

ORIGINAL

Decision No. 78482

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

William W. Schwarzer, Attorney at Law, of McCutchen,
Doyle, Brown & Enersen, for the Oroville
Wyandotte Irrigation District, applicant.

Iver E. Skjeie, Deputy Attorney General, and
Richard D. Martland, Associate Attorney, for
the Department of Water Resources of the State
of California, respondent.

ORDER ON MOTIONS

On January 28, 1971, respondent filed a pleading consisting of motions to continue the hearing scheduled for February 8, 1971; for an order authorizing oral argument before the Commission, and to expand the issues to be considered during the scheduled hearing of February 8, 1971, to include the presentation of evidence on whether

"the operation of Oroville Reservoir by the Department of Water Resources has yet caused, or is there reasonable certainty that such operation will in the future cause, a taking or destruction of any part of the Miners Ranch Canal". Respondent also suggested that as an alternative this proceeding should be reopened and the issue of Oroville Dam causing damage to the canal, or its destruction, should be retried and redetermined on the basis that the canal has not suffered any damage as yet from the operation of the dam.

The February 8, 1971 hearing was scheduled to consider issues raised by the applicant in a pleading filed on August 18, 1970. Respondent filed its reply on September 24, 1970 and a written motion to orally argue before the entire Commission on September 30, 1970. Applicant filed an additional pleading on October 2, 1970. Respondent's motion to orally argue before the Commission was denied by the presiding commissioner in a letter dated October 21, 1970. After several conferences by telephone, the Commission mailed a letter to the parties on November 9, 1970, to advise that a prehearing conference would be held on December 19, 1970 to determine what issues were raised in the pleadings and that the hearing would be scheduled on February 8 through 12, 1971. The parties were also advised to notify the Commission by December 14, 1970 of the issues they considered important. Both parties did so, and the prehearing conference was held on December 19, 1970 before Commissioner Symons and Examiner Fraser. The parties were notified at the conference that the matter would be set for hearing on February 8 through 11, 1971, in San Francisco. The dates had been selected in September 1970 after each counsel advised his calendar was clear during early February. A letter from the Secretary of the Commission was mailed to counsel for the parties on December 23, 1970. The letter listed the following five issues.

1. Whether the applicant should pay for moving the siphons and the communication line.
2. What is the cost of operating the canal and what percent of the cost will be eliminated by the substitute facility to be provided by the respondent.
3. How the expense claimed by the District for emergency pumping facilities, barge rental, maintenance and repair were incurred, and whether the respondent should reimburse the applicant for any or all of this expense.
4. Are there other facilities adequate to replace the irrigation canal which have not been considered as yet.
5. How much of the cost of building the substitute facility should be contributed by the applicant.

Hearing was held on February 8 and 9, 1971, before Examiner Fraser, in San Francisco. The proceeding was limited to the presentation of evidence on the five issues enumerated above. The matter was submitted after both parties presented evidence with briefs to be filed after preparation of the transcript.

A motion for a continuance was denied by the presiding commissioner on October 21, 1970 and by the Chairman of the Commission on February 5, 1971 after respondent's counsel filed a special motion on February 2, 1971. The motions alleged that applicant has failed to submit plans to the Federal Power Commission which incorporate the latest improvements suggested by the latter; and until the plans are submitted to and approved by the Federal Power Commission it cannot be known what modifications can legally be made in the Miners Ranch Canal. The submission and approval of the plans do not concern this Commission. We are concerned with what work is needed on the canal, or what facility should replace it; and which of the parties should pay the various costs involved. It is logical to assume that the plans submitted by the applicant will be approved by the Federal Power Commission and that any changes required will be comparatively minor. The orders denying the motion for a continuance will be sustained.

This application was originally filed on October 14, 1966. There were eight days of hearing in September of 1967 and it was submitted in November of 1967 on receipt of concurrent opening and closing briefs. Decision No. 74542 was signed on August 13, 1968. The decision concluded that portions of the Miners Ranch Canal of the Oroville Wyandotte Irrigation District, which is located in the same valley as Oroville Dam and approximately 5 to 40 feet above water level when the dam is full, will be taken or destroyed within the meaning of Section 11590 of the Water Code, by the operation and maintenance of the Department of Water Resources Oroville Reservoir. It was further concluded that the latter would have to provide a pumping plant designed to pump water from Oroville Dam into the tunnel at the lower end of the irrigation canal, thereby eliminating the canal. The decision further provided that the Commission would retain jurisdiction of this proceeding for all purposes and that the proceeding could be reopened if the parties agreed on an alternative facility, or if the Federal Power Commission failed to approve the new project.

Applicant filed a petition to modify Decision No. 74542 on August 18, 1970. The petition includes a copy of a Federal Power Commission order dated January 29, 1969, which directs the applicant herein to obtain three qualified consultants within 30 days to review the adequacy and soundness of applicant's revised plans for the irrigation canal or for a suitable facility to replace it. The FPC order further provides that one consultant will be selected by each party and that the first two will choose the third member of the team. The board of consultants was appointed and approved by the parties. The board issued reports on July 3, 1969 and on December 12, 1969. A copy of each report is attached to applicant's petition of August 18, 1970. The

earlier report provides a description of applicant's canal and a discussion of the various plans presented to protect it. The later report provides additional information from data obtained when the water level in Oroville Dam was very low and more of the bank was exposed. The last report concludes that the reservoir had not substantially affected the operation of the canal to the date of the report; but major slope failures could occur under conditions such as sudden drawdown in the reservoir, earth tremors, or torrential rains. The report notes that applicant has provided a pumping facility which floats on a raft of steel tank pontoons in the cove of Oroville Reservoir, and is designed to pump water directly into the tunnel at the base of the canal if the latter will no longer provide sufficient water for applicant's customers. The report classifies the pumping plant as a temporary expedient, however; and recommends that the upper 6 miles of the canal be protected by covering the lower slope - between the outer edge of the road that parallels the canal and the surface of the water in the reservoir - with a mantle of coarse rock of approximately six-inch diameter and by widening and improving the road which provides access to the canal. The report recommends further that the lowest mile of the canal be replaced by a 4400-foot tunnel, since the canal road rests entirely on fill along part of this stretch and if the road were to slide the canal would be endangered. The Federal Power Commission issued an Order on February 18, 1970 which included the findings and recommendations of the Board of Consultants and directed applicant herein to submit revised plans and exhibits (to the FPC) to implement the board's recommendations. The FPC Order further requests respondent herein "to cooperate as much as possible in the situation."

Respondent's motion to argue before the Commission "en banc" should be denied. This proceeding has been exhaustively briefed in the past and additional briefs will soon be filed. Facts, law and argument have been included in the motions filed as pleadings and in letters mailed to the Commission. Oral argument would merely repeat what is already in the record without benefit to those who can obtain the information by reading the briefs. Scheduling for oral argument also delays the proceeding, since the date selected for the argument must be convenient for all the commissioners and the counsel involved.

Respondent's motion to reopen and reconsider factual issue, or to modify decision limiting issues should be denied. The issue respondent seeks to place before this Commission has already been resolved by Decision No. 74542, which determined that the operation of Oroville Reservoir by the State Department of Water Resources would result in the taking or destruction of the Miners Ranch Irrigation Canal of the Oroville-Wyandotte Irrigation District and that the said Department of Water Resources must, under the provisions of Section 11590 of the Water Code, provide an adequate alternate or replacement facility for the irrigation canal that is threatened.

The findings of the Board of Consultants and the Federal Power Commission agree that the future security of the canal cannot be guaranteed if conditions remain as they are; the consultants also reported that in the event the canal collapsed or started to buckle, it might then be difficult or impossible to determine what factors caused the damage. The fact that the canal has not been seriously damaged to date is not a sufficient reason to reopen the proceeding.

Findings and Conclusions

1. The Motion for Modification of Commissioner's - Examiner's Decision Limiting Issues, Or to Reopen and Reconsider Factual Issue should be denied.
2. The Motion to Continue the Hearing should be denied.
3. The Motion for Oral Argument Before the Commission should be denied.

O R D E R

IT IS ORDERED that:

1. The Motion for Modification of Commissioner's - Examiner's Decision Limiting Issues, Or to Reopen and Reconsider Factual Issue is denied.
2. The Motion to Continue the Hearing is denied.
3. The Motion for Oral Argument Before the Commission is denied.

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

Dated at San Francisco, California, this 30th
day of MARCH, 1971.

[Signature] -
Chairman
[Signature]
Vernon L. Sturgeon
[Signature]
Commissioners