

#36.20(1)

3/25/70

Memorandum 70-35

Subject: Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition
of Section 1238(15)--Restoration of Public Records)

Subdivision 15 of Section 1238 of the Code of Civil Procedure authorizes condemnation by cities, counties, and "municipalities" to restore public records lost or destroyed by conflagration or other public calamity. The substance of this provision must be retained when Section 1238 is repealed.

Attached as Exhibit I is a Comment to subdivision 15 and a new article added to the Government Code to retain the substance of subdivision 15. These provisions should be tentatively approved.

Also attached is a staff background study on subdivision 15.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

CODE OF CIVIL PROCEDURE § 1238

Staff recommendation

Subdivision 15

~~15.--The plants, or any part thereof, or any record therein of all persons, firms or corporations heretofore, now or hereafter engaged in the business of searching public records, or publishing public records or insuring or guaranteeing titles to real property, including all copies of, and all abstracts or memoranda taken from, public records, which are owned by, or in the possession of, such persons, firms or corporations or which are used by them in their respective businesses; provided, however, that the right of eminent domain in behalf of the public uses mentioned in this subdivision may be exercised only for the purposes of restoring or replacing, in whole or in part, public records, or the substance of public records, of any city, city and county, county or other municipality, which records have been, or may hereafter be, lost or destroyed by conflagration or other public calamity; and provided further, that such right shall be exercised only by the city, city and county, county or municipality whose records, or part of whose records, have been, or may be, so lost or destroyed.~~

Comment. Subdivision 15 is continued without substantive change as Section 53030 of the Government Code.

§ 53030. Restoration of records destroyed by public calamity

Sec. . Article 2.5 (commencing with Section 53030) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 2.5. Restoration of Records Destroyed by

Public Calamity

53030. (a) As used in this section:

(1) "Acquire" includes acquisition by gift, purchase, lease, eminent domain, or otherwise.

(2) "Local agency" means a city, city and county, county, or other municipality.

(3) "Title company plant" means the plant, or any part thereof, or any record therein, of any person engaged in the business of searching or publishing public records or insuring or guaranteeing titles to real property, including copies of public records and abstracts or memoranda taken from public records, which is owned by or in the possession of such person or which is used by him in his business.

(b) If public records of a local agency have been lost or destroyed by conflagration or other public calamity, the local agency may acquire such portion of a title company plant as is necessary for the purpose of restoring or replacing the records or their substance.

Comment. Section 53030 continues the substance of subdivision 15 of former Code of Civil Procedure Section 1238.

THE DECLARED PUBLIC USES

Restoration of Public Records

Subdivision (15) was added to Section 1238 in 1906¹ to authorize condemnation by cities and counties to restore public records "lost or destroyed by conflagration or other public calamity."² The subdivision was one of a number of measures enacted to deal with the problems created by destruction of public records in the San Francisco earthquake and fire.³ Apparently the only other remnant of that episodic legislature is the Destroyed Land Records Relief Law, more commonly known as the McEnerney Act, now codified as Code of Civil Procedure Sections 751.01-751.28. In essence, the McEnerney Act provides a summary and highly conclusive quiet title action which has the effect of providing a new "record title" to the property.

Subdivision (15) has never been considered by the appellate courts and one would suppose its authorization to be very infrequently invoked. However, as there is no other legislation on this subject, subdivision (15) must be continued in existence if cities and counties are to be authorized to restore their records in the manner contemplated by the subdivision. Moreover, inasmuch as "title plants" and similar accumulations of data are initially acquired through the courtesy and cooperation of county recorders and other local officers, the circumspect authorization to condemn conferred by subdivision (15) does not seem an unreasonable imposition upon the owners of these privately kept records. The substance of subdivision (15) should, therefore, be codified in the portion of the Government Code dealing with the records-keeping powers and duties of cities and counties.⁴

THE DECLARED PUBLIC USES
THE RESTORATION OF PUBLIC RECORDS
FOOTNOTES

1. Cal. Stats. 1906 Ex. Sess., Ch. 50, § 1, p. 68. See also Evidence Code § 1601 making title abstracts and other instruments made and certified by persons engaged in the title insurance or abstract business admissible to prove the contents of the official record of the writing.
2. Subdivision (15) authorizes condemnation of:

The plants, or any part thereof, or any record therein of all persons, firms or corporations heretofore, now or hereafter engaged in the business of searching public records, or publishing public records or insuring or guaranteeing titles to real property, including all copies of, and all abstracts or memoranda taken from, public records, which are owned by, or in the possession of, such persons, firms or corporations or which are used by them in their respective businesses; provided, however, that the right of eminent domain in behalf of the public uses mentioned in this subdivision may be exercised only for the purposes of restoring or replacing, in whole or in part, public records, or the substance of public records, of any city, city and county, county or other municipality, which records have been, or may hereafter be, lost or destroyed by conflagration or other public calamity; and provided further, that such right shall be exercised only by the city, city and county, county or municipality whose records, or part of whose records, have been, or may be, so lost or destroyed.

3. Cal. Stats. 1906 Ex. Sess., Chs. 52-55, 60-64.
4. See Govt. Code §§ 50110-50114.