district, whether sold or distributed for consumption or for resale or redistribution; provided that the

district shall have no power to sell or distribute or to contract for such sale or distribution of, water for use on any lands within any county water district, reclamation district, irrigation district, water conservation district, protection district, municipality, flood control district, or other district or political subdivision of the State now or hereafter established, in or partially within, the limits of the district, which is empowered to deliver water to water users, without either contracting with such entity or without the express written permission of the governing body of such entity.

18. To establish tolls or charges for any water sold or distributed by it.

19. To levy assessments to pay the costs of acquiring and distributing any water in any water conservation zones which are benefited.

Sec. 32. Section 79-33 of the Water Code Appendix is amended to read:

79-33. ~~(a) - If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~ (b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission, and jurisdiction of such controversies is hereby vested in said commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained, and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (a) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1923 manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 33. Section 84-4.9 of the Water Code Appendix is amended to read:

84-4.9. (a) ~~If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment.~~ All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3, 4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made. (b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 34. Section 85-4.9 of the Water Code Appendix is amended to read:

85-4.9. (a) ~~If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 5.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~ (b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6, commencing at Section 1201, of Part 1 of Division 1 of the Public Utilities Code.

Sec. 35. Section 86-4.9 of the Water Code Appendix

is amended to read:

86-4.9. (a) ~~If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment.~~ All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made. (b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 36. Section 87-3 of the Water Code Appendix is

amended to read:

87-3. The San Mateo County Flood Control District is hereby declared to be a body corporate and politic and as such shall have in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To adopt a seal and alter it at pleasure.
3. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
4. To acquire, by grant, purchase, gift, devise, lease, contract, condemnation, construction or otherwise, lands, rights-of-way, easements, privileges and property of any kind, whether real, personal or mixed, and to construct, maintain and operate any and all works or improvements within or without the district necessary, convenient or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements or property acquired by it as authorized by this act; to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this act.
5. To hold, use, enjoy and to lease, sell, or otherwise dispose of real, personal or mixed property of every kind within or without the district necessary or convenient to the full exercise of its powers.
6. To incur indebtedness, and to issue bonds in the manner herein provided.

6.5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; and to do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including but not limited to, the regulation, storage and distribution of water for irrigation, domestic, fire protection, municipal, commercial, industrial, and all other beneficial uses; to distribute, sell, or otherwise dispose of, outside the district, any waters not needed for beneficial uses within the district; to commence, maintain, intervene in, defend or compromise in the name of the district to behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however that said district shall not have power to interfere or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

7. To control the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes within said district by retarding, spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save and conserve in any manner all or any of such waters and protect from damage from such flood or storm waters and watercourses, watersheds, harbors, public highways, life and property in said district.

8. To have and exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and to condemn, any existing works or improvements in said district now or hereafter used to control flood or storm waters or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act, is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the injury or detriment of any person, or persons, having any interest in such river, creek, stream, irrigation system, canal or ditch, of the waters thereof or therein, unless compensation be first ascertained and paid

therefor, under the laws of this State authorizing the taking of private property for public use, except as provision is made in the Constitution of the State for the taking of immediate possession of certain properties; provided further, however, that the district in exercising such powers shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railroads, mains, pipes, conduits, wires, cable, poles of any public utility which is required to be reconstructed or relocated.

The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district with the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of the fee simple or any lesser estate or interest in such property, as the case may be, is necessary; provided, however, that when the board of supervisors shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion by said district of any public improvement for flood control purposes and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence (a) of the public necessity of such proposed public improvement, (b) that such property is necessary therefor, and (c) that such proposed public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury.

~~Whenever real property or easements therein which is devoted to or held for some other public or quasi-public use is required by the district for flood control or water conservation purposes, the district may condemn real property or easements therein adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property or easements therein required by the district as aforesaid for flood control purposes.~~

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines of channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift or other legal means all lands and water and water rights and other property necessary or convenient for the construction, operation, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs, for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, waterworks, powerplants, easements, franchises, concessions or rights; to enter into and to do any and all acts necessary or proper for the performance of any agreement with the United States, or any state, county, district or any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said San Mateo County Flood Control District; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant any owner or lessee the right to the use of any water or the right to store such water in any reservoir of the district or to carry such water through any tunnel, canal, ditch or conduit of the district; to enter into and to do any acts necessary or proper for the performance of any agreement with any district or other political entity of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired, or secured for the use of the San Mateo County Flood Control District; to co-operate with, and to act in con-

junction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the Government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any such works, and of purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose as authorized herein.

10. To cause taxes and assessments to be levied and collected for the purpose of paying any obligations of the district and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water sources, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district.

12. To make contracts and to employ labor and professional services and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof by this act.

Provided, that in the exercise of the powers vested in it by this act, with respect to lands lying without the exterior boundaries of the County of San Mateo, said San Mateo County Flood Control District shall obtain, prior to the taking of any action to carry out the purposes of this act without said boundaries, written approval of the action from the governing body of each affected county, city and county, and city.

13. To plan, improve, operate, maintain, and keep in a sanitary condition, a system of public parks, playgrounds, beaches, swimming areas and other facilities for public recreation, for the use and enjoyment of all inhabitants of the district, as an incident to the carrying out of the projects of the district and on land acquired or used for the flood control drainage and water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic beaches and tables, bathhouses, golf courses, tennis courts, or other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the board shall not, for the purposes specified in this subdivision, interfere with control or operation of any existing public park, playground, beach, swimming area, parkway, recreation ground, or other public property, owned or controlled by any other district or municipality, except with the consent of the governing body of such district or municipality, and upon terms as may be mutually agreed upon between the board and the governing body.

Sec. 37. Section 87-31 of the Water Code Appendix
is repealed.

~~87-31.--If-by-any-judgment-in-condemnation-or-by
agreement-the-district-shall-be-required-to-relocate-any
street,-road,-highway,-railroad,-canal-or-other-property
subject-or-devoted-to-public-use,-the-board-shall-have-power
to-acquire-in-the-name-of-the-district,-by-agreement-or
condemnation,-all-rights-of-way-and-other-property-necessary
or-proper-for-compliance-with-said-agreement-or-said-judgment
of-condemnation-and-thereafter-to-make-such-conveyance-of
such-relocated-street,-road,-highway,-railroad,-canal,
or-other-property-as-may-be-proper-to-comply-with-said-agree-
ment-or-judgment.~~

Sec. 38. Section 90-19 of the Water Code Appendix is amended to read:

90-19. (a) ~~If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 7 of this act, shall provide that in making the exchange the property acquired and exchanged shall be limited to public use by the party with whom such exchange is made.~~

(b) In the event the agency and any common carrier railroad or other public utility fails to agree as to the character or location or of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 39. Section 93-19 of the Water Code Appendix is amended to read:

93-19. (a)--If by any judgment in condemnation or agreement the authority is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the authority, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 17 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made. (b)

In the event the authority and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the authority, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 40. Section 95-4.9 of the Water Code Appendix is amended to read:

95-4.9. (a)--If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of any and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made. (b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1801) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 41. Section 96-20 of the Water Code Appendix is amended to read:

96-20. (a) ~~If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyances of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment.~~ All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 8 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.

(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6, commencing at Section 1201, of Part 1 of Division 1 of the Public Utilities Code.

Sec. 42. Section 99-4.9 of the Water Code Appendix is amended to read:

99-4.9. (a)-- If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property received in exchange shall be dedicated to public use by the party with whom such exchange is made.--(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. (c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 43. Section 102-19 of the Water Code Appendix is amended to read:

102-19. ~~(a) - If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 7 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made. (b)~~

In the event the agency and any common carrier railroad or other public utility fails to agree as to the character or location or of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission. ~~(c)~~ Proceedings under this section relating ~~to the jurisdiction of said commission~~ may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing with Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

Sec. 44. Section 105-6 of the Water Code Appendix is amended to read:

105-6 The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual existence.
2. To sue and be sued in the name of the district.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights of way, easements, and privileges, excepting water rights owned by a public corporation or agency without the consent of such public corporation or agency, and to construct, maintain, alter and operate any and all projects or works of improvement, within or without the district, necessary or proper to carry out any of the objects or purposes of this act, or convenient to the full exercise of its powers, and to construct, complete, extend, add to, alter, remove, reconstruct, repair or otherwise improve any projects or works of improvement, or property acquired by it, as authorized by this act.

5. To control the flood and storm waters of the district, and the flood and storm waters of streams that have their source outside of the district, but which streams and the flood waters thereof flow into the district, and to conserve such waters for beneficial and useful purposes within the district by retaining, spreading, storing, retaining and causing the same to percolate into the soil within or without the district, or to save and conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district; provided, that water rights now existing, public or private, be not thereby taken or damaged without compensation; provided further, that none of the provisions of this act shall in any manner limit or preclude the full exercise by any county, city, district, public or municipal authority, agency or corporation, or any political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising any of its powers, although such be of the same nature as the powers of the district. Any such other public entity may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other public entity has an interest, or for the use, or joint use, of property or facilities in which the district has an interest.

6. To cooperate and to act in conjunction with or contribute funds to the United States or the State of California, or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of San Diego, or with any public agency or district, in the construction of any projects or works of improvement for the controlling of flood or storm waters

of or flowing into the district, or for the protection of life or property therein, or for the purposes of conserving said waters for beneficial use within said district, or for the protection of beaches and shorelines from erosion, or for the construction of beaches and shorelines, or in any other works, acts or purposes provided for herein, and to adopt and carry out any definite plan or system of projects or works of improvement for any such purpose; and to enter into, and to do any and all acts necessary or proper for the performance of, any agreement with, or necessary to comply with any act of authorization of, the United States, or any state, county or district of any kind, or necessary and proper for the performance of any agreement with any public or private corporation, association, firm or individual, or any number of them, for the joint financing, acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, projects or works of improvement, or other property of any kind which might be lawfully acquired or owned by the district.

7. To acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned by the district, and to grant to any person the right to carry any water owned by such person through any tunnel, canal, ditch or conduit of the district; provided, that the district shall not acquire any such rights from a municipality or public water agency or district other than with the consent of such municipality or public water agency or district.

8. To carry on technical and other investigations of all kinds, make measurements, collect data, and to make analyses, studies, and inspections pertaining to water supply, water rights, ocean currents, tides, erosion, control of floods, and use of water, and to make surveys, studies, and maps and plats relative to the location of necessary projects and works of improvement including but not limited to dams, levees, channels, conduits, canals, pipe-lines, roadways and other rights-of-way, and

relative to the acquisition of lands, or interests therein, and other property; provided, that the foregoing powers may be exercised by the district to the extent necessary to accomplish the purposes of this act; and further provided, that the district has the right of access, and may enter upon any lands within or without the district, irrespective of the ownership of such lands, with or without the permission of the owner of such lands, in order to accomplish the acts authorized by this section, or any of them, and such entry by the district or by its authorized representative shall not constitute, nor give rise to, any cause of action in favor of the owner or owners of such land except for injuries resulting from negligence, wantonness, or malice.

Whenever a project or work of improvement is contemplated due consideration shall be given to the location of existing sewage lines and to the possible locations of future sewage lines, and the district shall solicit the recommendations of public sewage disposal agencies in order that district facilities may be located equitably in light of such sewage lines.

9. To incur indebtedness and to issue bonds in the manner hereinafter provided.

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To make contracts, to employ labor, to employ expert appraisers, consultants and technical advisors and assistants, and to do all acts necessary for the full exercise of all powers vested by this act in said district or in any of the officers thereof.

12. The district has and may exercise the right of eminent domain within the County of San Diego, either within or without the district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or public corporation or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles or other property of any public utility or public corporation or district which is required to be moved to a new location; and provided further, that notwithstanding any provision of this act or any

other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in the district to take by proceedings in eminent domain any water rights appropriated to public use by any existing municipal corporation, water district, or other public agency. The district shall also have the right to and may condemn, within the County of San Diego, any existing works or improvements in the district or along streams flowing into the district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in the district or along streams flowing into the district from damage from such flood or storm waters, or to protect beaches or shorelines from erosion or to restore such beaches or shorelines, and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State of California in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize the district or any person to divert the waters of any river, creek, stream, irrigation system, canal or ditch or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement or interest in any real property which the board by resolution shall determine is necessary for carrying out the purposes of this act.

Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by this act; and
2. That the taking is necessary to such use; provided, when the board, by resolution adopted by vote of two-thirds of all its members, has found and determined that the public interest and necessity require the acquisition, construction or completion by the district of some project or work of improvement, and that the property described in such resolution is necessary therefor, such resolution shall be conclusive evidence:

- (a) of the public necessity for such proposed project or work of improvement;
- (b) that such property is necessary therefor, and

(c) that such proposed project or work of improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury; provided, however, that said resolution shall not be such conclusive evidence in the case of the taking by the district of property located outside of the territorial limits thereof.

Whenever land is to be condemned by the district for any of the uses and purposes permitted by law, and the taking of a part of a parcel of land would leave the remainder thereof in such size or shape or condition as to require the district to pay in compensation for the taking of such part an amount equal to the fair and reasonable value of the whole parcel, the resolution of the board may provide for the taking of the whole of such parcel and upon the adoption of any such resolution it shall be deemed necessary for the public use, benefit, safety, economy, and general welfare that the district acquire the whole of such parcel.

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing municipal corporation, water district or other public agency providing water to the public or as affecting the absolute control of any properties of such municipal corporation, water district or public agency necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in the district or any officer thereof, or in any person referred to in this act, except to the extent consented thereto by such municipal corporation, water district or public agency.

13. To plan, improve, operate, maintain, and keep in a sanitary condition a system of public parks, playgrounds, beaches, swimming areas, and other facilities for public recreation, for the use and enjoyment of all the inhabitants of the district, as an incident to the carrying out of the projects and works of improvement of the district and on land acquired or used for the flood control, drainage, beach or shoreline erosion control, or water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic grounds and equipment incidental thereto, bathhouses, golf courses, tennis courts and other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the district shall not, for the purposes specified in this subsection, interfere with the control or operation of any existing public park, playground, beach, swimming area, parkway, recreational ground, or other public property, owned or controlled by any other district, county or municipal corporation, except with the consent of the governing body of such district, county or municipal corporation, and upon such terms as may be mutually agreed upon between the board and such governing body; and further provided, that no such recreational facility shall be established in any

city or in the unincorporated territory of a county without the consent of the governing body of such city or county, and further provided, that if any such recreational facility is located within the unincorporated territory of a county then that county, or if any such recreational facility is located within the corporate limits of any city then that city, by resolution duly passed by the governing body of such county or city, may assume the management and control of such recreational facility, in which event such county or city shall establish and collect nondiscriminatory fees and charges for the use of such recreational facility and may establish rules and regulations pertaining to such recreational facility, and the county or city annually shall deduct from such fees and charges an amount sufficient to reimburse the county or city for the costs and expenses incurred in such management and control of such recreational facility, and shall pay over to the district, for use for general district purposes, all money collected in excess of the amount necessary for such reimbursement.

14. The powers herein granted shall include the design, construction, or maintenance of any levees, seawalls, groins, breakwaters, jetties, outlets, channels, harbors, basins, or other projects or works of improvement pertaining thereto for the protection of shoreline or beaches.

15. To lease, sell or dispose of any property or interest therein whenever, in the judgment of the board, said property or said interests therein or part thereof is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of such property for the purposes of the district, and to pay any compensation received therefor into the general fund of the district and use the same for the purposes of this act; provided, however, that nothing herein contained shall authorize the board or any officer of said district to sell, lease or otherwise dispose of any water, water right, reservoir space or storage capacity or any interest or space therein, except to public agencies for recreational purposes or except as heretofore provided in subsection 6 of this section, or except, in the discretion of the board, as is necessarily incidental to the accomplishment of the purposes of this act or to the public welfare; provided, however, that the district may grant and convey to the United States, or to any federal agency authorized to accept and pay for such land or interests in land, all lands and interests in land, now owned or hereafter acquired, lying within any channel, dam, or reservoir site, or shoreline or beach, improved and constructed, in whole or in part, with federal funds, upon payment to the district of sums equivalent to actual expenditures made by it in acquiring the lands and interests in land so conveyed, and in improving such lands and interests in land, deemed reasonable in the discretion of the board.

16. To grant or otherwise convey to counties, cities and counties, cities, the State of California or the United States easements for street and highway purposes over, along, upon, in, through, across or under any real property owned by the district.

17. To remove, carry away and dispose of any rubbish, trash, debris, or other inconvenient matter that may be dislodged, transported, conveyed, or carried by means of, through, in or along the works and structures operated or maintained hereunder and deposited upon the property of the district or elsewhere.

18. Notwithstanding any provision of this act, the district shall not have the power to compete with water selling or distribution agencies, either public or private, by selling or distributing water to consumers for domestic, agricultural or industrial use; provided, however, that the district shall have the power to sell to water agencies, either public or private, such surplus water as it may accumulate.

Sec. 45. Section 105-39 of the Water Code Appendix is amended to read:

105-39. (a) ~~If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~ (b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission, ~~and jurisdiction of such controversies is hereby vested in said commission.~~ (c) Proceedings under this section ~~relating to the jurisdiction of said commission~~ may be instituted, maintained, and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

SUBSTITUTE CONDEMNATION

The command of the Fifth Amendment is that "private property" shall not be taken "for public use without just compensation." This means that government cannot take the property of Jones and give it to Smith, as some rulers once did. The purpose of the taking must be "for public use."¹

A decides to condemn *B*'s land; *A* and *B* agree that *B* shall be compensated in land instead of money; *A* condemns *C*'s land and conveys it to *B*. Such a transaction, called substitute condemnation or compensation by substitution,² is authorized by California statute.³ 1965 amendments to the Streets and Highways Code extend the power to condemn substitute land to county boards of supervisors.⁴ Most of these California statutes have not been interpreted by the courts. This Comment considers the circumstances in which substitute condemnation can occur, the limitations on the use of the power, and the relation between substitute condemnation and the California law of eminent domain. For uniformity the transaction described above—*A* as the condemnor, *B*, the first condemnee, *C*, the ultimate condemnee—will be used throughout as a model.

The power of eminent domain is a power of the sovereign, inherent in and inseparable from the idea of sovereignty.⁵ Constitutions, therefore, do not grant the power;⁶ they limit its exercise.⁷ The United States and California constitutions limit the exercise of eminent domain in two ways: A taking must be for a public use, and just compensation must be paid for the taking.⁸ In any particular condemnation, these issues are justiciable.

¹ DOUGLAS, *A LIVING BILL OF RIGHTS* 57 (1961).

² 2 NICHOLS, *EMINENT DOMAIN* § 7.226 (Rev. 3d ed. 1965); *Herr v. City of St. Petersburg*, 114 So. 2d 171, 174 (Fla. 1959); see Annot., 68 A.L.R. 442 (1930).

³ CAL. STRETS. & HIGHW. CODE §§ 104(b), 104.2; CAL. WATER CODE §§ 253, 255.

⁴ CAL. STRETS. & HIGHW. CODE §§ 943(a), 943.2, 943.4.

⁵ *Kohl v. United States*, 91 U.S. 367, 371-72 (1875); *People ex rel. Dep't of Pub. Works v. Chevalier*, 52 Cal. 2d 299, 304, 340 P.2d 598, 601 (1959); *Gilmer v. Lime Point*, 18 Cal. 229, 251 (1861).

⁶ See authorities cited in note 5 *supra*.

⁷ *Gilmer v. Lime Point*, 18 Cal. 229, 251 (1861).

⁸ U.S. CONST. amend. V, amend. XIV, § 1; CAL. CONST. art. I, § 14. Although neither constitution says specifically that property shall be taken only for a public use, that interpretation is firmly established. See CAL. CODE CIV. PROC. § 1237; *Cole v. La Grange*, 113 U.S. 1 (1885); 2 NICHOLS, *op. cit. supra* note 2, at § 7.1[2]. Due process of law requires that private property be taken under the power of eminent domain only for a public use. *Fallbrook Irr. Dist. v. Bradley*, 164 U.S. 112, 158 (1896); *Missouri Pac. Ry. v. Nebraska*, 164 U.S. 403, 417 (1896). Due process also requires that property cannot be taken without just compensation. *West v. Chesapeake & Potomac Tel. Co.*, 295 U.S. 662, 671 (1935).

I

PUBLIC USE

In a dispute concerning substitute condemnation, C, the ultimate condemnee, will presumably argue that his land has not been taken for a public use.⁹ Historically, two distinct meanings have been given the phrase "public use."¹⁰ The first involves the use-by-the-public test. According to this view, a use is public if the public is entitled to actively use the property taken.¹¹ The second interpretation is that public use denotes public advantage: If the activity on the land promotes the general welfare of the public, the activity constitutes a public use.¹² The latter test is now used by many courts;¹³ the United States Supreme Court, for example, discarded the use-by-the-public test in 1916.¹⁴ Although California appears to have adopted the public benefit test early in its history,¹⁵ language in some opinions suggests that the use-by-the-public test was also followed.¹⁶ The public benefit test is, however, the view accepted today.¹⁷

⁹ Conceivably, C may argue as well that the taking is not "necessary." One writer has said: "The decision of the administrative agencies or officials includes the determination of the question as to whether an eminent domain action shall be resorted to for the acquisition of the property, the time when the eminent domain action shall be brought, the wisdom or feasibility of the project for which the property is taken, the extent or amount of property to be taken for the project, the nature of the estate to be taken, the kind of property taken, and the choice of the tract or tracts to be taken. These questions may be lumped together conveniently and be called the determination of necessity." Lavine, *Extent of Judicial Inquiry Into Power of Eminent Domain*, 28 So. Cal. L. Rev. 362, 371 (1955). C's contention that he must be allowed to argue that the taking is not necessary will be discussed at a later point. See notes 117-18 *infra* and accompanying text. Since C is arguing that his land should not be taken at all, for him the issue of just compensation is irrelevant here.

¹⁰ See 2 NICHOLS, *op. cit. supra* note 2, at §§ 7.2-7.2[3]; *Gravelly Ford Canal Co. v. Pope & Talbot Land Co.*, 36 Cal. App. 556, 178 Pac. 150 (1918).

¹¹ *Gravelly Ford Canal Co. v. Pope & Talbot Land Co.*, *supra* note 10; see 2 NICHOLS, *op. cit. supra* note 2, at § 7.2[1].

¹² *Bauer v. County of Ventura*, 45 Cal. 2d 276, 284, 289 P.2d 1, 6 (1955): "Public use' within the meaning of section 14 [of Article I of the California constitution] is defined as a use which concerns the whole community or promotes the general interest in its relation to any legitimate object of government."

¹³ See 2 NICHOLS, *op. cit. supra* note 2, at § 7.2.

¹⁴ *Mt. Vernon Cotton Co. v. Alabama Power Co.*, 340 U.S. 30 (1916).

¹⁵ See *Gilmer v. Lime Point*, 18 Cal. 229, 255 (1861), where it is said: "The only test and criterion of the admissibility of the power [of eminent domain] are that the particular object tends to promote the general interest, in its relation to any legitimate object of government."

¹⁶ See, e.g., *Gravelly Ford Canal Co. v. Pope & Talbot Land Co.*, 36 Cal. App. 556, 562-63, 178 Pac. 150, 153 (1918), where the two interpretations of public use are discussed and the stricter applied.

¹⁷ See *Housing Authority v. Dockweiler*, 14 Cal. 2d 437, 450, 94 P.2d 794, 801 (1939). In *Redevelopment Agency v. Hayes*, 122 Cal. App. 2d 777, 802-03, 266 P.2d 105, 122, *cert. denied*, 348 U.S. 897 (1954), it was said: "It might be pointed out that as our community life

II

SUBSTITUTE CONDEMNATION IN OTHER JURISDICTIONS

The cases which have allowed substitute condemnation can be divided into two groups, according to the activity *B* will conduct on *C*'s land. From these groups come two different concepts of substitute condemnation.

A. *The Two-Use Doctrine*

It is best to begin with cases which fit clearly within traditional notions of public use. In *Tiller v. Norfolk & W. Ry.*,¹⁸ *A* was a railroad seeking to acquire a portion of a state highway. *A* agreed with *B*, the state of Virginia, that *A* would condemn a portion of *C*'s land for the relocation of the highway. *C* argued that no Virginia statute authorized a taking of land which was not for the condemnor's own public use. The Supreme Court of Appeals held that, under certain extraordinary conditions where *B* could be adequately compensated only by an exchange of lands, substitute condemnation was permissible.¹⁹ The court noted, however, that the State could have condemned the property under statutory authority,²⁰ and that a highway is itself a public use.²¹

This rationale for substitute condemnation may be called the two-use doctrine. *B*'s land is taken for one public use, and *C*'s land for another, separate public use. Although the transaction in *Tiller* was cast in the form of compensation, the proposed use of *C*'s land justified a taking by *B* whether or not *A*'s use of *B*'s land was public. Thus it may be postulated: *A*'s taking of *C*'s land to compensate *B* is justified if *B*'s activity on *C*'s land will itself constitute a public use.

This conclusion was expressed by the Supreme Court of Ohio in *Langenau Mfg. Co. v. City of Cleveland*,²² a case where *A* was a municipality and *B* a railroad: "If the city of Cleveland [*A*] does not have

becomes more complex, our cities grow and become overcrowded, and the need to use for the benefit of the public areas which are not adapted to the pressing needs of the public becomes more imperative, a broader concept of what is a public use is necessitated. Fifty years ago no court would have interpreted under the eminent domain statutes, slum clearance even for public housing as a public use, and yet, it is now so recognized."

¹⁸ 201 Va. 222, 110 S.E.2d 209 (1959).

¹⁹ *Id.* at 226, 110 S.E.2d at 213. See also *Foley v. Beach Creek Extension R.R.*, 283 Pa. 588, 129 Atl. 845 (1925) (relocation of a state highway by a railroad); *cf. Rangely v. Midland Ry.*, [1868] L.R. 3 Ch. 306 (C.A.), where a landowner sold land to a railway and agreed that the company might purchase any land adjoining that sold which was required for the purposes of the railway. The Court of Appeal in Chancery held that this agreement allowed the railway to take lands for the relocation of a public footpath, though the company's compulsory powers had expired.

²⁰ VA. CODE ANN. § 33-52 (1950).

²¹ 201 Va. at 229, 110 S.E.2d at 215.

²² 159 Ohio St. 525, 112 N.E.2d 658 (1953).

authority to appropriate the land upon which the Nickel Plate [B's] tracks are to be relocated, the railroad has the power to do so.²³ Because the rule for compensation was the same whether A or B brought the action, the court found that C was not prejudiced by the fact that A, rather than B, initiated the action.²⁴

The two-use doctrine has also been applied to secondary takings of a less conventional nature. In *McLean v. City of Boston*,²⁵ houses removed in the course of a city improvement were relocated on C's land. A, the city, then sold C's land in parcels either to the various B's, the former occupants of the houses, or to the public at auction. The court reasoned that since there was an acute shortage of housing, the taking was for a public use.²⁶ Although the result may be understood as an application of the two-use doctrine, *McLean* is unconventional because B's activity on C's land is not normally considered a public use. Emergency conditions may, as the court held, convert a private use into a public use;²⁷ the case might be interpreted as indicating that compensation by substitution was needed if B was to be made whole. The taking in *McLean* may therefore be justified under a theory different from the two-use doctrine.

B. The Incident-to Taking

If B will not conduct an activity on C's land which itself constitutes a public use, different reasoning is needed to support the taking. In *Pitznogle v. Western Md. R.R.*,²⁸ A, a railroad, condemned portions of B's land and C's land, and in the process took a private road which connected B's land with a turnpike. A proposed to compensate B by providing him with a new road across C's land. The Court of Appeals of Maryland held that:

²³ *Id.* at 534, 112 N.E.2d at 662.

²⁴ *Ibid.* See also *Fitzsimons & Galvin, Inc. v. Rogers*, 243 Mich. 649, 220 N.W. 881 (1928), another case involving the relocation of a railroad. The Michigan Supreme Court reasoned that since it was well settled that a railroad could take land for such purposes, "it can not be said that the power of eminent domain is here being used for the purpose of condemning the property of one person for the private use of another." *Id.* at 662, 220 N.W. at 885. See also *United States v. 10.47 Acres of Land*, 218 F. Supp. 730 (D.N.H. 1962) (acquisition by the United States of a substitute water supply for a town); *Kelmar v. District Court*, 269 Minn. 137, 130 N.W.2d 228 (1964) (relocation of a river channel); *State of Missouri ex rel. State Highway Comm'n v. Eakin*, 357 S.W.2d 129 (Mo. 1962) (relocation of a pipeline); *Rogers v. Bradshaw*, 20 Johns. R. 735 (Ct. Err. N.Y. 1823) (relocation of a turnpike); *Weyel v. Lower Colorado River Authority*, 121 S.W.2d 1032 (Tex. Civ. App. 1938) (relocation of a power line owned by a public utility).

²⁵ 327 Mass. 118, 97 N.E.2d 542 (1951).

²⁶ *Id.* at 121, 97 N.E.2d at 544. See also *Watkins v. Ughetta*, 273 App. Div. 969, 78 N.Y.S.2d 393, *aff'd*, 297 N.Y. 1002, 80 N.E.2d 457 (1948).

²⁷ *McLean v. City of Boston*, 327 Mass. 118, 121, 97 N.E.2d 542, 544 (1951).

²⁸ 119 Md. 673, 87 Atl. 917 (1913).

[T]he condemnation of a part of this land, here sought to be condemned, for a substitute private road or way is *incident to and results from* the taking, by reason of public necessity, of the existing private road for public use, and the use of it for such purposes should, we think, be regarded as a public use within the meaning of the Constitution.²⁹

Had another road not been substituted, *B* would not have been able to condemn *C*'s land himself, even though he might have been landlocked.³⁰

Pitznogle thus holds that *A* may use substitute condemnation to compensate *B*, although *B* may be a private individual who lacks the power of eminent domain, if the taking of *C*'s land is "incident to and results from" the taking of *B*'s land.

In *Brown v. United States*,³¹ the federal government proposed to dam the Snake River in Idaho. The reservoir thus created would flood the town of American Falls. Pursuant to an Act of Congress,³² the government condemned *C*'s land on the outskirts of town for a new town site. The Supreme Court held this taking was for a public use: "The acquisition of the town site was so closely connected with the acquisition of the district to be flooded and so necessary to the carrying out of the project that the *public use of the reservoir covered the taking of the town site.*"³³ It was "natural and proper"³⁴ to relocate the town, the Court said, when compensation of those injured was so difficult.³⁵ A town is greater than the sum of its parts. Approving *Pitznogle*,³⁶ the Court based its decision on the connection between the taking of *C*'s land and the use to be made of *B*'s land. It did not discuss the possibilities that *B* could have condemned *C*'s land itself, or that *B*'s use of *C*'s land was a separate public use, but reasoned that the public use of the first taking served the second taking too.³⁷

A similar question had been presented to the Supreme Judicial Court of Massachusetts thirteen years before *Brown*: whether *A*, the State, in condemning land for a highway, could also condemn abutting land which it would sell to private persons.³⁸ In an advisory *Opinion of the Justices*,

²⁹ *Id.* at 679; 87 Atl. at 919-20. (Emphasis added.)

³⁰ *Ibid.*

³¹ 263 U.S. 78 (1923).

³² Sundry Civil Act, 41 Stat. 1367, 1403 (1921).

³³ 263 U.S. at 81. (Emphasis added.)

³⁴ *Ibid.*

³⁵ *Id.* at 82.

³⁶ *Id.* at 83.

³⁷ The Court analogized the taking of the plaintiff's land to a railroad's taking of property which will be used to supply dirt for embankments. In both cases, according to the Court, the condemnor's public use justified the taking of additional land. *Id.* at 81-82.

³⁸ *Opinion of the Justices*, 204 Mass. 607, 91 N.E. 405 (1910). The area which the

the court held that such a purpose was not public,³⁹ even though the activity would incidentally benefit the city and state.⁴⁰ The United States Supreme Court in *Brown* distinguished this *Opinion* by finding the relocation of American Falls to be a "necessary step in the improvement,"⁴¹ and not merely an attempt by the government to reduce costs by land speculation.⁴² Thus *Brown* stands for the proposition that *A*'s use of *B*'s land, if public, may justify the taking of *C*'s land to compensate *B*, if such taking is a "necessary step" in *A*'s improvement.⁴³

The Supreme Court treated substitute condemnation again in *Dohany v. Rogers*.⁴⁴ *A*, the State of Michigan, was widening a highway which adjoined a railroad right of way. The right of way was taken, and, as a statute provided,⁴⁵ the railroad was given a portion of *C*'s land, which *A* also condemned. The Court held that *C*'s land was taken for a public use, but did not decide whether the land was taken for highway or railway purposes: "It is enough that although the land is to be used as a right of way for a railroad, its acquisition is so essentially a part of the project for improving a public highway as to be for a public use."⁴⁶ *Brown v. United States* was cited as authority for this proposition.⁴⁷ Although the Court in *Dohany* used the incident-to rationale, the two-use doctrine could have been used with equal facility.⁴⁸

A variation of the incident-to doctrine was used to uphold a substitute condemnation in *Smouse v. Kansas City So. Ry.*,⁴⁹ a case in which

legislature sought to condemn consisted of many odd, irregularly shaped parcels; the legislature proposed to convert it to a trade center, with modern, mercantile buildings.

³⁹ *But cf.* *McLean v. City of Boston*, 327 Mass. 118, 97 N.E.2d 542 (1951); see notes 25-27 *supra* and accompanying text.

⁴⁰ 204 Mass. at 611, 91 N.E. at 407.

⁴¹ 263 U.S. at 84.

⁴² *Ibid.*

⁴³ The designation "necessary step" should be distinguished from the concept of the necessity of the taking. See notes 117-18 *infra* and accompanying text.

⁴⁴ 281 U.S. 362 (1930).

⁴⁵ Mich. Pub. Acts 1925, ch. 215.

⁴⁶ 281 U.S. at 366.

⁴⁷ *Ibid.*

⁴⁸ In *Fitzsimons & Galvin, Inc. v. Rogers*, 243 Mich. 649, 220 N.W. 881 (1928), a case arising out of the same transaction involved in *Dohany v. Rogers*, the Michigan Supreme Court decided the substitute condemnation was valid by means of the two-use doctrine. See also *Feltz v. Central Nebraska Pub. Power & Irr. Dist.*, 124 F.2d 578 (8th Cir. 1942), where *A*, a Federal Power Act licensee with the power of eminent domain, condemned a portion of *C*'s land to relocate a United States Highway taken by *A* in the construction of a dam on the North Platte. The Eighth Circuit appeared to follow *Brown*, holding that the taking of *C*'s land was "accessory to" and "in conjunction with" the original improvement. *Id.* at 582. The court was not, however, unmoved by the fact that *B*'s activity would itself constitute a public use. *Ibid.*

⁴⁹ 129 Kan. 176, 282 Pac. 183 (1929).

A was a railroad and *B* a quartz company. *A* sought to condemn for railroad purposes a portion of *C*'s property which included a pipeline and highway easement owned by *B*. *A* and *B* agreed that *A* would take an additional strip from *C* to compensate *B* for the loss of his easement. *C* complained that this additional strip was taken for a private use, but the Kansas court held that although that part of the taking might have been for a private purpose, the condemnation would not be defeated if the private use was *inconsequential* compared to the public use, or so subordinate to the public use as to be an incident of it.⁵⁰

The court in *Smouse* considered the alternatives open to *A* and found that substitution in kind was the most practical.⁵¹ This issue was raised because *C* alleged that *A*'s officials acted in bad faith in finding it necessary to take the strip. The Kansas statute⁵² provided that a railroad could condemn land deemed necessary for sidetracks and yards, but did not expressly authorize the taking of land for the compensation of another condemnee.

The *Smouse* holding is a variation on the incident-to rationale, as expounded in *Pitznogle* and *Brown*, in that the different character of *B*'s use of *C*'s land was recognized. The court did not hold that *B*'s use of the land taken was itself a public use, or that land taken for the purpose of compensating another condemnee is taken for a public use. These ideas are, however, latent in the opinion. The decision is also important because *A* is allowed, in effect, to condemn substitute land without specific statutory authority. The taking of *C*'s land is justified by *A*'s primary purpose in taking either the land of *B* or *C*: The first public use serves two takings, even though the second taking is not within the letter of the statute.⁵³

⁵⁰ *Id.* at 186, 282 Pac. at 187-83. (Emphasis added.)

⁵¹ *Id.* at 185, 282 Pac. at 187.

⁵² Kan. Laws 1864, ch. 124, § 1, at 236, repealed by Kan. Laws 1963, ch. 234, § 103, at 450.

⁵³ *But see* Commonwealth v. Peters, 2 Mass. 125 (1806). *B*, one Abraham Lincoln, had erected a dam on a stream to raise a pond for his mill. Proposed highway alterations would make *B*'s dam worthless. *A* agreed to build a new dam for *B* on land used for that part of the highway which was to be discarded, the title to which was in *C*. The Supreme Judicial Court of Massachusetts held that *B* could be compensated only in money. One Justice also thought that *A* had no title to convey, since it had taken only an easement from *C* which terminated when the land was no longer used as a road.

It appears that *B* was related to the President of the same name through one Samuel Lincoln, their nearest common ancestor, who emigrated from England to Massachusetts in 1637. *B* was a supervisor of the revenue for Worcester County, chairman of the selectmen of the town, and a representative in the State Legislature from 1809 to 1823. He is described as having been fond of fun and given somewhat to practical jokes. *C* in this case was one Anna Bigelow, apparently *B*'s mother-in-law. See LEA & HUTCHINSON, THE AN-

C. Analysis

Cases involving substitute condemnation can be divided into two groups, according to the character of *B*'s activity. *C*, the ultimate condemnee, protests in each case that his land has not been taken for a public use. To decide whether he is correct, the theoretical justifications for substitute condemnation should be considered.

If the condemnation can be valid only if *B* will use *C*'s land in a way that benefits the public, the device is merely a combination of two ordinary condemnations. *B*'s land is taken for one public use and *C*'s land for another. Under the two-use doctrine it is a matter of no concern that *A* rather than *B* condemns *C*'s land.⁵⁴ Since the activity on *C*'s land constitutes a public use, the question of whether *A* can take *B*'s land is, as far as *C* is concerned, irrelevant.⁵⁵

If *B* will not conduct an activity which benefits the public, however, the theory is different. The cases which have validated takings of this kind have held that the second taking is *incident to* the taking of *B*'s land.⁵⁶ The second taking is considered as being part of the first transaction. According to this theory, the taking of *C*'s land is a *means* to an end—the end being the public use to which *A*'s improvement is devoted.⁵⁷ *C*'s land is, in other words, taken for the same purpose for which *B*'s land is taken; the fact that it will be used to compensate *B* means only that the relation to the desired end is indirect.

It cannot be denied, however, that *B*'s use of *C*'s land will be different than *A*'s use of *B*'s land. In an incident-to taking, it is not *B*'s use which justifies the condemnation. The *use* of the land which is beneficial is its use as a means of compensation. Yet this concept of use is novel in that it does not involve activity on the land. Normally, uses of land are considered public if the activity to be conducted there is beneficial.⁵⁸ The incident-to rationale may represent, therefore, an expansion of the idea of use beyond the confines of activity. One court, by distinguishing the taking from the subsequent use, has suggested this result: "The traditional concept of use as the keystone of eminent domain has been en-

CESTRY OF ABRAHAM LINCOLN 137 (1909); W. LINCOLN, HISTORY OF THE LINCOLN FAMILY 169-73 (1923).

⁵⁴ See *Fitzsimons & Galvin, Inc. v. Rogers*, 243 Mich. 649, 220 N.W. 881 (1928); *Langenau Mfg. Co. v. City of Cleveland*, 159 Ohio St. 525, 112 N.E.2d 658 (1953); *Tiller v. Norfolk & W. Ry.*, 201 Va. 222, 110 S.E.2d 209 (1959).

⁵⁵ See *Langenau Mfg. Co. v. City of Cleveland*, *supra* note 54.

⁵⁶ See *Dohany v. Rogers*, 281 U.S. 362 (1930); *Brown v. United States*, 263 U.S. 75 (1923); *Smouse v. Kansas City So. Ry.*, 129 Kan. 176, 282 Pac. 183 (1929); *Pitznogle v. Western Md. R.R.*, 119 Md. 673, 87 Ail. 917 (1913).

⁵⁷ See *Brown v. United States*, *supra* note 56, at 82.

⁵⁸ See, e.g., CAL. CODE CIV. PROC. § 1238.

larged in modern thought and cases. We find it described as public purpose. The variation in the term from 'use' to 'purpose' indicates a progression in thought. The idea is that the taking itself, as distinguished from the subsequent use of the property, may be required in the public interest.⁵⁹

The use of land as a means of compensation can be considered a public use if it is recognized that *C*'s land will fulfill *A*'s obligation to *B*. *A*'s obligation is, of course, to provide just compensation. If *B* can be justly compensated only if he is given *C*'s property, it follows that *A* can discharge his obligation only by taking *C*'s land. If *A* is a public body, *C*'s property is used to discharge a public obligation, a use that does not seem far afield from traditional notions of public use. If *A* is a private body invested with the power of eminent domain, it seems more difficult to conceive the discharge of his obligation as a public use. *A*'s obligation to *B* is, however, no weaker because *A* is a private body. The question in such a case is naked: whether it is more in the public interest that one whose property has been taken for a public use be justly compensated, or whether *C*, the only person from whom just compensation for *B* can be obtained, should be allowed to hold his property inviolate.⁶⁰

The discussion of compensation as a public use implies limitations

⁵⁹ *Schneider v. District of Columbia*, 117 F. Supp. 705, 716 (D.D.C. 1953), *aff'd as modified sub nom.*, *Berman v. Parker*, 348 U.S. 26 (1954). The District Court goes on to say: "That the Government may do whatever it deems to be for the good of the people is not a principle of our system of government. Nor can it be, because the ultimate basic essential in our system is that individuals have inherent rights, and as to them the powers of government are sharply limited. There is no general power in government, in the American concept, to seize private property. Hence it is universally held that the taking of private property of one person for the private use of another violates the due process of law clauses of the Fifth and Fourteenth Amendments." *Ibid.* The court cites *Cooley on Constitutional Limitations*, which states: "The right of eminent domain, it has been said, 'does not imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation, where the public interest will be in no way promoted by such transfer.' It seems not to be allowable, therefore, to authorize private roads to be laid out across the lands of unwilling parties by an exercise of this right." 2 COOLEY, CONSTITUTIONAL LIMITATIONS 1124-26 (8th ed. 1927). The use of land as a means of compensation does not, it is submitted, run afoul of either of these authorities. If it is accepted that the just compensation of *B* is in the public interest, then the taking of *C*'s property is justified if his land is the only means available of providing just compensation.

⁶⁰ Consider Jeremy Bentham's example: "I possess a piece of land from which I derive a considerable revenue, but which I can approach only by a road running along the edge of a river. The river overflows and washes away the road. My neighbour obstinately refuses me a passage along a strip of land which is not worth the hundredth part of my field. Ought I to lose my all through the caprice or hostility of an unreasonable neighbour? But to prevent the abuse of a principle so delicate, rigorous rules ought to be laid down. I say, then, that forced exchanges ought to be permitted to prevent a great loss, as in the case of a field rendered inaccessible except by a passage through another." BENTHAM, *THE THEORY OF LEGISLATION* 147-48 (Ogden ed. 1931).

on substitute condemnation. The limitations have not, however, been clearly defined. The taking of *C*'s land has been allowed where it was a "necessary step"⁶¹ in *A*'s improvement and substitution the "best means of making the parties whole,"⁶² where it was an essential part of *A*'s improvement,⁶³ where it was "incident to" the taking of *B*'s land,⁶⁴ where it was "inconsequential compared to the public use,"⁶⁵ and where it was a by-product of *A*'s project.⁶⁶

Generalizing from these holdings, it may be concluded that *C*'s land will be considered to have been taken for a public use when (1) there is a *close factual connection* between the two condemnations, and when (2) because of the exigencies of the factual situation, fairness requires that *B* be compensated in land.

The phrase "close factual connection" is offered as an expression descriptive of the meaning which courts have given the concept "incident to" and its corollaries. In all cases examined, *C*'s land was near *B*'s.⁶⁷ Geographic proximity would thus seem to be an element of the connection. Further, *C*'s land was in each case taken to replace *B*'s. The limitation of a close factual connection would require, therefore, that *C*'s land be in fact taken for the purpose of compensating *B*, and not merely for *A*'s convenience or *B*'s pleasure.⁶⁸

The second conclusion is that "incident-to" substitute condemnation should be limited to situations where fairness requires that *B* be compen-

⁶¹ *Brown v. United States*, 263 U.S. 78, 84 (1923).

⁶² *Id.* at 83.

⁶³ *Dohany v. Rogers*, 281 U.S. 362, 366 (1930).

⁶⁴ *Pitznogle v. Western Md. R.R.*, 119 Md. 673, 679, 87 Atl. 917, 919 (1913).

⁶⁵ *Smouse v. Kansas City So. Ry.*, 129 Kan. 176, 186, 282 Pac. 183, 187 (1929).

⁶⁶ *Luke v. Massachusetts Turnpike Authority*, 337 Mass. 304, 149 N.E.2d 225 (1958).

An easement was taken across the plaintiff's land to provide access to land deprived of its connection with a street by the construction of a highway. The Supreme Judicial Court of Massachusetts said: "If the easement or the private way should be viewed in the abstract, no public purpose would appear. Such an approach, however, would be closing the eyes to reality. The laying out of the turnpike the length of the Commonwealth and the acquisition of numerous sites essential to that object are attributes of one huge undertaking. Procuring an easement and creating a right of way for the benefit of parcels of land incidentally deprived of all or some means of access to an existing way are but a by-product of that undertaking." *Id.* at 309, 149 N.E.2d 228.

⁶⁷ See, e.g., the plats in *Pitznogle v. Western Md. R.R.*, 119 Md. 673, 676, 87 Atl. 917, 918 (1913), and *Smouse v. Kansas City So. Ry.*, 129 Kan. 176, 181, 282 Pac. 183, 185 (1929); cf. *State Highway Comm'n v. Morgan*, 248 Miss. 531, 160 So. 2d 77 (1964), where substitute condemnation was disallowed because the easement to be granted *B* would not connect with any easement of right vested in him, but only with a permissive use across *C*'s land which *C* could terminate at any time.

⁶⁸ For example, in a situation similar to that presented in the *Pitznogle* case, *supra* note 28 and accompanying text, the limitation of a close factual connection would not permit a substitute condemnation of *C*'s beach property in Los Angeles if *A* condemned *B*'s road in San Francisco.

sated in land. Such a suggestion forces a reassessment of the traditional idea that money can, in every case, be a "full and perfect equivalent" of the land taken.⁶⁹ By allowing substitute condemnation, the courts may have implicitly recognized that *C*'s bargaining position would be extraordinary if *B* were compensated in money and was still in need of *C*'s land.⁷⁰ The Supreme Court in *Brown v. United States* stressed the point that compensation in money would have been inadequate, and concluded that "a method of compensation by substitution would seem to be the best means of making the parties whole."⁷¹ Significantly, the Court did not conclude that compensation in money would have been impossible, for obviously compensation in money will be just to the condemnnee in any case if the award is large enough. Thus the conclusion that substitution is the best means of making the parties whole would seem to be equivalent to holding that, because of the factual situation, it is more just that *C* receive money than *B*.

D. Compulsory Substitution

From the premise that incident-to substitute condemnation is limited to situations where *B* cannot otherwise be justly compensated, it follows that *B* should be able to compel *A* to take *C*'s land. No court has, however, reached this conclusion.

It is well settled that a condemnor cannot force a condemnnee to accept compensation in a form other than money.⁷² The limitation that compensation must be pecuniary should, however, be considered only as a limitation on the condemnor. The rule is that compensation must be "a full and perfect equivalent for the land taken,"⁷³ it does not neces-

⁶⁹ *Monogahela Nav. Co. v. United States*, 148 U.S. 312, 326 (1893).

⁷⁰ Although *B* might be awarded the value of the parcel taken plus the damages to the remainder, *C* is under no compulsion to sell at this price. This result is not changed if *B* is awarded the difference between the fair market value of the property before and after the taking. Even if *B* is awarded the amount it would cost to obtain substitute land, *C* may still refuse to take that price. The dilemma results from the fact that *B* is a necessitous buyer and *C* the only seller. Unless *C* is compelled to sell, there can be no justice for *A* or *B*; either *B* will receive an inadequate award or *A* will be forced to pay an amount in excess of the true value of the land taken plus the damages to the remainder. The most equitable solution may be to force *C* to accept a fair price for his land. Substitute condemnation accomplishes this result. See 1 ORCEL, VALUATION UNDER THE LAW OF EMINENT DOMAIN §§ 47-65 (2d ed. 1953); 4 NICHOLS, EMINENT DOMAIN §§ 12.2-12.22(2) (Rev. 3d ed. 1965).

⁷¹ 263 U.S. at 82-83. (Emphasis added.)

⁷² See 3 NICHOLS, *op. cit. supra* note 70, at § 8.2.

⁷³ *Monogahela Nav. Co. v. United States*, 148 U.S. 312, 326 (1893): "The noun 'compensation,' standing by itself, carries the idea of an equivalent. Thus we speak of damages by way of compensation, or compensatory damages, as distinguished from punitive or exemplary damages, the former being the equivalent for the injury done, and the latter imposed by way of punishment. So that if the adjective 'just' had been omitted, and the provision was simply that property should not be taken without compensation, the natural import

sarily follow that equivalence may always be measured in dollars. Indeed, if *B* is situated so that substitute condemnation may be used, compensation in money must be inadequate.⁷⁴ *B* should therefore be able to compel *A* to take *C*'s land.

Compulsory substitute condemnation is arguably a breach of the separation of powers. As a power inherent in sovereignty,⁷⁵ eminent domain can be exercised only by the sovereign or his agents.⁷⁶ Were a court to compel the exercise of the power, or the particular manner of its exercise, the court would conceivably be acting as a legislature.⁷⁷ Secondly, it could be argued that "just compensation" denotes payment in money,⁷⁸ and that the cases requiring condemnors to pay money also require condemnees to accept it.⁷⁹

of the language would be that the compensation should be the equivalent of the property. And this is made emphatic by the adjective 'just'. There can, in view of the combination of these two words, be no doubt that the compensation must be a full and perfect equivalent for the property taken."

⁷⁴ See note 60 *supra* and accompanying text.

⁷⁵ *Kohl v. United States*, 91 U.S. 367, 371-72 (1875); *Gilmer v. Lime Point*, 18 Cal. 229, 251 (1861).

⁷⁶ See *People v. Superior Court*, 10 Cal. 2d 288, 295-96, 73 P.2d 1221, 1225 (1937): "It is a well established legal principle that although the power of eminent domain is inherent in sovereignty, nevertheless neither the state itself nor any subsidiary thereof may lawfully exercise such right in the absence of precedent legislative authority so to do."

⁷⁷ In holding that the necessity of a taking was not a justiciable issue, the California Supreme Court cited as examples of questions of necessity "the questions of the necessity for making a given public improvement, the necessity for adopting a particular plan therefor, [and] the necessity for taking particular property, rather than other property, for the purposes of accomplishing such public improvement . . ." *People ex rel. Dep't of Pub. Works v. Chevalier*, 52 Cal. 2d 299, 307, 340 P.2d 598, 603 (1959). These questions were held to be exclusively for the legislature. *Ibid*; see notes 117-18 *infra* and accompanying text.

⁷⁸ *United States v. Miller*, 317 U.S. 369 (1943). In *Seaboard Air Line Ry. v. United States*, 261 U.S. 299, 304 (1923), it was said: "The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. . . . It rests on equitable principles, and it means substantially that the owner shall be put in as good a position pecuniarily as he would have been if his property had not been taken." See also *Vanhorne's Lessee v. Dorrance*, 2 U.S. (2 Dall.) 304, 315 (C.C. Pa. 1795): "No just compensation can be made except in money. Money is a common standard, by comparison with which the value of any thing may be ascertained. It is not only a sign which represents the respective values of commodities, but an universal medium, easily portable, liable to little variation, and readily exchanged for any kind of property. Compensation is a recompense in value, a *quid pro quo*, and must be in money. True it is, that land or any thing else may be a compensation, but then it must be at the election of the party; it cannot be forced upon him." Compensation in land was in this case to be forced on *B*, not required of *A*.

⁷⁹ See *Chicago, M. & St. P. Ry. v. Melville*, 66 Ill. 329 (1872). See also *Railroad Co. v. Halstead*, 7 W. Va. 301 (1874), where jury awards which included duties on condemnors to build or maintain objects for the benefit of condemnees were overturned on the theory that the condemnor was obliged only to pay money. In *Hill & Aldrich v. The Mohawk & H.R.R.*, 7 N.Y. 152 (1852), an award to the defendants in a condemnation action brought by a railroad included an easement. There the court held that "privileges of this kind must de-

Despite these arguments, however, a denial of substitute condemnation will prevent *B* from being made whole, even if, by definition of the words, he is "justly compensated" when paid. It would be inconsistent to allow substitute condemnation where fairness requires it but not to compel it if *A* refuses. A court might be driven to perform an admittedly legislative function if the condemnor refuses to act.⁸⁰

III

SUBSTITUTE CONDEMNATION IN CALIFORNIA

A. Public Use

The power to designate what uses are public is vested in the California Legislature.⁸¹ For the power to be exercised, therefore, there must exist a legislative declaration that a proposed use is public.⁸² Whether a use is *in fact* public is ultimately decided by the courts,⁸³ although the legislative declaration is given great respect; any doubts are to be

pend upon the agreement of the parties. The [jury of] appraisers . . . [has] no color of authority in the premises. They could neither compel the corporation to make the grant, nor the owners to accept it." *Id.* at 157. In *Chicago, S.F. & C. Ry. v. McGrew*, 104 Mo. 282, 15 S.W. 931 (1891), the condemnor's proffered evidence that it had tendered a use of land to the condemnee was held to have been rightfully excluded: "[S]uch a reservation must have been by consent of both parties; neither could have been required to grant or accept them." *Id.* at 298, 15 S.W. at 935. See also *In re Morse*, 35 Mass. (18 Pick.) 443 (1836), where it was said that although damages could be awarded only in money, a ratification by the condemnee would validate an award in land.

⁸⁰ *But cf.* STAFF OF THE HOUSE COMM. ON PUBLIC WORKS, 87TH CONG., 1ST SESS., BACKGROUND OF NEED FOR REVIEW OF PROCEDURES IN, AND COMPENSATION FOR, REAL-PROPERTY ACQUISITIONS 10 (Comm. Print 1961): "The suggestion that instead of compensating a person in dollars, for property taken, we should either provide a substitute or physically relocate his existing improvements, has heretofore been considered contrary to our basic concepts, with no duty on the Government to replace in kind that which it must take for public use. The Government's obligation to relocate facilities has been confined to roads and utilities, the continuance of which are in the public interest."

⁸¹ *Kern County High School Dist. v. McDonald*, 180 Cal. 7, 13, 179 Pac. 180, 183 (1919).

⁸² *People v. Superior Court*, 10 Cal. 2d 253, 295-96, 73 P.2d 1221, 1225 (1937); *Lindsay Irr. Co. v. Mehrtens*, 97 Cal. 676, 32 Pac. 803 (1893). It has been recognized that, as a practical matter, condemnation must be left in the hands of agents of the state. See *Linggi v. Garovotti*, 45 Cal. 2d 20, 286 P.2d 15 (1955); *Moran v. Ross*, 79 Cal. 159, 160, 21 Pac. 547, 548 (1889). California has provided that private persons may, without further legislative action, as "agents of the state," exercise the power of eminent domain for the uses set forth in § 1238 of the Code of Civil Procedure. CAL. CIV. CODE § 1001; see *Linggi v. Garovotti*, *supra*.

⁸³ *Lindsay Irr. Co. v. Mehrtens*, *supra* note 82; *City of Menlo Park v. Artino*, 151 Cal. App. 2d 261, 267, 311 P.2d 135, 140 (1957); *University of So. Cal. v. Robbins*, 1 Cal. App. 2d 523, 37 P.2d 163 (1934), *cert. denied*, 295 U.S. 738 (1935); see *County of Los Angeles v. Anthony*, 224 Cal. App. 2d 103, 36 Cal. Rptr. 308, *cert. denied*, 376 U.S. 963 (1964).

resolved in favor of validity.⁸⁴ Courts are hesitant to disagree with the legislature because whether a particular use is public is largely a matter of political judgment, an area judges are loath to enter.⁸⁵ Thus the scope of review for the issue of public use is limited—confined, perhaps, to extreme cases.⁸⁶

Although California courts will examine the nature of a proposed use, they will not examine the necessity of a taking by the state, even if fraud, bad faith, or abuse of discretion is alleged.⁸⁷ According to the California Supreme Court, the legislature is the sole judge of necessity.⁸⁸

B. Statutory Authority for Substitute Condemnation

Several California statutes provide that land may be taken for the purpose of compensation by substitution. These statutes may be divided

⁸⁴ *In re Madera Irr. Dist.*, 92 Cal. 296, 309-10, 28 Pac. 272, 274 (1891); *accord*, *University of So. Cal. v. Robbins*, *supra* note 33.

⁸⁵ See, e.g., *Stockton & V. R.R. v. City of Stockton*, 41 Cal. 147, 168, 169-70 (1877): "Public use,' 'public purpose,' and 'public policy'—the policy upon which governmental affairs are conducted for the time being—is legislative policy in the main, and 'public use' and 'public purpose' are largely dependent on this policy—notoriously varying in our country, from time to time, with the accession to power of political parties, differing from each other as to the system of measures best adapted to promote the interest of the State. The resolve of a legislative body, by which a tax is imposed, or private property taken, is, therefore, necessarily a legislative determination, that a public use is to be promoted by the tax, or the taking directed; and such a determination is the determination of a merely political question by the political department of the Government. . . . A case might, indeed, be presented in which it might appear, beyond the possibility of a question, that a tax had been imposed, or the property of a citizen had been taken for a use or purpose in no sense public; or, in the language of Chancellor Walworth . . . 'where there was no foundation for a pretense that the public was to be benefited thereby,' and in such a case it would be our duty to interfere and afford relief. But should we interfere in any other than such a case, we would but substitute a policy of our own for the legislative policy in the conduct of the affairs of the State, and substitute our will for that of the representatives of the people."

⁸⁶ See *City of Santa Ana v. Hartin*, 99 Cal. 538, 542, 34 Pac. 224, 226 (1893); *County of Los Angeles v. Anthony*, 224 Cal. App. 2d 103, 106, 36 Cal. Rptr. 308, 310, *cert. denied*, 376 U.S. 963 (1964).

⁸⁷ *People ex rel. Dep't of Pub. Works v. Chevalier*, 52 Cal. 2d 299, 307, 340 P.2d 598, 603 (1959). California Code of Civil Procedure § 1241 provides that when a taking is deemed necessary by the board of directors of various administrative districts, or by the legislative body of a county, city and county, or an incorporated city or town, such a determination is conclusive evidence of the public necessity of the improvement and that the property taken is necessary for such improvement, if the property taken is within the territorial limits of the political or administrative subdivision. In *Rindge Co. v. County of Los Angeles*, 262 U.S. 700, 709 (1923), the United States Supreme Court held that this statute did not violate the due process clause of the fourteenth amendment. The resolutions of the California Highway Commission and the California Water Commission are given similar conclusive effect. CAL. STRTS. & HIGHW. CODE § 103; CAL. WATER CODE § 251.

⁸⁸ *People ex rel. Dep't of Pub. Works v. Chevalier*, *supra* note 87, at 307, 340 P.2d at 603; *Sherman v. Butck*, 32 Cal. 241, 253 (1867).

into two groups: (1) those which allow substitute condemnation between bodies in charge of different public uses; and (2) those which simply grant the power of substitute condemnation to governmental agencies.

Section 104.2 of the Streets and Highways Code is an example of the first group. It provides that if *A*, the Department of Public Works, condemns for state highway purposes land which under *B* is devoted to some other public use, *A* may, with *B*'s consent, condemn *C*'s land for *B*. *C*'s land will thus be used by *B* for its public use, and *A* will use *B*'s land for a state highway.⁸⁹

Section 104(b) of the Streets and Highways Code is representative of the second group of statutes. It allows *A*, the Department of Public Works, to acquire real property which the Department considers necessary for the purpose of exchanging it for other real property to be used for rights of way.⁹⁰ *A* may, in other words, condemn *C*'s land for *B*, whose property has been taken for a state highway.⁹¹

The statutes authorizing substitute condemnation have not been interpreted by the California appellate courts.⁹² It would appear, however, that the statutes of the first group pose no public use problems. They authorize takings which can be classified under the two-use doctrine.⁹³ *B*'s activity will constitute a public use of *C*'s land, and *A*'s use of *B*'s land will be public. *C* cannot complain, therefore, that because of substitute condemnation his land has not been taken for a public use, although he can object that *B*'s use of his property will not be public.⁹⁴ Since the fact that his land is taken through the process of substitute condemnation is for *C* irrelevant, it would seem that the rules which normally

⁸⁹ See also California Streets and Highways Code §§ 943.2, 943.4, enacted in 1965, which grant to county boards of supervisors similar powers with respect to county highway purposes and California Water Code § 255, which grants to the Department of Water Resources the power to condemn land for purposes of exchange with another person or agency in charge of a public use.

⁹⁰ See also California Streets and Highways Code § 943(a), which provides that a county board of supervisors may "acquire any real property or interest therein for the uses and purposes of county highways, including real property adjacent to property being condemned for the purpose of exchanging the same for other real property to be used for widening county highways." California Water Code § 253(b) grants the Department of Water Resources similar powers.

⁹¹ California Streets and Highways Code § 102 and California Water Code § 250 provide that the Department of Public Works and the Department of Water Resources, respectively, may exercise the power of eminent domain for any property they are authorized to acquire.

⁹² California Streets and Highways Code § 104.2 was discussed in a recent case, *People ex rel. Dep't of Pub. Works v. Garden Grove Farms*, 231 Cal. App. 2d 666, 42 Cal. Rptr. 118 (1965), but the issue was not properly before the court. *C*, the appellant, raised the issue of compliance with § 104.2 only in his closing brief, and the court thus disregarded the question.

⁹³ See discussion at notes 18-27 *supra* and accompanying text.

⁹⁴ See note 21 *supra* and accompanying text.

govern condemnation proceedings should be applicable to takings authorized by these statutes.

The statutes of the second group,⁹⁵ also uninterpreted, may be more troublesome. They authorize substitute condemnation but do not require that *B*'s use of *C*'s property be a separate public use. The statutes apparently contemplate takings of the type approved in *Brown v. United States*⁹⁶ and *Pitznogle v. Western Md. R.R.*⁹⁷

As suggested earlier in this Comment, this type of substitute condemnation should be restricted to cases where (1) there is a close factual connection between the two takings, and (2) because of the factual situation, fairness requires that *B* be compensated in land.⁹⁸

Perhaps some support for this conclusion may be found in a 1939 amendment to section 104(b) of the Streets and Highways Code. The amendment deleted the former second sentence, which read: "Real property may be acquired for such purposes only when the owner of the property needed for a right of way [B] has agreed in writing to the exchange and when in the opinion of the commission, an *economy* in the acquisition of the necessary right of way can be effected thereby."⁹⁹ This amendment may mean that the use of substitute condemnation merely to reduce costs is no longer approved by the legislature. That result is in any event required by *Brown v. United States*, where the Supreme Court found the taking of *C*'s land to be a "necessary step" in the improvement itself and not merely an attempt to "reduce costs by land speculation."¹⁰⁰ If substitute condemnation cannot be used merely to reduce costs, it follows that the statutes are restricted in their application to situations where, as in *Brown*, substitution is the best means of making the parties whole.¹⁰¹

Although the California Supreme Court has held that any exercise of the power of eminent domain must be preceded by a legislative declaration that the use for which the property is taken is public, a governmental agency empowered to take land for specific uses may also have the implied power to take property for the purpose of compensating its condemnees.

⁹⁵ CAL. STRETS. & HIGHW. CODE §§ 104(b), 943(a); CAL. WATER CODE § 253.

⁹⁶ 263 U.S. 78 (1923); see note 31 *supra* and accompanying text.

⁹⁷ 119 Md. 673, 87 Atl. 917 (1913); see note 28 *supra* and accompanying text.

⁹⁸ See notes 66-67 *supra* and accompanying text.

⁹⁹ Cal. Stats. 1939, ch. 686, § 1, at 7201. (Emphasis added.) Although the first part of the amendment omits the requirement that *B* agree to the substitution, it would seem that, as a constitutional matter, his consent is required. See note 72 *supra* and accompanying text.

¹⁰⁰ 263 U.S. at 84.

¹⁰¹ *Id.* at 83.

Earlier it was suggested that substitute condemnation be approached with the distinction between the uses of *B*'s and *C*'s land in mind.¹⁰² Courts have, however, conceived the second takings as being for the same purpose as the first, with one use serving both condemnations.¹⁰³ Under such a theory an agency authorized to exercise the power of eminent domain could perhaps take substitute lands without express statutory authority.¹⁰⁴ The California Legislature has, however, granted two agencies the power to take substitute lands; this designation is perhaps good evidence that in California other agencies were not intended to have it.

C. Analogies

The California courts have not dealt with substitute condemnation directly. An instructive analogy to the problem can, however, be drawn from a recent urban renewal case. *Redevelopment Agency v. Hayes*¹⁰⁵ concerned the condemnation of blighted areas in San Francisco. The district court of appeal held that in the presence of compelling community economic need, the power of eminent domain could be used to take such areas for redevelopment.¹⁰⁶

The court adopted the reasoning of the federal district court in

¹⁰² See notes 57-60 *supra* and accompanying text.

¹⁰³ See *Dohany v. Rogers*, 281 U.S. 362, 366 (1930); *Brown v. United States*, 263 U.S. 78, 81-82 (1923); *Feltz v. Central Neb. Pub. Power & Irr. Dist.*, 124 F.2d 578 (8th Cir. 1942); *Benton v. State Highway Dep't*, 111 Ga. App. 861, 865, 143 S.E.2d 396, 400 (1965); *Snouse v. Kansas City So. Ry.*, 129 Kan. 176, 282 Pac. 183 (1929); *Pitznogle v. Western Md. R.R.*, 119 Md. 673, 87 Atl. 917 (1913).

¹⁰⁴ *Cf.*, e.g., *George D. Harter Bank v. Muskingum Watershed Conservancy Dist.*, 53 Ohio App. 325, 4 N.E.2d 996 (1935), where a public corporation sought to condemn a right of way for the relocation of a railroad. The substitute condemnation was authorized by statute, but the Ohio court said: "Even if such power of eminent domain were not expressly granted . . . we are of the opinion that it would still be a lawful exercise of that power as a necessary incident to the execution and accomplishment of the official plan for which the district was organized." *Id.* at 330, 4 N.E.2d 999. *But cf.* *Wheeler v. Essex Pub. Rd. Bd.*, 39 N.J.L. 291 (Ct. Err. & App. 1877), where defendant road board condemned the plaintiff's dam and built another for him on land owned by a third person. When the dam broke it was held plaintiff had no cause of action for damages because defendant had no power to build a substitute dam. "[T]he proper and only course to have been taken in this exigency was, to have the damages occasioned to the plaintiff by the removal of the dam and the appropriation of the land upon which it stood to the public use, ascertained and paid for in the mode prescribed. The defendant had no shadow of authority to substitute, in lieu of payment, the erection of a new dam in the place of the one demolished." *Id.* at 294. The Attorney General of California has apparently concluded that it is not a necessary incident of redevelopment that redevelopment agencies obtain substitute housing for the condemnees in an urban renewal project. See 37 Ops. Cal. Att'y Gen. 190 (1961); note 115 *infra* and accompanying text.

¹⁰⁵ 122 Cal. App. 2d 777, 266 P.2d 105, *cert. denied*, 348 U.S. 897 (1954).

¹⁰⁶ *Id.* at 793, 266 P.2d at 116.

*Schneider v. District of Columbia*¹⁰⁷ that the taking of property itself, as distinguished from the subsequent use of that property, may be required in the public interest.¹⁰⁸ As suggested earlier, this distinction is important in assessing substitute condemnation, since the public use for which C's land is taken is its use as a means of compensation.¹⁰⁹ *Hayes* is therefore at least collateral authority for the proposition that the use to which C's land is to be put need not be an activity.¹¹⁰

After redevelopment, the property in *Hayes* was to be returned to private owners. This fact did not, however, determine whether the use was public: "[T]he fact that [the property] is later to be returned to private ownership subject to restrictions protecting the public use, does not make it any the less a public use."¹¹¹ Although this determination did not originate with *Hayes*,¹¹² it provides theoretical support for substitute condemnation. That B will own C's land does not detract from the public use to which C's land is put. *Hayes* also required, however, that the land be returned to private persons subject to restrictions protecting the public use.¹¹³ It would seem that this requirement is not applicable to substitute condemnations, since after B has been compensated there is no public use to protect. The restrictions requirement contemplates a continuous public interest in the land—in redevelopment, that slums and blight do not reappear.

Hayes also provides the rubric of "compelling community economic need" as the test of state power to use eminent domain.¹¹⁴ To say that

¹⁰⁷ 117 F. Supp. 705 (D.D.C. 1953), *aff'd as modified sub nom.*, *Berman v. Parker*, 348 U.S. 26 (1954).

¹⁰⁸ *Redevelopment Agency v. Hayes*, 122 Cal. App. 2d 777, 790, 266 P.2d 105, 114, *cert. denied*, 348 U.S. 897 (1954).

¹⁰⁹ See notes 57-58 *supra* and accompanying text.

¹¹⁰ See notes 58-59 *supra* and accompanying text.

¹¹¹ 122 Cal. App. 2d at 803, 266 P.2d at 122.

¹¹² See *University of So. Cal. v. Robbins*, 1 Cal. App. 2d 523, 37 P.2d 163 (1934), *cert. denied*, 295 U.S. 738 (1935). See also *Housing Authority v. Dockweiler*, 14 Cal. 2d 437, 44 P.2d 794 (1939); *County of Los Angeles v. Anthony*, 224 Cal. App. 2d 103, 36 Cal. Rptr. 308, *cert. denied*, 376 U.S. 963 (1964). In *Anthony* appellant offered to prove that the Hollywood Motion Picture and Television Museum, for which his land had been condemned, was to be operated at a profit. This evidence was held to have been properly excluded. That the museum operators would make a profit did not destroy the public character of the enterprise. *Id.* at 106-07, 36 Cal. Rptr. at 310.

¹¹³ 122 Cal. App. 2d at 803, 266 P.2d at 122. See also *City & County of San Francisco v. Ross*, 44 Cal. 2d 52, 57, 279 P.2d 529, 532 (1955), where it was held that the power of eminent domain could not be exercised to acquire a site for a parking garage when the proposed lease between the city and the garage operators lacked controls "designed to assure that [the] use of the property condemned [would] be in the public interest."

¹¹⁴ 122 Cal. App. 2d at 793, 266 P.2d at 116. For a discussion of "compelling community economic need," see Siegel, *Memorandum on New Development Techniques*, in APPENDIX TO THE REPORT ON HOUSING IN CALIFORNIA 359 (1963).

in every case the compensation of *B* is a compelling economic need is to strain the analogy.¹¹⁵ Yet situations can be conceived where substitute condemnation would be necessary to avoid great economic loss.¹¹⁶ In such a case, "compelling community economic need," as used in *Hayes*, could be precedent for upholding the taking of *C*'s land.

D. Should the Necessity of the Taking Be a Justiciable Issue?

There are two concepts of necessity in eminent domain: (1) the necessity of the exercise of the power; and (2) the necessity of the particular manner of its exercise. The first concept involves the question of whether the condemnor must use his power of eminent domain to accomplish given ends. If he must exercise the power, the question involved in the second concept is whether he must take a particular estate or a particular parcel. It is submitted that one who questions whether land has been taken for a public use in a substitute condemnation must also be allowed to question whether in either sense the taking is necessary.

In an ordinary condemnation, the questions of necessity and public use are separable.¹¹⁷ Whether a taking is necessary depends on political judgments of choice.¹¹⁸ Whether the land has been taken for a public use

¹¹⁵ See 37 Ops. CAL. ATT'Y GEN. 190 (1961), where the question was presented whether legislation empowering a redevelopment agency to acquire property by eminent domain and make this land available to persons displaced as the result of the redevelopment would be constitutional. The Attorney General of California concluded that such a taking would not be for a public use. Compare *McLean v. City of Boston*, 327 Mass. 118, 97 N.E.2d 542 (1951), discussed at note 25 *supra* and accompanying text; *Watkins v. Ughetta*, 273 App. Div. 969, 78 N.Y.S.2d 393, *aff'd*, 297 N.Y. 1002, 80 N.E.2d 457 (1948).

¹¹⁶ Consider, for example, the facts of *Clark v. Nash*, 198 U.S. 361 (1905): Nash sought to condemn a right of way across Clark's land for the purpose of widening a ditch which would carry water from a creek in which Nash owned riparian rights to Nash's arid land, which without irrigation would be unproductive. By state statute Nash had the power to condemn a portion of Clark's land for such a purpose. Affirming the Utah Supreme Court, the United States Supreme Court held that such a taking was for a public use. Significantly, Nash's land was absolutely valueless without irrigation. The proposed ditch would be thirty inches wide. If no statute had existed declaring such use to be public, and if Nash had previously had a ditch which *A* took by eminent domain, it is suggested that Nash would have had a good cause of action for a substitute condemnation of a ditch across Clark's land. In such circumstances a compelling community economic need exists.

¹¹⁷ *People ex rel. Dep't of Pub. Works v. Chevalier*, 52 Cal. 2d 299, 306, 340 P.2d 598, 602 (1959); see *Rindge Co. v. County of Los Angeles*, 262 U.S. 760, 768-69 (1923).

¹¹⁸ See *People ex rel. Dep't of Pub. Works v. Chevalier*, note 117 *supra* at 307, 340 P.2d at 603; note 9 *supra*. In *Rindge Co. v. County of Los Angeles*, *supra* note 117, at 709, it is said: "The necessity for appropriating private property for public use is not a judicial question. This power resides in the legislature, and may either be exercised by the legislature or delegated by it to public officers. Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the state may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the 14th Amendment."

depends on the activity to be conducted there. The determinants of the two issues, the judgments of choice and the activity on the land, are not the same.

In a substitute condemnation, however, the questions of public use and necessity are inseparable. Whether land has been taken for a public use in a substitute condemnation will depend on whether fairness requires that *B* be compensated in land and whether there is a close factual connection between the taking of *B*'s and *C*'s land. Whether it is necessary to exercise the power of eminent domain—the first concept of necessity—will turn on whether *B* can be fairly compensated only in land. Whether it is necessary to take *C*'s property—the second concept—depends on whether there is a close factual connection between the two takings. To argue that *C*'s land has not been taken for a public use is to dispute the necessity of the taking, because the determinants of the two issues are the same. Necessity should therefore be justiciable. It is not suggested that the issues of public use and necessity are indistinguishable, but rather that, in substitute condemnations, they are so entwined that *C* must be allowed to dispute both.

CONCLUSION

The state of the law in California regarding the condemnation of substitute lands remains uncertain. The legislature has not made clear the extent of the authority granted the Department of Public Works, the Department of Water Resources, and county boards of supervisors. The courts will be forced to determine rules for such takings.

As the concept of public use has expanded, the meager precedent for substitute condemnation has become more relevant. Although the device should not be used simply to allow *B* to speculate in land and *A* to cut costs, related California cases may be interpreted to permit its use when substitution is the best means of making whole the parties to the transaction. If *B* will not conduct an activity which benefits the public, the taking of *C*'s land is significantly different from an ordinary condemnation. To ensure in such a case that the property has been taken for a public use, necessity should be a justiciable issue.

Stanley H. Williams