

THE
STATUTES OF CALIFORNIA,

PASSED AT THE

TWENTIETH SESSION OF THE LEGISLATURE,

1873-74,

BEGAN ON MONDAY, THE FIRST DAY OF DECEMBER, EIGHTEEN HUNDRED
AND SEVENTY-THREE, AND ENDED ON MONDAY, THE THIRTIETH DAY
OF MARCH, EIGHTEEN HUNDRED AND SEVENTY-FOUR.



SACRAMENTO:
G. H. SPRINGER, STATE PRINTER.

1874.

Handwritten signature
(Dec. 1)

together, and as near as possible in the order of the sections which they amend.

SEC. 3. This Act shall be in force from and after its passage.

CHAPTER DLXXV.

An Act to authorize the City and County of San Francisco to provide and maintain public waterworks for said city and county, and to condemn and purchase private property for that purpose.

[Approved March 30, 1874.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Board of Supervisors of the City and County of San Francisco are hereby authorized and empowered to take all necessary steps to provide and supply said city and county, and the inhabitants thereof, and manufacturing establishments therein, with a sufficient and abundant supply of pure fresh water, at the lowest possible rates, and to secure an abundant supply for their future wants; and to that end, and for that purpose, they are hereby authorized and empowered to construct, appropriate, and acquire, or to purchase and hold the necessary real estate, waterworks, reservoirs, distributing mains, pipes, flumes, ditches, water and water rights, creeks, ponds, springs, and sources of supply pertaining thereto, in this State, and to contract with any person or persons, corporation or corporations, to construct and put in operation the necessary machinery, waterworks, reservoirs, aqueducts, ditches, and flumes, and to lay down distributing mains and pipes through the streets of said city and county for supplying the same, for the above and all other useful purposes, and to do and perform all such acts, and make and enter into all such agreements and contracts as may be necessary and proper to carry the objects and purposes of this Act into operation and effect. Nothing in this Act contained shall authorize the appropriation or condemnation of any water or water rights in the Counties of Santa Clara, Tulare, or Kern, nor shall anything in this Act contained be so construed as to authorize the condemnation of waters already appropriated for mining purposes, and necessary therefor.

Water franchise.

Restrictions.

SEC. 2. Should said Board of Supervisors, after a careful examination, determine that it is expedient and proper, and for the interest of said city and county, and its inhabitants, to acquire for said city and county the waterworks, reservoirs, pipes, flumes, ditches, distributing mains, water, water rights, and real estate owned by the corporation known as the "Spring Valley Waterworks," or by any other corporation or person in this State, or the water of Laguna de la Merced, and the real estate connected therewith, with all the water rights, creeks, springs,

Powers.

and sources of supply pertaining thereto, or any, or either, or any part of any or either of them, or any running streams, or other sources of supply of fresh water that can be made available for the use of said city and county, whether the same is owned or claimed by any person or persons, firm, company, corporation, or corporations, then and in that case said Board of Supervisors are authorized and empowered to purchase the same, or so much and such parts and parcels thereof as they shall deem advisable and necessary, at and for such price or prices as may be agreed upon between said city and county, represented by a committee consisting of the Mayor, Auditor, and City and County Attorney, acting on its behalf, and the owner or owners, respectively, of the real estate, water, and property so sought to be acquired. But before any contract to purchase shall be entered into by said Board, or by the committee herein named, on behalf of the city and county, to negotiate a purchase, or before they shall proceed in that behalf, either to purchase any waterworks, or source of water supply, or to contract for or with any person or corporation for a supply of water for said city and county, or to construct any works for the purpose of supplying said city and county with water from any source whatever, it shall be the duty of said Board of Supervisors to appoint a competent civil engineer, have made the survey hereinafter required, and have on file in their office his report, showing all such matters and things as are hereinafter mentioned, as necessary to be shown. It shall be the duty of said engineer, under the direction of said Board of Supervisors, as soon as practicable after his appointment, to make full and accurate examinations and surveys of all real estate, waterworks, reservoirs, distributing mains, pipes, ditches, flumes, water and water rights, creeks, ponds, springs, and sources of supply of water, which it is contemplated to purchase, and prepare and file with his report accurate maps of the same. As soon as he has completed his examinations, surveys, and maps, he shall make a full and complete report in writing, to said Board, of the result of his labor, which must show substantially the following matters: First—A particular description of each piece or parcel of real estate proposed to be purchased and directed to be surveyed. Second—The alleged amount of daily supply of water, and the estimate of daily supply made by said engineer. Third—The source or sources of water supply and a particular description of the water rights appertaining thereto. Fourth—The size and capacity of all reservoirs. Fifth—The length, size, and condition of all flumes, tunnels, pipes, mains, and distributing pipes. Sixth—An estimate in detail of the cost and present value of all said property. Seventh—An estimate in detail (as near as may be) of operating said works and maintaining them. Eighth—A statement of such other matters as said Board of Supervisors may direct, or said engineer may deem proper to present to the public concerning the matter. The salary of said engineer and the compensation of his assistants, and all other incidental expenses necessarily connected with the proceedings, shall be fixed, allowed, and ordered paid by said Board of Supervisors, and the same shall be audited, allowed, and paid out of the General Fund of said city and

Committee
on
purchase.

Engineer.

His duty.

His report.

Salary.

county. After the report of said engineer has been filed with said Board of Supervisors, they shall carefully examine and consider the same; and if, after a thorough examination thereof, they are of the opinion that the property described therein, or any part of the same, should be purchased and owned by said city and county, they shall pass a resolution to that effect, designating, generally, therein, the property designed to be purchased, which resolution must be approved by the Mayor before it takes effect. Thereafter the committee, representing the said city and county as herein named, shall proceed to view and carefully examine each piece or parcel of real estate, all waterworks, reservoirs, flumes, pipes, ditches, and sources of water supply, and all other property contemplated by said resolution to be purchased; and, after having made such personal examination, they shall prepare and report in writing, to said Board, the result of said examination and their conclusions thereon, based upon their own observations and the surveys and estimates of said engineer, giving, in the same manner as said engineer, a full and detailed estimate of said property and the price at which it can be purchased. Whenever the said last mentioned report has been made and filed, or whenever the award of Commissioners shall be made and filed, said Board of Supervisors shall immediately cause the material parts thereof (except maps and surveys) to be published in three daily newspapers published in said city and county, for the period of thirty days. On a careful examination of said report, should it meet the approval of said Board, and they deem it for the interest of said city and county to purchase the property described therein, at the price named in said report, they shall submit it to the qualified electors of said city and county, at the next general election to be held thereafter. But should said committee be unable to agree with the owner or owners of any property sought to be acquired, on a price to be paid therefor, then the price or prices to be paid therefor shall be ascertained and awarded as hereinafter provided. But, in case said committee unanimously agree with such owners on such price, said city and county shall not be bound thereby until after their award and appraisement shall have been submitted to a vote of the qualified electors of said city and county, as herein provided, and shall have received a majority of said votes at said election.

Consideration of report.

Committee's duties

Publication.

Election.

Bargaining

When city bound.

Proceedings to condemn property.

SEC. 3. In order to procure the condemnation and appropriation of the real estate referred to in the preceding section, or any part or portion thereof, and such other real estate and water rights as may be deemed by the Board of Supervisors of said city and county necessary for an additional supply of pure fresh water; and, in order further to ascertain the true value of such real estate, waterworks, and appurtenances, the Mayor, Auditor, and City and County Attorney of said city and county are hereby appointed to represent said city and county as of the one part, and the owner or owners of the real estate and water rights thus sought to be condemned and appropriated to public use, of the other part, shall each have the right to appoint three citizens of this State, who shall be entirely disinter-

Commissioners.

ested and unconnected with any one who may be interested in the subject matter; and those appointed to represent said city and county shall also be residents and freeholders of said city and county; and the Court of the Twelfth Judicial District in and for said city and county, upon the application and petition of the Mayor, Auditor, or City and County Attorney, on behalf of said city and county, or of any of the parties interested in such lands or waters sought to be acquired, shall appoint the seventh Commissioner, of like qualifications, and who shall be a resident and freeholder in said city and county; and said Commissioners so appointed shall severally take and subscribe an oath that he will perform the duties of such Commissioner without fear, favor, or partiality, and to the best of his ability, he will endeavor to ascertain and report the true value of each and every piece and parcel of property and right of property sought to be appropriated by these proceedings to the public use, and that he will do equal and exact justice to the whole subject matter committed to him.

If owners refuse.

SEC. 4. Should the owner or owners of any property sought to be condemned and appropriated to public use, under the provisions of this Act, neglect or refuse, for the period of thirty days, to appoint Commissioners on their behalf, as hereinbefore provided, after having been requested, in writing, by said committee representing the city and county, so to do, then, and in that case, the Commissioners appointed by said city and county shall proceed and make the appraisement of the property, and report as in other cases. In case of a vacancy or vacancies in the office of said Commissioners by death, resignation, or otherwise, the same shall be filled in like manner as in the former instance.

Duties of Commissioners.

SEC. 5. That the said Commissioners shall, immediately after their appointment and qualification as aforesaid, proceed to view and examine each and every parcel of property, real, personal, and mixed, sought to be condemned and appropriated by the proceedings by which they are appointed, and after viewing and examining the same, they shall appoint a time and place in said city and county when and where they shall hear the evidence and take the proofs of all parties and persons interested as to the ownership and value of said property. They shall publish in three daily newspapers, in said city and county, notice of the time and place of such meeting, with a brief description of the property sought to be acquired, for ten days prior to the same; and after the publication as aforesaid, said Commissioners shall have jurisdiction to hear and determine, as hereinafter provided. The Commissioners may then commence to take evidence and proofs, and may continue the same from day to day until each and every party to said proceeding have had an opportunity of producing such testimony as the parties in interest may deem necessary to establish the value of said property; and said Commissioners are empowered to employ counsel to aid them in conducting the proceedings, and also to employ a shorthand reporter, to take the testimony in shorthand, and transcribe the same into longhand. The Commissioners are hereby authorized to administer oaths to each and every witness brought before them, and to issue subpoenas for

witnesses; and any person on being subpoenaed to attend before Same. them as a witness, and failing so to do, may be punished by said Court for contempt. Said Commissioners shall, within six months subsequent to their appointment and qualification, file with the County Clerk of said city and county their report, which shall contain a description of all the real estate, property, water, waterworks, and all appurtenances sought to be appropriated to public use by such proceedings; and also the amount that, in the judgment of the Commissioners, should be paid by said City and County of San Francisco to the owner, or several owners, of the said property, as their just compensation therefor. The report shall also name the owner and owners of the property described in the report, together with a statement of the interest of each therein, so far as the same can be ascertained from the Recorder's office of the county in which the property shall be situated, and if there is any lien or mortgage upon any of the said property, the amount of the same, and to whom payable.

SEC. 6. The report shall be agreed and subscribed to by at least five members of the seven comprising said Commission. Not less than two of such five shall be of those appointed on behalf of the city and county, except when said Commission consists of three members, as hereinbefore provided, and in that case it shall be agreed and subscribed to by a majority of them. They shall transmit with their report a copy of all the evidence and proof taken by them in the course of the discharge of their duties as Commissioners, and file the same with said County Clerk. Upon the filing of the report, the Clerk of said Court shall cause a notice of the filing of the same to be published for ten days daily, in three daily newspapers published in said city and county; and within twenty days after the first publication of such notice, any party or parties interested, or any taxpayer of the said city and county, may file his or their objections in writing against the confirmation of the report of said Commissioners; and if, at the expiration of said twenty days, no objections are filed, the Judge of the Twelfth District Court shall, in his discretion, make and enter an order confirming said report; but if such objections are filed, the said District Court shall appoint a day for the hearing of the same, and upon the day designated, or other day or days to which the hearing of the same may be adjourned, the said Court shall proceed to hear the allegations and proofs of the respective parties, and may confirm, reject, or modify the report of said Commissioners, in whole or in part, as to all the property sought to be condemned, or as to any part thereof, or refer the same back, in whole or in part, to the said Commissioners, for further action, who shall report upon the matters which said Commissioners are required to report upon, in pursuance of instructions to be given by said Court; and the report of five of said Commissioners, as hereinbefore provided in one case, and a majority of the three in the other, as to the lands, waters, water rights, and right of way, sought to be condemned, and as to the price to be paid therefor, when the same is confirmed by said District Court, shall be final and conclusive, and binding upon said city and county and the owners of the prop-

Report.
and pro-
ceedings
thereon.

Vote on
report.

erty (unless set aside for actual fraud); *provided*, that the said report and appraisalment shall be submitted to a vote of the qualified electors of said city and county, at the next general election to be held thereafter. At said election, the question to be voted for shall be, "Shall said report and appraisalment be adopted?" and if a majority of the votes cast are in favor of said report and appraisalment, then the said city and county shall take and pay for said property, as by said award and report determined. But in case a majority of said votes are against said report, appraisalment, and award, then said city and county shall pay all the expenses of said Commission, approved and allowed in the premises, and the city shall not take or pay for such property; and from thenceforth, said Commission shall be terminated and discharged, and said city and county be relieved from all further obligations or liability in the matter or proceeding. The Board of Supervisors shall make all necessary provisions and regulations for the election herein provided, which shall be conducted and governed by the General Election Laws of this State, so far as the same are applicable thereto.

Order of
Court.

SEC. 7. In the order of the said Court confirming the report of said Commissioners, the said Court shall, so far as practicable, order and decree to whom the compensation awarded for any piece or parcel of the real estate, water, and water rights described in the report shall be paid; and when the same is directed to be paid to more than one person, the said order shall state the amount to which each is entitled, and the said order shall direct that upon the payment of the several sums awarded as compensation for the property so sought to be appropriated to public use by said city and county, a good and sufficient deed of bargain and sale, as to which, or for which, said compensation has been awarded, must be signed, sealed, and delivered by the owner and owners of said real property; and in case of neglect or refusal to execute said deed, the said District Court may appoint a Commissioner, with full power to convey to said City and County of San Francisco all right, title, and interest which said owner and owners and claimants may have in said real estate, property, water, water rights, and appurtenances, and the said District Court may direct the proper Sheriff to place said City and County of San Francisco in the possession of the property as to which payment has been made or tendered; and as soon thereafter as practicable, the Board of Supervisors of said city and county may employ a competent and skillful engineer or engineers, under whose supervision and direction the said Board of Supervisors may at once commence to erect works, reservoirs, flumes, distributing pipes, and all things necessary for distributing an additional supply of pure, fresh water to the inhabitants of said City and County of San Francisco, from any of the sources of supply appropriated to the public use by these proceedings.

Commis-
sioner and
conveyance

Compen-
sation.

SEC. 8. The Commissioners appointed under and by virtue of this Act, shall not be entitled to any compensation for their services, but shall be allowed the actual expenses incurred under the provisions of this Act, but not to exceed the sum of ten thousand dollars; the amount to be settled and certified to by said

District Court, and to be taxed by said Court as a part of the expenses of the proceedings, and to be paid by said city and county.

SEC. 9. In order to raise means necessary to carry into effect **Bonds.** the provisions of this Act, the Board of Supervisors of said city and county shall be and they are hereby fully authorized to issue bonds of the said City and County of San Francisco, as hereinafter provided.

SEC. 10. Said bonds shall be issued in sums of one thousand **Same.** dollars each, and shall draw interest at the rate of six per cent per annum from the date thereof, and the principal thereof shall be made payable at a specified day to be named in said bonds, which shall be thirty years after their date, at the office of the Treasurer of said city and county, both principal and interest to be payable only in gold coin of the United States. The interest accruing on said bonds shall be due and payable semi-annually on the first day of January and the first day of July of each year, at said Treasurer's office. Said bonds shall be signed by the Mayor and Auditor of said city and county, and registered in numerical order, in books to be kept for that purpose by the Mayor, the Auditor, and the Treasurer of said city and county, respectively, and when so signed shall be presented by the Mayor to the Clerk of the Board of Supervisors of said city and county, who shall, in the presence of the Mayor, countersign the same as such Clerk, impress the corporate seal on each and redeliver them to the Mayor, who shall thereupon report to said Board of Supervisors, at a meeting thereof, the number, date, and amount of each bond so signed and countersigned, which report shall be entered upon the journals of said Board. Said bonds shall be issued, or disposed of, in the order in which the same shall be numbered. Said bonds, or any portion thereof, **Sale.** may, on a vote of a majority of the Board of Supervisors and approval of the Mayor, be sold at not less than par, from time to time, as said bonds shall be required to pay for the property purchased, and to extend, repair, and improve the waterworks hereby contemplated. The total of such bonds to be issued shall be fixed by the Board of Supervisors of said city and county.

SEC. 11. The Board of Supervisors of said city and county **Water rates.** shall, by order, from time to time, fix the rates to be paid by consumers of water; which rates shall never exceed an amount sufficient to pay interest on said cost of acquiring the real estate, water and water rights, hereby authorized to be acquired, at the rate of six per cent per annum, and interest on the cost of laying down mains and building reservoirs, and also the actual annual cost of keeping the same in repair, and the actual cost of managing said works, and the Sinking Fund in this Act mentioned; *provided*, that such Sinking Fund shall not be created until ten years after the issuance of the first of said bonds.

SEC. 12. Coupons for the interest shall be attached to each **Coupons.** bond so that the coupon may be removed without mutilation of the bond, and said coupons shall be signed by the Treasurer of said city and county. When any interest shall be paid on any bond issued under the provisions of this Act, the said Treasurer of said city and county shall detach the coupons

for the interest then due and paid, and cancel and deliver the same to the Auditor, taking his receipt therefor; and it shall be the duty of the Auditor to file the same in his office, and to make a report thereof at the next meeting of the Board of Supervisors.

Water-works tax.

SEC. 13. It shall be the duty of the Board of Supervisors of said city and county, prior to the making up of the general assessment roll for said city and county, to levy each year, at the time of levying other municipal taxes, a tax, to be styled "The Waterworks Tax," sufficient to raise any deficiency for interest required to be paid each year upon said bonds, and the Sinking Fund hereinafter mentioned, after applying the net proceeds or income from water rates thereto; but no tax for said Sinking Fund shall be levied until after ten years from the time of issuance of the first of said bonds. Said tax shall be levied and collected in the same manner as the general taxes for city and county purposes, and when collected, shall be paid to the Treasurer of said city and county, and shall form a part of the Waterworks Fund, and the money in said Fund shall be applied by said Treasurer to the purposes of this Act: First—To the payment of the interest on said bonds as the same shall fall due. Second—To the redemption of said bonds as hereinafter provided. Said bonds shall, until paid, be a lien upon all the real estate, water, water rights, and property acquired under the provisions of this Act.

Money, how used.

Treasurer's duties.

SEC. 14. It shall be the duty of the Treasurer to pay the interest on said bonds out of the money in the Waterworks Fund when due; and whenever at any time there shall be in said Waterworks Fund a sum of money amounting to twenty thousand dollars or upwards, over and above what shall be required for the payment of the interest for the then fiscal year, the said Treasurer shall advertise for two weeks, in two daily newspapers published in said city and county, for sealed proposals for the redemption of said bonds; and ten days after the expiration of the time of such publication, he shall, in the presence of the Mayor and Auditor aforesaid, open such sealed proposals, and shall pay and liquidate, so far as the money on hand and applicable thereto shall extend, such bonds so presented under said proposals as shall have been offered at the lowest price or prices; *provided*, the same shall not be for more than par value thereof. And whenever any of the said bonds shall have been paid by said Treasurer, he shall mark the same "Canceled" over his own signature, and note such cancellation upon the register of such bonds kept in his office, and immediately deliver the same to the Auditor of said city and county, taking his receipt therefor, and the said Auditor, on receiving such canceled bonds, shall file them in his office, and also note such cancellation upon the register of such bonds kept in his office. The Treasurer shall continue to comply with the requirements of this Act, until all the bonds and coupons issued for the objects and purposes herein mentioned, shall be paid and liquidated in full.

Redemption and cancellation.

Water Commissioners.

SEC. 15. The Mayor of said city and county shall have power to appoint three Commissioners, without salary, for the term of four years, subject to the approval of the Board of Supervisors,

who shall have full and complete management and control of all the real estate, water, and waterworks provided for and acquired under this Act, who may appoint competent and reliable persons to supervise and manage the same to the best possible advantage to the inhabitants of the City and County of San Francisco, and may fix the salary and term of office of such employés, under such orders and resolutions as the Board of Supervisors of said city and county may from time to time adopt.

SEC. 16. The Board of Supervisors of said city and county may, by ordinance, pass such rules and regulations as may be proper, in the judgment thereof, to provide for the collection of water rates and water dues; to cut off the supply of water from consumers who shall make default in the payment thereof; to prevent any interference with the mains, reservoirs, sources of supply, and pipes of the waterworks; to prevent any impure, deleterious, or foul material from being thrown or dumped in any watercourse or water supply connected with such waterworks, or the conduct of any business, art, or trade, which, by drainage, may injuriously affect the water supply. Ordinances

SEC. 17. Said City and County of San Francisco shall not be permitted to take possession, unless with consent of the owner or owners, of any real estate, water, or water rights, hereby authorized to be acquired, until the compensation agreed upon, or determined, as hereinbefore provided, shall have been paid, either to the person, persons, or corporations determined to be entitled thereto, or deposited with the Treasurer of said City and County of San Francisco, who shall hold the same subject to an order of the Judge of the Twelfth Judicial District Court to pay the amount so deposited to the party or parties entitled thereto. Payment and possession.

SEC. 18. Said city and county is authorized to lay down and maintain mains, or water pipes, in the streets and highways of said city and county, and also in any county or counties of this State. Mains.

SEC. 19. This Act shall take effect on and after its passage.

CHAPTER DLXXVI.

An Act in relation to suits brought against the County of Marin for damages on account of laying out public roads.

[Approved March 30, 1874.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. In any action commenced under the provisions of section thirteen of the Act of the Legislature entitled "An Act for laying out, altering, and vacating public roads in the County of Marin, approved April second, eighteen hundred and Warrant for judgment.