

Decision No. _____.

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)
fixing and determining the just com-)
pensation to be paid to North Coast)
Water Company for its lands, property)
and rights.)

Application No. 1154.

George H. Earlan for Marin Municipal Water District.

Charles S. Wheeler and John F. Bowie and Nathan M.
Moran for North Coast Water Company.

THEBLEN, Commissioner.

OPINION ON FIRST SUPPLEMENTAL PETITION OF
MARIN MUNICIPAL WATER DISTRICT.

Marin Municipal Water District, hereinafter referred to as the Water District, has filed herein its first supplemental petition, asking the Railroad Commission to make its finding declaring that North Coast Water Company, hereinafter referred to as the Water Company, has permitted the property which is the subject matter of this proceeding "to unreasonably depreciate or deteriorate in value" and declaring the amount of such unreasonable depreciation or deterioration.

The alleged unreasonable depreciation or deterioration in value is claimed by the Water District to have been caused by the failure of the Water Company to pay the taxes assessed against the property by the County of Marin and the Town of Mill Valley for the fiscal year 1916-1917, and by permitting penalties to accrue from the failure to pay the first installment of said taxes.

The Water District's petition alleges, in effect, that on April 9, 1915, the Railroad Commission made its findings herein declaring that the just compensation to be paid by the Water District for specified lands, property and rights of the Water Company was the sum of \$289,200.00; that the Water District thereafter, within the time specified by Section 47 of the Public Utilities Act, commenced an action in the Superior Court of the State of California in and for the County of Marin, entitled "Marin Municipal Water District v. North Coast Water Company, et al.," in which action the Superior Court thereafter made its decree in condemnation; that thereafter, on November 1, 1916, the Water District paid to the Water Company the just compensation determined in said decree and, under order of the Superior Court, entered into the possession of said lands, property and rights; that the original petition herein was filed on April 24, 1914, and that the date of the payment of the compensation fixed and determined by the Railroad Commission herein was November 1, 1916; and that between the date of the filing of said petition and the payment of said compensation by the Water District to the Water Company, the Water Company permitted said lands, property and rights to unreasonably depreciate or deteriorate in value by failing to pay the taxes assessed thereon by the County of Marin and the Town of Mill Valley for

the fiscal year 1916-1917 and by permitting penalties to accrue by reason of failure to pay the first installment of said taxes. The petition asks the Railroad Commission to make its finding under the provisions of Section 47 of the Public Utilities Act, as hereinbefore indicated.

The Water Company filed a motion to dismiss, urging various grounds, and also an answer and a cross-petition.

A public hearing was held in San Francisco on April 9, 1917, at which time evidence was introduced, argument presented and this proceeding submitted. Memoranda of authorities have been filed by the parties and this proceeding is now ready for decision.

In accordance with stipulation at the hearing, a copy of the judgment of the Superior Court in and for the County of Marin, made and filed on March 21, 1916 in said case of Marin Municipal Water District v. North Coast Water Company, was filed by the Water Company subsequent to the hearing herein and has been marked "Exh. No. 1 of Water Company on First Supplemental Petition of Water District".

The evidence shows that the taxes and penalties herein under consideration are as follows:

COUNTY OF MARIN TAXES

First installment	\$727.39
Penalties on first installment ...	109.12
Second installment	717.56

TOWN OF MILL VALLEY TAXES

First installment	309.80
Penalties on first installment....	40.76
Second installment.....	37.80

These taxes were assessed for the fiscal year July 1, 1916 to June 30, 1917 and became a lien on the first Monday in March, 1916. The first installment became payable on Monday, October 16, 1916 and became delinquent on Monday, December 4, 1916. The second installment became payable on Monday, January 1, 1917, and unless paid, will be delinquent on Monday, April 30, 1917.

Section 47 of the Public Utilities Act, after providing for the making of findings by the Railroad Commission on the original petition by the public authority and for the entry of judgment in condemnation by the superior court, continues 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. If between the date of the filing of any such petition and the payment of the compensation to the owner of the public utility, the owner of the public utility shall permit the property taken to unreasonably depreciate or deteriorate in value, the said county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or other public corporation may file with the commission a petition setting forth that fact, and praying that the commission determine and fix the amount of said unreasonable depreciation or deterioration. The Commission shall thereupon order a copy of said petition to be served upon the owner of said public utility with an order to within ten days appear before said commission and show cause why there should not be deducted from the amount of compensation to be paid an amount sufficient to cover said depreciation or deterioration. The Commission shall on the day so fixed, unless for good cause the hearing is continued, proceed to ascertain whether there has been any such depreciation or deterioration, and if so, what amount should be deducted therefrom from the compensation to be paid. Hearings shall be had in the same manner as provided in section 70 of this act. The commission shall thereupon certify to the court any amount which may be determined upon that should be so deducted from the compensation, and the court shall thereupon modify its judgment in order to conform with said ascertainment by said Commission."

The Water District must show that there has been unreasonable depreciation or deterioration in value of the Water Company's lands, property and rights herein under consideration and the amount of such depreciation or deterioration. Unless testimony is presented on which the Railroad Commission can make such findings, this proceeding must be dismissed.

That the Water District has as yet made no payment by reason of the tax liens and penalties herein referred to is conceded. Whether the Water District will hereafter be compelled, in order to prevent a legal sale of the property by reason of unpaid taxes

and penalties, to make such payment is the subject of distinct disagreement between counsel for the Water District and the Water Company respectively.

On the one hand, the Water District urges that, in order to save the property from tax sale, it will be necessary for the Water District to pay the taxes and penalties herein referred to and that the necessity for such payment constitutes a present "unreasonable depreciation or deterioration in value" of the property.

On the other hand, the Water Company contends that there has been a merger of the tax liens with the Water District's title or possessory right to the property, that the taxes heretofore assessed and levied can not be collected and that the Water District, consequently, can suffer no damage, present or prospective, by reason of the Water Company's failure to pay said taxes and penalties. In support of this contention, the Water Company relies principally on Webster vs. Board of Regents of the University of California, 163 Cal. 705, decided on September 20, 1912. In the Webster case, the Supreme Court held, in effect, that where the Board of Regents of the State of California were mortgagees of certain land and the title of the mortgagor was later sold to the state for failure to pay state and county taxes assessed on the mortgagor's interest in the land, the purchaser of the tax title from the state "obtained only the right and title of the mortgagor in the land, that is, the right to pay off the mortgage at any time before the foreclosure sale and the right to redeem from said sale within six months after it was made, and thereupon to hold the land discharged therefrom". The Board of Re-

gents having foreclosed the mortgage and purchased the land on foreclosure sale and the purchaser of the tax title having failed to pay off the mortgage or to redeem the land from the sale on foreclosure, the Supreme Court held that the interest of the purchaser of the tax title had been extinguished by the foreclosure sale and the deed thereunder and that the title was in the Board of Regents free from any claim of the purchaser of the tax title.. This case, in my opinion, can not properly be referred to as a case of merger of a tax title with the fee, but rather as a case in which a tax title, limited and conditional in its inception, later is extinguished by reason of the failure of its purchaser to comply with the conditions which attached thereto. I desire to draw attention, furthermore, to the fact that the Webster case differs from the present proceeding in at least two important respects, as follows:

1. Whereas in the Webster case, the fee of the property became vested in the Board of Regents, the Water District has as yet only a possessory interest for the reason that a final decree of condemnation has not as yet been entered in favor of the Water District.
2. Whereas the taxes in the Webster case were both state and county taxes, the taxes in the present proceeding are not state taxes at all, but are solely county and town taxes.

That the distinction between state taxes on the one hand and county and town taxes on the other is vital in a question of this character appears from City of Santa Monica v. Los Angeles County, 15 Cal. App. 710, decided on March 24, 1911, a case not referred to by the parties herein. A petition to have the case heard by the Supreme Court after judgment in the District Court of Appeal was

denied. In the City of Santa Monica case, it appeared that the City of Santa Monica bought certain land subsequent to March 1, 1903, but before the county taxes were levied and assessed in September, 1903. The city paid the taxes under protest and brought suit against the County of Los Angeles to recover the amount paid. Judgment for the city was reversed by the District Court of Appeal. The City of Santa Monica contended that "the lien of the county and state merged in the title acquired by the municipality, which is an integral part of the state government". In overruling this contention, Allen, P.J., said (p. 713):

"The taxes so levied upon the property were levied and assessed by the county for purposes within its jurisdiction. The bare acquisition of the premises upon which the tax levy attached did not carry with it any interest or estate in the lien therein created for county purposes. There was, therefore, no vesting of any lesser estate, held in the same right or otherwise, through which a merger could be said to result".

Justice Allen concluded as follows:

"The plaintiff (City of Santa Monica), when it acquired this land, took it subject to the lien for county purposes to the same extent as would a private purchaser."

In Smith v. City of Santa Monica, 162 Cal. 221, decided on February 10, 1912, the Supreme Court referred to the decision in 15 Cal. App. 710 as follows:

"In this case the question is not of the merger of a lien held by the county for a county tax, the question which was presented in City of Santa Monica v. Los Angeles County, 15 Cal. App. 710."

Whatever views the Railroad Commission may entertain concerning the question of law here at issue, the

fact remains that, if the parties do not reach some fair, satisfactory adjustment between themselves, this question can be decided only by the courts and that the courts have not spoken on the facts of this case. On the facts as they are herein presented, the Railroad Commission can not know whether the Water District must ultimately pay the taxes and penalties herein referred to and hence can not make a finding as to whether or not there has been unreasonable or any depreciation or deterioration in value of the property.

It is not necessary to decide herein whether, in case the Water District should necessarily pay said taxes and penalties to prevent a legal sale of the property, the failure of the Water Company to make such payment would constitute an "unreasonable depreciation or deterioration in value" of the property, as those words are used in Section 47 of the Public Utilities Act. If the parties herein reach an amicable adjustment on the basis of the decision in City of Santa Monica v. Los Angeles County, supra, or otherwise, it will not be necessary to pass on this and other questions presented by the Water Company on the motion to dismiss.

I recommend that the first supplemental petition of the Water District herein be denied, without prejudice, and submit the following form of order:

O R D E R

MARIN MUNICIPAL WATER DISTRICT having filed its first supplemental petition herein as indicated in the opinion which precedes this order, NORTH COAST WATER COMPANY having filed a motion to dismiss said petition as well as an answer and a cross-petition, a public hearing having been held, briefs having been filed and the matter having been submitted,

IT IS HEREBY ORDERED that the first supplemental petition of Marin Municipal Water District be and the same is hereby denied, without prejudice.

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

Dated at San Francisco, California, this 25th day of April, 1917.

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H. H. Hovland

Frank R. Darby

Commissioners.