

September 19, 1960

Memorandum No. 77 (1960)

Subject: Study No. 36(L) - Condemnation (Taking Possession)

In commenting on specific provisions, the text of the provisions are not set out as was done in prior memoranda. To understand the comments in this memorandum, you should refer to the Commission's tentative recommendation and statute dated June 23, 1960 (a copy is enclosed). In this memorandum, suggested revisions are shown in strike out and underscore indicating changes from the tentative statute proposed by the Commission. A complete revision of the statute as it would appear if all of the suggested revisions were approved is on the yellow sheets attached to this memorandum. The letters referred to in this memorandum are set out in Memorandum 74 (1960) and in the supplements to that memorandum. The letters should be read to fully appreciate the suggestions made by the letter writers.

Like our other recommendations, the recommendation of the Commission relating to taking possession has receive a mixed reaction. The Chairman of the State Bar Committee reports:

There has long been a need for a comprehensive study and revision of statutory procedure for the taking of possession and title to property in eminent domain actions. This appears to be it and we feel that it meets the requirements in that it provides "due process" where none existed in the past. (Bar (2) 47 - 51.)

On the other hand, Public Works and the Los Angeles County Counsel's office object to a great many of the proposals and assert that there have been no hardships under existing law. This should be contrasted with Mr. Tarr's statement:

There have been times when agents for public bodies actually threatened property owners with the taking of immediate possession, wherein the owner would be deprived of his property and have no other funds either to move or purchase other property. And it has been dynamite to business of [sic] industrial firms, forcing settlements to avoid losses and financial failure. (Bar (2) 51-57.)

Turning to the specific proposals:

SECTION 1243.5 (1) and (2)

1. Codification of existing procedure

San Francisco has no objection to the provisions of subdivision (1), which is intended to codify existing procedure for the obtaining of the order of immediate possession. (SF Supp (58).) However, Los Angeles can see no useful purpose in enacting such a statute. (LA Supp (54).) Public Works does not object to codifying the present practice and procedure, but it points out that the existing practice is not quite what the Commission provided in the statute. (PW Supp (18) - (19).) Public Works points out that the proposed legislation contemplates a deposit by the condemner after the order of immediate possession is obtained. Thus the order for possession is subject to a condition subsequent. If the deposit is made in the State Treasury there is nothing in the condemnation record to show that this condition has been met. Therefore, Public Works believes the statute should provide that the court, upon application of the condemner, should fix the amount of the deposit for each parcel and that only after the deposit is made should the court make the order authorizing the plaintiff to take immediate possession.

As the Commission intended to codify the existing practice, the staff recommends that Public Works' suggested modification be approved.

## 2. Possession after judgment

Public Works also objects to the phrase "and prior to entry of judgment." (PW Supp (18).) It feels that agencies entitled to take immediate possession under the Constitution should be entitled to do so after judgment inasmuch as the authority granted by the Constitution continues throughout the proceedings and is not limited to the period before entry of judgment. Moreover, the authority to take possession after judgment under Section 1254 is subject to the court's discretion, but the plaintiff has an absolute right to take possession under the Constitution and Section 1243.5. Public Works argues that the defendant would be protected under its proposal, for under the Constitution the court has the authority to raise the amount deposited to the amount of the judgment.

The staff recommends that the phrase "prior to entry of judgment" be retained in Section 1243.5. It is more convenient to have the rules relating to possession prior to judgment in one location and the rules relating to possession after judgment in another. Moreover, it is somewhat confusing to have two procedures that are almost, but not quite, the same to accomplish the same purpose.

So far as the discretion of the court under Section 1254 is concerned, the staff recommends that the court should not have a discretion to keep the condemner out of possession. The present section is inconsistent with the Commission's general approach to the possession problem. If the right of immediate possession is to be extended to all condemners prior to judgment, certainly all condemners should have the right to obtain possession after an adjudication determining both their right to condemn and the amount of compensation to be paid.

3. "Probable just compensation"

[Public Works objects to the phrase "probable just compensation." (PW Supp (19).) It believes that the term implies a hearing and determination of market value. It also believes that the deposit should be regarded merely as "security" to the owner for prompt payment when the amount he is entitled to receive is determined. In connection with the discussion of Section 1254.7 (at Supp (25)), Public Works asserts that the deposit is in reality an offer by the condemner to purchase the property at that amount.

The deposit is not "security" in the ordinary meaning of the word. It is not a fund to be resorted to by the defendant if the plaintiff does not fulfill some other obligation. It will be the compensation the defendant will receive. Since the defendant is able to withdraw the deposit, it has lost whatever character as "security" that it had. It is doubtful whether it serves a useful purpose as "security." It is unlikely that the State would be unable to pay a condemnation judgment, and if the State does not promptly pay, the condemnee does not have the right to resort to the "security" for, under existing law, the failure of the State to pay constitutes an abandonment of the condemnation. (C.C.P. § 1255a.) In reality, the deposit is a form of preliminary approximate compensation. Therefore, the term "probable just compensation" is a more accurate term and should be retained. The term does not imply a hearing. The hearing procedures are spelled out in detail in the Commission's statute, and the statute specifically provides that the amount of the deposit is originally determined upon an ex parte application.]

As the staff has suggested that subdivision (1) be modified to incorporate Public Works' suggestion on procedure, the staff also

recommends that the provisions of subdivision (2) relating to the determination of the amount of the deposit be moved to subdivision (1).

#### 4. Contents of possession order

Public Works suggests that subdivision (2) be amended so that the description of the property in the order of immediate possession may be made by reference to the complaint. (PW Supp (19).) It believes that a metes and bounds description is meaningless to the average property owner and the copying of the lengthy description contained in the complaint may possibly lead to errors and mistakes. The staff recommends approval of the suggestion.

Public Works also suggests the substitution of "upon a showing by the plaintiff" for "if the court determines." The purpose of the change is to state the section positively instead of in terms of a condition. The change of language will probably make little difference in practice, but the staff believes the present language more clearly indicates that the court is to exercise its judgment and make a determination of the questions involved.

Richard L. Huxtable suggests certain additions to the immediate possession order. (Huxtable (111) 36-51.) He believes that the order should also state the statutory authority for the exercise of the power of eminent domain, and if the plaintiff is a city or city and county whether the property is within its boundaries. He also believes that the order should state whether the property is already dedicated to public use and, if so, why the proposed use is a more necessary public use. These statements would inform the defendant from the face of the order whether

the issue of necessity can be litigated or not. Mr. Huxtable believes these additions will not burden the plaintiff or the court unduly and they may avoid unnecessary motions to vacate at a later time. These modifications are reasonable, and the staff recommends their approval.

#### Recommendation

If the foregoing alterations are approved, subdivisions (1) and (2) would be altered to read as indicated below. In connection with the discussion of the constitutional amendment and supplementary legislation some further amendments are suggested that do not appear here.

1243.5. (1) In any case in which the plaintiff is entitled pursuant to Section 14 of Article I of the Constitution of this State to take immediate possession of the property sought to be condemned, the plaintiff may, at any time after the issuance of summons and prior to the entry of judgment, apply ex parte to the court for an order determining the probable just compensation which will be made for the taking of the property and any damage incident thereto. After depositing the amount so determined in accordance with Section 1254.5, the plaintiff may, at any time prior to the entry of judgment, apply ex parte to the court for an order authorizing it to take immediate possession of and to use the property sought to be condemned.

(2) If the court determines that the plaintiff is entitled to [acquire] take the property by eminent domain and [~~that the plaintiff is entitled pursuant to Section 14 of Article I of the Constitution~~] to take immediate possession thereof, and if the court determines that the plaintiff has deposited the amount

required in subdivision (1) of this section, the court shall, by order, authorize the plaintiff to take immediate possession of and to use the property sought to be condemned. [after the plaintiff deposits, in accordance with Section 1245.5, the amount the court determines to be the probable just compensation which will be made for the taking of the property and any damage incident thereto.] The order authorizing immediate possession shall:

(a) Describe the property and the estate or interest therein sought to be [acquired] condemned, which description may be made by reference to the complaint.

(b) State the purposes of the condemnation and the statutory provisions authorizing the exercise of the power of eminent domain for such purposes.

(c) If the plaintiff is a city, city and county, county, school district, or irrigation, transit, rapid transit, public utility or water district, state whether or not the property sought to be condemned is situated within the territorial limits thereof.

(d) State whether or not the property sought to be condemned is already dedicated to a public use, and if the property is so dedicated, the order shall state in general terms the facts that cause it to appear that the use for which the property is sought to be condemned is a more necessary public use.

(e) State the amount [that the plaintiff is required to] of the deposit.

[(a)] (f) State the date upon which the plaintiff is authorized by the order to take possession of the property.

SECTION 1243.5 (3)

1. 20-day notice

Modesto believes that the 20-day notice requirement is too long. It suggests ten days as a reasonable requirement. It also objects to the provision permitting the court to stay the order to avoid hardship, as it believes that this provision will be abused by attorneys who will seize any excuse to delay the litigation. (Modesto (75) 30-52.)

Public Works does not object to the 20-day limit if provision is made for shortening time in necessary cases. (PW Supp (5).) San Francisco states that "Since all persons having an interest in the property should be given adequate notice there should be no objection to this proposal." (SF Supp (58).) Public Works argues that its right of way manual requires ten days' notice in any case, and that it has discovered no hardship situations in operating under the existing statute. It points out that the order for possession is not self-executing, and if the condemnee refuses to vacate, a writ of assistance must be secured which brings the matter before a judge for review.

Public Works' suggestion that the court be given authority to shorten the amount of required notice may be necessary to take care of emergency situations that may possibly arise. If a provision for shortening time is included, the 20-day notice requirement should be satisfactory. It is recommended that this additional provision be included in the statute.



## 2. Service of the order

Public Works objects to personal service of the order for immediate possession. (PW Supp (6).) In view of the expansion of the notice to 20 days, it believes that there is little danger that the mail will not be adequate.

Although no one has pointed it out, personal service is probably superfluous if the person to be served has already been served with the summons and complaint. In such a situation, the immediate possession procedures are merely a part of litigation and service by mail should be sufficient as it is for the service of all other papers in the litigation.

Public Works also objects to the proposal to delete the reference to the latest secured assessment roll. It points out that the addresses of the record owners are not readily apparent from the records in the Recorder's Office. As the assessor's records are sufficient for mailing a tax notice, Public Works believes that such records should be adequate for immediate possession notices.

Our proposal does not preclude the condemner from looking at the tax records to determine addresses. Presumably this policy would be continued. However, we deleted this provision so that the requirement of notice to the owner would not be met by notifying the owner of record on the first Monday in March when the County Recorder's Office shows that the property was transferred to another person on the second Monday in March. Inasmuch as all condemners must have a title search made and must make an effort to serve the complaint on the interested parties as shown by the title search if they expect to acquire a good title, it does

not appear to be an unreasonable imposition to require that the order for immediate possession be served on the same parties.

Public Works also recommends the retention of the provision in existing law that a single service upon persons at the same address is sufficient. (PW Supp (20).) As this provision does save time and money and does not seriously jeopardize the notice requirement, the staff recommends the retention of this provision which the Commission previously deleted from the existing law.

#### Recommendation

In view of the foregoing comments, it is recommended that subdivision (3) be altered to read:

(3) At least 20 days prior to the time ~~[date-upon-which the-plaintiff-is-authorized-under-the-order-to-take-immediate]~~ possession is taken, the plaintiff shall ~~[file-a-copy-of-the order-in-the-office-of-the-recorder-of-the-county-in-which-the property-is-located-and-shall]~~ serve ~~[make-personal-service-of]~~ a copy of the order on the record owner or owners of the property or any interest therein and on the person or persons, if any, in possession of the property. Service of the order shall be made by personal service unless the person on whom service is to be made has previously appeared in the proceeding or has previously been served with a copy of the summons and complaint in the manner prescribed by law, in which case service of the order may be made by mail. If it appears by affidavit to the satisfaction of the court that a person on whom a copy of the order authorizing

immediate possession is required to be personally served under this section resides out of the State, or has departed from the State or cannot after due diligence be found within the State, the court may order that in lieu of such personal service the plaintiff send a copy of the order by registered or certified mail addressed to such person at his last known address. A single service upon or mailing to those at the same address is sufficient. The court may, for good cause shown by affidavit of the plaintiff, shorten the time herein specified to a period of not less than three days.

#### SECTION 1243.5 (4)

Public Works can see no reason for the enactment of subdivision (4) of Section 1243.5 as this section is presently in the Constitution.

The Commission recommended the codification of this section so that it may be deleted from the Constitution in accordance with our recommendation that the Constitution should merely authorize the Legislature to prescribe procedures. The Constitution should not specify what the procedures should be.

#### SECTION 1243.5 (5)

Public Works recommends the elimination of this subdivision because it merely reiterates the previous requirements. (FW Supp (20).) This subdivision was inserted because the deposit requirement was a condition subsequent. As the staff has recommended that this be changed, there will be no further need for subdivision (5) and the staff, too, recommends its elimination.

SECTION 1243.5 (6)

Stay of the order of immediate possession

Public Works objects to the provisions for delay contained in subdivision (6). (PW Supp (6) - (8), (20) - (21).) It asserts that the Commission's recommendation is without support, either in fact or in reason. It believes that this power would permit one individual to delay vast public projects to the detriment of the public. It also believes that this proposal would practically wipe out the right of immediate possession.

Public Works asserts that, as a practical matter, superior courts do not issue writs of assistance to make the order of possession effective except upon a showing of necessity and with the imposition of reasonable conditions. If this is in fact the present practice, there does not seem to be any reason to keep it out of the statutes where anyone may discover it by reading.

Los Angeles, too, objects to the delay and believes that no hardships have been developed under existing procedures. (LA Supp (54) - (55).) Modesto, too, believes this provision may be abused and thinks that it should be eliminated unless possession is more clearly defined. (Modesto (75) 38-45.) San Francisco, however, says "This proposal may on occasion prove beneficial to municipalities when other condemners seek to acquire their property. It should not prove objectionable." (SF Supp (59).)

Public Works is particularly concerned with the provision in the last sentence of subdivision (6) which permits a stay without notice to the condemner. The hardship on the condemner and the loss of benefit to the public would not be apparent to the court on an ex parte motion by the

condemnee. Moreover, it is pointed out that the section does not specifically require a showing of "unnecessary hardship." The notice that immediate possession is to be taken must be given about three weeks before the plaintiff may take the property. Therefore, there should be little excuse for failing to present a motion to vacate the order of immediate possession in sufficient time to permit the court to decide the matter. Therefore, the staff recommends that the last sentence of subdivision (6) be deleted.

No change in the language "for good cause shown" is recommended by the staff. Some "good cause" may appear to the court other than unnecessary hardship to the occupant of the property, e.g., the court might require time to receive evidence on the question of public use.

#### SECTION 1243.5 (7)

San Francisco states that the proposal permitting the order to be vacated together with the provision for appeal "appears to be a fair proposal and should not be objectionable." (SF Supp (59).) However, Public Works does object to the appeal provision. (PW Supp (9), (21).) Public Works also points out that, even in the absence of specific legislation, the trial court has the power to vacate the order of immediate possession if it can be shown that the condemner does not have the right to immediate possession. If the trial court refuses to vacate an order, an appropriate writ can be secured from an appellate court. Public Works urges that this is more effective than an appeal because it will be heard and determined within a relatively short time without having a record prepared and transmitted to the appellate court.

In its draft statute (at Supp (33)) Public Works retains the power of the court to vacate the immediate possession order if the plaintiff does not have the right to immediate possession under the Constitution.

The right of appeal is granted only on the questions of (1) right to condemn and (2) right to immediate possession. As most public entities are entitled to a conclusive presumption as to "necessity," it will be only the rare case where there is a substantial doubt as to these questions. In most cases, the courts can be relied on to refuse applications for stays. In the doubtful cases, it will probably be better to have these important issues resolved upon a review of the record; and the plaintiff should not be granted possession until all doubts as to its right to take the property are resolved. Therefore, it is recommended that subdivision (7) be retained in the statute.

#### SECTION 1243.5 (8)

There were no objections to this subdivision.

#### SECTION 1243.5 ADDITIONAL PROVISIONS

Public Works suggests that a provision be added indicating that the amount of money deposited or withdrawn is inadmissible in the main trial. It also believes that a provision should be added to this section indicating that possession under this section does not waive the right of appeal.

(PW Supp (21).)

These provisions may help to clarify what is probably the law anyway, and it is recommended that they be placed in the statute.

Recommendation

If the foregoing suggestions are approved, new subdivisions would be added to Section 1243.5 to provide:

(9) The amount required to be deposited by the plaintiff and the amount of such deposit withdrawn by the defendant may not be given in evidence nor referred to in the trial of the issue of compensation.

(10) The plaintiff shall not be held to have abandoned or waived the right to appeal from the judgment by taking possession of the property pursuant to this section.

SECTIONS 1248 and 1252.1

These two sections provide for the proration of taxes between condemners and condemnees. Public Works objects to this remedy. They believe that the tax collecting agencies should refund the moneys collected. It asserts that such legislation would be unconstitutional as a gift of public funds, a diversion of highway funds and a taxation of state property. (PW Supp (11).)

Mountain View (at (78) 46 - (79) 10) and Judge Lawrence (at (87) 8-13) suggest that assessments be eliminated from these provisions. They argue that the property owner's property has been increased in value by the improvement, and therefore the entire amount due should come out of his compensation, for otherwise his compensation will include the increased value for which he will never pay. Mountain View points out that Revenue and Taxation Code Section 4986 provides only for the proration of taxes, not assessments. Judge Lawrence believes that we should add a provision

making it clear that no tax exemption is caused by the condemnation of a term interest. Judge Lawrence also questions whether the cost procedure is adequate for reimbursement of tax moneys in partial takings cases. Mr. Huxtable (at (112) 29-44) suggests that 1252.1 may be simplified by eliminating subdivision (3) and adding "which shall be claimed by the defendant at the time and in the manner provided for claiming costs" to subdivision (2). He suggests a simpler method of avoiding the tax problem by providing that taxes will not be prorated where they have been prepaid and that where property is subject to condemnation, the first installment will not become delinquent until January 10 and the second installment until July 10.

The refund procedure recommended by Public Works will not work in all situations, for there are some condemners that are not exempt from taxation. The taxing entity should not be required to give a refund in such a case to the taxpayer, for the property has not become exempt from taxation and the taxing entity is entitled to retain the money. In this situation at least, the condemner should be liable for its prorated share of the taxes as between it and the condemnee. So far as the constitutional problems are involved, the total amount of money that is realized upon the sale of property on the open market includes the share of the taxes allocable to the remaining portion of the fiscal year. If the condemner is to pay "market value," therefore, it is not unreasonable that it, too, should pay this sum to the condemnee. This does not amount to taxation of the condemner. It is just a way of determining the total "just compensation."

In market transactions between private buyers and sellers, liability for special assessments that are levied and collected as taxes are also



prorated. Therefore, it may be argued that if condemnation is going to result in compensation equal to that in the market place, such assessments should be prorated in condemnation proceedings as well. This led the Commission to make its tentative recommendation that special assessments should be prorated. This may also have been the consideration that prompted the Legislature, when it originally enacted Section 1252.1 in 1953, to include the sentence, "For the purposes of this section, the term taxes shall include ad valorem special assessments levied and collected in the same manner as other taxes." The original Section 1252.1 was repealed in 1955, and, as correctly pointed out by Mountain View, the sentence does not appear in Revenue and Taxation Code Section 4986, the section that now provides for the proration of taxes.

There is, however, a reasonable basis for distinguishing between taxes and assessments in eminent domain proceedings. Taxes are not paid for a direct benefit to the land which is reflected in the value of the land. Special assessments, though, are imposed to pay for improvements that constitute a benefit to the property assessed. When the property is valued, this enhancement is reflected in the valuation. The lien imposed on the property, on the other hand, is disregarded in the valuation, because all liens are disregarded and are discharged from the award. Hence, if special assessments were prorated, the owner would be doubly compensated -- once in the award because of the enhanced value of the property, and once in the proration when the condemner assumes part of the assessment. Therefore the staff recommends the deletion of "special assessments" from the proposed sections.

The suggestion that the delinquency date for taxes on property subject to condemnation be postponed for one month doesn't seem to solve the problem involved -- it merely postpones it. The proposal that subdivision (3) be eliminated from Section 1252.1 does not seem feasible. The latest date that can be used as a basis for proration is the date of recording the final order of condemnation. This may occur 30 days or more after "final judgment." "Final judgment" in the title on eminent domain refers to the judgment in the proceeding when all possibility of direct attack upon it has been exhausted. (C.C.P. § 1264.7.) Yet, a memorandum of costs is required to be filed within ten days after the entry of judgment. (C.C.P. § 1033.) Therefore, some procedure such as provided in the Commission's statute is necessary to provide for the recovery of the prorated taxes after the final order of condemnation is recorded.

#### Recommendation

It is recommended that the proposed sections be retained with the words "or special assessments" omitted wherever they presently appear.

#### SECTIONS 1249 and 1249.1

Public Works approves of these sections as a clarification of existing law. (PW Supp (11), 22.) It suggests, though, that the term "brought to trial" be substituted for the word "tried" in Section 1249 as this more accurately describes the existing rule. Public Works also suggests that a definite date of valuation be provided in case of a new trial. Its suggestion is that this should be the same date involved in

the first trial provided the case is brought to trial within a reasonable time after the new trial is ordered. These suggestions will clarify the statute and their approval is recommended by the staff.

In 1249.1 Public Works suggests that "special benefits" be added after "damages" and that "or before the trial" be eliminated. Marin believes that the word "enhance" in 1249.1 should be changed to "affect." (Marin (71) 46 - (72) 14.) He points out that improvements may both enhance the value of the property and may diminish the value of the property if they are not adapted to its highest and best use. Yet they must be considered in the determination of value in either case. Judge Lawrence suggests that improvements be valued as of the day of valuation excluding those made with actual knowledge of pendency of the action. (Lawrence (87) 36-37.) Los Angeles makes a similar proposal and points out that in the East move-on houses have been placed in the path of proposed freeways for the purpose of enhancing damages. (LA Supp (56).) Mr. Huxtable (at (112) 4-27) and Mr. Dolle (at (98) 34-47) suggest the elimination of the phrase "for its highest and best use." San Francisco says of our proposal that its enactment "should be urged." (SF Supp (60).)

The staff recommends that all of the above suggestions relating to Section 1249.1 except the one relating to the exclusion of improvements made with actual knowledge of the pendency of the action be approved. In the interest of certainty for purposes of valuation, a definite cut off date should be adopted. Moreover, it does not seem proper to cut off a person's right to improve his property merely because a condemnation action is contemplated. He should be able to treat the property as his own at least until the condemnation action is begun.

Recommendation

If the foregoing alterations are approved, the tentative statute will be changed to read:

1249. Subject to Section 1249.1, for the purpose of assessing compensation and damages the right thereto 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]~~ brought to trial 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 commencement of the trial. Upon a new trial, the compensation and damages shall be deemed to have accrued at the date used in the original trial; provided that in any case in which the new trial is not brought to trial within eight months after the date of the order granting the new trial or the date of filing the remittitur, unless the delay is caused by the defendants, the compensation and damages shall be deemed to have accrued at the date of the commencement of the new trial.

1249.1. All improvements pertaining to the realty that are on the property on the date of the service of summons and which ~~[enhance]~~ affect its value ~~[for-its-highest-and-best-use]~~ shall be considered in the assessment of compensation ~~[and]~~, damages

and special benefits unless they are removed or destroyed either before the title to the property or the possession thereof is taken by the plaintiff [~~ex-befere-the-trial~~], whichever is earlier. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation and damages.

#### SECTION 1253

Judge Lawrence believes that "title and tax liability should pass together on the day that plaintiff acquires a perfected right to possession, whether or not this is prior to the Final Order." (Lawrence (87) 39-41.) San Francisco also agrees with this proposal. (SF Supp (60).) Los Angeles, too, has no objection to this proposal. (LA Supp (55).) However, Public Works points out that the early passage of title does not benefit either the condemner or the condemnee. (PW Supp (23).) Matters of tax liability and liability for special assessments are determined without regard to the location of title. Public Works opposes this recommendation because there is no reason to make such a change. The problem they see that is created by this section is the problem involved when the pleadings are amended to provide for a larger or smaller taking of the property. This can cause the title to bounce back and forth between the condemner and the condemnee. If the title passes only at the culmination of litigation, there is no question as to when and what property is transferred to the condemner. Moreover, it points out that under our statute the date of possession can be a shifting one depending upon the disposition by the courts of the various motions to stay and vacate the order of possession. Recordation

of the final order is a certain date upon which the title may pass. In addition if title is not vested in the condemner, upon abandonment there is no necessity for a new order to revest the title in the defendant. This is a problem when rights of way are realigned so that there are abandonments of small portions of the condemned property. As to each such parcel, under our present proposal, there would have to be an order revesting title. (PW Supp (10) - (11).)

#### Recommendation

In view of the considerations pointed out by Public Works, it is recommended that the provision of the present law that title passes upon the recordation of the final order of condemnation be retained. This would mean that subdivision (3) and the reference thereto in subdivision (2) of the Commission's proposed Section 1253 would be deleted and minor adjustments would have to be made in several other sections. One such adjustment would be to delete the requirement of recording the order for possession. This would be advantageous, for in order to have a correct record of the title the order for possession would have to be recorded and every order of the court vacating, staying or otherwise affecting the order would also have to be recorded.

#### SECTION 1254

Palm Springs, Mr. Huxtable and Mr. Tarr all object to various provisions of the existing statute. Palm Springs objects to the provision that makes the condemner an insurer of the deposit. (Plm Sprgs (83) 10 - 22.) Both Mr. Huxtable and Mr. Tarr object to the provision that the condemnee must

be charged with costs of the new trial unless he receives a greater award than was made at the first trial. (Huxtable (112) 46 - (113) 10; Tarr (114) 27 - 50.) All these suggestions relate to provisions in the existing code section and are matters the Commission has not yet considered. Accordingly it is recommended that no action be taken in regard to them at this time.

Public Works has several suggestions in regard to this section. (PW Supp (9), (23) - (25), (36) - (41).) It believes that the procedure under this section should conform as nearly as possible to the procedure under Section 1243.5. It also believes that the section should be divided into subdivisions for easier reading.

Public Works recommends that our requirement that the order for possession describe the property and the purpose of the condemnation be deleted as this information is in the judgment already. These provisions were incorporated in this section by the Commission because this was to be a title document. If Public Works' suggestion that title is not to pass until the final order is accepted, there is no need for this information to be in the order of possession. In view of the staff's recommendation on passage of title, it recommends that this provision be deleted from this section.

Public Works suggests the addition of language to indicate that this section does not apply if the plaintiff is already in possession under Section 1243.5, for under that section the court can alter the amount of the deposit and, presumably, would do so after judgment. This would clarify an uncertainty and its approval is recommended.

Public Works also recommends the deletion of the provision that an order authorizing possession by a school district is not appealable. All

condemners should be treated alike. Public Works, as well as several other condemners, agrees with the proposal that the taking of possession should not waive the right of appeal. No objections have been expressed to this proposal. Public Works also suggests the deletion of certain words that serve no useful purpose, recommends the addition of a ten-day notice to the defendant and recommends the addition of a subdivision to provide for recovery by the condemner of any excess withdrawal by the defendant.

#### Recommendation

Public Works' suggestions are well conceived and, unlike the other suggestions, relate to matters with which the Commission is concerned at the present time. It is recommended that they be approved and that the first portion of the section be changed to read as follows:

1254. (1) In case in which the plaintiff is not in possession of the property sought to be condemned, the plaintiff may, at any time after trial and judgment entered or pending an appeal from the judgment [~~to the Supreme Court, whenever the plaintiff shall have paid~~] and after payment into court [ , ] for the defendant [ , ] the full amount of the judgment [ , ] and such further sum as may be required by the court as a fund to pay any further damages and costs that may be recovered in said proceeding, [as well as all damages that may be sustained by the defendant, if, for any cause the property shall not be finally taken for public use,] apply ex parte for an order authorizing it to take possession of and to use the property sought to be condemned.

(2) If in the judgment the court determined that the plaintiff is entitled to acquire the property by eminent domain, and if the court determines



that the plaintiff has made the deposit as required in subdivision (1) of this section, the [superior] court [in which the proceeding was tried may, upon notice of not less than ten days] shall, by order, authorize the plaintiff [if already in possession, to continue therein, and if not, then] to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and [may] shall, if necessary, stay all actions and proceedings against the plaintiff on account thereof. [The order shall describe the property, the estate or interest acquired therein and the purposes of the condemnation. In an action for condemnation of property for the use of a school district, an order so authorizing possession or continuation of possession by such school district is not appealable.]

(3) At least 10 days prior to the time possession is taken, the plaintiff shall serve upon the defendants or their attorneys, either personally or by mail, a copy of the order of the court authorizing it to take possession of the property. A single service upon or mailing to those at the same address is sufficient.

(4) At any time after the court has made an order authorizing the plaintiff to take possession pursuant to this section, the court may, upon motion of any party to the eminent domain proceedings, alter the amount that the plaintiff is required to deposit pursuant to such order.

(5) The plaintiff shall not be held to have abandoned or waived the right to appeal from the judgment by depositing the amount of the judgment and such further sum as may be required by the court and taking possession of the property pursuant to this section.

(6) The defendant, who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the [same]

full amount of the judgment at any time thereafter upon obtaining an order therefor from the court. [~~It shall be the duty of~~] The court, or a judge thereof, upon application [~~being made~~] by such defendant, [~~he~~] shall order and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial [~~shall be~~] is granted. A payment to the defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. [~~In ascertaining the amount to be paid into court, the court shall take care that the same be sufficient and adequate.~~]

(7) Any amount withdrawn by any party in excess of the amount to which he is entitled as finally determined in the condemnation proceeding shall be returned to the party who deposited it together with legal interest from the date of its withdrawal, and the court in which the condemnation proceeding is pending shall enter judgment therefor against such party.

[No change in rest of the section except to place subdivision numbers before the remaining paragraphs.]

SECTIONS 1254.5 and 1254.7

Public Works recommends that these sections be renumbered 1243.6 and 1243.7 inasmuch as they relate to immediate possession and should be adjacent to the immediate possession section, Section 1243.5. (PW Supp (25) - (26).) The staff also recommends this change as it results in a more logical arrangement of the sections.

Public Works suggests that the reference to the Constitution in Section 1254.5 be retained. However, the staff recommends that it be deleted in accordance with the basic decision to remove the procedural provisions from the Constitution.

Los Angeles (LA Supp (55)) and San Francisco (SF Supp (59)) agree that the amount to be withdrawn should be increased to 100 per cent of the deposit. Public Works agrees that the amount should be 100 per cent of the deposit if this is limited to 100 per cent of the original deposit. Otherwise, it fears that the condemnee may be able to withdraw more than he will be ultimately awarded, and the condemner is without security for the repayment of any excess. Moreover, the property owner would have the use of the money for a period of time when he was not entitled to it. Public Works suggests an amendment to this section which would require the court to consider the protection given the plaintiff in assuring the return of any excess withdrawal.

As a condemnee who has withdrawn more than he is entitled to receive has had the use of money he is not entitled to, the staff recommends that he be liable for interest on such excess.

Also, there may be a problem of collecting the unsecured debt from the condemnee when he withdraws an amount in excess of the amount eventually awarded. The problem has been aggravated by the Commission's recommendation for a contested hearing on "probable just compensation". This recommendation will probably result in more deposits that are in excess of the amount eventually awarded. One possible solution is that suggested by Public Works -- to permit withdrawal of 100 per cent of the original deposit. Rarely if ever will this amount be in excess of the ultimate award. However, this solution would substantially nullify the condemnee's right to contest the amount deposited, for even if the condemnee were successful in establishing

his right to a larger deposit he would be limited in his withdrawals to the original, inadequate deposit.

The suggestion that the court be required to consider protection given the plaintiff in assuring the return of any excess withdrawal seems inadequate to protect the condemner. There is nothing in the suggestion that would prevent the court from "considering" the condemner's protection and then permitting a full withdrawal without security of any sort.

The staff believes that the policy followed on appeals and in replevin actions should be adapted to condemnation procedure, i.e., the condemnee should be required to post a bond to secure repayment of any excessive withdrawal. As a condemnee is presently permitted to withdraw 75 per cent of the deposit without posting a bond, the staff does not believe that a bond should be required if the condemnee withdraws 75 per cent of the deposit or less. However, if the condemnee wishes to withdraw more, he should be required to post a bond to secure the repayment of any amount he withdraws that is in excess of the amount eventually awarded to him.

Public Works also recommends the deletion of the provision in Section 1254.7 providing for passage of title upon withdrawal of the deposit. (PW Supp (10).) This will make the rules relating to passage of title uniform and the staff recommends that this suggestion be adopted.

#### Recommendation

In the light of the foregoing comments, the staff recommends that Sections 1254.5 and 1254.7 be renumbered and that Section 1254.7 be amended to read:

[1254.7.] 1243.7. (1) At any time after money has been deposited as provided in Section 1243.5, upon application, in the manner hereinafter

provided, of the party whose property or interest in property is being taken, the court [may] shall order from the money deposited in connection with such property or property interest an amount not exceeding 75 per cent of the amount deposited [~~which the court finds such party is entitled to receive~~] for his respective property or interest to be paid to such party.

(2) If the amount sought to be withdrawn exceeds 75 per cent of the amount deposited for the respective property or interest, the applicant shall, before withdrawing any amount in excess of such 75 per cent, file an undertaking executed by two or more sufficient sureties approved by the court to the effect that they are bound to the plaintiff in double the amount of such excess for <sup>the</sup> return of any amount withdrawn that exceeds the amount to which the applicant is entitled as finally determined in the condemnation proceeding, together with legal interest from the date of its withdrawal.

(3) [~~Sueh~~] The application shall be made by affidavit wherein the applicant shall set forth his interest in the property and request withdrawal of a stated amount. The applicant shall serve a copy of the application on the plaintiff and no withdrawal shall be made until at least 20 days after such service of the application, or until the time for all objections has expired, whichever is later.

(4) Within the 20-day period, the plaintiff may object to such withdrawal by filing an objection thereto in court on the grounds that other persons are known or believed to have interests in the property. In this event the plaintiff shall attempt to personally serve on such other persons a notice to such persons that they may appear within ten days after such service and object to such withdrawal, and that failure

to appear will result in the waiver of any right to such amount withdrawn. or further rights against the plaintiff to the extent of the sum withdrawn.

(5) The plaintiff shall state in its objection the names and last known addresses of other persons known or believed to have an interest in the property, whether or not it has been able to serve them with such notice and the date of such service. If the plaintiff in its objection reports to the court that it is unable to personally serve persons known or believed to have interests in the property within the 20-day period, said money shall not be withdrawn until the applicant causes such personal service to be made.

(6) If such persons so served appear and object to the withdrawal, or if the plaintiff so requests, the court shall thereupon hold a hearing after notice thereof to all parties and shall determine the amounts to be withdrawn, if any, and by whom. No persons so served shall have any claim against the plaintiff for compensation for the value of the property taken or severance damages thereto, or otherwise, to the extent of the amount withdrawn by all parties; provided, the plaintiff shall remain liable for said compensation to persons having an interest of record who are not so served.

(7) If withdrawn, the receipt of any such money shall constitute a waiver by operation of law of all defenses in favor of the person receiving such payment except with respect to the ascertainment of the value of the property or interest in the manner provided by law. Any amount so paid to any party shall be credited upon any judgment providing for payment.

(8) Any amount withdrawn by any party in excess of the amount to which he is entitled as finally determined in the condemnation proceeding shall be

returned to the party who deposited it together with legal interest thereon from the date of its withdrawal, and the court in which the condemnation proceeding is pending shall enter judgment therefor against the defendant. If the defendant does not pay the judgment within 30 days after the judgment is entered, the court may, upon motion, enter judgment against the sureties for such amount together with the interest that may be due thereon.

#### SECTION 1255a

Public Works objects strenuously to our proposal on abandonment. (FW Supp (12).) It points out that, in many right of way condemnations, during the course of the proceeding there will be a slight realignment of the right of way and the proceeding will be abandoned as to certain small portions of property. This is often done to protect existing improvements and to minimize damages. This is also done to relinquish mineral rights. Our statute would force the State to compensate the landowner to obtain his consent to such an abandonment. Public Works argues that the landowner is sufficiently protected by existing law under the doctrine of estoppel.

It is true that in the situations discussed by Public Works our statute places the condemnee in a position where he can "hold up" the condemner unjustifiably over a small parcel of land, even though the condemner seeks to abandon for the condemnee's benefit as well as its own. However, it is not necessary to abandon the entire proposal to eliminate this difficulty. As a possible solution, the staff suggests an amendment to Section 1255a that would permit abandonment by the

condemner upon order of the court. This would place the burden upon the condemner to show the court that it should be permitted to abandon. Under the estoppel doctrine, it is necessary for the condemnee to prove that it has irrevocably changed its position in reliance upon the condemner's actions. An alternative solution would be to prohibit abandonment after withdrawal of a substantial portion of the deposit, for it is probable that the condemnee's position would be materially changed only after withdrawal of the deposit.

Other adjustments are necessary if title does not pass with possession. Subdivision (4) would be deleted.

#### Recommendation

It is recommended that subdivisions (1) and (2) of Section 1255a be amended to read:

1255a. (1) Unless the ~~[title-to]~~ plaintiff has taken possession of the property sought to be condemned ~~[has-vested-in-the-plaintiff]~~, the plaintiff may abandon the proceedings at any time after the filing of the complaint and before the expiration of 30 days after final judgment, by serving on defendants and filing in court a written notice of such abandonment; and failure to comply with Section 1251 of this code shall constitute an implied abandonment of the proceedings.

(2) If the plaintiff has taken possession of the property sought to be condemned, the plaintiff may not abandon the proceedings except with the consent of all parties to the proceeding whose interests would be affected by such abandonment; but the court may, upon motion and for good cause, permit the plaintiff to abandon the proceedings without such consent.



An alternative amendment to subdivision (2) might be:

(2) If the plaintiff has taken possession of the property sought to be condemned and if 75 per cent or more of the amount deposited has been withdrawn, the plaintiff may not abandon the proceedings except with the consent of all parties to the proceeding whose interests would be affected by such abandonment.

#### SECTION 1255b

Los Angeles agrees with our proposals concerning interest as does San Francisco. However, Judge Lawrence believes that interest should always commence on the day of valuation and should always cease when a withdrawable deposit is made. (Lawrence (87) 31.) Richard Huxtable suggests that the words "is available for withdrawal" be used for "may be withdrawn." (Huxtable (113) 12.) He agrees with the Commission's proposal, but he believes that the change in language would make it clearer. The existing language might be construed to mean that interest will cease on the date the money is withdrawn.

Public Works disagrees with the basic proposal. (PW Supp (13).) It believes that the property owner should not be forced to either withdraw the deposit or lose both the possession of the property and interest on the award. It might be added that the owner also loses any defense except as to the amount of the award; however, our immediate possession statute protects him in this regard for it affords him the opportunity to attack the condemner's authority prior to the taking of possession.

Public Works also notes that the State does earn some interest on the deposit. It feels that this statute would force withdrawals in every

case where there is no conflict over the extent of the condemnees' interests. This would place the court in the position of making a preliminary evaluation in all cases, consuming both time and expense.

Under existing law, in order to withdraw the deposit, the condemnee must give up all defenses except his claim to greater compensation. Under the staff proposals made in this memorandum, if he withdraws more than 75 per cent of the deposit, he will also have to post a bond to secure the condemner in the event the amount eventually awarded is less than the amount withdrawn. At least under the present law, he does not lose his right to compensation for the loss of use of his property (interest) if he decides that he does not wish to waive his defenses and does not wish to put up an undertaking. However, under the statute as proposed, the condemnee is forced to choose between giving up defenses and giving up his compensation for the loss of use of his property.

As long as such conditions are attached to the withdrawal of the deposit, it is suggested that the existing law be retained and that interest cease only when withdrawn or upon entry of judgment.

In regard to the commencement of interest on the valuation date, the problem will probably be discussed in connection with one of the studies presently being prepared by the consultant. It is suggested that no recommendation be approved that would change the present law until the study is received and considered.

#### Recommendation

If the foregoing suggestions are approved, it is recommended that Section 1255b be amended to read:

1255b. (1) The compensation and damages awarded in a condemnation proceeding shall draw legal interest from the earliest of the following dates:

(a) The date of the entry of judgment.

(b) [~~The date that the title to property sought to be condemned vests in the plaintiff.~~]

[~~(c)~~] The date that the possession of the property sought to be condemned is taken or the damage thereto occurs.

(2) The compensation and damages awarded in a condemnation proceeding shall cease to draw interest on the earliest of the following dates:

(a) As to any amount deposited pursuant to Section 1243.5 [~~ex-Section 1254~~], the date that such amount [~~may be~~] is withdrawn by the person entitled thereto.

(b) As to any amount deposited pursuant to Section 1254, the date of such deposit.

(c) As to any amount paid to the person entitled thereto, the date of such payment.

#### CONSTITUTIONAL REVISION

The proposal to amend the Constitution has been generally well received. Public Works, however, points out that efforts to amend the Constitution have been made before and lists at the end of its letter the Constitutional amendments that have been introduced and have failed since 1933. (PW Supp (14)-(15), (51)-(52).) In regard to the draft it prefers the word "security" to "probable just compensation" and prefers the retention of the existing authorization for immediate possession that appears

in the Constitution. It believes that this amendment will invite a series of contests as to the probable just compensation from the day the condemner applies for the possession order until the final disposition of the case. It believes that one trial on the issue of just compensation is adequate and that this procedure could be retained if the deposit were treated as a security deposit for prompt payment.

The requirement of a deposit as "security" for prompt payment seems to serve little purpose. The State is reasonably solvent and there is little danger that it will not promptly pay a judgment, whether it makes a "security" deposit or not, unless it abandons the proceeding as it presently has the right to do. The problem is to get money into the hands of the condemnee when he needs it, i.e., when he loses his property. He should have some opportunity to object to the amount of the deposit as well.

Public Works comments that this amendment implies to the voters that just compensation is not now being promptly paid whereas it is paid 30 days after final judgment. This, however, does not seem to be "prompt" payment, for final judgment may follow the taking of the property by a period of several months or years. The Constitution should guarantee property owners that, subject to reasonable conditions, they are entitled to be paid for their property when it is taken from them.

The staff recommends no change in the proposed amendment.

#### SUPPLEMENTARY LEGISLATION

Public Works objects to permitting the court to determine "necessity" for taking immediate possession. (PW Supp (15)-(17).) Los Angeles also

objects. (LA Supp (56).) If such language is adopted, Public Works feels that it should be limited to those agencies in which the question of necessity is not conclusively determined by a resolution of the governing body, for the proposal replaces in the law, to a limited extent, a matter which the Legislature previously removed when it gave certain public bodies the right to conclusively determine the question of "necessity." This proposal will give the courts the right to determine "necessity" insofar as it relates to when the property will be taken.

The proposal is somewhat inconsistent with the basic decision of the Commission on immediate possession. If the only issue to be decided is value, no real purpose is served in preventing the plaintiff from taking possession. If the statute makes it uncertain whether immediate possession can be taken, the condemnee is again given the bargaining weapon of being able to keep the condemner out of possession unless an excessive offer is made. The problem of securing just compensation to the condemnee should be attacked directly and should not be solved by giving a condemnee unfair bargaining weapons. It is recommended, therefore, that the supplementary statute be amended to delete the reference to "necessity."

Mr. Huxtable (Huxtable (111) 25-34) and Mr. Tarr (Bar (3) 8-12) both object to the extension of the right of immediate possession to anyone who can bring a condemnation action. They do not believe that this right should be exercised by other than public or quasi-public agencies. The problem of private condemners using immediate possession as a tool of business rivalry seems remote. The safeguards provided in Section 1243.5 are adequate to prevent anyone from taking immediate possession who is not entitled to condemn the property. It is unlikely that many persons other than public

or quasi-public entities will be able to establish their right to condemn. Only two appellate cases have been discovered in California in which unincorporated persons have used condemnation. Therefore, the staff does not recommend that the Commission's proposed legislation be changed to eliminate private condemners.

Public Works (at Supp (14)) points out an error. There is a gap between the date the constitutional amendment will become effective and the effective date of the supplementary legislation. As the authority for immediate possession is being taken out of the Constitution, there will be no authority for anyone to take immediate possession during this period.

This defect may be cured by adding a new section numbered 1243.4 to the principal proposed statute that will define the persons entitled to take immediate possession in the same terms as the present Constitution. The amendment of the Constitution, therefore, will not repeal the statutory authorization. This suggestion will permit the amendment of Section 1243.5 as originally proposed to delete all reference to the Constitution. Then, when the constitutional amendment is adopted, if the question of "necessity" is omitted from the supplementary legislation it will be unnecessary to further amend Section 1243.5. The only amendment to be proposed in the supplementary legislation would be an amendment to Section 1243.4. This suggestion has the further advantage of permitting the Legislature to expand or contract the right of immediate possession without opening up the procedural section to amendment each time it desires to do so.

Recommendation

The staff recommends that the following new section be added to the principal statute to be recommended by the Commission:

1243.4. In any proceeding in eminent domain brought by the State, or a county, or a municipal corporation, or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation, the plaintiff may take immediate possession and use of any right of way or lands to be used for reservoir purposes, required for a public use whether the fee thereof or an easement therefor be sought, in the manner and subject to the conditions prescribed by law.

The supplementary legislation, then, would consist only of a proposed statute which would amend this section as follows:

1243.4. In any proceeding in eminent domain [~~brought-by-the-State,-or a-county,-or-a-municipal-corporation,-or-metropolitan-water-district, municipal-utility-district,-municipal-water-district,-drainage,-irrigation, levee,-reclamation-or-water-conservation-district,-or-similar-public corporation,~~], the plaintiff may take immediate possession [~~and-use~~] of [~~any-right-of-way-or-lands-to-be-used-for-reservoir-purposes,-required-for a-public-use-whether-the-fee-thereof-or-an-easement-therefor-be-sought,~~] the property sought to be condemned in the manner and subject to the conditions prescribed by law.

Respectfully submitted,

Joseph B. Harvey  
Assistant Executive Secretary

9/20/60

An act to amend Sections 1243.5, 1248, 1249, 1253, 1254, 1255a and 1255b of, to renumber and amend Sections 1254.5 and 1254.7 of, and to add Sections 1243.4, 1249.1 and 1252.1 to, the Code of Civil Procedure, relating to eminent domain.

The people of the State of California do enact as follows:

SECTION 1. Section 1243.4 is added to the Code of Civil Procedure, to read:

1243.4. In any proceeding in eminent domain brought by the State, or a county, or a municipal corporation, or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation, the plaintiff may take immediate possession and use of any right of way or lands to be used for reservoir purposes, required for a public use whether the fee thereof or an easement therefor be sought, in the manner and subject to the conditions prescribed by law.

SEC. 2. Section 1243.5 of the Code of Civil Procedure is amended to read:

1243.5. ~~{(a)}~~ (1) In any ~~[ease]~~ proceeding in eminent domain, if ~~[which] the [State,-a-county,-a-municipal-corporation,-a-public-corporation, or-a-district-takes-immediate-possession-of-lands-to-be-used-for-reservoir purposes,-or-a-right-of-way,-pursuant-to-Section-14-of-Article-I-of-the~~



Constitution-of-this-State,] plaintiff is authorized by law to take immediate possession of the property sought to be condemned, the plaintiff may, at any time after the issuance of summons and prior to the entry of judgment, apply ex parte to the court for an order determining the probable just compensation which will be made for the taking of the property and any damage incident thereto. After depositing the amount so determined in accordance with Section 1243.6, the plaintiff may at any time prior to the entry of judgment, apply ex parte to the court for an order authorizing it to take immediate possession of and to use the property sought to be condemned.

(2) If the court determines that the plaintiff is entitled to take the property by eminent domain and to take immediate possession thereof and if the court determines that the plaintiff has deposited the amount required in subdivision (1) of this section, the court shall, by order, authorize the plaintiff to take immediate possession of and to use the property sought to be condemned. The order authorizing immediate possession shall:

(a) Describe the property and the estate or interest therein sought to be condemned, which description may be made by reference to the complaint.

(b) State the purposes of the condemnation and the statutory provisions authorizing the exercise of the power of eminent domain for such purposes.

(c) If the plaintiff is a city, city and county, county, school district, or irrigation, transit, rapid transit, public utility or water district, state whether or not the property sought to be condemned is situated within the territorial limits thereof.

(d) State whether or not the property sought to be condemned is already dedicated to a public use, and if the property is so dedicated, the order shall state in general terms the facts that cause it to appear that the use

for which the property is sought to be condemned is a more necessary public use.

(3) [the State, or such county, municipal corporation, public corporation, or district, as the case may be, shall,] At least [three] 20 days prior to the time possession is taken, the plaintiff shall [personally] serve a copy of the order on [or mail to] the record owner or owners of the property or any interest therein [or if known,] and on the person or persons, if any, in possession of the property [or if any, either a copy of the order of the court authorizing such possession or a notice thereof]. Service of the order shall be made by personal service unless the person on whom service is to be made has previously appeared in the proceeding or has previously been served with a copy of the summons and complaint in the manner prescribed by law, in which case service of the order may be made by mail. If it appears by affidavit to the satisfaction of the court that a person upon whom a copy of the order authorizing immediate possession [or notice] is [mailed it] required to be personally served under this section resides out of the State, or has departed from the State or cannot after due diligence be found within the State, the court may order that in lieu of such personal service the plaintiff send a copy of the order [shall be sent] by registered or certified mail [and, if sent to the owners, it shall be] addressed to [them] such person at [their] his last known address. A single service upon or mailing to those at the same address shall be sufficient. [The latest secured assessment roll in the county where the property is located may be used to ascertain the names and addresses of the owners of the property.] The court may, for good cause shown by affidavit of the plaintiff, shorten the time herein specified to a period of not less than three days.

(4) At any time after the court has made an order authorizing immediate possession, the court may, upon motion of any party to the eminent domain proceedings, alter the amount that the plaintiff is required to deposit pursuant to such order if the court determines that the probable just compensation which will be made for the taking of the property and any damage incident thereto is different from the amount set forth in such order.

(5) At any time after the court has made an order authorizing immediate possession and before the plaintiff has taken possession pursuant to such order, the court, upon motion of the owner of the property or an interest therein or of an occupant of the property, may:

(a) Stay the order for good cause shown.

(b) Vacate the order if the court determines that the plaintiff is not entitled to take the property by eminent domain or that the plaintiff is not entitled to take immediate possession of the property.

(6) An appeal may be taken from an order granting or denying a motion to vacate an order authorizing immediate possession. The appeal does not stay the order from which the appeal is taken or the order authorizing immediate possession; but the trial or appellate court may, in its discretion, stay the order authorizing immediate possession pending review on appeal or for such other period or periods as to it may appear appropriate.

(7) Failure of a party to make a motion to stay or vacate an order authorizing immediate possession is not an abandonment of any defense to the action or proceeding.

(8) The amount required to be deposited by the plaintiff and the amount of such deposit withdrawn by the defendant may not be given in evidence nor referred to in the trial of the issue of compensation.

(9) The plaintiff shall not be held to have abandoned or waived the right to appeal from the judgment by taking possession of the property pursuant to this section.

SEC. 3. Section 1254.5 of the Code of Civil Procedure is renumbered and amended to read:

~~[1254.5.]~~ 1243.6. When money is ~~[paid-into-court]~~ required to be deposited as provided by Section ~~[14-of-Article-I-of-the-Constitution]~~ 1243.5, the court shall order the money to be deposited in the State Treasury, unless the plaintiff requests the court to order deposit in the county treasury, in which case the court shall order deposit in the county treasury. If money is deposited in the State Treasury pursuant to this section it shall be held, invested, deposited, and disbursed in the manner specified in Section 1254, and interest earned or other increment derived from its investment shall be apportioned and disbursed in the manner specified in that section.

SEC. 4. Section 1254.7 of the Code of Civil Procedure is renumbered and amended to read:

~~[1254.7.]~~ 1243.7. (1) At any time after money has been deposited as ~~[security-as]~~ provided in Section ~~[14-of-Article-I-of-the-Constitution]~~ 1243.5 ~~[for-the-condemnation-of-any-property-or-interest-in-property-for state-highway-purposes]~~, upon application, in the manner hereinafter provided, of the party whose property or interest in property is being taken, the court ~~[may]~~ shall order from the money deposited in connection with such property or property interest an amount not exceeding 75 per cent of the amount ~~[originally]~~ deposited for ~~[the]~~ his respective property or interest

to be paid to such party.

(2) If the amount sought to be withdrawn exceeds 75 per cent of the amount deposited for the respective property or interest, the applicant shall, before withdrawing any amount in excess of such 75 per cent, file an undertaking executed by two or more sufficient sureties approved by the court to the effect that they are bound to the plaintiff in double the amount of such excess for return<sup>the</sup> of any amount withdrawn that exceeds the amount to which the applicant is entitled as finally determined in the condemnation proceeding, together with legal interest from the date of its withdrawal.

(3) [Such] The application shall be made by affidavit wherein the applicant shall set forth his interest in the property and request withdrawal of a stated amount. The applicant shall serve a copy of the application on the plaintiff and no withdrawal shall be made until at least [twenty{] 20 [}] days after such service of the application, or until the time for all objections has expired, whichever is later.

(4) Within [said-twenty-(20)-days] the 20-day period, the plaintiff may object to such withdrawal by filing an objection [thereof] thereto in court on the grounds that other persons are known or believed to have interests in the property. In this event the plaintiff shall attempt to personally serve on such other persons a notice to such persons that they may appear within [ten-{] 10 [}] days after such service and object to such withdrawal, and that failure to appear will result in the waiver of any right to such amount withdrawn or further rights against the plaintiff to the extent of the sum withdrawn.

(5) The plaintiff shall state in its objection the names and last

known addresses of other persons known or believed to have an interest in the property, whether or not it has been able to serve them with such notice and the date of such service. If the plaintiff in its objection reports to the court that it is unable to personally serve persons known or believed to have interests in the property within [~~said-twenty-~~] the 20 [~~+~~] day period, said money shall not be withdrawn until the applicant causes such personal service to be made.

(6) If such persons so served appear and object to the withdrawal, or if the plaintiff so requests, the court shall thereupon hold a hearing after notice thereof to all parties and shall determine the amounts to be withdrawn, if any, and by whom. [~~y-to-a-total-amount-not-exceeding-75-percent-of-the-amount-deposited.~~] No persons so served shall have any claim against the plaintiff for compensation for the value of the property taken or severance damages thereto, or otherwise, to the extent of the amount withdrawn by all parties; provided, the plaintiff shall remain liable for said compensation to persons having an interest of record who are not so served.

(7) If withdrawn, the receipt of any such money shall constitute a waiver by operation of law [~~to~~] of all defenses in favor of the person receiving such payment except with respect to the ascertainment of the value of the property or interest in the manner provided by law [~~y-and title-to-the-property-or-interest-as-to-which-money-is-received-pursuant-to-this-section-shall-vest-in-the-State-as-of-the-time-of-such-payment~~]. Any amount so paid to any party shall be credited upon any judgment providing for payment [~~and-shall-be-considered-payment-upon-the-judgment-as-of-the-date-the-withdrawal-is-made-so-that-no-interest-shall-be-payable-upon-the-amount-so-withdrawn-after-the-date-of-its-withdrawal~~].

(8) Any amount withdrawn by any party in excess of the amount to which he is entitled as finally determined in the condemnation proceeding shall be returned to the party who deposited it together with legal interest thereon from the date of its withdrawal, and the court in which the condemnation proceeding is pending shall enter judgment therefor against the defendant. If the defendant does not pay the judgment within 30 days after the judgment is entered, the court may, on motion, enter judgment against the sureties for such amount together with the interest that may be due thereon.

SEC. 5. Section 1248 of the Code of Civil Procedure is amended to read:

1248. The court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed;

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff;

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the

construction of the improvement proposed by the plaintiffs; and if the benefit shall be equal to the damages assessed under subdivision (2), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value;

4. If the property sought to be condemned be water or the use of water, belonging to riparian owners, or appurtenant to any lands, how much the lands of the riparian owner, or the lands to which the property sought to be condemned is appurtenant, will be benefited, if at all, by a diversion of water from its natural course, by the construction and maintenance, by the person or corporation in whose favor the right of eminent domain is exercised, of works for the distribution and convenient delivery of water upon said lands; and such benefit, if any, shall be deducted from any damages awarded the owner of such property;

5. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences, along the line of such railroad, and the cost of cattle-guards, where fences may cross the line of such railroad; and such court, jury or referee shall also determine the necessity for and designate the number, place and manner of making such farm or private crossings as are reasonably necessary or proper to connect the parcels of land severed by the easement condemned, or for ingress to or egress from the lands remaining after the taking of the part thereof sought to be condemned, and shall ascertain and assess the cost of the construction and maintenance of such crossings;

6. If the removal, alteration or relocation of structures or improvements is sought, the cost of such removal, alteration or relocation and the



damages, if any, which will accrue by reason thereof;

7. As far as practicable, compensation must be assessed for each source of damages separately;

8. When the property sought to be taken is encumbered by a mortgage or other lien, and the indebtedness secured thereby is not due at the time of the entry of the judgment, the amount of such indebtedness may be, at the option of the plaintiff, deducted from the judgment, and the lien of the mortgage or other lien shall be continued until such indebtedness is paid; except that if such lien is for ad valorem taxes upon the property, the amount of such taxes for which, as between the plaintiff and the defendant, the plaintiff is liable under Section 1252.1 may not be deducted from the judgment.

SEC. 6. Section 1249 of the Code of Civil Procedure is amended to read:

1249. Subject to Section 1249.1, for the purpose of assessing compensation and damages the right [~~thereof~~] thereto 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 [~~one-thousand-two-hundred-forty-eight~~] 1248; provided, that in any case in which the issue is not [~~tried~~] brought to trial 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 commencement 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 one thousand two hundred fifty four, 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.]~~

Upon a new trial, the compensation and damages shall be deemed to have accrued at the date used in the original trial; provided that in any case in which the new trial is not brought to trial within eight months after the date of the order granting the new trial or the filing of the remittitur, unless the delay is caused by the defendants, the compensation and damages shall be deemed to have accrued at the date of the commencement of the new trial.

SEC. 7. Section 1249.1 is added to the Code of Civil Procedure, to read:

1249.1. All improvements pertaining to the realty that are on the property on the date of the service of summons and which affect its value shall be considered in the assessment of compensation, damages and special benefits unless they are removed or destroyed either before the title to the property or the possession thereof is taken by the plaintiff, whichever is earlier. 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.

SEC. 8. Section 1252.1 is added to the Code of Civil Procedure, to read:

1252.1. (1) As between the plaintiff and defendant, the plaintiff is liable for the payment of any ad valorem taxes upon the property sought to be condemned that are allocable to that part of the fiscal year that begins on the date that the title to the property vests in the plaintiff or the plaintiff takes possession of the property, whichever is earlier.

(2) If the defendant pays any taxes for which, as between the plaintiff and defendant, the plaintiff is liable under subdivision (1) of this section, the plaintiff shall pay to the defendant a sum equal to the amount of such taxes for which the plaintiff is liable.

(3) If the title to the property vests in the plaintiff or if the plaintiff takes possession of the property prior to judgment, the amount the defendant is entitled to be paid under subdivision (2) of this section shall be claimed at the time and in the manner provided for claiming costs. If title to the property does not vest in the plaintiff and if the plaintiff does not take possession thereof prior to judgment, the amount the defendant is entitled to be paid under subdivision (2) of this section shall be claimed within 30 days after the title vests in the plaintiff or within 30 days after payment of such taxes, whichever is later, and shall be claimed in the manner provided for claiming costs.

SEC. 9. Section 1253 of the Code of Civil Procedure is amended to read:

1253. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by [~~the last two~~] Sections 1251

and 1252, the court ~~[must]~~ shall make a final order of condemnation, which ~~[must]~~ shall describe the property condemned, the estate or interest acquired therein and the purposes of such condemnation. A certified copy of the order ~~[must]~~ shall thereupon be filed in the office of the recorder of the county in which the property is located. ~~[, and thereupon]~~

(2) The title to the property described [therein] in the final order of condemnation [shall] vests in the plaintiff for the purposes described therein [specified] upon the date that a certified copy of the final order of condemnation is filed in the office of the recorder of the county.

SEC. 10. Section 1254 of the Code of Civil Procedure is amended to read:

1254. (1) In any case in which the plaintiff is not in possession of the property sought to be condemned, the plaintiff may, at any time after trial and judgment entered or pending an appeal from the judgment [to the Supreme Court, whenever the plaintiff shall have paid] and after payment into court [,] for the defendant [,] the full amount of the judgment [,] and such further sum as may be required by the court as a fund to pay any further damages and costs that may be recovered in said proceeding, [as well as all damages that may be sustained by the defendant, if, for any cause the property shall not be finally taken for public use,] apply ex parte for an order authorizing it to take possession of and to use the property sought to be condemned.

(2) If in the judgment the court determined that the plaintiff is entitled to acquire the property by eminent domain, and if the court determines that the plaintiff has made the deposit as required in subdivision (1)

of this section, the [superior] court [in-which-the-proceeding-was-tried may, upon notice of not less than ten days] shall, by order, authorize the plaintiff [if already in possession, to continue therein, and if not, then] to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and [may] shall, if necessary, stay all actions and proceedings against the plaintiff on account thereof.

(3) At least 10 days prior to the time possession is taken, the plaintiff shall serve upon the defendants or their attorneys, either personally or by mail, a copy of the order of the court authorizing it to take possession of the property. A single service upon or mailing to those at the same address is sufficient.

(4) At any time after the court has made an order authorizing the plaintiff to take possession pursuant to this section, the court may, upon motion of any party to the eminent domain proceedings, alter the amount that the plaintiff is required to deposit pursuant to such order.

(5) The plaintiff shall not be held to have abandoned or waived the right to appeal from the judgment by depositing the amount of the judgment and such further sum as may be required by the court and taking possession of the property pursuant to this section.

(6) The defendant, who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the [same] full amount of the judgment at any time thereafter upon obtaining an order therefor from the court. [It shall be the duty of] The court, or a judge thereof, upon application [being made] by such defendant, [to] shall order and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt

therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial [~~shall be~~] is granted. A payment to the defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. [~~In ascertaining the amount to be paid into court, the court shall take care that the same be sufficient and adequate.~~]

(7) Any amount withdrawn by any party in excess of the amount to which he is entitled as finally determined in the condemnation proceeding shall be returned to the party who deposited it together with legal interest from the date of its withdrawal, and the court in which the condemnation proceeding is pending shall enter judgment therefor against such party.

(8) The payment of the money into court, as hereinbefore provided for, shall not discharge the plaintiff from liability to keep the said fund full and without diminution; but such money shall be and remain, as to all accidents, defalcations, or other contingencies (as between the parties to the proceedings), at the risk of the plaintiff, and shall so remain until the amount of the compensation or damages is finally settled by judicial determination, and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until he is authorized or required by rule of court to take it. If, for any reason, the money shall at any time be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation is finally brought to an end, and until paid over or made payable to the defendant by order of court, as above provided. The court

shall order the money to be deposited in the State Treasury, unless the plaintiff requests the court to order deposit in the county treasury, in which case the court shall order deposit in the county treasury. If the court orders deposit in the State Treasury, it shall be the duty of the State Treasurer to receive all such moneys, duly receipt for, and to safely keep the same in the Condemnation Deposits Fund, which fund is hereby created in the State Treasury and for such duty he shall be liable to the plaintiff upon his official bond. Money in the Condemnation Deposits Fund may be invested and reinvested in any securities described in Sections 16430, 16431 and 16432, Government Code, or deposited in banks as provided in Chapter 4 of Part 2 of Division 4 of Title 2, Government Code. The Pooled Money Investment Board shall designate at least once a month the amount of money available in the fund for investment in securities or deposit in bank accounts, and the type of investment or deposit and shall so arrange the investment or deposit program that funds will be available for the immediate payment of any court order or decree. Immediately after such designation the Treasurer shall invest or make deposits in bank accounts in accordance with the designations.

(9) For the purposes of this section, a written determination signed by a majority of the members of the Pooled Money Investment Board shall be deemed to be the determination of the board. Members may authorize deputies to act for them for the purpose of making determinations under this section.

(10) Interest earned and other increment derived from investments or deposits made pursuant to this section, after deposit of money in the State Treasury, shall be deposited in the Condemnation Deposits Fund.

After first deducting therefrom expenses incurred by the Treasurer in taking and making delivery of bonds or other securities under this section, the State Controller shall apportion as of June 30th and December 31st of each year the remainder of such interest earned or increment derived and deposited in the fund during the six calendar months ending with such dates. There shall be apportioned and paid to each plaintiff having a deposit in the fund during the six-month period for which an apportionment is made, an amount directly proportionate to the total deposits in the fund and the length of time such deposits remained therein. The State Treasurer shall pay out the money deposited by a plaintiff in such manner and at such times as the court or a judge thereof may, by order or decree, direct.

(11) In all cases where a new trial has been granted upon the application of the defendant, and he has failed upon such trial to obtain greater compensation than was allowed him upon the first trial, the costs of such new trial shall be taxed against him.

SEC. 11. Section 1255a of the Code of Civil Procedure is amended to read:

1255a. (1) Unless the plaintiff has taken possession of the property sought to be condemned, the plaintiff may abandon the proceedings at any time after the filing of the complaint and before the expiration of thirty days after final judgment, by serving on defendants and filing in court a written notice of such abandonment; and failure to comply with Section 1251 of this code shall constitute an implied abandonment of the proceedings.

(2) If the plaintiff has taken possession of the property sought to



be condemned, the plaintiff may not abandon the proceedings except with the consent of all parties to the proceeding whose interests would be affected by such abandonment; but the court may, upon motion and for good cause, permit the plaintiff to abandon the proceedings without such consent.

(3) Upon such abandonment, express or implied, on motion of any party, a judgment shall be entered dismissing the proceeding and awarding the defendants their costs and disbursements, which shall include all necessary expenses incurred in preparing for trial and reasonable attorney fees. These costs and disbursements, including expenses and attorney fees, may be claimed in and by a cost bill, to be prepared, served, filed and taxed as in civil actions; provided, however, that upon judgment of dismissal on motion of plaintiff, defendants, and each of them, may file a cost bill within ~~[thirty-]~~ 30 ~~[ ]~~ days after notice of entry of such judgment; that said costs and disbursements shall not include expenses incurred in preparing for trial where the [said] action is dismissed forty days or more prior to the time set for the pre-trial [ef] conference in the [said] action or, if no pre-trial conference is set, the time set for the trial of the action.

SEC. 12. Section 1255b of the Code of Civil Procedure is amended to read:

1255b. ~~[If the plaintiff in a condemnation proceeding obtains an order from the court for possession of the property sought to be condemned prior to the trial of the action, then]~~ (1) The compensation and damages awarded in a condemnation proceeding shall draw [lawful] legal interest

from the [~~effective-date-of-said-order.~~] earliest of the following dates:

(a) The date of the entry of judgment.

(b) The date that the possession of the property sought to be condemned is taken or the damage thereto occurs.

(2) The compensation and damages awarded in a condemnation proceeding shall cease to draw interest on the earliest of the following dates:

(a) As to any amount deposited pursuant to Section 1243.5, the date that such amount is withdrawn by the person entitled thereto.

(b) As to any amount deposited pursuant to Section 1254, the date of such deposit.

(c) As to any amount paid to the person entitled thereto, the date of such payment.

SEC. 13. (1) Except as provided in subdivision (2) of this section, this act applies to all actions or proceedings in eminent domain pending in the courts at the time this act takes effect in which no order authorizing the plaintiff to take possession of the property sought to be condemned prior to the final order of condemnation has been made prior to the effective date of this act.

(2) Sections 6 and 7 of this act do not apply to any action or proceeding pending in the courts at the time this act takes effect.

(36)

Revised 6/23/60  
6/10/60

II

A resolution to propose to the people of the State of California an amendment to the Constitution of the State by amending Section 14 of Article I thereof relating to eminent domain.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1961 Regular Session commencing on the 2nd day of January, 1961, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 14 of Article I thereof, to read:

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner. [~~y-and-no-right-of-way-or-lands-to-be-used-for-reservoir purposes-shall-be-appropriated-to-the-use-of-any-corporation,-except-a municipal-corporation-or-a-county-or-the-State-or-metropolitan-water-district, municipal-utility-district,-municipal-water-district,-drainage,-irrigation, levee,-reclamation-or-water-conservation-district,-or-similar-public corporation-until-full-compensation-therefor-be-first-made-in-money-or ascertained-and-paid-into-court-for-the-owner,-irrespective-of-any-benefits from-any-improvement-proposed-by-such-corporation,-which~~] Except as provided in Section 23a of Article XII of this Constitution, such just compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law.

[;provided,that] However, the Legislature may, by statute, authorize the plaintiff in [any] a proceeding in eminent domain [brought-by-the-State, or-a-county,-or-a-municipal-corporation,-or-metropolitan-water-district, municipal-utility-district,-municipal-water-district,-drainage,-irrigation, levee,-reclamation-or-water-conservation-district,-or-similar-public-corporation, the-aforesaid-State-or-municipality-or-county-or-public-corporation-or-district aforesaid-may] to take immediate possession of and [use-of-any-right-of-way or-lands-to-be-used-for-reservoir-purposes,-required-for-a-public-use] title to the property sought to be condemned, whether the fee thereof or [an] a lesser estate, interest or easement [therefor] be sought, [upon-first-commencing-eminent domain-proceedings-according-to-law-in-a-court-of-competent-jurisdiction-and thereupon-giving-such-security-in-the-way-of-money-deposited-as-the-court-in which-such-proceedings-are-pending-may-direct,-and-in-such-amounts-as-the court-may-determine-to-be-reasonably-adequate-to-secure-to-the-owner-of-the property-sought-to-be-taken-immediate-payment-of] after first giving such notice as may be required by law and depositing such amount of money as the court determines to be the probable just compensation to be made for [such] the taking and any damage incident thereto, including damages sustained by reason of an adjudication that there is no necessity for taking the property [,-as-seen-as-the-same-can-be-ascertained-according-to-law]. The court may, upon motion of any party to [said] the eminent domain proceedings, after such notice to the other parties as [the-court] may be prescribed by law, alter the amount [of-such-security-so] required to be deposited in such proceedings. The money deposited shall be paid promptly to the person entitled thereto in accordance with such procedure as the Legislature may by statute prescribe.

The Legislature may by statute prescribe the manner in which, the time at which, the purposes for which, and the persons or entities by which, immediate possession of property sought to be condemned may be taken.

The taking of private property for a railroad run by steam or electric power for logging or lumbering purposes shall be deemed a taking for a public use, and any person, firm, company or corporation taking private property under the law of eminent domain for such purposes shall thereupon and thereby become a common carrier.

(36)

9/20/60

An act to amend Section 1243.4 of the Code of Civil Procedure as proposed to be added by Senate Bill No. relating to eminent domain.

The people of the State of California do enact as follows:

SECTION 1. Section 1243.4 of the Code of Civil Procedure as proposed by Senate Bill No. is amended to read:

1243.4. In any proceeding in eminent domain [~~brought-by-the-State, or-a-county,-or-a-municipal-corporation,-or-metropolitan-water-district, municipal-utility-district,-municipal-water-district,-drainage,-irrigation, levee,-reclamation-or-water-conservation-district,-or-similar-public corporation~~], the plaintiff may take immediate possession [~~and-use~~] of [~~any-right-of-way-or-lands-to-be-used-for-reservoir-purposes,-required-for-a-public-use-whether-the-fee-thereof-or-an-easement-therefor-be sought,~~] the property sought to be condemned in the manner and subject to the conditions prescribed by law.

SEC. 2. This act shall become effective only if Senate Constitutional Amendment No. is approved by the vote of the people at the next general election, and in such case, this act shall become effective on January 1, 1963.