

ORIGINAL

Decision SS 03 081 MAR 23 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the City of Fontana)	
for the determination of just)	
compensation for acquisition of)	Application 86-06-022
the Fontana Division of the San)	(Filed June 6, 1986)
Gabriel Valley Water Company.)	

ORDER MODIFYING DECISION 87-07-082
AND DENYING REHEARING

An application for rehearing of Decision (D.) 87-07-082 has been filed by the Fontana Water Company Division of the San Gabriel Valley Water Company (Division). A response in opposition thereto has been filed by the City of Fontana (Fontana). We have considered all of the allegations of legal error raised in the application, and are of the opinion that insufficient grounds for granting rehearing have been shown. However, we will modify the decision in several respects to further clarify our position on the issues raised by Division.

IT IS ORDERED that D.87-07-082 is modified as follows:

1. On page 1a, the first paragraph after the heading Discussion on Comment is modified to read:

"We adopt without change the ALJ's proposed decision denying the motion to dismiss. While we agree with respondent that the constitutionally based objections it raised by its motion and addressed in its brief and appeal, insofar as they allege violations of the California Constitution, are independent of the issues raised in the Jackson Water Works decision, it is our conclusion that these objections equally lack merit. Division fails to persuade us that Article XII, Section 5 of the California Constitution, which expressly

provides that the Legislature can establish procedures under which the Commission may fix just compensation for utility property, does not contemplate the procedures established in Public Utilities Code §1401 et seq. These procedures have repeatedly been upheld as constitutional by the California Supreme Court. Division's other objections have been adequately addressed in the ALJ's proposed decision."

2. On page 1c, delete the last sentence in the first full paragraph.

3. On page 1c, insert the following language at the bottom of the page:

"As to objections to Fontana's right and power to take Division's property or the propriety of any of Fontana's actions, Division's proper remedy is to seek relief in the Superior Court and not from this Commission."

4. On page 4, the last sentence on the page, continuing to the end of the first paragraph on page 5, is modified to read:

"A person having an interest in the property may obtain judicial review of the validity of the resolution of necessity, although nothing precludes the public entity from rescinding and adopting a new resolution (Code Civ. Proc. §1245.255 (Emphasis added). But the salient point is that the law clearly provides that Superior Court shall hear and determine all objections to the right to take (Code Civ. Proc. §1260.120). Because of this the Commission repeatedly has refused to rule on such questions as a city's jurisdiction to take, or whether a city has complied with the requirements of the Code of Civil Procedure, and has deferred such questions to Superior Court." [Nb: footnote 5 is not deleted.]

5. On page 5, the first sentence in the first full paragraph, the word "properly" is inserted between the words "is invited," so that the phrase becomes "is properly invited."

6. On page 6, the sentence of the text beginning "After all" and the following sentence are modified to read:

"After all, if the political subdivision tenders the just compensation amount and the public utility accepts and executes an appropriate conveyance the necessity to commence a formal eminent domain action vanishes. A resolution of necessity is a prerequisite for a condemnation action, but not necessarily in every Chapter 8 proceeding before the Commission."

7. On page 6, the last paragraph, which continues on page 7, is modified to read:

"The Commission's finding of just compensation is final and the Superior Court's function is to determine only whether the political subdivision has the right and power to take the property (East Bay Municipal Utility District v. Railroad Commission (1924) 194 C. 603), and whether the political subdivision has satisfied all of the legal requirements necessary to condemn the property."

8. On page 7, the first full paragraph is modified to read:

"Accordingly, before this Commission, in a just compensation petition proceeding, it is not material whether Division has yet adopted, or will have to adopt, a resolution of necessity, or has met other requirements under the Code of Civil Procedure for an action under the Eminent Domain Law. Essentially, these issues must be decided in Superior Court."

9. On page 8, the last sentence in the first full paragraph is modified to read:

"As we stated earlier, Superior Court is the forum to consider all objections to the right to take (Code Civ. Proc. §1260.120), and to further consider whether Fontana has satisfied all of the legal requirements necessary to condemn the Division's property."

10. On page 11, the words "As stated before" are deleted from the beginning of the second sentence in the first full paragraph.

11. On page 12, the last sentence in the first full paragraph is modified to read:

"As we previously have stated, Division must look to Superior Court to consider the validity of Fontana's actions under CEQA."

12. On page 12, in the second full paragraph, after the sentence "Division's contentions are in the wrong forum" add the sentence "They must be raised in Superior Court."

13. On page 13, Finding 12 is modified to read:

"Code of Civ. Proc. §1260.120 provides that Superior Court shall hear and decide all objections to the right to take under the Eminent Domain Law, and whether Fontana has satisfied all of the legal requirements necessary to condemn Division's property."

IT IS FURTHER ORDERED that rehearing of D.87-07-082 as modified above is denied.

This order is effective today.

Dated MAR 23 1988, in San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weisber
Victor Weisber, Executive Director

L/AKM/lmz

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