

Decision No. 74542**ORIGINAL**

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 and J. Thomas Rosch of McCutchen, Doyle, Brown & Enersen, for the applicant. P. J. Minasian, for the applicant.
Iver E. Skjele, Deputy Attorney General and Richard D. Martland, Associate Attorney, Department of Water Resources, for the State Department of Water Resources, Protestant.

O P I N I O N

This application was filed on October 14, 1966. It was heard before Examiner Fraser at San Francisco on September 11, 14, 15, 18, 19, 20, 21 and 22, 1967; it was submitted in November 1967 on receipt of concurrent opening and closing briefs.

On November 22, 1966 the protestant filed a pleading titled "Motion to Dismiss" which alleged that the exclusive jurisdiction to resolve this controversy is in the Federal Power Commission and the Federal Courts. The motion was heard before Examiner Gravelle on December 20, 1966, and Decision No. 72200, dated March 28, 1967, affirmed jurisdiction and denied the motion to dismiss. The decision also denied the applicant's "Petition for a Summary Order Determining Liability" filed on December 6, 1966.

Applicant is an irrigation district and as such an agency of the State of California (Water Code Sections 20570, 11102). It serves approximately 30,000 acres southeast of Oroville in Butte County. It provides irrigation service to 450 customers on 5000 acres and domestic water to 3000 individual connections serving approximately 15,000 persons. It is the successor to two public utility water companies and subject to orders issued by this Commission requiring it to maintain service to water users in the former service areas (Henderson v. Oroville-Wyandotte Irrigation District, 207 Cal. 215 (1929); 213 Cal. 514 (1931); Rutherford v. Oroville-Wyandotte Irrigation District, 215 Cal. 124 (1932)).

Applicant collects its water in dams and reservoirs on the high ground along the South Fork of the Feather River in Butte County. The water comes down from Ponderosa Reservoir through the Miners Ranch Canal, then the Miners Ranch Tunnel to Miners Ranch Reservoir from whence it is distributed as irrigation or domestic water. Applicant alleges that its seven mile Miners Ranch Canal is halfway up a slope to be inundated by the rising water in Oroville Dam which has been constructed at the mouth of the same valley by the State Department of Water Resources. It is further alleged that the applicant's canal will either be submerged or will collapse into

Oroville Dam, depending on the water level and wave action in the latter, thereby destroying applicant's water system. Applicant then requests the Commission to order the respondent to provide applicant with a substitute facility for Miners Ranch Canal - to be destroyed by the respondent's dam - as required by Sections 11590-11592 of the California Water Code. Respondent filed a document on November 22, 1966 titled "Special Return of Respondent", wherein Commission jurisdiction was challenged. Later filings by the respondent have raised numerous issues which will be considered hereafter.

Facts

The original plan for applicant's water system was formulated by a consulting engineer in 1950. It included a series of dams and two powerhouses to generate electricity. The project was licensed by the Federal Power Commission in 1952. Applicant and the Yuba County Water District filed opposing applications in 1951 with the State Division of Water Resources (one of respondent's predecessors) for authorization to appropriate the water flow of the South Fork. Hearings were held in 1953 and 1955. In October, 1955, the State Engineer issued a decision which directed the two applicants to combine on a joint project for utilization of the water shed, referred favorably to present applicant's method of controlling the stream and described its plan in detail as Miners Ranch Canal with a capacity of 125 cfs, to extend from Ponderosa Dam along the South Fork for six miles, then into Miners Ranch Tunnel which would carry the water from the end of the canal down to Miners Ranch Reservoir. This plan did not include a maintenance road, communication line or siphons. A map was attached to this decision which illustrated the proposed Oroville Reservoir and its location adjacent to the Miners

Ranch Canal. Applicant and the Yuba County Water District executed a joint project agreement in March, 1958 which adopted the original plan modified to increase flow down Miners Ranch Canal to 250 cfs and to provide a third powerhouse at Kelly Ridge, adjacent to Miners Ranch Terminal Reservoir (authorized by the F.P.C. on April 30, 1959). The right to appropriate the necessary water was granted on May 29, 1958 by the State Water Rights Board (which had succeeded to certain functions of the Division of Water Resources, W.C. 179), subject to the requirement that the project be completed by December 1, 1964.

The California Districts Securities Commission (W.C. 20000-20087) requested the respondent to evaluate the South Fork project on July 1, 1958. The latter reported in September 1958 that the project was feasible after certain minor changes were made in the design of the Canal conduits (to make them larger).

The Bechtel Corporation was hired by the applicant on April 23, 1958 as project engineer. Bechtel completed the initial surveys, testing of materials, geologic investigations and cost estimates along with a tentative plan for the construction of the project. Later plans were approved by the applicant, Department of Water Resources and the Pacific Gas and Electric Company (which was to purchase the power produced). The plans were amended in various ways until March, 1960, when final drawings were presented to the Federal Power Commission for approval. The California Districts Securities Commission approved the project after receiving a report from Bechtel in April, 1960 that the entire system was feasible and could be constructed within the projected estimate of costs.

A revenue bond issue of \$62,000,000 was authorized in December, 1958, by a general election of the district. Bids were accepted in March, 1959 but the estimated cost was too high and the project was revised. An amended license - based on the revised

plans - was issued by the Federal Power Commission on June 3, 1960. Construction began in June of 1960, although Miners Ranch Canal was not started until March 1, 1961. The project was completed about January 1, 1963 and has been in continuous operation since the date of completion.

Respondent's predecessor filed in 1952 and was licensed in 1956 to construct Oroville Dam. The license was transferred in 1957 to the Department of Water Resources, which had just been created. The Oroville-Wyandotte Irrigation District protested the application for the license, on the basis that Oroville Dam would flood the District's Palermos Canal and the proposed Miners Ranch Canal. The license included a provision that it would be assumed the parties could reach an agreement on the protested issue and if not the Federal Power Act provided for damages where a licensee damages or destroys the property of another. The Oroville bonds were voted in November of 1960 and the necessary land was acquired from 1961 through 1964. All brush and trees were removed from the slope below the Miners Ranch Canal in early 1965 during the construction of Oroville Dam. It was completed and expected to fill to its 900 foot elevation during the winter of 1967-1968.

The representatives of the parties had numerous discussions and meetings, wrote many letters and executed numerous agreements during the period from 1951 to 1966.

It is difficult to determine when the Department of Water Resources was first advised that the applicant expected Oroville Dam to destroy the Miners Ranch Canal. Applicant claims discussions on this point were held as early as July 1964 and the Department of Water Resources alleges that it is unlikely; it is evident that letters were exchanged in January of 1965 wherein the Department advised the Irrigation District that the (Miners Ranch) communication and conveyance system would be protected.

Representatives of the parties herein held conferences in January, February and March of 1966. The possible effect of Oroville Dam on the Miners Ranch Canal was discussed and a Department of Water Resources spokesman suggested dumping riprap (large rocks used as a protective cover) along the downhill side of the canal to lessen the action of the water in Oroville Dam on the slope below the canal. Another solution consisted of pumping water out of Oroville Dam into Stringtown Tunnel thereby eliminating Miners Ranch Canal entirely. Under this plan the water of the District would flow into Oroville Dam rather than through the canal and the Department would operate the pumping plant with the District contributing payments equal to the amounts of money saved on the canal operation and maintenance. The applicant claims it accepted the pumping plant plan in March of 1966 and that the Director of Water Resources wrote to the District on May 11, 1966 to advise that the Department of Water Resources had only a minimal responsibility for conditions against which the District should have protected itself. A final inspection of the District's project was made by the Department of Water Resources in May and a report was issued on July 8, 1966 by the Chief Engineer of the Department of Water Resources which stated that the Department and District were negotiating the solution to problems which they anticipated when the water in Oroville Dam inundated the siphons and saturated the foundation of Miners Ranch Canal. A final letter on September 15, 1966 from the Director of Water Resources to the District advised that it was the latter's responsibility to provide the necessary protection and to pay for it. Upon receipt of this letter the District prepared and filed its application in this proceeding.

The Department of Water Resources maintains that the discussions regarding the protection to be afforded the Miners Ranch Canal were informal and that there were no representations made that the Department would provide and pay for protection for any part of the Canal at any time. The Department contends that their engineers participated as an act of goodwill and cooperation and it was - or should have been - obvious that they had neither the intent nor authority to bind the Department to pay for the chosen solution among the remedies discussed.

The Miners Ranch Canal

It is a concrete-lined ditch seven miles long built on a shelf cut into the mountain with a free-standing concrete wall on the downhill side. The portion of the shelf on the downhill side of the concrete wall is used as a maintenance road the entire length of the canal. It is not paved or surfaced and is subject to frequent washouts during storms. The canal crosses two deep cuts in the canyon wall - formed by McCabe and Powell Creeks - by means of two siphons which descend to the creek beds and up the opposite side to connect with the canal again. The siphons extend 200 feet below the maximum normal water level in Oroville Dam. They provide the means of carrying the canal water over the cuts and were not built to resist submersion. The District has recently modified them to increase their resistance and insure their operation while submerged. A communication line consisting of a wire strung on telegraph poles parallels the length of the canal. It was originally below the Oroville Dam water level where it crossed McCabe and Powell Creeks, but it was recently moved further up the slope by the District to move it above the water level in Oroville Dam.

The canal descends from 940 to 907 feet elevation. It extends seven feet lower than its minimum elevation in the design drawings and plans submitted by the District and approved by the Federal Power Commission. It is within twenty feet in horizontal distance of the water in Oroville Dam when the latter is at its maximum normal level of 900 feet.

The canal was constructed at a cost of \$2,136,000. The maintenance cost from 1963 through mid-1967 was \$217,467.82; necessary repair of the maintenance road accounted for \$177,659.36 of the total.

Provisions of the Water Code

The application is based on the following provisions of the Water Code of the State of California:

"§11590. Substitution of new facilities or agreement before taking or destroying line or plant of common carrier, etc. The department has no power to take or destroy the whole or any part of the line or plant of any common carrier railroad, other public utility, or state agency, or the appurtenances thereof, either in the construction of any dam, canal, or other works, or by including the same within the area of any reservoir, unless and until the department has provided and substituted for the facilities to be taken or destroyed new facilities of like character and at least equal in usefulness with suitable adjustment for any increase or decrease in the cost of operating and maintenance thereof, or unless and until the taking or destruction has been permitted by agreement executed between the department and the common carrier, public utility, or state agency."

"§11591. Expense of part of project construction costs. The expense of the department in complying with the requirements of this article is part of the cost of constructing the project."

"§11592. Submission of controversy to, and determination by, State Public Utilities Commission. In the event the department and any common carrier railroad, other public utility, or state agency fail to agree as to the character or location of new facilities to be provided as required in this article, the character and location of the new facilities and any other controversy concerning requirements imposed by this chapter shall be submitted to and determined and decided by the Public Utilities Commission of the State."

"The department" mentioned in all three Sections is the State Department of Water Resources.

The Application

The application alleges the canal, siphons, maintenance road and communication line will all be damaged or destroyed by the operation of Oroville Dam. It requests the Commission to (a) determine the character and location of substitute facilities to be provided by the Department of Water Resources; (b) direct the Department to provide such facilities; (c) determine and decide all controversies between the parties; and (d) grant any other relief found to be appropriate.

The substitute facility recommended by the applicant consists of a tunnel which would eliminate the need for a canal by letting the water flow from Ponderosa Reservoir through the mountain to Miners Ranch Tunnel. The tunnel would require little maintenance but would take two or more years to build, and would cost an estimated eleven to fourteen million dollars, depending on how much of it is lined and how long it takes to complete construction.

Position of the respondent, Department of Water Resources

1. The California Public Utilities Commission lacks jurisdiction to determine the issues presented. Respondent maintains that sole jurisdiction to determine this controversy is in

the Federal Power Commission or the Federal Courts. Any action or decision by this Commission will require alteration in either or both projects licensed by the Federal Power Commission without the prior approval of the Federal Power Commission and may prohibit, limit, or condition respondent's right to use federal lands which were withdrawn and reserved for respondent's project. Legal authority is provided in support of the proposition that Congress has preempted the field and that State laws thereon have been superseded by the Federal Power Act.

2. Applicant did not appeal the decision of the Federal Power Commission which denied its protest on Oroville Dam and therefore failed to exhaust its remedy before the Federal Power Commission. This action before the California Public Utilities Commission is therefore a collateral attack on the final decision rendered by the Federal Power Commission and should be dismissed.

3. Applicant is estopped from claiming that damage will occur due to operation of Oroville Dam and from suggesting that the respondent should be liable therefor if damage does occur. Applicant was advised in December, 1958, no protest would be filed (before the F.P.C.) on Miners Ranch Canal if assurance was provided that the canal would be constructed so as not to interfere with Oroville Dam. Applicant accepted this condition by letter in December of 1958 and as late as May, 1961 again advised by letter that there would be no conflict between the two projects. If applicant had indicated the possibility of a conflict when both projects were before the F.P.C. respondent would have protested and the controversy would have been resolved before the Federal Power Commission prior to the start of construction. Respondent relied on applicant's assurance

there would be no conflict and took no action. Applicant is now estopped from making a claim against the respondent for damage to Miners Ranch Canal due to the operation of Oroville Dam since the claim was not presented at the proper time and the position of applicant up to the time of filing encouraged respondent to believe that no claim of conflict was being considered.

4. Respondent offered to prove that about one and a half miles of the canal was built too far downhill to be on the land appropriated for its construction. Evidence on this issue was excluded. The land supposedly appropriated was owned by either the United States or the State of California. Respondent maintained that ownership of the land on which the plant is located must be proved to qualify for relief under the quoted sections of the Water Code.

5. The secretary of applicant violated Rule No. 5 of the Commission's Rules of Practice and Procedure by verifying the application without having personal knowledge of many of the allegations therein included.

Will the operation of Oroville Dam damage or destroy the Miners Ranch Canal? Expert testimony produced by applicant indicated that wave action and rapid drawdown (lowering the water level) of Oroville Reservoir will probably cause deep slides along the embankment under the canal. It was emphasized that these slides would be of sufficient magnitude to render the canal inoperative. Another expert testified that in periods of heavy rainfall it is possible that the water level in Oroville Dam could rise sufficiently to inundate the canal. Respondent's expert testified that the soil under the canal is incompressible and deep slides are not likely to occur. He further testified that small

slides are likely, which will damage the road adjacent to the canal. Respondent's witness stated that the cuts caused by the slides can be repaired by placing riprap (rock fill) over the slope moved by the slide to stabilize and reinforce the bank. Applicant's engineers oppose the plan to use riprap to protect the bank. Expert testimony was provided to show that riprap is unavailable near the project and any used would have to be transported to the site at great expense. It was emphasized that it would also have to be carefully slid into position to provide the protection at the most unstable point. An engineer testifying for applicant estimated it would take a total of sixteen to twenty million dollars worth of riprap, labor, and equipment to protect the canal. He further estimated that the riprap would have to be spread over a period of time - probably years - as slides occurred. He opposed the riprap scheme and favored either the tunnel or the pumping plant, which would take water out of Oroville Dam and pump it into the applicant's Miners Ranch Tunnel, thereby eliminating the canal.

Engineering testimony was provided by respondent to reveal that the berm which serves as the maintenance road of the canal was constructed at the request of the Pacific Gas and Electric Company for \$18,156.25. It was further revealed that the berm was built of loose, uncompacted material and was not constructed to specifically serve as a road or as a protective bank for the canal. Another engineer testified that the berm has a serious erosion problem which has not been reduced by frequent maintenance; that the construction of the canal permits rainfall to drain down the slope of the hill behind the inside wall of the canal, building up hydrostatic pressure and causing the inner lining to crack or peel; this condition

is still prevalent in spite of frequent repair; also the expansion joints in the outer canal leak and cause spalling on the inner wall. Exhibits were presented covering the maintenance cost of the canal which show that \$20,000 was budgeted in 1967 to repair the expansion joints and \$18,000 to remove algae; they show an amount totaling \$20,048 was spent on work during 1967 which was not budgeted.

Counsel for respondent maintained that the lining and berm of the canal are slowly deteriorating and require constant repair; also that the maintenance cost of the canal is too high due to insufficient money and planning being put into its construction. He classified the canal as a low initial cost, high maintenance project and suggested that applicant may be displeased with its canal and is hoping to acquire a new tunnel at respondent's expense. He argued that all relief should be denied applicant; but in the event the Commission decides otherwise, the most that should be required is the protection of the canal in place with applicant still responsible for the inherent maintenance costs which have been a part of operating the canal since it was built. He further argued that even if construction of the tunnel was ordered respondent would have to be credited with the equivalent of the capitalized cost of operating and maintaining the Miners Ranch Canal for the period it would have held together had it not been replaced by the tunnel.

Related Court Proceedings

The parties herein are also involved in an action before the Federal Power Commission. About November 1, 1966 the applicant herein advised the Federal Power Commission (hereafter F.P.C.) that the South Fork Project as constructed was different from the plans submitted before and approved by the F.P.C. Applicant requested that the project be approved as it was constructed. Respondent herein had

requested that the F.P.C. investigate the South Fork Project as early as October 11, 1966. A conference was held by the parties and staff of the F.P.C. in Washington, D. C. on November 29, 1966. Nothing was resolved at the conference so respondent herein filed a formal protest and petition to intervene on March 3, 1967. On May 22, 1967 the F.P.C. granted the Petition to Intervene and set the matter for hearing on the issues of whether the plans for the South Fork Project (applicant's Miners Ranch Canal) as built should be approved and whether Project No. 2088 (applicant's South Fork Project) can be operated and maintained consistent with Project No. 2100 (respondent's Oroville Dam and Reservoir) as licensed. A prehearing conference was held on June 29, 1967 and hearing before the F.P.C. was concluded in San Francisco on September 25, 27 and 28, 1967. An Initial Decision of the Presiding Examiner of the F.P.C. was issued on March 11, 1968.

The controversy is also pending before the U. S. Court of Appeals for the Ninth Circuit (No. 22126) on an appeal from a Judgment Dismissing Action and Complaint and for General Relief. The judgment being appealed was rendered on August 11, 1967 by the United States District Court for the Eastern District of California, in Civil Action No. Civ. S. 141, wherein the District Court dismissed the complaint of the Department of Water Resources against applicant herein and this Commission on the basis that no damage had occurred as yet and the action was therefore premature.

The Court of Appeals for the Ninth Circuit issued an order in Case No. 22126 (The State of California, Acting by and through the Department of Water Resources, appellant, vs. The Oroville-Wyandotte Irrigation District, an irrigation district, and the California Public Utilities Commission, a public commission, appellees) on September 11, 1967, which was served on the Commission the same day. The order reads as follows:

"Upon Motion for Temporary Restraining Order"

"We find that any order made by the California Public Utilities Commission would be a nullity and unenforcible by reason of the provisions of Title 16-§803 (b) U.S.C.A. Therefore no restraining order is needed to protect the rights of the moving party and the same is denied."

The Commission considered this court order on September 12, 1967 and voted to proceed with the hearing since no restraint had been imposed. The hearing continued on September 14, 1967.

Discussion

This controversy involves two agencies of the State of California. Regardless of who prevails, taxpayers will ultimately bear the cost. Both agencies have completed projects designed to store and distribute the water produced by the watershed of a good sized river. Said projects were built to ensure the availability of water to serve the maximum number of customers for the maximum period. The experts who testified agreed that damage to the canal is likely to occur. They differed on the cause and extent of the damage. If the canal suddenly collapsed into Oroville Dam it is evident that the parties herein would do whatever was necessary to restore service to those affected as rapidly as possible. The question here is simply what should be done and who should pay for it.

Basically three methods of protection were discussed.

(1) It was recommended that riprap be deposited at all points along the canal where slides occurred due to the action of the water in Oroville Dam. The riprap consists of loads of football or larger sized rocks which would allow water to filter through to saturate the bank under the rock and at the same time provide sufficient weight to prevent movement of the bank. It was emphasized that riprap of the size needed is not available anywhere in the Oroville

area. It is very expensive to purchase and would have to be transported to where needed at additional cost. Riprap is not the best protection for the canal. It is expensive and difficult to obtain, although limited quantities could be stored near the canal for repair of small slides on a temporary basis. (2) The tunnel applicant seems to favor would take a minimum of two years to construct at a cost of at least fourteen million dollars. If the canal is improperly constructed, as has been alleged, it is likely that serious damage or destruction will occur before the tunnel is completed. The cost and time involved to construct the tunnel far exceed the requirements allotted to the original canal. (3) The third alternative eliminates the canal and arranges for all water to flow into Oroville Dam. A pumping plant is to be provided to pump sufficient water from Oroville Dam into the Miners Ranch Tunnel to satisfy the need of the irrigation district. This is the best alternative. It will require less labor, time and cost than either of the others and last longer. It is the solution selected by the parties herein a few years ago when it was thought that both projects would be combined.

This Commission has jurisdiction to resolve the present controversy under Sections 11590-11592 of the Water Code. The peculiar circumstances of this case are a prototype of the situation which the sections were designed to solve. It is difficult to conceive how any Commission action could interfere with the jurisdiction of the Federal Power Commission. The latter agency is not concerned with local disputes other than to insure that sponsored projects are efficiently constructed to perform their stated functions. It has been suggested that Section 803 (b) of Title 16 of the United States Code Annotated will render this Commission's order a nullity.

Said section merely provides that except in emergency, no alteration should be made in the plans of a licensed project without prior Federal Power Commission approval. The legal authorities which construe this section indicate that the best plan for the project under consideration should be adopted by the Federal Power Commission. The best plan is further characterized as the one which most efficiently provides for the local public need. There will be no jurisdictional conflict with either the Federal Power Commission or the Federal Courts.

The cost of replacing the canal should be shared by the parties. The portion of the communication line which crosses McCabe and Powell Creeks was originally placed so as to be inundated and inoperative when the dam filled. These sections of communication line were finally moved above water line and the cost of completing this operation should be borne by the Oroville Wyandotte Irrigation District. The base of each of the siphons bridging McCabe and Powell Creeks was not constructed to withstand long submergence although located more than one hundred feet under water when the dam is full. The cost of altering the siphons to resist submergence should be borne by the Oroville-Wyandotte Irrigation District. The Irrigation District should also contribute a sum equivalent to the annual maintenance and operating cost of the canal projected for the period that the canal would remain in operation under normal conditions (its life expectancy).

Findings of Fact

1. Applicant is an agency of the State of California. It provides public utility water service to about 15,000 domestic water users and about 450 irrigation water users in a service area of about 30,000 acres in Butte County.

2. The Department of Water Resources, respondent herein, has completed the construction of Oroville Dam and Reservoir which has filled to its 900 foot operating level.

3. The District derives its water supply from its South Fork Project, located principally on the South Fork of the Feather River Canyon. This project collects water through a series of upstream dams and reservoirs and conveys it to the District's downstream distribution facilities. Among the facilities used to convey the water is the Miners Ranch Canal which, by means of a system of canals, conduits, flumes and siphons, carries the water from Ponderosa Dam to Miners Ranch Tunnel from where it is carried to Miners Ranch Terminal Reservoir. Miners Ranch Terminal Reservoir supplies about 80 percent of the District's supply of domestic and irrigation water and the canal is the only means of supply of the Reservoir.

4. Miners Ranch Canal is located on the south side of the canyon of the South Fork. The water surface of the reservoir will be from seven to forty feet below the canal and its maintenance road. The canal crosses the deep cuts of McCabe and Powell Creeks by siphons which recently had to be modified to increase resistance to submergence. The cost of modifying the siphons should be paid by the applicant. The latter should also pay for moving the communication line to higher ground where it crossed McCabe and Powell Creeks.

5. The waves and changes in the depth of the water in the reservoir will cause erosion of the slope on which the canal and road are located. There is a substantial certainty that slides will occur and that portions of the road and canal will be displaced thereby; further that the constant threat of these slides will make the canal unreliable and destroy its usefulness as a water supply facility.

6. The constant threat of severe slides and possible collapse of Miners Ranch Canal amounts to the taking or destruction of the canal by the operation of Oroville Dam. The canal is a low, initial cost project and is expensive to maintain and repair; further the canal was constructed so as to be susceptible to the variance in water level of Oroville Dam and so close to the latter as to require that the two projects be unified to guarantee continued operation of the water system supplied by the canal.

7. The Department of Water Resources should replace the Miners Ranch Canal with a plant designed to pump water from Oroville Dam into Miners Ranch Tunnel in sufficient quantities to adequately supply the applicant's system, and the entire flow of water from the applicant's upstream reservoir should then be directed into Oroville Dam and the Miners Ranch Canal should be abandoned as a water carrying facility as soon as the pumping plant is in operation.

8. The cost of erecting the pumping plant and placing it in operation should be shared by the parties. The Department of Water Resources should provide the funds to erect and operate the pumping plant and the applicant should contribute a sum equivalent to the annual operating and maintenance cost of the canal projected for the period the canal could be expected to continue in operation.

9. The solution suggested herein is not exclusive and may be improved by the parties. If the latter agree on an alternative facility, either party may file a copy of the agreement and request an appropriate modification of this order.

10. Respondent's request for a proposed report should be denied.

11. Respondent's motion to argue before the entire Commission should be denied.

Conclusions of Law

1. The District is an agency of the State of California, and Miners Ranch Canal and its siphons, road and communication lines are part of the District's line or plant, or the appurtenances thereof, within the meaning of Water Code Section 11590.

2. Portions of the District's line or plant, and appurtenances, consisting of parts of Miners Ranch Canal, the road paralleling the canal, the siphons and communication lines, will be taken or destroyed within the meaning of Section 11590 by the operation and maintenance of Oroville Reservoir.

3. The substitute facility to be provided by the Department of Water Resources, pursuant to Section 11590 of the Water Code, to replace the facility to be taken or destroyed should be a pumping plant designed to take water from Oroville Dam and force it into Miners Ranch Tunnel thereby eliminating the need for the Miners Ranch Canal.

4. Respondent's Motion to Dismiss on the basis of lack of jurisdiction should be denied. This issue has already been determined by Decision No. 72200, dated March 28, 1967, in this proceeding (Rehearing denied by Decision No. 72436, dated May 16, 1967).

5. The failure to appeal the F.P.C. decision denying the protest on Oroville Dam does not prejudice the applicant's position before this Commission, nor is this proceeding a collateral attack on the decisions of the Federal Power Commission.

6. The evidence is insufficient to support the contention that applicant's failure to present claims of possible damage to

its South Fork project prior to the construction of Oroville Dam and respondent's reliance thereon, should estop the applicant from demanding that its facility be replaced by the respondent at the latter's expense.

7. The application herein was signed and verified by an officer of applicant corporation with sufficient knowledge of the allegations made therein to satisfy legal requirements for this proceeding.

8. The land occupied by Oroville Dam and the Miners Ranch Canal was reserved by the State and Federal government. The entire valley of the South Fork was made available to the parties without either specifying boundaries. The fact Miners Ranch Canal may have been constructed too far downhill at certain points is immaterial in this proceeding.

9. The Commission should retain jurisdiction over this proceeding for all purposes.

O R D E R

IT IS ORDERED that:

1. The substitute facility to be provided by the respondent Department of Water Resources pursuant to Section 11590 for the facilities of the applicant Oroville-Wyandotte Irrigation District to be taken or destroyed by said Department of Water Resources shall be a plant designed to pump water from Oroville Dam into the Miners Ranch Tunnel. The flow of water from applicant's upstream storage area will be directed into Oroville Dam as soon as the pumping plant is in operation. The cost of these facilities and for moving the applicant's communication line and modifying its siphons shall be borne as noted in the findings herein.

2. If the parties agree on an alternative facility; or if the Federal Power Commission fails to approve the new project, either party to this proceeding may request a modification of this order.

3. The request for a Proposed Report of Examiner is denied.

4. The request to orally argue before the Commission en banc is denied.

5. The motion to dismiss the application is denied.

The Commission hereby retains jurisdiction over this proceeding for all purposes.

The Secretary is directed to cause a certified copy of this order to be served upon each party herein and their attorneys.

This order shall be effective twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of AUGUST, 1968.

William M. Bennett
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Fred P. Morrissey, being necessarily absent, did not participate in the disposition of this proceeding.