

#36

11/16/71

Memorandum 71-91

Subject: Study 36 - Condemnation (Jurisdiction of Public Utilities Commission)

Summary

The Public Utilities Commission has jurisdiction to determine just compensation for the taking of certain public utility property. This jurisdiction is concurrent and alternate to that of the Superior Court. This memorandum summarizes the commission's power to determine just compensation and presents the questions (1) whether the limited jurisdiction of the Public Utilities Commission should be continued and (2) if so, whether the procedure should be made to conform with that provided in the general eminent domain statute.

Analysis

Despite the provision of Section 14 of Article I of the California Constitution providing for determination of just compensation by a jury, there is a significant exception to this rule. Section 23a of Article XII of the Constitution gives the Legislature plenary authority to delegate to the Public Utilities Commission the jurisdiction to ascertain just compensation for the taking of any property of a public utility in an eminent domain proceeding.

23a. The Railroad Commission (Public Utilities Commission) shall have and exercise such power and jurisdiction as shall be conferred upon it by the Legislature to fix the just compensation 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, municipal water district, irrigation district or other public corporation or 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 provision of this Constitution. All acts of the Legislature heretofore adopted which are in accordance herewith are hereby confirmed and declared valid.

This provision was added in 1914 to assure the constitutionality of the statutory provisions (now Sections 1401-1421 of the Public Utilities Code, Exhibit I, attached) which permit local political subdivisions to have the Public Utilities Commission determine the compensation to be paid in the taking of "the lands, property, and rights of any character whatsoever of any public utility." East Bay Muni. Util. Dist. v. Railroad Comm'n, 194 Cal. 603, 229 P. 949 (1924). The only other statutory application of Section 23a is Sections 1206-1220 of the Public Utilities Code (Exhibit II, attached) which provide for the determination of just compensation by the Public Utilities Commission in the taking of property for the elimination of grade crossings.

These limited areas in which the Public Utilities Commission supplants the jury in the determination of just compensation have been held to be constitutional under both the equal protection and due process clauses. Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 137 P. 1119 (1913); Marin Municipal Water Dist. v. Marin Water & Power Co., 178 Cal. 308, 173 P. 469 (1918); Southern Cal. Edison Co. v. Railroad Comm'n, 6 Cal.2d 737, 59 P.2d 808 (1936). This is true only because the Public Utilities Commission jurisdiction is limited to cases involving public utility property, and has no application to property of "private" persons. S.H. Chase Lumber Co. v. Railroad Comm'n, 212 Cal. 691, 300 P. 12 (1931). See also Breidert v. Southern Pac. Co., 61 Cal.2d 659, 394 P.2d 719, 39 Cal. Rptr. 903 (1964).

The commission's power to determine just compensation for utility property and in connection with the elimination of grade crossings does not supplant the power of court or jury, but is an alternate means of valuation. The commission takes jurisdiction only if its authority is invoked by special petition to the commission. Pub. Util. Code §§ 1217, 1421. See Citizens

Util. Co. v. Superior Court, 59 Cal.2d 805, 382 P.2d 356, 31 Cal. Rptr. 316 (1963). The invocation of the commission's determination of compensation may be either prior to or following commencement of an eminent domain proceeding in the Superior Court. See, e.g., North Sacramento v. Citizens Util. Co., 218 Cal. App.2d 178, 32 Cal. Rptr. 308 (1963).

In either case, the commission's finding is conclusive as to compensation although the court has jurisdiction to decide all legal issues and all other factual questions in the proceeding.

Evaluation

Over the years, the appellate courts have had much to say in favor of the fixing of just compensation by the Public Utilities Commission. See, e.g., Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 137 P. 1119 (1913). Use of the commission to determine compensation in the past has been, judging from the volume of appellate and Public Utilities Commission decisions, if not overwhelming, at least substantial. And it is arguable that the commission is probably a more competent arbiter of the value of utility property than a jury. In addition, the Constitution Revision Commission has studied this area and has recommended that Public Utilities Commission jurisdiction be retained, although it proposes to limit jurisdiction to those cases where both plaintiff and defendant consent to commission valuation. Proposed Article XVI, Section 4 reads:

The Legislature may provide that on request of the condemnor and condemnee the commission fix just compensation for public utility property taken by eminent domain.

On the other hand, despite past reliance on the commission, recent appellate cases in this area have become increasingly scarce. This is understandable in light of the volume of work the commission performs.

If jurisdiction is to be left in the commission to determine compensation for the taking of utility property, the Law Revision Commission should determine whether the procedures for such determination should be revised to conform with the general eminent domain valuation procedures. In the general eminent domain statute, for instance, the Commission has tentatively determined the complaint need not indicate the larger parcel, that it should be served as in civil actions generally, and that, in the valuation of property, severance damages should not be itemized. These tentative decisions conflict with present law in the Public Utilities Code providing that the petition contain an indication of the larger parcel, that service be made in a special manner, and that severance damages be separately stated. Likewise, there may be different provisions in the Public Utilities Code procedure relating to date of valuation, subsequent improvements, valuation methods, and the like. See Citizens Util. Co. v. Superior Court, 59 Cal.2d 805, 382 P.2d 356, 31 Cal. Rptr. 316 (1963).

Whether to leave the Public Utilities Commission with jurisdiction and whether to conform the valuation provisions are matters about which the staff has no strong feelings one way or another. This seems to be an area where we could merely retain the existing provisions without an in-depth study, especially if the procedure is to be available only if both plaintiff and defendant agree.

Respectfully submitted,

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EXHIBIT I

§ 1401. "Lands, property, and rights"

As used in this chapter, "lands, property, and rights" includes a part or portion thereof.

§ 1402. "Political subdivision"

As used in this chapter, "political subdivision" means a county, city and county, city, municipal water district, county water district, irrigation district, public utility district, or any other public corporation.

§ 1403. Petitions to political subdivision to institute proceedings to acquire lands, etc., of public utilities

Any political subdivision may, at any time, file with the commission either a petition of the first class, setting forth the intention of the political subdivision to acquire under eminent domain proceedings, or otherwise, the lands, property, and rights of any character whatsoever of any public utility or a petition of the second class, setting forth the intention of the political subdivision to initiate such proceedings as may be required under the law governing the political subdivision for the purpose of submitting to the voters of the political subdivision a proposition to acquire under eminent domain proceedings, or otherwise, the lands, property, and rights of any character whatsoever of any public utility.

§ 1404. Contents of petition: Prayer of petition: Signature and verification: Filing of additional copies

Each such petition shall contain the name of the political subdivision appearing as petitioner therein, a description of the lands, property, and rights which the political subdivision intends to acquire, and the names and addresses of all owners and claimants thereof, including each trustee and mortgagee under each deed of trust and mortgage, if known, or a statement that they are unknown. The petition shall pray that the commission fix the just compensation which shall be paid by the political subdivision, under the law, for such lands, property, and rights. The petition shall be signed in the name of the political subdivision and verified by the chairman or other presiding officer or by the secretary or clerk of the legislative or other governing body of the political subdivision. At the time the petition is filed, the petitioner shall also file with the commission additional copies thereof equivalent in number to three more than the number of owners and claimants named in the petition.

§ 1405. When commission's order to show cause required: Specifications of order: Directions of order

Upon the filing of the petition the commission shall make its order to show cause. The order shall specify the nature of the proceeding, contain a general description of the lands, property, and rights which petitioner desires to acquire by condemnation or otherwise, and direct the owners and claimants named in the petition, who shall also be named in the order, to appear before the commission at a time and place specified in the order, to show cause, if any they have, why the commission should not proceed to hear the petition and to fix the just compensation to be paid for the lands, property, and rights.

The order shall direct the secretary of the commission to serve or cause to be served upon each owner and claimant a copy of the order certified under the seal of the commission to which shall be attached a copy of the petition.

§ 1406. Manner of service of order

Service of the order to show cause shall be made in accordance with the provisions of the Code of Civil Procedure or by depositing a copy of the order to show cause certified under the seal of the commission with a copy of the petition attached thereto, in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to each of the owners or claimants, at the address specified in the petition.

§ 1407. Same: Service where owner or claimant out of State

If any owner or claimant named in the petition resides out of the State or has departed from the State or cannot after due diligence be found within the State, or conceals himself to avoid service, or is a corporation having no managing or business agent, cashier or secretary or other officer upon whom summons may be served, who, after due diligence, can be found within the State, and the fact appears by affidavit to the satisfaction of the commission, and it also appears by such affidavit or by the petition that a cause of action exists against the owner or claimant on whom the service is to be made or that he is a necessary or proper party to the proceeding, the commission shall make an order that the service be made on such owner or claimant by publication of the commission's order to show cause. The order shall direct that the publication be made in a newspaper designated by the commission as likely to give notice to the person to be served, and for such time as the commission finds to be reasonable, at least once a week, but publication against an owner or claimant residing out of the State or absent therefrom shall not be less than two months. If the address of any owner or claimant, as stated in the petition, is out of the State, the secretary of the commission shall, within 15 days after the making and filing of the order to show cause, deposit or cause to be deposited a copy of that order, certified under the seal of the commission, with a copy of the petition attached thereto, in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to such owner or claimant at the address specified in the petition. When publication is ordered, personal service of a copy of the order to show cause and of the petition out of the State is equivalent to publication and deposit in the United States mail.

§ 1408. Service of notice of hearing on petitioner: Manner and proof of service: Jurisdiction after service: Effect upon jurisdiction of failure to serve person not named in petition

Within 10 days prior to the time set for the first hearing on the petition, which time shall be not less than 30 days after the filing of the petition, the secretary of the commission shall serve or cause to be served upon the petitioner a written notice specifying the time and place of the hearing. In all respects not in this chapter otherwise specified, service and the proof of service shall be made as provided by the Code of Civil Procedure. Upon the completion of service upon the petitioner or upon any owner or claimant named in the petition, the commission shall have full and complete jurisdiction over such petitioner, owner, or claimant, with full and complete jurisdiction, insofar as such petitioner, owner, or claimant is concerned, to make each finding referred to in this chapter. The failure to make service upon any person alleging that he is an owner or claimant but not named in the petition shall in no way affect the jurisdiction of the commission over owners and claimants on whom service has been made.

§ 1409. Time and place for holding of hearing: Payment of extra costs: Suspension of proceedings on failure to pay: By whom presentation of evidence authorized

At the time and place specified in the order to show cause, or at such other time and place as, for good cause, is otherwise ordered by the commissioner, the commission shall proceed to a hearing on the petition. At such times and in such amounts as is directed by the commission, the political subdivision shall pay to the commission all extra costs as determined by the commission, which the commission incurs to comply with the requirements of this chapter, and if such amounts are not paid by the political subdivision as directed by the commission, the commission may suspend further proceedings on the petition. Evidence may be presented by the political subdivision, by each owner or claimant named in the petition, and by the commission.

§ 1410. Manner of amending petition after filing

The commission may, at any time subsequent to the filing of the petition, and prior to making and filing its finding as to just compensation, authorize the amendment of the petition by altering or modifying the description of the lands, property, and rights, or by adding to or deducting from the lands, property, and rights, and in each other respect including jurisdictional allegations.

§ 1411. When making and filing of findings required: Findings required: Day of fixing of compensation

When the proceeding has been submitted, the commission shall make and file its written finding fixing, in a single sum, the just compensation to be paid by the political subdivision for the lands, property, and rights. If the commission finds that severance damages should be paid, the just compensation for such damages shall be found and stated separately. The just compensation shall be fixed by the commission as of the day on which the petition was filed with the commission.

§ 1412. Time for filing of acceptance by owner: Payment of compensation: Execution of deed by owner: Procedure when deed not executed

Within 20 days after the commission has made and filed its finding, the owner of the lands, property, and rights may file with the legislative or other governing body of the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission. Upon the filing of the stipulation, the political subdivision shall proceed with all due diligence to provide the necessary funds under the law governing the providing of such funds, for paying the just compensation fixed by the commission. Whenever the just compensation has been tendered by the political subdivision, a deed of grant, bargain, and sale conveying the owner's right, title, and interest in and to the lands, property, and rights to the political subdivision shall be executed and delivered by the owner, and the other claimants who have any right, title, or interest in the property shall execute appropriate instruments conveying or releasing to the political subdivision their respective rights, titles, and interests therein. If the deed or the instruments of conveyance or release are not executed and delivered within 60 days after such tender has been made, the political subdivision may commence an action in a court of competent jurisdiction or proceed under Section 1413.

§ 1413. Time for action to take lands, etc., under eminent domain proceedings

In the case of a petition of the first class, if the owner does not file the stipulation within such 20 days, the political subdivision, within 60 days after the commission has made and filed its finding, shall commence an action in a court of competent jurisdiction to take such lands, property, and rights, under eminent domain proceedings. In the case of a petition of the second class, if the owner does not file the stipulation within such 20 days, the political subdivision, within 60 days after the commission has made and filed its finding, shall initiate proceedings for the purpose of submitting to it voters a proposition to acquire under eminent domain proceedings the lands, property, and rights. The political subdivision shall not be required, in either case, to delay for more than 20 days after the commission has made and filed its finding, before commencing such further proceedings. In the case of a petition of the second class, if the voters of the political subdivision, as provided by the law governing the political subdivision, vote in favor of any proposition to acquire under eminent domain proceedings, or otherwise, such lands, property, and rights, the political subdivision shall, within 60 days thereafter, commence an action in a court of competent jurisdiction to take such lands, property, and rights, under eminent domain proceedings, unless the owner has filed with the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission.

§ 1414. Petition by owner on failure of political subdivision to take action: Notice to political subdivision to appear

If the political subdivision, in a petition of the first class, fails to file such action in a court of competent jurisdiction within such period of 60 days after the commission has made and filed its finding, or if the political subdivision, in a petition of the second class, fails to proceed diligently to submit the proposition to its voters or fails, if its voters have voted in favor of the acquisition of the lands, property, and rights, to file such action in a court of competent jurisdiction within 60 days thereafter, the owner of such lands, property, and rights may file with the commission a verified petition in writing setting forth that fact. The petition may also set forth in detail the expenditures which the owner has necessarily incurred in the proceeding before the commission.

The commission shall thereupon cause written notice, with a copy of the owners' petition attached thereto, to be served upon the political subdivision, to appear before the commission at a time and place specified in the notice, to show cause why an order should not be made by the commission (a) finding that the political subdivision has failed to pursue diligently its rights, (b) determining that the finding as to just compensation shall no longer be of any force or effect, and (c) determining the reasonable expenditures necessarily incurred by the owner which, in the opinion of the commission, should be assessed against the political subdivision. The time specified in the notice shall be not less than 10 days subsequent to the date of service.

§ 1415. Authorization for order declaring finding of compensation no longer of force and finding expenses of owner: Liability of political subdivision thereupon

If the commission determines that the political subdivision, in case of a petition of the first class, has failed to commence the action in a court of competent jurisdiction within 60 days after the commission has made and filed its finding of just compensation, or that the political subdivision, in case of a petition of the second class, has failed to proceed diligently to submit the proposition to its voters or has failed, after its voters have voted in favor of the acquisition of the lands, property or rights, to file such action in a court of competent jurisdiction within 60 days thereafter, the commission shall make and file its order declaring that such finding shall no longer be of any force or effect, and make its finding as to the reasonable expenditures necessarily incurred by the owner in the proceeding before the commission, which should be assessed against the political subdivision. The political subdivision shall thereupon be liable to the owner in the amount thus found by the commission, and the owner may thereupon maintain an action against the political subdivision for such amount in any court of competent jurisdiction.

§ 1416. Finality of findings of commission: Judgment of court

The finding of the commission fixing the just compensation to be paid by the political subdivision for the lands, property, and rights shall be final and shall not be subject to modification, alteration, reversal, or review by any court of this State. If the court in which the political subdivision has commenced its action, subsequent to the making and filing by the commission of its finding as to just compensation, decides that the political subdivision has the right and power under the law to take the lands, property, and rights, it shall enter a judgment in favor of the complainant in the action, fixing as the just compensation which shall be paid for the taking of the lands, property, and rights, the just compensation fixed by the commission. The judgment may include the allowance of such costs between the parties as is provided for in the law of eminent domain of this State. The judgment of the court insofar as it refers to the just compensation to be paid for the lands, property, and rights, shall be final and shall not be subject to modification, alteration, reversal, or review by any court except as specified in this chapter. The judgment of the court shall include a provision, in substance, that it is subject to modification by reason of such increase or decrease in the just compensation to be paid as may thereafter be certified to the court by the commission, as provided in this chapter.

§ 1417. Time for petitions for increase or decrease in compensation: Service of copy of petition and notice of hearing: Consolidation of petitions

At any time within 30 days subsequent to the entry of such judgment, the owner of the lands, property, and rights may file with the commission a verified petition in writing, alleging that by reason of expenditures made by the owner subsequent to the date of the filing of the original petition with the commission, for the purpose of preserving or improving the lands, property, and rights, or by reason of other acts and occurrences subsequent to that date, the just compensation theretofore fixed by the commission should be increased, and praying that the commission make its finding increasing such compensation. At any time within 30 days subsequent to the entry of the judgment, the political subdivision may file with the commission a verified petition in writing, alleging that by reason of loss or destruction of the lands, property, and rights, or by reason of depreciation or deterioration thereof or by reason of other acts and occurrences, subsequent to the date of the filing of the original petition, the just compensation theretofore fixed by the commission should be decreased, and praying that the commission make its finding decreasing the compensation. The commission shall in each instance cause a copy of such petition or petitions to be served upon each party other than the petitioner, who was named as the political subdivision, owner, or claimant in the original proceeding before the commission, together with a written notice specifying the time and place of hearing on such petition or petitions, which time shall be within 45 days after the entry of the judgment by the court, and shall cause written notice of the time and place of the hearing to be served upon each petitioner in such petition or petitions. If both such petitions are filed, the commission may consolidate them for hearing and decision.

§ 1418. Findings of commission as to compensation: Finality of findings

After a hearing, the commission shall make and file its finding fixing, as of the date on which the finding is made and filed, the extent to which the just compensation theretofore fixed should be increased or decreased by reason of the matters alleged in the petition or petitions. If the claim is made that the just compensation theretofore fixed by the commission should be increased by reason of expenditures made by the owner subsequent to the date of the filing of the original petition with the commission for the purpose of preserving or improving the lands, property, and rights the commission may increase the just compensation only to the extent to which the commission determines that such expenditures were beneficial to the lands, property, and rights, and reasonably and prudently made. The finding of the commission fixing the extent to which the just compensation theretofore fixed should be thus increased or decreased shall be final and shall not be subject to modification, alteration, reversal, or review by any court of this State.

§ 1419. Modification of judgment by court: Finality of judgment: Filing of petition as stay of judgment

The commission shall thereupon transmit to the court its finding, certified under the seal of the commission, fixing the extent to which the just compensation theretofore fixed by the commission shall be increased or decreased. The court shall thereupon modify its judgment so as to conform with the finding of the commission. The judgment of the court, as thus modified, insofar as it refers to the just compensation to be paid for the lands, property, and rights, shall be final and shall not be subject to modification, alteration, reversal, or review by any court. The filing of either or both the petitions specified in Section 1417 shall not act as a stay of the judgment in condemnation, but upon the payment of the just compensation fixed in the original judgment of condemnation the plaintiff in the action shall be entitled to immediate possession of the lands, property, and rights.

§ 1420. Time for filing of petitions for rehearing: Finding set aside by Supreme Court: Extension of time on obtaining writ of review

The provisions of this part with reference to rehearing and review shall be applicable to the findings of the commission made and filed under the provisions of this chapter. Petitions for rehearing shall be filed within 20 days from the date of making and filing the finding as to which a rehearing is desired. If such finding of the commission is set aside by the Supreme Court of the State of California, the matter shall be referred back to the commission for further action in the proceeding before the commission, and the commission may, in taking further action, consider the entire testimony theretofore taken in the proceeding before the commission as well as such further testimony as may be presented in connection with such further action. Should a writ of review be obtained from the Supreme Court of the State of California, the time within which the political subdivision shall file an action in a court of competent jurisdiction or submit the proposition to its

voters shall be extended to not more than 60 days beyond the final decision of the Supreme Court upon that writ.

§ 1421. Exclusiveness of procedure in chapter: Construction of chapter
The procedure provided in this chapter shall be alternative and cumulative and not exclusive, and the political subdivision shall continue to have the right to pursue any other procedure providing for the acquisition under eminent domain proceedings of the lands, property, and rights of any public utility. This chapter shall not be construed as repealing any law of this State providing for such eminent domain proceedings.

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EXHIBIT II

§ 1206. Commission's power to fix just compensation

The commission may fix the just compensation to be paid for property or any interest in or to property to be taken or damaged in the separation of grades at any crossing specified in Section 1202, or for property or any interest in or to property to be taken or damaged in the construction, alteration, or relocation, under the order or with the approval of the commission, of elevated tracks or subways for any railroad or street railroad over or under any public road, street, highway, or private right of way, or of any public road, street, or highway over or under the tracks of any railroad corporation or street railroad corporation, and upon the payment of the compensation so fixed may make a final order of condemnation.

§ 1207. Same: Manner of commencement of proceedings: Contents of order and petition: Verification of petition: Filing of copies

Proceedings under Section 1206 may be commenced by order on the commission's own motion or by a petition filed by the State, county, city and county, city, political subdivision, railroad corporation, or street railroad corporation affected. Any such proceeding may be made a part of any proceeding commenced under Sections 1202 to 1205, inclusive.

The petition shall set forth the name and interest of the petitioner. The order on the commission's own motion and the petition shall set forth (a) a statement of the purpose of the proceedings and the use for which property or interest in or to property is sought to be taken, (b) a description of each piece of land or other property or interest in or to property sought to be taken, and whether it includes the whole or only a part of an entire parcel or tract or piece of property or interest in or to property, and (c) the names and addresses of all owners and claimants thereof, if known, or a statement that they are unknown, and a statement of each railroad corporation, the State and political subdivision which in the opinion of the commission or the petitioner has an interest in the proceeding.

The petition shall pray (a) that the commission fix the just compensation to be paid for the acquisition of or damage to the property and interest in or to property specified in the petition, (b) that the commission designate the party or parties to the proceeding who shall pay such compensation and the owners and claimants of the property and interest in or to property condemned to whom such compensation

shall be paid, and (c) that the commission make its final order of condemnation. When the proceeding is commenced by order on the commission's own motion such matters shall be included in the statement of the purpose of the proceeding.

The petition shall be verified. At the time it is filed with the commission the petitioner shall also file additional copies thereof equal in number to three more than the number of owners and claimants named in the petition.

§ 1208. Same: When commission to make order to show cause: Contents of order: Incorporation of order to show cause in order on commission's own motion

Upon the filing of the petition or the making of the order on the commission's own motion, the commission shall make its order to show cause. The order shall (a) specify the nature of the proceeding, (b) contain a general description of the property and interest to be condemned, and (c) direct the owners and claimants and the railroad corporations, street railroad corporations, and governmental authorities in interest named in the petition or order on the commission's own motion, who shall also be named in the order to show cause, to appear before the commission at a time and place specified in the order, to show cause, if any they have, why the commission should not proceed after hearing to fix the just compensation to be paid for the acquisition of or damage to the specified property and interest, to designate the party or parties to the proceeding who shall pay such compensation and the owners and claimants to whom such compensation shall be paid, and to make its final order of condemnation.

The order to show cause shall direct the secretary of the commission to serve or cause to be served upon each owner and claimant, railroad corporation, street railroad corporation, and governmental authority in interest a copy of the order certified under the seal of the commission to which shall be attached a copy of the petition or order on the commission's own motion.

When the proceeding is commenced by order on the commission's own motion the order to show cause may be incorporated in the order on the commission's own motion.

§ 1209. Manner of personal service

Personal service shall be made in accordance with the provisions of the Code of Civil Procedure or by depositing a copy of the order to show cause certified under seal of the commission with a copy of the petition or order on the commission's own motion attached thereto or made a part thereof in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to the party to be served.

§ 1210. When service by publication permissible: Permissible publications: Time of publication: Deposit in registered mail: Effect of personal service out of State

If any owner or claimant named in the petition or order on the commission's own motion resides out of the State or has departed from the State or cannot after due diligence be found within the State, or conceals himself to avoid service, or is a corporation having no managing or business agent, cashier or secretary or other officer upon whom summons may be served, who, after due diligence, can be found within the State, and the fact appears by affidavit to the satisfaction of the commission, and it also appears by such affidavit or by the petition or order on the commission's own motion that a cause of action exists against such owner or claimant on whom service is to be made and that he is a necessary or proper party to the proceeding, the commission may make an order that the service be made on such owner or claimant by publication of the commission's order to show cause. The order shall direct that the publication be made in a newspaper designated by the commission as likely to give notice to the owner or claimant to be served, and for such time as the commission finds to be reasonable, at least once a week, but publication against an owner or claimant residing out of the State or absent therefrom shall not be less than two months.

If the address of any owner or claimant as stated in the petition or order on the commission's own motion is out of the State, the secretary of the commission shall, within 15 days after the making and filing of the order to show cause, deposit or cause to be deposited a copy of that order, certified under the seal of the commission, with a copy of the petition or order on the commission's own motion attached thereto or made part thereof, in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to such owner or claimant at the address specified in the petition or order on the commission's own motion. Personal service of a copy of the order to show cause and of the petition or order on the commission's own motion out of the State is equivalent to publication and deposit in the United States mail.

§ 1211. Time for serving notice of hearings: Specifications: Mode and proof of service: Jurisdiction after service: Effect on jurisdiction of failure to serve owner or claimant not named in petition or order

Within 10 days prior to the time set for the first hearing on the petition or order on the commission's own motion, which time shall be not less than 30 days after the filing of the petition or the making of that order, the secretary shall serve or cause to be served upon the petitioner a written notice, specifying the time and place of the hearing. In all respects not in this chapter otherwise provided, service and the proof of service shall be made as provided by the Code of Civil Procedure. Upon the completion of service upon the petitioner or upon any party in interest named in the petition or order, the commission shall have full and complete jurisdiction insofar as such petitioner or party in interest is concerned, to make each finding referred to in this chapter, to fix the just compensation to be paid for the acquisition of or damage to any property or interest therein specified in the petition or order, to designate the party or parties to the proceeding who shall pay such compensation and the owner or claimant to whom such compensation shall be paid, and to make its final order of condemnation. The failure to make service upon any person alleging that he is an owner or claimant or party in interest but not named in the petition or order or to acquire jurisdiction over such person shall in no way affect the jurisdiction of the commission over owners and claimants and parties in interest on whom service has been made.

§ 1212. Time and manner of amending petition or order after filing

The commission at any time subsequent to the filing of the petition, and prior to making and filing its finding of just compensation, may authorize the amendment of the petition, or in case the proceeding is by order on the commission's own motion may amend the order, by altering or modifying the description of the property or interest therein, or by adding to or deducting from the property or interest therein, or by bringing in any additional party or parties, or in any other respect including jurisdictional allegations.

§ 1213. Time and place of hearing: Findings: Time for fixing compensation

At the time and place specified in the order to show cause, or at such other time and place as, for good cause, is otherwise ordered by the commission, the commission shall proceed to a hearing upon the petition or order on the commission's own motion. When the proceeding has been submitted the commission shall make and file its finding upon the question whether the use to which the property or interest therein is to be applied is a use authorized by law and whether the taking is necessary to such use, and shall make and file its written finding fixing the just compensation to be paid for the property or interest. If the commission finds that severance damages should be paid, the just compensation for such damages shall be found and stated separately. The just compensation shall be fixed by the commission as of the day on which the petition was filed or the order on the commission's own motion was made.

§ 1214. Orders for payment of compensation: Liability of parties for compensation: Time for beginning permissive work: When liability to pay compensation arises: Collection from political subdivision

The commission shall also make its order designating the party or parties to the proceeding who shall pay the just compensation so fixed, or any portion thereof, the amounts in which it shall be paid, the times at which it shall be paid, the property or interest therein for which it shall be paid, and the owners and claimants of such property or interest to whom it shall be paid. The commission may prescribe any other terms or conditions with reference to the payment of such compensation as the commission deems proper, including a provision that the money due be paid to the commission to be distributed to the parties entitled thereto.

The party or parties whom the commission designates to pay such compensation or any part thereof are thereupon liable therefor, and may be sued in any court of competent jurisdiction by the party or parties entitled to such compensation as provided in the commission's order. In cases in which the order of the commission authorizing any work to be done under the provisions of this chapter is permissive in character and not mandatory, the commission may prescribe the time within which the party receiving such permission shall elect to proceed and notify the commission thereof, and only in the event such party elects to proceed and so notifies the commission shall any liability arise to pay the compensation or any part thereof under the provisions of this section. When any political subdivision of the State is designated by the commission to pay such compensation or any portion thereof it shall be collectible in the manner provided in Section 1203 for the collection of expenses apportioned by the commission to political subdivisions of the State.

§ 1215. When final order of condemnation to be made: Contents: Filing: Vesting of property

When the just compensation has been paid in accordance with the commission's order, the commission shall make its final order of condemnation which shall describe the property or interest therein condemned and the purpose of such condemnation. A copy of the order certified under the seal of the commission shall thereupon be filed in the office of the recorder of the county in which the property described is situated, and thereupon the property or interest in or to property described therein shall vest in the parties and for the purposes specified in the order.

§ 1216. Finality of commission's findings: Review: Petitions for rehearing: Procedure on reference back to commission

The finding of the commission on the question of the necessity for the taking and the finding fixing the just compensation to be paid for any property or interest in or to property under the provisions of Sections 1206 to 1216, inclusive, are final and shall not be subject to modification, alteration, reversal, or review by any court of this State. The provisions of this part with reference to rehearing and review shall be applicable to the findings of the commission made and filed under the provisions of this chapter. Petitions for rehearing shall be filed within 20 days from the date of making and filing the finding as to which a rehearing is desired. If a finding of the commission made and filed under the provisions of this chapter is set aside by the Supreme Court of the State of California, the matter shall be referred back to the commission for further action in a proceeding before the commission, and the commission shall have the right, on taking further action, to consider the entire testimony theretofore taken in the proceeding before the commission as well as such further testimony, if any, as may be presented in connection with such further action.

§ 1217. Exclusiveness of procedure provided in chapter

The procedure provided in this chapter shall be alternative and cumulative and not exclusive to the right to pursue any other procedure providing for the acquisition under eminent domain proceedings of property or interest in or to property.

§ 1218. Right to damages

Nothing in this chapter shall entitle any owner or claimant of property and interest in or to property to receive damages when the right to receive such damages does not exist under the laws of this State apart from the provisions of this chapter.