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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

CITY OF RIPON, Plaintiff and Appellant, v. MARSHALL C. SWEETIN et al., Defendants and Respondents.	C036592, C037212 (Super. Ct. No. CV006448) ORDER MODIFYING OPINION AND DENYING REHEARING [CHANGE IN JUDGMENT]

BY THE COURT:

The opinion filed July 30, 2002, is modified as follows:

1. On page 24 of the slip opinion, immediately before the "DISPOSITION," add:

In a petition for rehearing, defendants contend their property was entitled to city water and sewer services pursuant to the 1994 utility easement they signed allowing the City to run pipelines across their property, because the easement described their property as having city water and sewer services. However, no such description appeared in the grant of easement. The easement did refer to the City's Resolution to

acquire the easement, and the Resolution had an attachment, "Exhibit A," which stated under "Site Description" that the property "lacks curbs, gutters, and sidewalks, and is currently zoned M-1, industrial by the City of Ripon. [¶] *Utilities include* electricity, telephone, natural gas, *city water, and sewer*." (Italics added.) However, the same Exhibit A stated under "Description of Part Taken" that "This acquisition will be beneath the ground and apparently *none of the improvements or present operation will be affected*." (Italics added.) Moreover, the Resolution itself stated the purpose of the acquisition was "to install certain infrastructure along Jack Tone Road which will provide necessary services to properties *in the northern areas of the City* . . . ." (Italics added.) As indicated, defendants' property was to the south of the highway.

Thus, the easement did not unequivocally entitle defendants' property to city water and sewer services, and it is undisputed that defendants' property was not hooked up to the city water and sewer services. Defendants' argument about the easement is one that would need to have been presented in a *Klopping* claim for unreasonable precondemnation conduct by the City.

2. In the DISPOSITION, on page 24, line 3, of the slip opinion, delete "The City shall recover its costs on appeal" and replace it with "The parties shall bear their own costs on appeal."

This modification changes the judgment.

Defendants' petition for rehearing is denied.

SIMS, Acting P.J.

NICHOLSON, J.

KOLKEY, J.