

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 2666

In the matter of the application
of the city of Santa Cruz for an
order of the Railroad Commission
fixing and determining the just
compensation to be paid to the
HIHN WATER COMPANY for its land,
property and rights.

Application No. 1639.

J. L. Johnston, for Applicant.

C. B. Younger, for the Hihn Water Company.

LOVELAND, Commissioner:

OPINION

This proceeding is brought under Section 47 of the
Public Utilities Act which provides ^{in part} as follows:

"The Commission shall have power to ascertain
the value of the property of every Public Utility
in this state and every fact which in its judg-
ment may or does have any bearing on such value.
The Commission shall have power to make revaluations
from time to time and to ascertain all new con-
struction, extensions and additions to the property
of every public utility."

Section 70 of the Public Utilities Act, which need
not be quoted in full at this time, lays down the procedure
to be followed in carrying out the provisions of Section 47.

A new section was added to the Constitution of Cali-
fornia by the election of November 3, 1914, known as Section
25a of Article XII, and reads as follows:

"The Railroad Commission shall have and exercise
such power and jurisdiction as shall be conferred
upon it by the Legislature to fix the just compensa-
tion to be paid for the taking of any property of
a Public Utility in eminent domain proceedings by
the state or any county, city and county, incorporated
city or town, or municipal water district, and the
right of the Legislature to confer such powers upon
the Railroad Commission is hereby declared to be
plenary and to be unlimited by any provisions of this
Constitution. All acts of the Legislature heretofore
adopted, which are in accordance herewith, are hereby
confirmed and declared valid."

The effect of adding this new section to the Constitution is to remove all doubt concerning the constitutionality of Sections 47 and 70 of the Public Utilities Act and with greater particularity explains the power and jurisdiction of the Commission under Sections 47 and 70.

The petition of the City of Santa Cruz, hereinafter called the applicant, was filed on April 20, 1915, by the Council of that city and sets forth, first: That said petitioner is the legislative body of the City of Santa Cruz, a municipal corporation in the State of California; second: That it is the intention of said Council to initiate such proceedings as may be required under the law governing said city, for the purpose of submitting to the voters of said city, a proposition to acquire under eminent domain proceedings, or otherwise, the existing public utility commonly called the "Hihn Water System", and the lands, property and rights connected with such existing public utility, said lands and property being set forth in an exhibit marked Exhibit "A" hereunto attached and made a part of this Opinion and Order.

A public hearing was held on this application in the city of Santa Cruz, California, on June 25, 1915, at which time the Hihn Water Company, hereinafter called the Water Company, by testimony, and by exhibits in support of such testimony, presented its valuation of the system to the Commission, with detailed description thereof. In view of the fact that a detailed description of the property is attached hereto and marked Exhibit "A", it is not necessary at this time to enlarge upon the description of the property as given by witnesses and in exhibits in the testimony of the witnesses testifying as to value of the Water Company.

Mr. C. E. Loveland, of the Hydraulic Engineering Department of the Commission, also presented a valuation of

the property and gave testimony in connection therewith.

The results of valuations submitted at the hearing follow:

	Estimated cost new	Depreciated repro- duction cost as of May 1, 1915.
Commission's Hydraulic Engineers -	\$227,908.	\$124,614.
Engineer for Water Company -	235,976.	182,915.

The discrepancy in the estimate of reproduction cost less depreciation of the system as of May 1, 1915, between the engineers, is principally due to the method of depreciation and the deterioration of reservoirs and pipe lines.

It is contended by the engineer for the Water Company that the sinking fund method of depreciation should be used in arriving at the depreciated value. The Commission's engineers used the straight line method in their report submitted.

The Engineer for the Water Company has not depreciated the reservoirs and the cast iron pipe lines. He presented the argument in testimony that no depreciation has occurred either from physical deterioration or obsolescence.

The Commission's engineer testified that obsolescence should be considered as well as physical deterioration in arriving at a depreciated value. He further testified that in his opinion economical operation will require that the plant be reconstructed and certain of the present reservoirs eliminated.

A large part of the cast iron pipe is of 6" or less in size and may become inadequate if, in the future, a larger water supply is required. The testimony shows that the construction of a storage reservoir on the East Branciforte Creek, above the present intake, has been contemplated and if constructed will supersede the present Branciforte Reservoir and render it obsolete. There are four small distribution reservoirs in this system, the largest

of which has a capacity of four million gallons. Small reservoirs, such as these, are known to have been abandoned on many systems and it is the exception, rather than the rule, that small reservoirs have continued in operation throughout a long period of years.

In arriving at the fair value of this plant, I have considered the purpose and manner for which it is now used. The testimony of the city's witnesses shows that a large part of the distribution system is paralleled by the city's mains and as a consequence their service value decreased, but it is manifestly unjust to conclude that this system has a lesser value because of some future plans of a possible purchaser.

In this regard I desire to point out this Commission's Decision No. 1439, In the matter of the Application of Frank Xumeth for permission to sell the Sanger Water Works to the City of Sanger, and of the City of Sanger to buy, Application No. 1041.

A discussion of the various points of difference between these engineers would lead to useless refinement. It is sufficient to say that I have given careful consideration, both at the hearing and subsequently to the method used by each engineer.

I shall now proceed to discuss the question of the value of water rights. The Water Company diverts its water from the East Branciforte, West Branciforte and Majors Creek. The water is diverted from the banks of the streams and the Water Company contend that it is entitled to a value for water rights. In the case of San Joaquin and Kings River Canal and Irrigation Company vs. County of Stanislaus, 233 U.S. 454, the Supreme Court of the United States held, that by virtue of the appropriation the Canal Company had secured a separate property right. This is a case of the appropriation of water from the banks of a natural stream by an appropriator who did not own land in connection with such appropriation. The evidence in this proceeding shows, first; there is a live stream, second; the doctrine of riparian rights

and appropriation can be applied in this case, third; the Water Company is not the owner of land in connection with such diversion of water. I am of the opinion that the water rights of this company have a value separate and distinct from the lands.

Testimony as to the value of water rights was submitted by these engineers as follows:

Engineer for Water Company based on price paid by city for Liddell Spring.	
Majors Creek - 47 miner's inches	\$51,300.
Scotts Valley - 15 miner's inches	25,500.
East Branciforte - 46 miner's inches	80,800.
Total	\$157,600
Commission Engineers.....\$25,150.	
Commission Engineers, based on price paid by City for Liddell Spring, using length of frontage as the unit.....\$38,500.	

The city of Santa Cruz purchased, in 1912, the right to certain water in what is known as Liddell Creek for the sum of \$20,000. The Water Company made its appraisal of its water rights by a quantity measure using the above mentioned purchase by the city as a basis for the value per inch of water and adding thereto the cost of constructing a transmission system from Liddell Creek to a point equidistant from the city with the Water Company's present sources of supply. There are only four measurements available as to the quantity of water in Liddell Spring and these are scattered over a period of six years. There are three measurements of Majors Creek; two of the East Branciforte Creek and one of Scotts Valley. After carefully considering these measurements and the testimony, I am of the opinion that the data available as to the quantity of water in these streams is inadequate to base an estimate of the value of these rights upon a quantity measurement.

Testimony as to the method of procedure in securing these water rights shows that the Water Company probably acquired their rights by purchase from the various land owners riparian to the streams and the cost of obtaining waivers would in this case vary more directly with the frontage on the stream than with a quantity measurement.

The Commission's engineers submitted two estimates of the cost of obtaining waivers of their rights from land-owners riparian to the streams.

The estimate of \$25,150. is based upon the price paid by the city for its Liddell Spring supply but it is estimated that for certain portions of the frontage on the streams the cost of obtaining these waivers would be less than in the case of Liddell Spring because of the fact that a large part of the course of these streams is through the town of Santa Cruz, and also these streams are fed by other streams and, therefore, in diverting water the damage sustained by the riparian owners would be less than if all the water is diverted as in the case of Liddell Creek.

In the estimate of \$58,500. as the cost of obtaining waivers of riparian rights, the Commission's engineer used, as a unit cost, the price per front foot paid by the city for its Liddell Creek rights.

After carefully considering these different estimates of value, I recommend that some such sum be allowed as these water rights must have cost and would ~~have~~ cost if purchased today.

In determining the fair value of this property it must be considered as a going concern, although no evidence was submitted as to what sum, if any, should be allowed for this element of value.

In this connection I desire to refer to this Commission's decision No. 2586, In the matter of the application of Peoples Water Company for Reorganization, Application No. 1531, which states in part as follows:

"Going concern value as urged by Mr. Creed on behalf of the company is entirely dissociated from any idea of good will value, but is in his judgment a value which a public utility plant has

"because it has customers, hence an established business, and has a reasonable assurance of the continuance of that business, the uncertainties of getting that business are removed and is to be distinguished from the value of a plant which has no consumers or only a few consumers and whose future business success is more or less uncertain. With this general statement of Mr. Creed's I agree, but the difficulty arises in determining what this value is or what measure to apply to arrive at this value."

The annual report of the Water Company for the year ending December 31, 1913 shows a gross revenue of \$16,955.64, and a deficit of \$1,975.70. No amount was set aside for depreciation. The annual report for 1914 shows a gross revenue of \$13,701. and a deficit of \$5,996.

These records show a decided decrease in revenue. It is impossible to foretell, at this time, whether or not this decrease will continue in the future and to what extent. There have been decisions of courts which have recognized going value and the latest decisions seem to favor valuing a utility as it is found without a specified separate finding as to going value.

From letters introduced as evidence at the hearing it appears that an understanding had been arrived at between the owners of this water system and the City of Santa Cruz that, while the question of the value of the system should be determined by the Railroad Commission, the city would not be required, in any event, to pay more than \$150,000. and while the valuation here found is in no wise based upon that understanding, it is worthy of mention as indicating what the Water Company would be willing to accept for the system, which agrees very closely with the value found by the Commission.

I submit herewith the following finding:

FINDING

The City of Santa Cruz, an incorporated city, having applied to this Commission to fix a fair value to be paid for the land, property and rights of the Hihn Water System, a public utility, and a public hearing having been held, and being fully appressed in the premises,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that the just compensation to be paid by the City of Santa Cruz to the Hihn Water Company for the land, property and rights of the public utility water system known as the Hihn Water System of Santa Cruz, which is more specifically described in Exhibit "A" attached hereto and made a part of this finding, is the sum of \$149,764.

IT IS ALSO FOUND AS A FACT that as the valuation found in this proceeding is for the purpose of indicating to the City of Santa Cruz what sum it might reasonably pay for the property in question and as such valuation may contain certain elements which would not be a part of a valuation found for rate fixing purposes, such as including property not used and useful to the water system, etc., it is expressly understood that this valuation cannot be set forth at any time by any one as the valuation for rate fixing purposes.

The foregoing opinion and finding are hereby approved and ordered filed as the opinion and finding of the Railroad

Commission of the State of California.

Dated at San Francisco, California, this 4th
day of August, 1915.

Max Thelen
H. D. Lowland

Frank R. Debin

Commissioners.

EXHIBIT "A"

LAND, PROPERTY AND RIGHTS OF THE HIEN WATER COMPANY,
as follows:

LAND

HIGH STREET RESERVOIR, part of lot 5, block "A", city of Santa Cruz.

MAJORS CREEK INTAKE: First parcel of land described as follows:

Commencing at a point in the middle of Cojo or Majors Creek 100' northeasterly of a post marked station "O", which said post stands in the middle of said creek near an oak tree on the west bank of said creek marked "B.M.", thence the following courses: westerly at right angles to said creek 50', southwesterly and parallel with said creek 150', southeasterly and across said creek 100', northeasterly and parallel with said creek 150', and westerly 50' to the point of beginning.

Second parcel of land described as follows:

Commencing at a maple tree marked "B.M." on the east side of Majors or Cojo Creek, thence the following courses: easterly and nearly right angles with said stream 40', northerly 150', westerly 100' crossing said creek, southerly 150' and easterly across said creek to point of beginning.

MAJORS CREEK SETTLER: Parcel of land described as follows:

Commencing at a point in the middle of the open cut at the south end of the tunnel of the Santa Cruz Water Company on the Rancho Refugio from which point the south portal of said tunnel bears north $4\frac{1}{2}$ degrees west, 22 feet distant, thence the following courses: 88° W. 125'; N. 2° E. 30'; S. 88° E. 131.5'; S. $68\frac{1}{2}^{\circ}$ E. 130'; S. $21\frac{1}{2}^{\circ}$ W. 30'; N. $68\frac{1}{2}^{\circ}$ W. 125' to place of beginning.

BRANCIFORTE RESERVOIR: Parcel of land described as follows:

Commencing on the west side of Branciforte Avenue in the city of Santa Cruz, in said county, at a point formed by the intersection of the westerly line of said avenue

with the southerly line of land now or formerly belonging to one Smith, thence the following courses: S. $19^{\circ} 10'$ W, 112'; N. $65^{\circ} 15'$ W, 8.25'; N. $40^{\circ} 15'$ W, 265'; N. 44° E, 126'; S. $28^{\circ} 15'$ E, 195' and S. 64° E. to the point of beginning.

BRANCIFORTE INTAKE: Parcel of land described as follows:

Commencing at a point on the easterly side of the Branciforte Creek on the north boundary of land formerly of Henry Rice, on the quarter-section line running east and west through the middle of section 29 T. 10 S. R. 1 W., distant 1311' west of the east line of said section, thence in the following courses: S. $89^{\circ} 56'$ W, 108'; N. $29^{\circ} 00'$ W, 65'; N. $18^{\circ} 15'$ E, 252'; N. $52^{\circ} 15'$ E, 91'; S. $69^{\circ} 00'$ E, 86'; S. $52^{\circ} 15'$ W, 109'; S. $11^{\circ} 30'$ W, 177', and S. $19^{\circ} 15'$ E, 88' to the point of beginning.

SCOTTS VALLEY RESERVOIR: That certain tract of land situated within the boundaries and forming a part of the Carbonera Rancho, and on the easterly side of the county road leading from the city of Santa Cruz to Scotts Valley, and bounded on the south by land of the estate of F.W. Billing; on the east by the west branch of Branciforte Creek; on the north and northwest and northeast by a private road running from said county road, said private road beginning on the easterly side of said county road at or near the northwest corner of land of the estate of F.W. Billing, and running northeasterly, southeasterly and northeasterly to and across the said west branch of Branciforte Creek.

PHYSICAL STRUCTURES AND IMPROVEMENTS

Item	Quantity	Unit
<u>EAST BRANCIORTE COLLECTION:</u>		
Settler at Dam	1	Each
Settler No. 2	1	"
Reservoir: Appurtenances as follows:	1	"
Masonry retaining wall, wooden cover, 75' of 6" C.I. Class B, sluice pipe, 14' of 12" riv. iron overflow pipe, frame tool house 12' x 12' and barbed wire fence.		
Trestle on transmission line.	1	"
<u>SCOTT'S VALLEY COLLECTION SYSTEM:</u>		
Diversion Dam: Appurtenances as follows:	1	"
Drain box, and 607' of 8" riv. iron outlet pipe.		
Flume:	10695	Foot
Box 12" x 10", built of redwood		
Tributary flumes		
Tributary pipe, 124' of 4" Boiler tubing		
169' of 5" " "		
233' of 4" riv. iron		
Trestle on transmission line	1	Each
Reservoir - capacity 4 M G-	1	"
Appurtenances as follows:		
Retaining foot wall, wooden cover, board fence.		
Settler near reservoir	1	"
<u>MAJORS CREEK COLLECTION SYSTEM:</u>		
Diversion Dam, rock fill with rubble facing	1	"
Old Dam, log cribbing	1	"
By Pass	1	"
Training Wall-West, rock fill with rubble facing	1	"
Appurtenances: Redwood booms and 5/8" steel cable		
Sand box - 14' of 6" No. 14 riv. iron inlet pipe	1	"
Settler: Appurtenances -	1	"
sluice box, 40' of 14" riv. iron sluice pipe, 8" crane gate with standard, spillway fence.		
Whirling settler: Appurtenances -	1	"
Funnel and 18' of 14" galv. sheet iron pipe, 24' of 8" riv. iron sluice pipe		

PHYSICAL STRUCTURES AND IMPROVEMENTS, Cont'd.

Item	Quantity	Unit
<u>MAJORS CREEK COLLECTION SYSTEM, Cont'd.</u>		
Drainage Ditch	1	Each
Road to Dam	1	"
Bridge	1	"
Trail - between tunnel portals	1	"
<u>MAJORS CREEK TRANSMISSION:</u>		
Flume - Redwood box 14" x 17"	8000	Foot
Tunnel - 45' x 6" bore	329	"
Timbering 424 B.M.		
Settler at tunnel portal-	1	Each
Appurtenances - drainage ditch, wooden cover, redwood intake box		
<u>UPPER HIGH STREET RESERVOIR:</u>	1	"
Rubble concrete bottom plaster finish		
Appurtenances - redwood fence, road		
<u>LOWER HIGH STREET RESERVOIR:</u>	1	"
Rubble concrete, brick, concrete and cement plaster finish, wooden cover, overflow to creek - 949' of 8" riv. pipe, 245' of 8" terra cotta and 970' of flume 6" x 8"		
<u>EAST BRANCFORTE TRANSMISSION LINE:</u>		
Pipe:		
8" Riveted (14 gage)	4599	Foot
9" Std. Screw Black	417	"
10" C. I. #1	796	"
10" Riv. Iron (14 gage)	11948	"
12" Casing	17	"
12" Riv. Iron	1015	"
12" C.I. #1	178	"
Gates:		
4" I.B.B. 2	2	Each
6" I.B.B. I	2	"
10" I.B.B. I	2	"
Hydrants - 2 1/2"	3	"
Standards	1	"
<u>SCOTTS VALLEY TRANSMISSION LINE:</u>		
Pipe:		
6" C.I. #1	10585	Foot
7" Std. Screw Black	209	"
Gates - 6" I.B.B.I.	5	Each

PHYSICAL STRUCTURES AND IMPROVEMENTS, Cont'd.

Item	Quantity	Unit
<u>MAJORS CREEK TRANSMISSION:</u>		
Supply pipe from settlers to High Street Reservoir -		
8" C.I.	328	Foot
10" C.I.	1945	"
8" Riv. I (14 gage)	32718	"
10" " " "	1758	"
10" Std. casing	1235	"
12" " "	40	"
<u>DISTRIBUTION SYSTEM:</u>		
Pipe:		
Standard Screw Black 3/4"	1239	Foot
" " " 1"	6215	"
" " " 1-1/4"	3238	"
" " " 1-1/2"	2850	"
" " " 2"	34116	"
Standard Screw Galv. 3/4"	150	"
" " " 1"	511	"
" " " 1-1/4"	246	"
" " " 2"	356	"
Standard Screw Black 2-1/2"	6896	"
" " " 3"	3155	"
" " " 3-1/2"	950	"
" " " 4"	22559	"
" " " 5"	122	"
" " " 6"	827	"
Boiler tubes 2"	50	"
" " 2-1/2"	300	"
" " 3"	802	"
" " 3-1/2"	1381	"
" " 4"	2070	"
Cast Iron, Class B - 3"	7064	"
" " " 4"	20814	"
" " " 6"	5208	"
" " " 8"	5100	"
" " " 10"	50	"
Casing, Standard 4"	598	"
" " 5"	3110	"
" " 6"	800	"
" " 8"	1298	"
Riv. Iron 4"	13665	"
" " 6"	1268	"
" " 8"	2261	"
Stop cocks:		
Brass 1"	3	Each
" 2"	3	"
" 2-1/2"	3	"
Iron Body brass lined 4"	1	"

PHYSICAL STRUCTURES AND IMPROVEMENTS. Cont'd.

Item	Quantity	Unit
<u>DISTRIBUTION SYSTEM, Cont'd.</u>		
Gates:		
Wheel, Brass 1"	3	Each
" " 1-1/4"	1	"
" " 1-1/2"	10	"
Globe " 1-1/2"	1	"
Wheel " 2"	28	"
" Iron Body Brass Ld. 2"	18	"
Globe Valves, Brass 2"	4	"
Wheel Gates, I.B.B.L. 2-1/2"	9	"
Globe Valves, Brass 3"	1	"
Wheel Gates, I.B.B.L. 3"	7	"
" " " 4"	66	"
Gates, I.B.B.L. 6"	15	"
" " " 8"	6	"
Hydrants 1-1/2"	1	"
" 2-1/2"	44	"
" 3"	7	"
Services	1116	"
Services outside city	95	"
Meters 3/4"	1	"
" 1"	2	"
" 1-1/2"	1	"

All water, water rights and rights to water owned or claimed by
Hahn Water Company.