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**ORIGINAL**

Decision No. 7972A

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 facili-  
ties 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 applicant.  
Iver E. Skjeie and Richard D. Martland, Deputies  
Attorney General, for the Department of Water  
Resources of the State of California, respondent.

O P I N I O N

The Commission retained jurisdiction of this proceeding  
after issuing Decision No. 74542, dated August 13, 1968. On

August 18, 1970, applicant herein filed a petition to modify Decision No. 74542. The decision concluded that the Miners Ranch Canal of the Oroville Wyandotte Irrigation District (OWID) will be taken and destroyed due to the operation of Oroville Dam and Reservoir by the State Department of Water Resources and that the latter should provide a pumping plant as a substitute facility therefor under the provisions of Section 11590 of the Water Code of the State of California. The Petition requests that the decision be modified to provide for retention of the upper six miles of the canal, with proper slope protection where needed, and an all-weather, widened and reinforced canal service road and, for replacement of the lower mile of canal with a 4,400-foot tunnel. The suggested modification has been adopted by the Federal Power Commission (FPC) as the best and least expensive method of protecting the canal. The petition further requests that the Department of Water Resources (DWR) be ordered to pay for modifying and relocating two siphons and the canal communication lines at a total cost of \$201,127.11 and an additional \$119,819.97 for the installation of a pumping plant, plus \$896.52 per month for pump maintenance and barge rental. The petition also requests that the DWR be required to pay \$56,368.72 for canal maintenance and repair.

DWR 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. DWR'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?

On January 28, 1971, DWR 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". DWR 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,

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should be retried and redetermined on the basis that the canal has not suffered any damage as yet from the operation of the dam.

Another request for a continuance was denied by the Chairman of the Commission on February 5, 1971 after DWR's counsel filed a special motion on February 2, 1971.

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. Both parties participated and the matter was submitted on concurrent opening and closing briefs, which have been received. The Commission issued a special decision (No. 78482) on March 30, 1971, which denied all of the motions filed by DWR on January 28, 1971.

This application was originally filed on October 14, 1966. There were eight days of hearings 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 OWID, 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 of the State of California, by the operation and maintenance of the Department of Water Resources Oroville Reservoir. It was further concluded that under provisions of Section 11590 of the Water Code 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 as a substitute facility, 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 FPC failed to approve the new project.

Applicant's canal and DWR's Oroville Dam have both been licensed by the FPC. On May 22, 1967 the FPC instituted an investigation and provided for a hearing on the issue of whether the operation of Oroville Dam (reservoir) may render unusable portions of OWID's Miners Ranch Canal. Hearings were held in September of 1967 and an initial decision was issued March 11, 1968. Oral argument, on exceptions, was held before the FPC on November 18, 1968 and the final decision issued on January 29, 1969. The decision orders 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. Applicant herein proposed that 1.6 miles of the canal be retained and that 5.5 miles of the canal be replaced by 3.64 miles of tunnel; at a cost of \$6,885,000. The DWR proposed that the more exposed slopes be reinforced, that repair materials be stockpiled along the canal and that it be checked regularly, so damage is promptly discovered and repaired. The cost of this proposal was estimated to be \$1,224,000.

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. It concludes that the reservoir has 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 4,400-foot tunnel, at an estimated cost of \$1,500,000, 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 FPC 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 DWR "to cooperate as much as possible in the situation."

Position of Department of Water Resources

DWR argued that applicant's canal has not been constructed as required in the plans approved by the FPC and that the FPC has ordered the applicant to do necessary work on the canal, which the latter insists DWR pay for. DWR further argued that the applicant's canal has been operating without interference from Oroville Reservoir since 1966, when this action was filed.

DWR noted the only damage suffered by applicant's canal has been from slides above the canal, leaking expansion joints and deterioration of the inner lining of the canal. None of these problems have been caused by Oroville Reservoir, although slides from above have filled the canal causing the water to overflow and

wash out the slope below the canal. DWR argued that the road paralleling the canal has a high maintenance cost because of poor design and faulty construction. DWR asserted that more than \$177,000 was expended on repairing the road and slope below the canal prior to November, 1967, when Oroville Reservoir started to fill with water. DWR argued that if applicant's petition is granted all maintenance expense will be eliminated on the section of the canal to be replaced by the tunnel and full credit should be allowed DWR for this saving to applicant.

DWR noted that the present pumping plant was installed by applicant after two serious slides occurred in January of 1969 on the slopes above the canal. DWR has denied liability on the basis the plant was constructed to counter the effect of slides having no connection with Oroville Reservoir. DWR argued that it should not be liable for applicant's normal maintenance and repair expenses, since these charges are not related to the operation of Oroville Reservoir. It further contended that the recommendation of the Board of Consultants is only advisory and cannot be accepted as yet, because plans have not yet been filed with the FPC to illustrate how long it will take to complete the work and how it will be done. DWR concludes that if it is required to reconstruct or repair applicant's facility, it is entitled to various credits for the maintenance expense applicant will save thereby projected over the 40-year remaining life of the canal and that the credits should be allowed prior to the start of construction.

The issues listed herein do not coincide with those selected at the prehearing conference, where the parties were primarily concerned with who should pay for the recommended construction and maintenance. The first issue listed hereafter is whether the recommendation of the Board of Consultants should be adopted, which is the basis for reopening this proceeding. The prehearing conference expanded the issues to permit either party to present evidence

regarding any method of reinforcing, eliminating, or replacing applicant's canal. This opportunity was disregarded by the parties, and Issue 4 from the prehearing conference has therefore been eliminated. Prehearing Issues 1, 3 and 5 are covered in the following analysis. Issue 2 is discussed but not settled since the improvements recommended will have to be installed and functioning before it is known whether the substitute facility will cost less to operate than the original canal.

Issues

1. Whether Commission Decision No. 74542 which ordered that applicant's canal be abandoned and a pumping plant substituted therefor should be modified by eliminating the pumping plant and retaining the canal, after reinforcing the lower slopes on the upper six miles of the canal and replacing the lowest mile with a 4,400-foot tunnel.

2. Whether the portion of Decision No. 74542 which ordered applicant to pay for modifying and relocating two siphons and the canal communication line should be modified to require that DWR assume the cost of relocation.

3. Whether DWR should be required to pay the entire cost of installing and maintaining the emergency pumping plant which will provide water for applicant's system if the canal should cease to operate.

4. Should DWR be ordered to pay all of the necessary expense of maintaining the canal until a substitute facility is provided?

5. What credit should be allowed DWR for possible savings on the repair and maintenance of the canal?

Discussion

1. The recommendation of the Board of Consultants should be adopted. The majority of the consultants were selected by the parties herein and adopted a plan which will afford maximum security at minimum cost. The pumping plant which is already installed was



suggested by the Board of Consultants as a temporary safeguard in the event that the canal ceased operating. It was not installed pursuant to Commission Decision No. 74542. Neither of the parties herein is opposed to the consultants' proposal, although there is a controversy as to who should pay for the work to be done.

2. The present record does not justify charging DWR for moving the communication line and the siphons. Applicant was ordered to assume this obligation in the original decision herein, which provided for a pumping plant to replace the canal. Most of the canal will now be retained, hopefully resulting in a lowered cost for both parties, but no reason has been given to change the original order other than the continued existence of the canal.

3. The cost of installing and maintaining the standby pumping plant should be shared equally by the parties. Each would benefit if this facility is ever needed and both cooperated in its installation. It is a temporary expedient, installed as suggested by the Board of Consultants.

4. DWR should not be required to pay applicant's normal maintenance expense, which repairs damage or wear not caused by the operation of Oroville Reservoir. Normal maintenance would clear slides from above the canal, repair leaking joints and mend the deterioration in the canal walls. The record does not refer to specific instances where the canal was damaged by reservoir operation.

5. DWR argued it should be credited in advance with all costs applicant will save, totaled for the 40-year period estimated to be the remaining life of the canal.

Decision No. 74542 ordered that applicant's canal be replaced with a pumping plant. The decision awarded DWR a credit on monies to be expended of a sum equivalent to the annual maintenance cost of the canal totaled for the period it would have continued to operate. This order was to credit the annual maintenance expense applicant would save when the canal was eliminated.

Under present ruling the canal will continue to function and each party should assume a portion of its operating expense. The credit for maintenance expense based on the elimination of the canal is no longer relevant. It is likely that the decision to retain most of the canal will accrue financial benefits for both parties in view of the high cost of replacement. It is therefore reasonable to require applicant to be responsible for ordinary maintenance and repairs and for DWR to be charged only with maintenance or repairs caused by the operation of Oroville Reservoir.

If maintenance expense is substantially reduced or eliminated on the portion of the canal replaced by the tunnel, DWR is entitled to a credit therefor, to be determined after the tunnel is constructed and at least 12 months have elapsed, to allow sufficient time to determine whether savings or losses realized indicate a permanent trend.

Findings

1. Finding No. 7 of Decision No. 74542 is hereby amended to read as follows:

The Department of Water Resources should:

- (a) Replace the lower reach of Miners Ranch Canal with a tunnel approximately 4,400 feet in length extending from the vicinity of the intake tunnel upstream to near the lower siphon, and replacing the lower reach of the canal.
- (b) Provide an improved all-weather roadway along the remaining length of the canal.
- (c) Provide slope protection below the remaining length of the canal to include an adequate mantle of coarse material.

2. Finding No. 8 of Decision No. 74542 is hereby amended to read as follows:

The cost of constructing the tunnel and reinforcing the remainder of the canal should be borne by the Department of Water Resources.

The cost of regular maintenance and repair will be charged to applicant. DWR will assume the cost of any extraordinary maintenance and repair occasioned by the operation of Oroville Reservoir.

3. If maintenance expense is substantially reduced or eliminated on the portion of the canal replaced by the tunnel, DWR is entitled to a credit therefor, to be determined after the tunnel is constructed and at least 12 months have elapsed, to allow sufficient time to determine whether savings or losses realized indicate a permanent trend.

4. There is no justification in the record on this proceeding to charge DWR with the cost of moving the siphons and the communication line.

5. The cost of installing and maintaining the standby pumping plant, including barge rental, should be shared equally by the parties.

6. The cost of past and current maintenance will be borne as provided in Finding No. 2 herein. DWR will be charged only with maintenance or repair expense which is incurred due to the operation of Oroville Reservoir.

7. Neither party should be awarded specific costs until the canal is modified as recommended and has been operating a sufficient length of time to reveal whether the proposed improvements will reduce maintenance expense.

#### Conclusions

1. Conclusion No. 3 of Decision No. 74542 is superseded as follows:

The substitute facility to be provided by the Department of Water Resources, pursuant to Section 11590 of the Water Code for the facility to be taken or destroyed should consist of replacing the lower reach of the canal with a 4,400-foot tunnel and to provide

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slope protection and an improved all-weather roadway along the remaining length of the canal.

2. Excepting the modifications herein provided, Decision No. 74542 should remain in full force and effect.

O R D E R

IT IS ORDERED that:

1. Ordering paragraph 1 of Decision No. 74542 is superseded as follows:

The substitute facilities 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 as follows:

- (a) A tunnel approximately 4,400 feet in length extending from the vicinity of the intake tunnel upstream to near the lower siphon, and replacing the lower reach of the canal.
- (b) An improved all-weather roadway along the remaining length of the canal.
- (c) Slope protection below the remaining length of the canal providing an adequate mantle of coarse material.

2. The costs of operating and preserving applicant's facility will be borne by the parties as provided in the present findings.

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3. In all other respects Decision No. 74542 will remain in full force and effect.

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

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of FEBRUARY, 1972.

William J. ... Chairman  
...  
...  
... Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.