

Decision No. 82561

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 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

McCutchen, Doyle, Brown and Enersen, by
William W. Schwarzer and J. Thomas Rosch,
Attorneys at Law, 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

This application was filed on October 14, 1966. There were eight days of hearing in 1967 and 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 is from 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' (DWR) Oroville Reservoir. It was further concluded that under the provisions of Section 11590 of the Water Code the DWR should 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 also 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 the Federal Power Commission (FPC) failed to approve the new project.

On August 18, 1970 applicant filed a petition to modify Decision No. 74542. The petition requested that the decision be modified to provide for (a) retention of the upper six miles of the canal, with proper slope protection where needed, (b) an all-weather, widened, and reinforced canal service road, and (c) replacement of the lower mile of the canal with a 4,400-foot tunnel. The suggested modification had been adopted by the FPC as the best and least expensive method of protecting the canal. The petition also requested that the Commission require the DWR to assume the entire expense of canal maintenance and repair for installation of the pumping plant and for moving siphons and communication lines. DWR filed its reply

on September 24, 1970. It argued in favor of reopening the proceeding to reconsider the issue of whether the operation of Oroville Dam will ever damage the canal and whether the necessary canal maintenance and repair result from deterioration due to the inadequate design and faulty construction of the canal.

Hearing was held on February 8, 9, and 10, 1971 in San Francisco. All motions were denied on March 30, 1971 by a preliminary decision (No. 78482). Decision No. 79724 dated February 15, 1972 accepted the recommendation in applicant's petition and ordered (page 12 of Decision No. 79724) that the substitute facility to be provided by DWR to replace applicant's canal shall be: (1) a 4,400-foot tunnel to replace the lower reach of the canal; (2) an improved all-weather roadway along the remaining length of the canal; and (3) slope protection along the portion of the canal not replaced by the tunnel. It was further provided on page 11 of Decision No. 79724 that:

"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."

DWR petitioned for a rehearing arguing that the proceeding should be reopened; that the Commission's decision should conform with FPC decisions; and that each party should be informed of the specific past canal repair or maintenance expense it is responsible for under the rule adopted by Decision No. 79724. Rehearing was granted by Commission Decision No. 80077 dated May 18, 1972 for the very limited purpose of determining what "historical costs" each party is responsible for and to suggest that Finding 1 be clarified by including a statement that DWR will be financially responsible for

the tunnel, all-weather roadway, and providing the slope protection. DWR requested further hearings so additional evidence could be provided on the issue of historical costs. Applicant argued that further hearings were not necessary since the record was adequate and historical costs had been covered in detail by exhibits and testimony on direct and cross-examination. A prehearing conference was held and arguments were heard from both appearances. The request to hold further hearings was denied and the proceeding was submitted on the limited issues raised by the order granting rehearing.

Discussion

Historical costs consist of expenses incurred to provide necessary replacement, repair, and maintenance on the canal and its adjacent access road and slopes. Decision No. 74542 provides that DWR will only be liable for replacement, repair, or maintenance expense which results from the effect of the location or operation of Oroville Dam on the canal. The expense of normal maintenance will be paid by the applicant.

The historical costs in issue are as follows:

<u>Exhibit No.</u>	<u>Work Order</u>	<u>Total</u>
48D	2-68	\$ 884.92
48H	12-69	2,437.71
48I	13-69	1,371.71
48J	14-69	2,713.05
48M	23-69	45,128.58
48N	2-70	1,348.76
48O	3-70	9,000.00
48P	5-70	889.02
48R	11-70	9,784.34
48S	20-70	1,577.84
		<u>\$74,135.93</u>

The description of work performed under Work Order 2-68 defines the job as constructing "a ramp from Station 6 up to the existing ramp road since it will not be possible to drive from Station 5 to Station 6 when Oroville Reservoir is full". Order 12-69

covered the removal of rock from the Forbestown Tunnel pit and spreading it over the canal road from Station 8 to Station 116+20. This work repaired damage caused by washouts due to severe rainstorms. Order 13-69 notes that it is concerned with the work involved in locating and establishing a rock quarry and in transporting the rock and spreading it on the canal road from the Old Enterprise Road to Station 3. Order 14-69 relates to work performed in opening an emergency access road from the top of Stringtown Mountain to Station 3, to be known as Hall Road. Order 23-69 states it "shall include all costs of labor, material, and equipment necessary to protect and repair the berm and canal embankment damaged as a result of the construction and filling of Lake Oroville". There is no mention of how the reservoir caused the damage or why the repairs became necessary. The record shows that repairs completed were no different than those required prior to the existence of the reservoir. Order 2-70 notes that it includes all costs and material used to repair a section of the canal road damaged by a cave-in located in the old Southern Cross Mine. Orders 3-70 and 5-70 describe repairs to eliminate slides caused by heavy rainfall. Order 11-70 includes work performed to protect a portion of the canal road. There is no description of the nature or extent of the work. The record reveals that applicant expects DWR to pay for work performed and materials furnished under Work Orders 12-69, 13-69, 14-69, 5-70, and 11-70 on the supposition that the water level in Oroville Reservoir probably accelerated the normal settling and wear on the canal and access road. Order 20-70 states that it was issued to cover work performed in reinforcing a 20-foot section that has been settling for a year and a half, with damage to the walls of the canal. Testimony reveals that this section is on fill material and may be over an old mine shaft. The canal is 36 feet above the water level in Oroville Reservoir at this section. Three of the work orders (13-69, 14-69, and 23-69) include a general statement that the work is necessary due

to increasing damage caused by the filling of Lake Oroville. These statements are self-serving and are not persuasive since there are no descriptions of the alleged damage or why it was caused by operation of the reservoir. The only extraordinary maintenance indicated in the ten work orders is the construction performed under Order 2-68 at a cost of \$884.92. Respondent should reimburse applicant for this expenditure.

Findings

1. Finding 1 of Decision No. 79724 should be amended to specifically provide that respondent DWR will be financially responsible for (a) replacing the lower reach of Miners Ranch Canal with a tunnel approximately 4,400 feet in length, (b) providing an improved all-weather roadway along the remaining length of the canal, and (c) providing slope protection below the remaining length of the canal to include an adequate mantle of coarse material.

2. The cost of providing the work and materials listed in Work Orders 12-69, 13-69, 14-69, 23-69, 2-70, 3-70, 5-70, 11-70, and 20-70 will be borne by the applicant.

3. The cost of providing the work and material listed in Work Order 2-68 will be borne by the respondent in the amount of \$884.92.

We conclude that Finding 1 of Decision No. 79724 should be amended as provided in the findings herein and that respondent should pay the sum of \$884.92 to the applicant.

O R D E R

IT IS ORDERED that:

1. Finding 1 of Decision No. 79724 is amended as follows:

The Department of Water Resources should be financially responsible for:

- (a) Replacing 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) Providing an improved all-weather roadway along the remaining length of the canal.
- (c) Providing slope protection below the remaining length of the canal to include an adequate mantle of coarse material.

2. The historical costs will be borne by the parties as provided in Findings 2 and 3 of this decision.

3. In all other respects Decisions Nos. 74542 and 79724 will remain in full force and effect.

The Secretary is directed to mail a certified copy of this order to each party and to their attorneys.

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

Dated at San Francisco, California, this 12th day of MARCH, 1974.

Vernon L. Stinger
President
William J. Simpson, Jr.
Thomas Moran
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.