

IRA

Decision No. 15720.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of }
EAST BAY WATER COMPANY, }
a corporation, for an order authori- }
zing the sale of real property. }

Application No. 12129

McKee, Tasheira and Wahrhaftig, for applicant.

BY THE COMMISSION:

ORDER

The East Bay Water Company asks permission to grant to the East Bay Municipal Utility District, its successors and assigns, a perpetual right of way easement 100 feet in width at a depth of ten feet or more under the surface of the ground of the hereinafter described lands, for the construction, maintenance and operation of a tunnel aqueduct, under such described lands, situate in Contra Costa County.

By the agreement entered into between the East Bay Water Company and East Bay Municipal Utility District, the District is given the right to construct a tunnel under the

following described lands and under the following conditions:-

"BEGINNING at a point on the boundary line between the lands of Manuel Alves and Antonio C. Lemos, and the East Bay Water Company, which point bears N. $0^{\circ} 37'$ W. 26.3 feet from a concrete monument at the southwest corner of the said Alves and Lemos tract, and running thence N. $85^{\circ} 48'$ W. 2312.03 feet to a point on the boundary line between the lands of the East Bay Water Company and the Orinda Park Tract, which line is also the westerly boundary of Lot 1 of the Rancho El Sobrante, said point bearing N. $45^{\circ} 52' 14''$ E. 1058.77 feet along said westerly boundary of the said Lot 1 from a concrete monument, and running thence N. $45^{\circ} 52' 14''$ E. 133.17 feet along the westerly boundary of the said Lot 1; thence S. $85^{\circ} 48'$ E. 2214.35 feet to a point on the westerly boundary of the said Alves and Lemos Tract; thence S. $0^{\circ} 37'$ E. 100.37 feet along the westerly boundary of the said Alves and Lemos Tract to the point of beginning, and containing an area of 5.20 acres.

Said parcel being a portion of Lot 1 of the Rancho El Sobrante, as said Lot is shown on the Map accompanying and forming a part of the final report of the referees in partition of said Rancho.

RESERVING, nevertheless, to the owner of said land through which said easement is taken, all springs and water rights without any right on the part of East Bay Municipal Utility District to take or diminish the flow of any of said springs in the construction or in the maintenance of said aqueduct tunnel, unless full compensation therefor be paid to said owner if and whenever the flow of said springs, or any of them, may be diminished due to the construction or to the maintenance of said tunnel.

FURTHER RESERVING to the owner of the land through which said easement is taken, the full right to the use of the surface of said land for any purpose whatsoever, provided the same does not interfere with the easement herein granted, and also reserving to the owner of said land the right to construct and maintain pipe or pipe lines under the surface of said land, provided the same shall not interfere with the easement herein granted.

IT IS UNDERSTOOD that the surface of said land shall be fully protected by the Grantee herein in the construction and maintenance of any tunnel, and that if the same be damaged by said construction or maintenance of said tunnel, the Grantee shall compensate Grantor therefor."

The Railroad Commission has considered the request of applicant and believes that this is a matter in which a public

hearing is not necessary and that the application should be granted,
therefore,

IT IS HEREBY ORDERED that the East Bay Water Company
be, and it is hereby, authorized to grant, sell and convey to the
East Bay Municipal Utility District a tunnel easement under the
surface of the lands described in this order, said grant, sale and
conveyance to be made in accordance with the terms and conditions
of the agreement entered into between East Bay Water Company and
East Bay Municipal Utility District dated October 20, 1925.

DATED at San Francisco, California, this 5th day
of December, 1925.

W. B. Brundage

C. Seacey

Leon Whitell

Commissioners.