

**ORIGINAL**

Decision No. 72200

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Oroville-Wyandotte Irrigation District for an order,

(a) determining and deciding pursuant to Section 11592 of the California Water Code the character and location of new facilities to be provided by the Department of Water Resources pursuant to Article 3, Chapter 6, Part 3, Division 6 of the California Water Code,

(b) directing and requiring the Department of Water Resources to provide and substitute such facilities for the facilities of applicant to be taken or destroyed by said Department,

(c) determining and deciding all controversies between applicant and the Department of Water Resources concerning the requirements imposed by said Article 3, Chapter 6, Part 3, Division 6 of the Water Code, and

(d) granting other appropriate relief.

Application No. 48869  
(Filed October 14, 1966)

William W. Schwarzer, McCutchen, Doyle, Brown,  
Trautman & Enersen, for applicant.  
Iver E. Skjeie and Richard D. Martland, for  
Department of Water Resources, State of  
California, protestant.

RULING ON MOTION TO DISMISS AND PETITION  
FOR SUMMARY ORDER

This application was filed on October 14, 1966. A pre-hearing conference, requested by applicant, was held in San Francisco on November 22, 1966. On the latter date a document entitled "Special Return of Respondent Department of Water Resources of the State of California To Application No. 48869 By Way of Motion

to Dismiss for Lack of Jurisdiction" was filed by the Attorney General of California representing the Department of Water Resources. On December 6, 1966 applicant filed a document entitled "Applicant's Memorandum of Points and Authorities (1) in Opposition to Motion to Dismiss, and (2) in Support of Petition for a Summary Order Determining Liability under Section 11590 of The Water Code."

A hearing on the Motion to Dismiss was held in San Francisco on December 20, 1966 before Examiner Gravelle. No testimony was presented but one exhibit was received for the Department of Water Resources and arguments of counsel were heard.

On December 27, 1966 the Department of Water Resources filed Civil Action CIV S-141 in the Eastern District of the United States District Court of California naming applicant and this Commission as defendants and seeking, among other things, injunctive relief. This Commission was served in said proceeding on January 12, 1967.

The position of the Department of Water Resources, stated simply, is that if the parties hereto are in conflict then exclusive jurisdiction of such conflict lies in the Federal Courts because each of the parties are Federal Power Commission licensees and only the Federal Courts can determine the duties and liabilities of such licensees under the provisions of the Federal Power Act.

We disagree. There are without question areas of responsibility which lie exclusively within federal jurisdiction. The problem posed by the application here is one that, as we see it, falls squarely within Section 11592 of the California Water Code and in which we do have jurisdiction.

We will not, however, as applicant has requested summarily determine the liability of the Department of Water Resources. Such determination should be made only after the parties have had an opportunity to present their evidence at public hearings.

The motion to dismiss as well as the petition for summary determination of liability are each denied. This matter will be set for further public hearing.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 28<sup>th</sup> day of MARCH, 1967.

[Signature]  
President

[Signature]

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Commissioners