

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application )  
of CITY OF SANTA MONICA for an )  
order of the Railroad Commission )  
fixing and determining the just )  
compensation to be paid to )  
IRWIN HEIGHTS WATER COMPANY for )  
its lands, property and rights. )

ORIGINAL

Application No. 1562.

Decision No. 2527

Victor R. McLucas and John Mellen for  
City of Santa Monica.  
Dennison and Towner, by C. C. Towner, for  
Irwin Heights Water Company.

HEBLEN, Commissioner.

O P I N I O N.

This is a proceeding to fix and determine the just compensation to be paid by City of Santa Monica, a municipal corporation, for the lands, property and rights of Irwin Heights Water Company, a public utility engaged in the business of selling water for domestic and municipal use, to some extent, for irrigation purposes in a portion of the City of Santa Monica. This proceeding is brought under the provisions of Section 47 of the Public Utilities Act.

The petition filed by the City of Santa Monica alleges, in effect, that petitioner is a municipal corporation duly organized and existing under the laws of this state; that petitioner has a population of approximately 12,000 people and that its inhabitants derive water for domestic use from various wells and springs located in and around the City of Santa Monica, and owned and operated by certain water companies, including Irwin Heights Water Company; that by reason of Santa Monica's rapid growth it has been difficult for the owners of these water systems to secure funds for making the necessary extensions, additions and replacements to their respective systems; that the City Council of Santa Monica finds that the public interest and convenience of the City require the acquisition and construction of a municipal water system and that the

City of Santa Monica intends to acquire each of said water systems by eminent domain proceedings; and that the necessary ordinance preliminary to the bringing of this proceeding has been adopted by the City Council. The City asks that the Railroad Commission fix and determine the just compensation to be paid for the lands, property and rights of Irwin Heights Water Company, in accordance with the provisions of Section 47 of the Public Utilities Act.

At the hearing held in this proceeding it was stipulated that the evidence taken concurrently in Application No. 1561, being a similar application with reference to the property of Ocean Park Water Company, and Application No. 1564, being a similar application with reference to a portion of the property of City Water Company of Ocean Park, might be considered, in so far as material, as having been presented in this proceeding. Briefs have been filed and this proceeding is now ready for decision.

Irwin Heights Water Company secures its water by pumping from wells located on a parcel of land at the intersection of Marine Street and Hatch Street, on the southerly limits of the City of Santa Monica. These wells are between 60 and 75 feet deep. Three of the wells are connected up to a two-stage centrifugal pump. The water out of the fourth well flows into a reservoir which has been excavated a short distance from the other wells and is then pumped out of the reservoir. The Water Company's distributing reservoir is located at or near the intersection of Pearl Street, if extended, with Logan Avenue. The reservoir is 65½ feet wide by 225 feet long, and holds approximately 490,000 gallons. The company has also constructed near this reservoir a high tank for the purpose of supplying water to its customers on the higher elevations. The company owns a distributing system which in general covers that portion of the City of Santa Monica which is located between the right of way of Pacific Electric Railway Company on the north, the city limits on the south,

Cambridge Street on the east and the Pacific Ocean on the west, with the exception of the thickly settled territory in the southwestern portion of the general area thus described. The company serves water for domestic and municipal purposes and, to a slight extent, for irrigation. The company reported in its annual report for the year ending December 31, 1914, that it had 689 connections, of which 207 were metered. Mr. C. C. Towner testified that in 1914 the company had an average of about 650 consumers.

A description of the property to be acquired is attached to the petition herein and marked "Exhibit C." At the hearing the City filed an amended inventory which under stipulation was substituted for Exhibit "C". Several additional minor parcels of property were referred to at the hearing. At the close of the hearing it was stipulated that such additional property as was shown by the evidence might be added to the City's amended inventory, the desire of all parties being that the value herein determined should cover the Water Company's entire property. Exhibit No. 1, attached hereto, includes the entire property, in so far as I have been able to determine the same from the testimony and exhibits herein.

In its brief on file herein, the Water Company makes a final claim of between \$118,201.00 and \$128,735.00. The City in its brief makes a final claim of \$57,769.20.

I shall discuss the value of the property under the following heads:

1. Lands.
2. Physical structures and improvements.
3. Water rights.
4. Going value.

1. LANDS.

All parties have agreed to the value of the lands of Irwin Heights Water Company as follows:

Easterly portion of Block 7--Session's Sub-division,.....	\$6,000.00
Southwesterly portion of Lot 8, Block 45, East Santa Monica,.....	2,440.00
Lot 16, Block 46, East Santa Monica,.....	2,000.00
Right of way for pump line.....	500.00
Right of way for pipe line across Lot 1, Block 41,.....	100.00
Right of way for pipe line across Lots 1 and 16, Block 4,.....	100.00
Right of way for pipe line across Lots 14, 15 and 16, Block "G" Ocean Spray Tract.	75.00
Right of way for pipe line across Lots 1 and 2, Block "G" Ocean Spray Tract,.....	<u>50.00</u>
Total,.....	\$11,265.00

These prices do not include any value for developed water.

2. PHYSICAL STRUCTURES AND IMPROVEMENTS.

Estimates of the reproduction value new and of the depreciated reproduction value of the physical structures and improvements of Irwin Heights Water Company were presented on behalf of the Water Company by C. S. Burns and on behalf of the Railroad Commission by Assistant Hydraulic Engineer James Armstrong.

As shown by Water Company's Exhibit No. 3, Mr. Burns estimated a reproduction value new of these properties amounting to \$84,663.23 and a depreciated reproduction value of \$70,988.09. He estimated an additional allowance for paving cost over mains and services of \$11,997.13 under the head of reproduction cost, and \$10,177.06 under the head of depreciated reproduction cost. In Decision No. 2279, rendered on April 9, 1915, in Application

No. 1141, In the matter of the application of the Marin Municipal Water District for an order of the Railroad Commission fixing and determining the just compensation to be paid to Marin Water and Power Company for its lands, property and rights, this Commission held, both on reason and authority, that no allowance should be made, in valuing mains and services, for paving costs, unless the pavement was laid prior to the laying of the mains and services. As was there pointed out, such pavement does not in any way make the property more valuable. Subsequent to the testimony of Mr. Burns, the parties agreed upon a value of \$531.00 under the head of "estimated reproduction cost" for paving allowance in those cases in which it was necessary for the Water Company to cut through pavement for the purpose of laying mains and services.

Mr. James Armstrong presented a report showing an estimate, together with additions later agreed upon between the Water Company and himself, of \$74,429.00, under the head of "estimated reproduction cost" and \$59,023.00 under the head of "estimated <sup>depreciated</sup> reproduction cost."

Mr. Armstrong and the Water Company agreed on the items in their respective inventories and also on the ages of the respective items of the property. With slight minor exceptions, the Water Company accepted Mr. Armstrong's unit prices, but not his overhead percentages. The chief differences between the Water Company and Mr. Armstrong are as follows: \$2,000 which the Water Company claims for preliminary expenses, for which Mr. Armstrong testified that he had made an allowance in his overhead percentages; 5 per cent on the cost of pipes, for special fittings, which item was included by Mr. Armstrong in his unit prices for the pipe, which unit prices were accepted by the Water Company; an allowance of 19 per cent for overhead percentages claimed by the Water Company, as contrasted with allowances of between 8 and 16 per cent made by

Mr. Armstrong, Mr. Armstrong's allowances being added in most cases to actual cost, which cost, as testified to by Mr. Armstrong, included a number of items usually covered by the addition of overhead percentages; and depreciation computed on the straight line theory, as estimated by Mr. Armstrong, as contrasted with depreciation computed on the sinking fund theory, as estimated by Mr. Burns.

The Water Company in its brief also draws attention to an item of 4551 feet of 8-inch riveted pipe, 11 years in use, total depreciated reproduction value of \$1,734.00, which the Company believes to have been omitted by Mr. Armstrong. An examination of Mr. Armstrong's appraisal shows that this item was omitted from the detail through an error in typing, but that it was included in the totals.

Before leaving this subject, I desire to draw attention to the fact that the estimates of Mr. Burns and Mr. Armstrong each includes an estimate for reproducing the distributing system in the Marsh Tract, amounting to a sum in excess of \$10,000. Although the pipe and a portion of the cost of laying the same, totalling \$8,768.88, were donated to Irwin Heights Water Company by the owners of this tract, who desired to have water placed thereon so as to assist them in selling lots therein, the property now belongs to the Water Company and the company is entitled to be paid its fair value. On the other hand, only one consumer has been taken on in this tract during the last two years and there does not seem to be prospect for further development of the tract in the near future. These matters must be considered in estimating the fair value of the property, as will hereinafter be pointed out.

After discussing the question of the value of the physical structures and improvements, and also a claim for going concern value, the Water Company, in its brief, concludes that if a sum of \$7913.00 is added, as going concern value, to the depreciated

reproduction value as testified to by Mr. Armstrong, particularly if Mr. Armstrong's estimate is amended by adding thereto the 8-inch riveted pipe hereinbefore referred to, "the difference between the two appraisals will be so slight that the company will be disposed to accept the same as to physical assets and going value". The question of going value will be hereinafter discussed.

### 3. WATER RIGHTS.

The testimony shows that all the water used in Santa Monica is derived from wells which are located in and about Santa Monica. Mr. H. T. Malloy, who dug most of the wells which have been sunk in this vicinity during the last 25 years, and who showed intimate knowledge, from practical experience, of water conditions in this vicinity, testified that the water percolates through gravel beds starting at or near the base of the Santa Monica Mountains, a few miles west of Sherman, thence extending to a point north of Palms, thence dividing into two branches, referred to as the northerly and the southerly branch, thence re-uniting at or near the Cody Well, which is located about half a mile north of the Irwin Heights Water Company's wells, and thence passing on southeast and south of the Water Company's wells in a general southwesterly direction to the ocean. It is his opinion, based on his experience, that these gravel strata have a width of from about 400 feet to three quarters of a mile. While a few good wells have been bored off this strata, most of the producing wells in this vicinity are, according to Mr. Malloy, located on one of these two main gravel strata.

The wells of Irwin Heights Water Company have been continuously in operation for at least 8 years. Several years ago these wells were tested and it was found that at the end of 72 hours the pump was delivering 65.65 miner's inches of water. Well No. 4 was not included in this test and had previously been tested and



produced 11.65 miner's inches. Mr. C. C. Towner testified that an additional 2.7 miner's inches was secured by an enlargement of the reservoir which is located near the wells. While the Water Company thus claims 80 miner's inches of water, it is fundamental that an appropriator of water is entitled only to the amount of water actually taken and used, and not to the amount which might possibly be diverted through his ditch or from his well.

Smith vs. Hawkins, 120 Cal. 86; Senior vs. Anderson, 115 Cal. 496; Duckworth vs. Watsonville Water and Light Company, 150 Cal. 521, 536.

Accordingly, it becomes necessary to consider the amount of water actually taken and used by Irwin Heights Water Company. The evidence on this point is conflicting. The City presented estimates, based upon the amount of power consumed and the consumption through meters, which would seem to indicate that the number of miner's inches actually used is not in excess of 27.4 miner's inches. The computation based on the meter use, omits the water consumed for irrigation purposes, for street sprinkling and for settling of pipe, as well as losses in transmission, and is based on an estimate of 550 domestic consumers instead of 650. The estimate based on the amount of power consumed is based on a 24-hours continuous run of the pumps, while the evidence shows that the pumps are not operated at night and that the maximum run during the months of heaviest use is about 10 hours per day.

The Water Company claims a maximum consumption, including losses, during a few days of heaviest pumping in the summer months amounting to about 800,000 gallons per day, pumping 10 hours per day. This amounts to between 61 and 62 miner's inches. I am satisfied that the maximum use, not during any one minute or one hour, but during the few days of heaviest use in the ~~summer~~ summer time, has been between 60 and 62 miner's inches.

That water rights acquired by appropriation may have value just as any other property is clear. San Joaquin and Kings



River Canal and Irrigation Company vs. County of Stanislaus,

233 U. S. 454. The extent of the value is an entirely different question and presents the most difficult problem in this proceeding.

In Water-Company of Tonopah vs. Public Service Commission of Nevada, decided on August 13, 1913, being a case of water right value claimed for percolating water, Judge Morrow refers to the Water Company's claims as follows:

"The water which it (the company) claims as a water right is percolating water running through its lands. I do not understand that percolating water passing under or through the soil is anywhere recognized as a water right, having a valuation separate and distinct from the land. It is not in any sense surface water. It is not water appropriated from running streams; nor is it water the right to which is the same as that of a riparian owner. Percolating water is part and parcel of the soil, and it is as much a constituent element of the land as the mineral therein contained. Its value, if it has any, is, therefore, in the land and cannot be separated from the land. It follows that in this case the value which the water has must be in the land. It may be that the complainant's development of water upon this land has given it a largely increased value, but if that is so, it appears to me that that should be the valuation of the land with its water content as a whole and not as land with a water right attached. This may not make a great difference in the result; but it will enable the commission and the court to make a comparison with other land of like character and similarly situated."

In concluding, Judge Morrow further says:

"It seems to me that it would be difficult to establish an absolutely independent water value aside from the value of the land; but the value of the water with the land may be ascertained in the view of its available uses."

In the present proceeding, the value of the land without reference to the water developed thereon has been agreed upon. If value is shown to the developed water such value must, under Judge Morrow's view, be considered in placing the final value upon the land. It makes but little difference, in the end, whether a separate allowance is made for such value as a separate water right value, or whether it be considered in determining the final value of the land with its water content and the rights growing out of the same, but it is conducive to clear thinking to analyze the situation as has been done by Judge Morrow.

In the present proceeding, F. E. Trask, a witness appearing in behalf of the Water Company, testified that, in his opinion, the fair value of the water taken and used by Irwin Heights Water Company is \$500.00 per miner's inch. He reached this conclusion by the application of the next available source theory. He considered that the next available source is Owens River water, owned by the City of Los Angeles, and reached his conclusion on a comparison between the assumed cost of delivering Owens River water to the City of Santa Monica as contrasted with the cost of pumping water from the wells of the Water Company. There is nothing in the testimony to show that Owens River water is available for use in Santa Monica.

C. S. Burns, appearing for the Water Company, testified to a value of \$740.00 per miner's inch. This value is a composite value resulting from the application of the next available source theory and the next available use theory. Mr. Burns followed Mr. Trask in regarding the Owens River water as the next available source and he regarded irrigation use as the next available use.

Neither of these witnesses had made any personal measurements in and about Santa Monica and each of these witnesses based his acceptance of Owens River water as the next available source on the testimony of certain other witnesses with reference to local conditions, to which testimony reference will hereinafter be made. Each of these witnesses testified that if water can be developed <sup>without insurmountable legal obstacles</sup> by sinking additional wells in the water bearing strata in the vicinity of Santa Monica, his estimate of the value of the water of Irwin Heights Water Company must be pro tanto reduced. It seems impossible to escape from this conclusion. If it is proper to look to the next available source, it seems absolutely essential, in order to do justice in this proceeding between the City of Santa Monica and the Water Company, to examine the possibility of securing water by sinking wells in the vicinity of

Santa Monica and into the cost of such operations, if they are possible and feasible. If it appear that additional water can be derived in this manner, in necessary quantity, without material cost in addition to the amounts herein allowed to the Water Company for its lands, wells, pump and transmission main, it must be evident that the Water Company's right to pump water from its wells cannot have a value anywhere nearly as great as that testified to by the company's witnesses.

It thus becomes necessary to consider the testimony with reference to the possibility of developing additional water in this immediate vicinity.

Mr. E. T. Malloy testified with reference to a large number of wells now in operation in and about Santa Monica. The following table contains, by reference to pages of the transcript, the names of these wells, the number of the wells where there are more than one, the depth of the wells, their capacity and the thickness of the water bearing gravel, in so far as appears from Mr. Malloy's testimony, both on direct and on cross-examination:

TABLE No. I.

Wells Testified to by H. T. Malloy

Trans- cript Page.	Name	No. Wells	Depth	Capacity	Water- bearing Gravel.
175	I. H. W. Company.	3	45' to 72'	No test	37'
176	Cody		100'	40"	45'-57'
178	Jap		75'	20"	
179	On Hill		185'	Windmill	
180		2		"	
180	O.P.W. Co. Highland Ave.		100'		
185	City W. Co. 7th & Ozone	over	400'		10'
188	City W. Co. Longfellow & Marine	4	80'		10'
190	City W. Co. Indiana & Ballona	1	80'		10'
191	City W. Co. Elena & Compton	2	260'		126'
205	McLaughlin		90' to 100'	40" to 50"	
205	Sweeney		110'	50" to 60"	
205	Palms W. Co.		360'	90"	26'
206	Whitworth		400'	80"	50'-60'
206	City of Sherman	3 or 4	400'	50" to 60" each	50'-60'
208	Hammel & Denker	2	300'	"Big Stream"	
209	Burkhardt		180'	"Sure good well"	40'
209	Country Club	over	100'	"Good well"	30'
210	Sawtelle W. Co.	2	250'	"Pretty good"	20'
211	S.M.W. Co.	4	280'	30" to 55"	36'
212	Colorado & Cambridge		200'	27" to 30"	
212	Another at Colorado & Cambridge		80'	30"	
212	Malloy		180'	75"	65'
212	Near Simon's Brick Yard		300'	75" if larger bore	50'
219	Denker	2	200'	"Not much good"	
220	1/4 mi. south of Sawtelle W. Co.		200'	"No water"	
220	1 blk. from S.M.W. Co.		500'	" "	
220	1/4 mi. west of S.M.W. Co.		400'	2" or 3"	
221	Nevada Avenue		200'	"Scarcely any water"	
222	Pico St.	2	200'	"Streak of surface water"	
222	South of stream		300'	1"	
222	" " "		500'	1"	
222	O.P.W. Co.		360'	6" to 10"	6'
223	Shallow flat district		110'-115'	"Never paid to pump"	
223	R.R. Co.		400'	"Very little water"	
224	Palms W. Co.		600'	"Never pumped"	
224	Charnock		200'	"A little water"	
225	Santa Monica Canyon		100'	"Not very good well"	
<u>Cross Examination</u>					
227	Jap			15" to 20"	
228	Cody			"With larger pump could pump more 40" "	
232	Lachenmyer			"Nice big stream, more than 60" "	15'
234	Miller			"Couldn't pump it dry"	35'
248	25th St.			Domestic	

TABLE No. I. (Continued)

Transcript Page.	Name	No. Wells	Depth	Capacity	Water-bearing Gravel.
249	Nonpareil Laundry			30"	
250	Hackett			Windmill	
251	Brown Bros.			"Good well"	
252	F. King			"Small well"	
252	Coe			"Good well"	25'
253	Howard		300'	25" to 27"	
253	Bernard			50" to 60"	
253	Sabichi		100'	"Never tested"	"Lots of gravel"
254	Between Bernard and Sabichi		300'	"Used for irrigating. Good well"	
255	Lot 12, Blk. 200, Villa Farms		80'	30"	
256	Sweet			10"	"Good"
256	Carpenter & Dexter		270'	"Pumps 10" could develop much more Domestic	40' "Good gravel"
260	Hollwedel				
278	City Water Co. ("Dandy")			"Pumps not big enough to take water out"	36' to 160'

These wells are not all pumped at the same time nor to their full capacity. It would be most misleading to say that the amount of water being pumped in this vicinity may be ascertained by simply adding together the capacities of these various wells. The table, however, does show the extent to which it has been possible hitherto to pump water in and about Santa Monica.

Mr. Malloy testified that there is an area of water bearing land containing about 100 acres, commencing at a point about 700 or 800 feet south and east of the Irwin Heights Water Company's plant and extending in a southerly direction. He testified that, in his opinion, two wells can be advantageously sunk in each 5 acres of this tract, and that between 50 and 60 miner's inches per well can be thus developed, with a total possibility of developing between 2000 and 2400 inches of water on this tract. The well known as the "Dandy", recently installed by City Water Company of Ocean Park, having a capacity in excess of 100 miner's inches, was bored in this territory.

Mr. Malloy further testified that there are about 50 acres of water bearing lands near the easterly city limits of Santa Monica, near the Southern Pacific Company's yards, in which only one or two wells have hitherto been dug. One of these wells belongs to Mr. Malloy and produces 75 miner's inches of water. Judging from his own well and a few others which he dug in this vicinity, Mr. Malloy testified that, in his opinion, about three wells could be dug on each 5 acres of this land and that they would produce an average of about 55 miner's inches of water per well, making a total of 1650 miner's inches for this property.

Mr. Malloy also referred to the lands owned by the Baker Estate, which he considers to be water bearing and which now have wells on both sides. It appears from the testimony of Mayor T. H. Dudley that there are 100 acres in this tract.

Mayor Dudley testified that the market value of the lands first hereinbefore referred to lying easterly and southerly of the Water Company's property have a market value of between \$1500.00 and \$2000.00 per acre, and that these lands can actually be bought for this amount. He referred to the fact that the property on which the City Water Company's "Dandy" well is located is a part of this area and that it was purchased three or four years ago at \$1000.00 per acre for a tract of five acres. He testified that the land owners in this vicinity are now asking \$1500.00 per acre for their land. He further testified that the Baker Estate property was appraised one year ago at \$1500.00 per acre and that it could now be bought for \$2000.00 per acre. He further testified that the market value of the 50 acres owned partly by Mr. Malloy and partly by his neighbors is \$2000.00 per acre.

Mr. Nelson Taylor, appearing in behalf of the City of Santa Monica, presented computations showing that water can be delivered <sup>from</sup> ~~from~~ Mr. Malloy's 75 inch well into the Water Company's reservoir at less cost than that incurred by the Water Company, and he testified that water will flow by gravity from the Irwin Heights Water Company's reservoir to the reservoir now jointly used by Ocean Park Water Company and City Water Company of Ocean Park. There is nothing to show that it would cost materially more to pump water from the tract of land lying southerly and easterly of the property of Irwin Heights Water Company.

Based on this evidence, the City contends that the next available source is the water bearing lands testified to by Mr. Malloy, that the cost of water pumped from these lands, based on the cost of purchasing the land, installing the necessary machinery and transmitting the water thus pumped, would be as little or less than the present cost to Irwin Heights Water Company, Ocean Park Water Company and City Water Company of Ocean Park, and hence concludes that no substantial value should be assigned to the rights



to pump water claimed by these water companies.

I am satisfied from Mr. Malloy's testimony that additional water in the amounts indicated by him can be developed in the parcels of property to which he referred as water bearing lands. The water companies in these proceedings, however, take the position that such waters cannot be pumped without injuriously affecting their own supply, and that any person now undertaking to pump water from these lands could be enjoined from doing so by the present companies. The water companies fortify themselves in this contention by the testimony of witnesses Trask and Burns, who testified that in their judgment the safe pumping limit in this basin has been reached, and that pumping from additional wells will result in depriving the present water companies of a portion of the water to which they claim to be entitled. The opinion of these witnesses is not based on personal observation but on the testimony of other witnesses who preceded them. Mr. Trask and Mr. Burns did not have the advantage of hearing the testimony of the witnesses who followed them and who testified in behalf of the City of Santa Monica. The testimony of Mr. Trask and Mr. Burns was based primarily on the following testimony with reference to a depletion of water supply in the ~~vicinity~~ Santa Monica basin:

(a) Irwin Heights Water Company's wells.

Mr. C. C. Towner testified that the water level in the excavation referred to as a reservoir into which water flows from Well No. 4, has gone down 6 feet in the last 8 years. The testimony seems to indicate, however, that the wells of Irwin Heights Water Company are not located on either the northern or the southern main gravel strata. This conclusion is fortified by the fact that the quality of the water produced by this company is different from that produced by Ocean Park Water Company or City Water Company of Ocean Park, leading to the conclusion that the source of water must be different. Hence, testimony with reference to the condition

of these particular wells cannot be taken as indicative of general conditions in this basin and particularly of conditions with reference to the water in the main gravel strata.

(b) Mr. Malloy's testimony as to surface waters.

Mr. Malloy testified, on direct examination by the water companies, that there has been a lowering of the water plane during recent years in some places as much as 15 feet, and that in some cases, wells which he dug have gone entirely dry. On later re-direct examination by the water companies, however, he explained that he was referring to surface waters, that these waters are about the only ones which have been affected in the last 25 years and that in the lower strata to which he now goes when he digs wells, he finds no difference. He explained that in this basin clay beds lie between the various strata and that in the Santa Monica basin there is no connection to speak of between the various strata.

(c) Mr. C. E. Mellen's testimony.

Mr. C. E. Mellen, General Manager of Ocean Park Water Company, testified that there has been a gradual lowering of the water plane in this basin and that the water has not returned to the point where it was 8 years ago.

Thereafter, after Mr. Trask and Mr. Burns had testified, it developed from the testimony of Mr. Edwin Hill, who has been employed for 10 years by Ocean Park Water Company as pipe fitter and pump operator, that the water level in the company's Rose Avenue pumping plant is three feet higher than it was last year, and is higher to-day than it was 9 years ago. Mr. Hill was frequently lowered into this well and based his conclusion on the water level with reference to an old casing in the well. He testified that the water level in the company's Rose Avenue well is about 18 inches higher now than it was 9 years ago. Referring to the Highland Avenue plant of Ocean Park Water Company, Mr. Hill

testified that he has run this plant as long as it has been run, being between 5 and 6 years, and that the water level in this plant also has increased about 3 feet in the last 2 years.

I see no reason for not giving full credence to Mr. Hill's testimony on this point. He had actual charge of the operations of these pumps and actually went down into the wells from time to time, so that he has first hand information with reference to the level of the water therein.

As an illustration of what is actually done in this community in the development of additional water, I desire to refer again to the experience of City Water Company of Ocean Park. When that company's growing business required the development of additional water 2 or 3 years ago, the company bought 5 acres in the area south and southeast of Irwin Heights Water Company's property, hereinbefore referred to, paying \$1000 per acre. The company spent \$2000 for the boring of two wells, one of which is the "Dandy", and has a capacity of over 100 miner's inches. The testimony shows that while the water level in the old wells of City Water Company of Ocean Park and of Ocean Park Water Company, which wells are close together, was lowered while the wells were being pumped hard, during the summer two or three years ago, the pumping of water from the "Dandy" well has not affected the water level in any of the wells of Irwin Heights Water Company, City Water Company of Ocean Park or Ocean Park Water Company.

I desire also to draw attention to the fact that notwithstanding the development of the large number of wells in this basin testified to by Mr. Malloy, there is no evidence that a single injunction proceeding or damage suit has been brought. That the owners of lands over the water bearing strata have the right to enjoin the taking of water from this area, if injury is done, or at least, in the case of water appropriated for public use, to secure damages if water is taken from this area, is

clearly established in this state. Katz vs. Walkinshaw, 141 Cal. 116; Cohen vs. La Canada Land and Water Company, 142 Cal. 437; Barr vs. Macclay Rancho Water Company, 160 Cal. 268; Hudson vs. Dailey, 156 Cal. 617.

While it is true that Irwin Heights Water Company and the other water companies <sup>which</sup> have pumped water for five years and appropriated it for public use, would undoubtedly prevail as against any attempt from those who have stood by and permitted this appropriation to be made, to enjoin the further pumping of water (Katz vs. Walkinshaw, 141 Cal. 116, 136; Newport vs. Temescal Water Company, 149 Cal. 531; Barton vs. Riverside Water Company, 155 Cal. 509; Miller and Lux vs. Enterorise Canal and Irrigation Company, 49 C.D. 251, 256, decided February 19, 1915), the evidence in this case does not satisfy me that the facts in connection with the water situation in this basin are such that these water companies, in turn, could successfully bring action to enjoin another appropriator of water for public use from sinking wells in the water bearing lands referred to by Mr. Malloy and taking therefrom water for public use in the City of Santa Monica.

Even assuming that it is physically possible to develop these additional waters, which I find to be the fact, and that the new appropriator for public use could successfully withstand the efforts of the existing water companies to enjoin such development, which I believe from the facts as shown in these proceedings would be the case, nevertheless, the fact that the existing water companies have an actually developed supply of water as contrasted with a probability, however certain it may seem, of developing water, and that their rights to the continued use of the water which they have heretofore developed and used are secure, except possibly against land owners who may be able to recover damages if they can prove a diversion from their lands to their injury, are

facts which add value to the property of these water companies, and for which just compensation must be paid.

#### 4. GOING VALUE.

The Water Company presents a claim of \$7913.00 for going value. Mr. C. S. Burns, testifying in support of this claim, stated that this sum represents the estimated difference between the value to a purchaser of the plant as it now stands with its business and the cost to him of building a plant to serve the same territory and to build up the business. This estimate is based on a number of assumptions which it is not necessary here to analyze.

The annual report of Irwin Heights Water Company for the year ending December 31, 1913, shows that the operating revenue for the year was \$10,286.25 and that the operating expense, not including interest on the investment or depreciation, was \$7365.53. The Water Company set up no depreciation fund in 1913.

The Water Company's annual report for the year ending December 31, 1914, shows that the operating revenue was \$11,645.17 and that the operating expense, not including interest on the investment or depreciation, was \$8819.70. The Water Company set up during this year a depreciation fund amounting to \$3625.38. The total of operating expenses and depreciation as thus indicated was \$12,445.08, or \$799.91 more than the operating revenue. In these computations no allowance is made for interest on the investment.

The Water Company has applied to the Railroad Commission for an order authorizing the company to increase its rates and claims in its brief on file in the rate case that on the basis of an investment of \$80,433.00 "it is apparent that a horizontal raise of fifty per cent will be necessary."

The rates now charged by Irwin Heights Water Company are the same as those which were established by Ordinance No. 48 on February 27, 1908, for the year 1908-09. Under the provisions of Section 1 of Article XIV of the Constitution of this State, such rates "shall continue in force for one year and no longer." There is no record of any attempt on the part of the Water Company to increase the rates thus established.

In determining the value of the property of a public utility, subject to regulation with reference to its rates by a public authority, careful consideration must be given to the rates which have been or may be established by the constituted authorities. A public utility is worth no more than fair rates established by competent public authority will justify, unless something additional is allowed for the possibility of future growth and added revenues coming therefrom. The evidence shows that the Water Company is serving a territory a considerable portion of which is sparsely settled. The Marsh Tract, heretofore referred to, is a clear case in point. The distributing mains for which a value of some \$10,000 is claimed by the Water Company under the head of "reproduction cost," serve only a single consumer, and there is no immediate prospect of additional customers. That rates will be established so as to yield the Water Company the usual interest on this \$10,000 is, of course, impossible. San Diego Land and Town Company vs. Jasper, 189 U.S. 439, 446, 447; Southern Pacific Company vs. Bartine, 170 Fed. 725, 767.

These are matters to which careful consideration must be given in determining the fair value of the property either for rate making or for condemnation.

In its brief in Case No. 698, Freeman vs. Irwin Heights Water Company, the rate case, the Water Company states that in its opinion the rate should be based on \$80,433.00, which represents,

according to the Water Company, "the actual investment as nearly as can be ascertained." A purchaser naturally expects a return on the purchase price. If he knew that he could not get a return thereon, he would simply pay so much less for the property. In the present case we have a property which cannot earn a return on the cost to reproduce it, for the reason that it is overbuilt for the needs of the present consumers. If \$80,453.00, even though the use of this amount will necessitate an increase of 50 per cent in the rate which has been charged for six years, is a fair sum to be used for the establishment of rates, it seems difficult to understand why a sum materially in excess of this amount should be claimed for the purpose of condemnation. It must be borne in mind that the sum of \$80,453.00, even if it accurately represents the original investment, makes no allowance for the depreciated condition of the property.

As has frequently been said by this Commission in these condemnation cases, the public can afford to be generous when it takes public utility property from the owners thereof. The Railroad Commission generally finds a value in these cases somewhat in excess of the value which it could allow in rate making cases, and the finding in this case will not be an exception to this rule.

I recommend the following findings:

#### F I N D I N G S.

CITY OF SANTA MONICA, an incorporated city, having filed with the Railroad Commission a petition setting forth the intention of said city to acquire under eminent domain proceedings or otherwise, the lands, property and rights of IRWIN HEIGHTS WATER COMPANY, a public utility operating within the boundaries of said city, and asking the Railroad Commission to fix and determine the just compensation to be paid to Irwin Heights Water Company for the



public utility and land, property and rights thereof, and public hearings having been held, and the Commissioner who heard the evidence having made a personal inspection of the wells and reservoirs and a portion of the distributing system of said Irwin Heights Water Company, and being fully apprised in the premises,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that the just compensation to be paid by City of Santa Monica to Irwin Heights Water Company for all of said company's lands, property and rights, other than the right to be a corporation, as said lands, property and rights are described in Exhibit No. 1, which is attached hereto and made a part hereof, is the sum of seventy-five thousand dollars (\$75,000.00).

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

Max Thelen  
H. C. ...  
...  
Edwin O. Edgeston  
...  
Commissioners.

EXHIBIT NO.1

All the lands, property and rights, other than the right to be a corporation, of Irwin Heights Water Company, more specifically described as follows, to-wit:-

L A N D S

Parcel No.1

That part of Lot Seven (7) of Mrs. S. L. Session's Sub-division of Block Thirty (30) and part of Block Forty-seven (47) of the Lucas Tract, in the Rancho La Ballona, as per map recorded in Book 11, Page 24, Miscellaneous Records of the Recorder's Office of the County of Los Angeles, State of California, described as beginning at the northeasterly corner of said Lot Seven (7), thence south thirty-five degrees (35°) twelve minutes (12') east four hundred thirty (430) feet to the southeast corner of said lot; thence south fifty-six degrees (56°) forty-eight minutes (48') west three hundred eighty-two and seventy-six hundredths (382.76) feet; thence north thirty-five degrees (35°) twelve minutes (12') west four hundred eighteen (418) feet, more or less, to the southeasterly line of Ballona Avenue; thence north fifty-four degrees (54°) twenty minutes (20') east three hundred eighty-two and seventy-five hundredths (382.75) feet to the place of beginning, containing four (4) acres, more or less.

Parcel No.2

Those portions of Lot Eight (8) in Block Forty-five (45) and Lot Sixteen (16) in Block Forty-six (46) in the Town of East Santa Monica, County of Los Angeles, State of California, according to map of said East Santa Monica recorded in Book 17, pages 95, 96, 97 and 98, Miscellaneous Records of said Recorder's Office, which was conveyed to Joseph Burkhard by deed to him from R. A. Crippen and Ruth D. Crippen, his wife, recorded in

Book 847 page #16 of Deeds, of said Recorder's Office. Said portion of Lot #8 hereby conveyed being that portion thereof lying westerly of a straight line commencing at a point in the southerly line of said Lot Eight (8), distant two hundred fifty-two (252) feet easterly from the easterly line of Logan Avenue, and drawn north in such direction that it will intersect the northerly line of Lot Thirteen (13) in said Block Forty-five (45) at a point distant three hundred sixty-six feet (366') easterly from the easterly line of said Logan Avenue. Said portion of Lot #16 hereby conveyed being that portion thereof lying westerly of a straight line commencing at a point in the northerly line of said Lot Sixteen (16) distant two hundred fifty-two and three hundredths (252.03) feet easterly from said Logan Avenue, and extending south in such direction as would reach a point fifteen (15) feet north from the southerly line of Lot #11 in said Block Forty-six (46), distant one hundred (100) feet from the easterly line of said Logan Avenue. Excepting from this conveyance the easterly thirty (30) foot strip of said Lot Sixteen (16) adjoining and abutting upon said Logan Avenue.

Parcel No. 5.

- A certain right of way for pipe line over those portions of Lots Fifteen (15), Fourteen (14), Thirteen (13), Twelve (12), and Eleven (11) of Block Forty-six and Lot Two (2) of Block Forty-seven (47) in said East Santa Monica, according to the official map thereof, which were conveyed by deed of Crippen and wife to Joseph Burkhard, said pipe line being a single pipe line extending from said Lot Sixteen (16) to said Lot Seven (7), the right of way herein granted being the same right of way <sup>heretofore</sup> conveyed to said C. C. Towner and W. A. Irwin by said Joseph Burkhard,

Parcel No.4

A certain right of way and easement over a strip of land ten feet wide lying across Sherman Avenue, Charles Street, and John Street, and those certain lots, pieces or parcels of land situate, lying and being in the Rancho La Ballona, and being Lots Twenty (20), Twenty-six (26), Thirty (30), Thirty-three (33), Thirty-eight (38) and Thirty-nine (39), in Van Every's Addition to East Santa Monica, according to the plat of said addition recorded in Book 72 at pages 63 and 65, Miscellaneous Records, in the Recorder's Office of the County of Los Angeles, State of California, as more particularly described in a certain instrument dated April 30th, 1904, between H. L. White, of Los Angeles, California, as party of the first part, and William A. Irwin and C. C. Towner, as parties of the second part, now of record in the Recorder's Office of said County.

Parcel No.5

Certain rights of way referred to in the testimony of C. C. Towner in Application No.1562, pages 91 and 92 of the transcript, being referred to as follows:

(a) Right of way for pipe on Clover Hill Tract off Ashland Avenue.

(b) Right of way for pipe across Mr. I. E. Bell's lot on Sixteenth Street.

(c) Right of way for pipe across Lots 1 and 2, Block "G" of Ocean Spray Tract.

(d) Right of way for pipe line across Lots 13 and 14, of Block 40, East Santa Monica.

PHYSICAL STRUCTURES AND IMPROVEMENTS.

<u>Item</u>	<u>Quantity</u>	<u>Unit</u>
<u>Pump Plant at Marine and Hatch Streets.</u>		
Plant building, frame	1	Each
75 H.P. Type C. West Ind. Motor, installed with foundations complete	1	"
B. J. 2 stage 6" Centr. Pump, installed with foundations, complete	1	"
Well #1-65 of 12" #14 Casing with cribbing	1	"
#2-60' 12" #14 Casing	1	"
#2-39' of 5' Concrete pipe reinforced	1	"
#3-15' 5' Concr. pipe reinforced (see note)	1	"
#4-60' - 12" #14 Casing	1	"
56' - 12" 2 ply leather belt	1	"
Collecting Basin or Sump	1	"
<u>Non-Operative or Emergency Equipment.</u>		
50 H.P. 60 Cycle 2080 volt motor, not installed	1	"
5" B.J. 2 stage Hor. centr. pump " "	1	"
<u>Concrete Reservoir at Pearl and 18th Streets.</u>		
Reservoir proper-excav. and concrete	all	all
Roof and Motor Shed, etc.	"	"
<u>Booster Pump Plant at Reservoir.</u>		
7½ H.P. Motor installed complete	1	each
3" B.J. Hor. Centr. 1 stage pump complete	1	"
54' 6" 2 ply leather belting, complete	1	"
Pipe and fittings	all	all
R.W. Tank 18' dia. x 12' high on 40' frame tower	1	each
Concrete footings, complete	6	cu. yds.
<u>Distribution System.</u>		
3/4" S.S. Blk. pipe, dipped	212	foot
1" " " "	1917	"
1 1/4" " " "	1566	"
1 1/2" " " "	8303	"
2" " " "	37509	"
3" " " "	1830	"
4" " " "	100	"
3/4" Gal. S.S. "	1386	"
1" " " "	240	"
4" Cement pipe	1070	"
3" O.D. Casing, (includes 3" I.D.)	4224	"
3 1/2" " " "		"
4" " " "	30798	"
6" " " "	9095	"
8" " " "	75	"
4" R.S. Pipe (#14 gauge drive)	8088	"
5" " " " "	2775	"

(Physical Structures and Improvements continued)

<u>Item</u>	<u>Quantity</u>	<u>Units</u>
6" R.S. Pipe (#14 gauge drive)	8082	foot
8" " " " " "	4551	"
12 $\frac{1}{2}$ " " " " " "	4085	"
Large gate and valves	1	lot

Meters:

5/8" Meters - principally Trident	75	each
3/4" " " " "	39	"
1" " " " "	2	"
1 $\frac{1}{2}$ " " " " "	4	"
2" " " " "	10	"

Services:

1/2"	253	each
3/4"	415	"
1"	5	"
1 $\frac{1}{2}$ "	20	"
2"	36	"
3"	2	"
4"	1	"

Tools and Stock on Hand: 1 lot

Manhole 1 each

Auto Truck - "Great Western" 40 H.P. (P.V.)

Portable Garage 1 lot

Dayton Couplings 1000 each

Iron Shut-off Boxes 100 "

WATER RIGHTS.

All water rights, including the right to pump from 60 to 62 miner's inches from the company's wells owned by Irwin Heights Water Company.