

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of }  
 MARIN MUNICIPAL WATER DISTRICT for an }  
 order of the Railroad Commission fix- }  
 ing and determining the just compensa- } Application No. 1141  
 tion to be paid to MARIN WATER AND }  
 POWER COMPANY for its lands, property }  
 and rights. }

George H. Earlan for Marin Municipal Water District.  
 Lilienthal, McKinstry and Raymond, by Joseph Haber, Jr.,  
 for Marin Water and Power Company.

THELEN, Commissioner.

OPINION ON SUPPLEMENTAL PETITIONS.

The Railroad Commission has before it in this proceeding four supplemental petitions, three having been filed by Marin Water and Power Company, hereinafter referred to as the Water Company, and the fourth having been filed by Marin Municipal Water District, hereinafter referred to as the Water District.

The decision on the original petition of the Water District herein was made and filed on April 9, 1915 (Decision No. 2279, Vol. 6, Opinions and Orders of the Railroad Commission of California, p. 507). A petition for rehearing filed by the Water Company was denied on May 10, 1915 (Decision No. 2368, Vol. 6, Opinions and Orders of the Railroad Commission of California, p. 876). On a review proceeding instituted by the Water Company, the findings of the Railroad Commission were affirmed by the Supreme Court of this State on January 17, 1916. (171 Cal. 706.)

Subsequent to the decision of the Railroad Commission, made and filed on April 9, 1915, the Water District filed its complaint in eminent domain in the Superior Court of this State, in and for the County of Marin, this proceeding being numbered Case No. 4495. In this court proceeding, the Water District asked the Superior Court to enter its decree condemning to the use of the Water District the property of the Water Company as described

in Exhibit A, which was attached to and made a part of the Railroad Commission's findings in said Decision No. 2279. The following proceedings, among others, have been taken in said eminent domain proceeding:

June 5, 1915 - Complaint filed.

June 5, 1915 - Summons issued.

Aug. 31, 1915 - Summons served.

March 25, 1916- Amended answer filed.

March 25, 1916- Trial.

May 27, 1916- Judgment in condemnation entered.

July 25, 1916- Notice of appeal to Supreme Court filed with County Clerk of Marin County by Water Company.

Nov. 1, 1916- Writ of possession issued by Superior Court, award of \$1,200,150.00 paid into court by Water District and drawn out by Water Company, and Water District entered into possession of entire property.

The judgment entered on May 27, 1916, provided, in part, that all the property, lands and rights of Marin Water and Power Company as described in the Railroad Commission's decision of April 9, 1915, should be condemned for use as a part of a water works system proposed to be installed and assembled by the Water District; that the value of said lands, property and rights is the sum of \$1,200,150.00, being the just compensation found by the Railroad Commission; that said compensation should be paid by the Water District to the Water Company within one year from the entry of the judgment; and that upon the payment of said sum of \$1,200,150.00, or the amount of the judgment as thereafter modified, the Water District should be entitled to a final order of condemnation. The judgment further provides as follows:

"It is further ordered, adjudged and decreed that this judgment is subject to modification on account of any unreasonable depreciation or deterioration in value of the value of the property taken, or on account of any

loss which may be suffered by the owner of said public utility through being required to properly take care of said property as by Section 47 of the Public Utilities Act of the State of California it is required to do."

The four supplemental petitions filed herein will be briefly summarized prior to a detailed consideration of each such petition.

First Supplemental Petition of Water Company (filed October 20, 1916). In this petition, the Water Company asks the Railroad Commission to certify to the Superior Court in said Case No. 4495 the amount of loss alleged to have been suffered by the Water Company in connection with certain betterments, improvements, additions and extensions to the property of the Water Company alleged to have been installed both before and after the Railroad Commission's findings of April 9, 1915, and also by reason of the payment by the Water Company of the general property tax on its property for the fiscal year commencing July 1, 1916 and ending June 30, 1917.

Second Supplemental Petition of Water Company (filed November 29, 1916). In this petition, as amended at the hearing, the Water Company asks the Railroad Commission to certify to the Superior Court in said Case No. 4495 the additional compensation, if any, to be paid by the Water District to the Water Company in connection with the Water Company's "miscellaneous equipment, maps, map books, block books, records, pipe lists, inventories and data."

Third Supplemental Petition of Water Company (filed November 29, 1916). In this petition, the Water Company asks the Railroad Commission to make a revaluation of a portion of its property, namely, its physical structures, and thereafter to certify to the Superior Court in said case No. 4495, such modification of its findings heretofore made as the Railroad Commission may make as the result of such partial revaluation.

Supplemental Petition of Water District (filed December 19, 1916). In this petition, the Water District asks the Railroad Commission to certify to the Superior Court in said Case No. 4495, the amount of unreasonable depreciation or deterioration in the value of the property of the Water Company, alleged to have been caused by the failure of the Water Company to deliver to the Water District certain meter books, customers' ledgers, books of account and other records.

Public hearings in these supplemental petitions were held in San Francisco on December 20, 1916 and January 22, 1917. In accordance with stipulation of the parties at these hearings, the Water Company, by letter of December 29, 1916, filed a statement showing the dates on which the construction work referred to in the Water Company's first supplemental petition was performed. The letter of December 29, 1916, with enclosures, has been filed as an exhibit herein and marked "Exhibit No. 8 of Marin Water and Power Company on First Supplemental Petition." Briefs have been filed both by the Water District and the Water Company and these proceedings are now ready for decision.

The various supplemental petitions will be considered in the order hereinbefore referred to.

FIRST SUPPLEMENTAL PETITION OF WATER COMPANY.

In its first supplemental petition, the Water Company asks the Railroad Commission to certify to the Superior Court in said Case No. 4495, additional amounts to be paid for various purposes as specified.

1. For "necessary extensions to its distributing system", made between June 30, 1914 and April 5, 1915-\$ 1,679.33.

These extensions are water mains which were laid in the

Short Ranch Tract and in the Cordoni Tract in August, 1914, prior to the Railroad Commission's findings of April 5, 1915.

2. For "necessary extensions to its distributing system pursuant to stipulations entered into by and between it (Water Company) and the Water District" - \$11,775.76.

These extensions were made by the Water Company under stipulation with the Water District, the Water District agreeing to reimburse the Water Company in the amount of the actual cost thereof, in the event that the Water District should ultimately acquire the Water Company's properties. These items consist in part of larger water mains substituted for existing water mains, of water mains installed as extensions of existing mains and of a pumping plant for the purpose of improving the Water Company's supply of water delivered to the State Prison at San Quentin. The Water District concedes that the claim of \$11,775.76 is proper and joins the Water Company in asking that this sum be certified by the Railroad Commission to the Superior Court in said Case No. 4495.

3. For "certain other necessary extensions to its distributing system" - \$258.68.

These extensions were made without stipulation by the Water District. The petition alleges that they were made subsequent to the Railroad Commission's findings of April 9, 1915. The Water Company's Exhibit No. 8 on First Supplemental Petition shows that these items, being partly spurs, partly an extension and partly connecting mains, were installed in July and October, 1914, prior to the Railroad Commission's said findings of April 9, 1915.

4. For "certain other betterments, improvements and additions to its plant and system necessary in order to maintain the same as an efficient operating water system" - \$33,192.14.

These items likewise were not covered by stipulation

of the Water District. No attempt was made to secure such stipulation except with reference to items in connection with the construction of Tamalpais Dam, as to which the Water District refused to enter into a stipulation. The items entering into the total amount claimed of \$33,192.14 are as follows:

Additions and Betterments, June 30, 1914, to October, 1916 .....	\$29,059.02
Expenditures in 1915 transferred from main- tenance account to capital account.....	947.34
Construction of Tamalpais Dam - June, 1914, to November, 1914 .....	<u>3,185.78</u>
Total,	\$33,192.14

As will be observed, these expenditures were incurred in part before the Railroad Commission's findings of April 9, 1915, and in part subsequent thereto. The dates on which these various payments were made are shown in Water Company's Exhibit No.8 herein.

5. For "certain other improvements to its plant and system consisting of personal property not affixed thereto, but necessary in order to maintain its system as an efficient operating water system" - \$2,470.20.

These are certain items of personal property not covered by stipulation with the Water District. The testimony herein does not show when this property was purchased, except that it was acquired subsequent to June 30, 1914.

6. For general property taxes paid by the Water Company on its property for the fiscal year ending June 30, 1917, two-thirds of the total amount of \$14,377.48 - \$9,584.58.

The foregoing expenditures group themselves naturally into those which were incurred prior to April 9, 1915, the date of the Railroad Commission's findings, and those which were incurred subsequent thereto.

Referring first to the expenditures incurred prior to April 9, 1915, these expenditures cover certain detached items of property, consisting principally of certain

the site  
cottages at/Tamalpais Dam/and two short pipe extensions, concern-  
ing which the Water Company claims that no specific evidence of  
value was presented to the Railroad Commission in the original  
proceeding herein.

The Railroad Commission's findings of April 9, 1915,  
herein, subsequent to the introductory paragraph, read as follows:

"The Railroad Commission hereby finds as a fact that the  
just compensation to be paid by Marin Municipal Water  
District to Marin Water and Power Company for all of  
said company's lands, property and rights, other than  
the right to be a corporation, is the sum of \$1,200,150.00.  
The lands, property and rights of Marin Water and Power  
Company for which said compensation is hereby fixed and  
determined as just and reasonable, are described in the  
schedule which is hereto attached, marked "Exhibit A",  
and made a part of these findings."

Said "Exhibit A", in addition to describing in considera-  
ble detail the property, both real and personal, intended to be  
acquired by the Water District, continues as follows:

"6. Together with all properties built and building  
or to be built subsequent to the making of the list  
by the above engineering firm (referring to an inventory  
prepared by the J. G. White Engineering Corporation in  
behalf of the Water Company) up to the date of the  
findings and judgment of the Railroad Commission in  
the above entitled matter."

The property description contained in said "Exhibit A"  
was the same property description which was filed by the Water  
District as a part of its original petition herein. This property  
description is <sup>clearly</sup> ~~adequately~~ adequate to include the few scattered  
items to which the Water Company now directs the Railroad Commis-  
sion's attention herein. Attention should be directed to the fact  
that the Railroad Commission's findings of April 9, 1915, fixed  
the just compensation to be paid by the Water District for the  
Water Company's entire lands, property and rights, viewed as a  
going concern, and that this finding is not dependent on the  
estimated reproduction cost new or the estimated reproduction  
cost new less depreciation of a few detached pieces of pipe or

other property.

In connection with the expenditures incurred by the Water Company prior to April 9, 1915, it will hereinafter <sup>further</sup> appear that the Railroad Commission has no jurisdiction at this time to make any order. This fact is, of course, conclusive with reference to these items.

A proper discussion of this petition with reference to expenditures incurred by the Water Company subsequent to April 9, 1915, requires a brief reference to statutory provisions.

Section 1249 of the Code of Civil Procedure of California, reads as follows:

"For the purpose of assessing compensation and damages the right thereof shall be deemed to have accrued at the date of the issuance of summons and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken but injuriously affected, in all cases where such damages are allowed as provided in section 1248; provided, that in any case in which the issue is not tried within one year after the date of the commencement of the action, unless the delay is caused by the defendant, the compensation and damages shall be deemed to have accrued at the date of the trial. Nothing in this section contained shall be construed or held to affect pending litigation. If an order be made letting the plaintiff into possession, as provided in section 1254, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages."

Hence, if the Water District had, in the first instance, filed its complaint in eminent domain in the Superior Court, the compensation awarded by the Superior Court would have been determined as of the date of the issue of the summons and no improvements put upon the property subsequent to the date of the service of the summons could have been included in the assessment of compensation or damages.

The Water District, however, chose to come first to the Railroad Commission by filing a petition, as provided by Section 47 of the Public Utilities Act. This section establishes a procedure



by which the Railroad Commission may determine the just compensation to be paid by municipal water districts and other designated public authorities for the property of public utilities which such municipal water districts and other public authorities may desire to acquire. The section provides, in part, that if such municipal water district or other public authority thereafter files a complaint in the Superior Court asking that a decree of condemnation be entered, the just compensation determined by the Railroad Commission shall be deemed final and conclusive between the parties and that the Superior Court, if it shall first decide that the public authority has the right and power to take the property, shall enter a decree in favor of the public authority fixing the amount that shall be paid as the amount determined by the Railroad Commission.

Section 47 further provides as follows:

"The judgment (of the Superior Court) shall include a provision, in substance, that said judgment is subject to modification on account of any unreasonable depreciation or deterioration in value of the property taken, or on account of any loss which might be suffered by the owner of said public utility through his being required to properly take care of said property, as is hereinafter more fully provided for".

The section further provides that <sup>in</sup> the two classes of cases specified in the sentence just quoted, further proceedings may be taken before the Railroad Commission and the Railroad Commission shall thereafter certify to the Superior Court, for insertion in a modified judgment, such amounts as the Railroad Commission may find should be either added to or subtracted from its original findings.

As provided in detail subsequent to the sentence next hereinabove quoted, the proceedings before the Railroad Commission subsequent to the judgment of the Superior Court can be only of the following two classes:

- (1) In case of "any unreasonable depreciation or

deterioration in value of the property taken", occurring "between the date of the filing of any such petition (referring to the original petition filed by the public authority) and the payment of the compensation to the owner of the public utility".

(2) In case of "loss which might have been suffered by the owner of said public utility through his being required to properly take care of said property", such loss being only such loss as occurs "between the time when the judgment in condemnation has become final and the time of the payment of the compensation". The section also refers to such loss as being loss incurred "in order to preserve the property".

The Water Company, however, urges that under the provisions of Section 70 of the Public Utilities Act, the Railroad Commission has the power herein to ascertain the value of betterments, improvements, additions or extensions made by the Water Company subsequent to the Railroad Commission's findings of April 9, 1915, irrespective of the specific provisions of Section 47 of the Public Utilities Act, and thereafter to report such value to the Superior Court. Section 70 of the Public Utilities Act was enacted on December 23, 1911 (Chapter 14, Extra Sessions, 1911) and has not been changed. Section 47 of the Public Utilities Act as enacted on December 23, 1911, consisted only of a single paragraph providing for general valuations without reference to eminent domain proceedings. Thereafter, by act of June 11, 1913 (Statutes 1913, p. 683), Section 47 was amended so as to add thereto a procedure for the determination by the Railroad Commission of the just compensation to be paid by public authorities for public utility properties. Section 47, as thus amended, in part prescribes the procedure to be adopted and in part refers to Section 70.

The Water Company relies on a sentence in Section 70 of the Public Utilities Act, reading as follows:

"The commission may from time to time cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify or affect any finding of fact previously made, and may at such time make findings of fact supplementary to those theretofore made."

The fact that the hearings and investigations thus referred to are to be held "from time to time" would seem to indicate that this sentence must refer to general valuations made, from time to time, for the purpose of rate making or the issue of securities or other matters and not to eminent domain proceedings in which there is a finality of proceedings resulting in the transfer of the property to public authorities over whom the Railroad Commission generally has no jurisdiction.

Furthermore, it would seem entirely clear that in so far as proceedings before the Railroad Commission subsequent to the entry of judgment by the Superior Court are concerned, the specific provisions of Section 47 must prevail over the general provisions of Section 70.

Attention should further be drawn to the fact that there is no provision either in Section 47 or in Section 70 for the certification by the Railroad Commission to the Superior Court of any modified findings in any instance except in the <sup>classes of</sup> two cases provided for in Section 47 and hereinbefore referred to.

Hence, in order that the Water Company may secure hereafter a finding of additional compensation, in so far as the items referred to in its first supplemental petition and not covered by stipulation of the Water District are concerned, the Water Company must, as provided by Section 47 of the Public Utili-

ties Act, show that its expenditures were incurred during a specified time, namely, "between the time when the judgment in condemnation has become final and the time of the payment of the compensation", and for the purposes specified in Section 47, namely, to meet a loss which was suffered by the Water Company "through its being required to properly take care of said property", or, as these words are interpreted in a subsequent portion of the statute, a loss suffered "in order to preserve the property".

In the present instance, the Water District concedes that the date "when the judgment in condemnation has become final", as those words are used in Section 47, was May 27, 1916. The date of the payment of compensation to the Water Company was November 1, 1916. Hence, the only expenditures as to which the Water Company may claim additional compensation herein under this head are expenditures incurred between May 27, 1916, and November 1, 1916.

The Water Company must, further, show a loss incurred through its being required to properly take care of the property or to preserve the property. The meaning of this language is not entirely clear. It would seem obvious that if the statute had intended that the owner of the public utility should be reimbursed for all additions and betterments, such as the installation of additional service connections or of meters, it would have said in apt ~~words~~ language that the public utility might secure a supplemental finding from the Railroad Commission specifying the expenditures incurred for "additions and betterments" or for "additions to capital account" during the period specified. I am satisfied that the language referred to was not intended to cover such additions and betterments as the utility might make in the ordinary course of its business but that its purpose was that the utility should preserve the property as far as possible in its

status at the time the petition was filed with the Railroad Commission and that it should not have the power by incurring heavy expenditures for additions and betterments, a part or all of which the public authority would not itself incur, to increase the just compensation to be paid by the public authority. The record herein contains a clear illustration of what I have in mind. The development plans of the Water Company contemplated the construction of what is known as the Tamalpais Dam but the development plans of the Water District do not contemplate such construction. The Water Company is asking herein that it be awarded additional compensation to the extent of \$3,185.78 for expenditures incurred on its Tamalpais Dam properties, which expenditures would not have been incurred by the Water District if it owned the property. I am satisfied that the Legislature used the language hereinbefore referred to in a narrower sense than that contended for by the Water Company herein to mean not ordinary additions and betterments but "losses" incurred by the utility to preserve the property and take care of it in the condition in which it existed when the petition was filed with the Railroad Commission. The Water Company itself seems to have acted on this view when it required stipulations from the Water District before it would proceed to make certain new extensions, to replace existing water pipes with larger water pipes and to <sup>install</sup> ~~pipe~~ a pumping plant to be used at San Quentin.

With the exception of the item of taxes, to which reference will hereinafter be made, I find that none of the expenditures ~~xx xx made~~ incurred by the Water Company between May 27, 1916 and November 1, 1916, were made to take care of <sup>suffered properly</sup> "losses - ~~incurred~~ to/take care of said property" or "to preserve the property". My conclusion is strengthened by the fact that

it has been the policy of the State in eminent domain proceedings, as shown by Section 1249 of the Code of Civil Procedure, not to include in awards in condemnation, improvements put upon the property subsequent to the date of the service of the summons. The exceptions to this general policy established by Section 47 of the Public Utilities Act shall not be construed beyond the fair import of the language used.

In this ruling, the Railroad Commission must not be understood as passing on the question whether the Water District can take the improvements installed subsequent to April 9, 1915, without paying for them, or whether the Water Company has not the right, unless adequate compensation is paid, to remove such additions and betterments. Referring to this point, the Water District's brief herein says, in part, that "if, after the Commission has made an award which does not give to the company the value of these meters because the Commission finds that it has no jurisdiction so to do, the way is still open for the company to get recompense therefor by agreement". These are matters over which the Railroad Commission does not have jurisdiction. In view of said declaration of the Water District, we assume that the parties will reach an agreement on fair and equitable terms covering such additions and betterments installed subsequent to April 9, 1915, as are actually useful to the Water District.

Referring now to the question of taxes, the Water Company shows that it was assessed for taxes on its properties owned on the first Monday in March, 1916, by the Town of Sausalito, the Town of Ross, the Town of San Anselmo, the Town of Larkspur, the Town of San Rafael, the County of Marin and the State of California, for the fiscal year commencing July 1, 1916, and ending June 30, 1917, in the sum of \$14,377.48, and that the Water Company will pay said sum in order to preserve its said properties. The Water Company claims reimbursement for these taxes during the period from November 1, 1916, to June 30, 1917

in the sum of \$9,584.58. The question here is not whether the Water Company would be entitled to taxes in case this proceeding had in the first instance been brought in the Superior Court but, rather, whether under the specific provisions of Section 47 of the Public Utilities Act the Water Company is entitled to any such reimbursement. The Water Company's claim that it should be reimbursed for the proportionate part of the taxes which accrue between November 1, 1916 and June 30, 1917, cannot be allowed for the reason that no part of this period falls within the language of Section 47. The only period which falls within that language is the period from May 27, 1916 to November 1, 1916. During this period, the Water Company was in possession of the property and received all the revenues from the operation thereof, under rates established by the Railroad Commission sufficient to meet all operating expenses, including taxes, and to yield in addition thereto, a fair return on the fair value of the property used and useful in the public service. If additional compensation were now awarded for that portion of the general property taxes of the Water Company which accrued between May 27, 1916 and November 1, 1916, the Water Company would be twice compensated for the same item.

After careful consideration, I recommend that certification be made to the Superior Court in said Case No. 4495, covering the item of \$11,775.76 under the stipulations between the Water Company and the Water District but that no certification be made with reference to any of the other claims of the Water Company under its first supplemental petition.

#### SECOND SUPPLEMENTAL PETITION OF WATER COMPANY.

In its second supplemental petition, as amended at the hearings, the Water Company asks that the Railroad Commission determine a final value for the Water Company's miscellaneous

equipment and certify to the Superior Court in said Case No. 4495 any excess in such value of the sum of \$25,000.00 heretofore allowed by the Railroad Commission.

The item "Miscellaneous Equipment" as shown in Table I in said Decision No. 2279 of April 9, 1915, contains the following note: "This item is subject to change at time of purchase". No complete inventory of miscellaneous equipment was presented to the Railroad Commission in the original proceeding herein and the compensation allowed under this head was only tentative. Entirely apart from the question whether, under a strict interpretation of Section 47 of the Public Utilities Act, an additional allowance for this item can be made as of the time of the purchase, the parties have all assented to and acted upon this disposition of the matter. I believe that good faith now requires that the matter be disposed of as indicated in said decision and I shall pursue this course. The testimony herein shows no substantial variation in the value of miscellaneous equipment/<sup>as</sup>between April 9, 1915, the date of the Railroad Commission's findings, June 5, 1915, the date of the issue of summons in said Case No. 4495, and November 1, 1916, the date of the entry into possession by the Water District.

The Water Company has presented herein as Exhibit No. 2 on second supplemental petition, an inventory of tools, supplies, vehicles and furniture, and other personal property, as of October 31, 1916, together with an appraisal of the fair value of the property, totalling \$36,974.21.

The testimony shows that certain deductions should be made from the amount thus claimed by the Water Company. These deductions may be summarized as follows:



1.	Property not to be taken by the Water District, consisting of one business buggy, certain cattle and office furniture,	\$1,124.55
2.	Duplications of property as shown by Railroad Commission's Exhibit No.1, as modified by the testimony,	1,623.83
3.	Reductions in valuations,	<u>2,571.36</u>
	Total,	\$5,319.74

Deducting the sum of \$5,319.74 from the Water Company's claim of \$36,974.21 leaves the sum of \$31,654.47 as a fair allowance for miscellaneous equipment. This sum being \$6,654.47 in excess of the tentative allowance of \$25,000.00 heretofore made. I recommend that the Railroad Commission certify to the Superior Court this additional sum to be added to the just compensation heretofore determined.

### THIRD SUPPLEMENTAL PETITION OF WATER COMPANY.

In its third supplemental petition herein, the Water Company asks that the Railroad Commission revalue a portion of its properties, namely, its physical structures, and thereafter certify to the Superior Court such additional compensation, if any, as the Railroad Commission may determine as the result of such revaluation.

Attention should first be drawn to the fact that the Water Company asks a revaluation of only a portion of its property. Mr. J. T. Ryan, testifying in behalf of the Water Company, stated that due to the abnormally high prices of materials now prevailing, the estimated cost to reproduce the physical structures of the Water Company would be higher on specified dates subsequent to April 9, 1915, than such estimate would be on April 9, 1915. The Water Company accordingly asks increased compensation.

This petition seems to overlook the fact that the lands, property and rights of the Water Company were considered

by the Railroad Commission in their entirety as a going concern and that there is no necessary relationship between engineering estimates of the cost to reproduce the physical structures of the Water Company as of any specified date and the just compensation to be paid for the property viewed as a going concern. It might well be that the value of a public utility property as a going concern might increase during a period within which the cost to reproduce a portion of its property might become less and, conversely, that the value of the property as a going concern might be diminished during a period within which the estimated cost to reproduce physical structures or other property might increase. There is nothing said in this petition and there was no evidence introduced at the hearing with reference to the other portions of the Water Company's property or with reference to its value as an entirety as a going concern. For all that appears, the value of the property as a going concern, notwithstanding the abnormal prices of materials, may be no greater now than it was on April 9, 1915.

Furthermore, as hereinbefore shown, the Railroad Commission has no jurisdiction to proceed on such a petition at this time. If the Railroad Commission could have entertained a <sup>supplemental</sup> petition to revalue the Water Company's property as of June 5, 1915, the date of the issue of the summons in said Case No. 4495, nevertheless, under the specific provisions of Section 47 of the Public Utilities Act, after judgment has been entered in the Superior Court, the Railroad Commission has no jurisdiction to <sup>re-</sup>entertain a general/valuation proceeding of this character.

Attention may be drawn to the fact that Mr. Ryan testified that as to physical structures there was no substantial difference in the <sup>cost</sup> of reproduction as between April 9, 1915, the date of the Railroad Commission's findings herein,

and June 5, 1915, the date of the issue of summons in said Case No. 4495.

I recommend that this petition be dismissed.

PETITION OF WATER DISTRICT.

The petition of the Water District alleges, in effect, that the Water Company failed to deliver to the Water District certain books known as meter books, customers' ledgers, books of account and other data, which books and data the Water District alleges were included in the property described by the Railroad Commission in its findings of April 9, 1915, and that as a result of the failure to deliver such books, the Water District has been damaged in the sum of \$15,000.00. The Water District asks that this sum be certified to the Superior Court to be deducted from the just compensation heretofore fixed, as unreasonable depreciation or deterioration in value of the property.

Entirely apart from other questions in connection with this petition, it is sufficient to say that the Water District confesses inability to show any specific money damage due to the failure of the Water Company to deliver such books and data. I do not mean to be understood as intimating that any particular portion of such books and data or any thereof should have been delivered by the Water Company to the Water District. In view of the inability of the Water District to prove damages, I recommend that on this ground alone, this petition should be dismissed.

I recommend the following form of findings and order:

FINDINGS.

Marin Water and Power Company having filed three supplemental petitions herein and Marin Municipal Water District having filed one supplemental petition herein, all as set forth

in the foregoing opinion, public hearings having been held on said petitions, briefs having been filed and said petitions being now ready for decision,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that the just compensation heretofore fixed and determined by the Railroad Commission to be paid by Marin Municipal Water District to Marin Water and Power Company for all of said company's lands, property and rights, other than the right to be a corporation, as appears in Decision No. 2279, made and filed on April 9, 1915, in the above entitled proceeding, <sup>should</sup> ~~shall~~ be increased in the sum of \$11,775.76, as stipulated between Marin Municipal Water District and Marin Water and Power Company, and in the further sum of \$ 6,654.47, being additional compensation to be paid for miscellaneous equipment.

#### O R D E R.

IT IS HEREBY ORDERED that in all respects other than as set forth in the findings which precede this order, each of the four supplemental petitions herein shall be and they are hereby dismissed.

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission be and he is hereby directed to transmit to the Superior Court of the State of California, in and for the County of Marin, a copy of the opinion, findings and order in this decision, certified under the seal of the Railroad Commission, together with advice that to the just compensation of \$1,200,150.00, heretofore fixed and determined by the Railroad Commission to be paid by Marin Municipal Water District for the lands, property and rights of Marin Water and Power Company, as described in the original petition herein and in Exhibit A, attached to and made a part

of the findings of the Railroad Commission of April 9, 1915, there should be added, in such modified judgment as said court may hereafter enter in Case No. 4495, Marin Municipal Water District, a public corporation, Plaintiff, vs. Marin Water and Power Company, a corporation, Mercantile Trust Company of San Francisco, Defendants, a corporation, et al.,/ the additional sum of \$18,410.23, consisting of \$11,755.76, as provided by stipulation between Marin Municipal Water District and Marin Water and Power Company, and the sum of \$6,654.47, being additional compensation for miscellaneous equipment.

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

Dated at San Francisco, California, this 15<sup>th</sup> day  
of February, 1917.

Max Thelen  
H. S. Loveland  
Alfred

Frank R. Perkins

Commissioners.