

23. PROPOSED FILING OF CLAIM FOR DAMAGES AGAINST THE DEPARTMENT OF WATER AND POWER, CITY OF LOS ANGELES, RESULTING FROM FLOODING OF OWENS LAKE; INYO COUNTY - PRC 3894.1 AND W 503.676.

After consideration of Calendar Item 22 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. IS TO FILE A CLAIM AGAINST THE CITY OF LOS ANGELES, DEPARTMENT OF WATER AND POWER, FOR DAMAGES AMOUNTING TO \$42,179.90 FOR THE PERIOD MARCH 1, 1969, TO MARCH 15, 1971, ARISING FROM LOSS OF ROYALTIES DUE TO THE FLOODING OF OWENS LAKE.
2. AUTHORIZES THE OFFICE OF THE ATTORNEY GENERAL TO APPEAR, IF NECESSARY, ON BEHALF OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION, IN THE CASE OF CALVIN Q. MORRISON AND GUY WEATHERLY, DBA MORRISON & WEATHERLY CHEMICAL PRODUCTS V. CITY OF LOS ANGELES, DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES, SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. 152656, AND TO TAKE ANY OTHER APPROPRIATE LEGAL ACTION IN CONNECTION WITH SAID CLAIM FOR DAMAGES REFERRED TO IN PARAGRAPH 1, ABOVE.

Attachment:

Calendar Item 22 (2 pages)

CALENDAR ITEM

22.

3/71
PRC 3894.1
W 503.676
NB

PROPOSED FILING OF CLAIM FOR DAMAGES AGAINST THE DEPARTMENT OF WATER AND POWER, CITY OF LOS ANGELES, RESULTING FROM FLOODING OF OWENS LAKE; INYO COUNTY - PRC 3894.1 AND W 503.676.

During the winter of 1968-69, Owens Lake was flooded. It is estimated that because of the flooding, the State incurred \$42,179.90 in damages during the period March 1, 1969, to March 15, 1971, as a result of loss of royalties receivable from its lessee Calvin Q. Morrison and Guy Weatherly, dba Morrison & Weatherly Chemical Products, Mineral Lease PRC 3894.1. A judgment by the California Supreme Court on February 7, 1950 (34 C.2d 695,701), in previous litigation due to flooding of Owens Lake in 1937, 1938, and 1939, enjoined conduct by the City of Los Angeles as follows:

- (1) Diverting any waters out of defendants' aqueduct system onto Owens Lake, or in any way releasing any waters to be deposited into or onto Owens Lake at any time, unless the flow of water of the Owens Valley watershed is in excess of an amount equal to the reasonable capacity of defendants' aqueduct system and all of its component facilities reasonably operated. Defendants' Long Valley Dam and reservoir shall not be considered a component facility of the aqueduct system for the purposes of this paragraph. The reasonable operation contemplated herein shall not require any diversion of waters onto the defendants' lands in Owens Valley in excess of amounts that may reasonably be used on said lands or stored thereunder for future beneficial use by the defendants.
- (2) Diverting or taking into defendants' aqueduct system any waters from the Mono Basin watershed if there would thereby be an increase in the flow of the Owens River past the Long Valley Dam that would necessitate the diversion of any waters from defendants' aqueduct system into or onto said Owens Lake.

It is believed that the action of the City of Los Angeles in again permitting the flooding of Owens Lake violates the Supreme Court's injunction.

The City denies that the flooding of Owens Lake violated the aforementioned injunction, and claims that the flooding was an Act of God and that it is not liable for any damages.

The State's lessee has filed an action for damages caused by the flooding, but the State is not a party. However, the Office of the Attorney General, on behalf of the State, has filed an amicus curiae brief in opposition to the claim of the City of Los Angeles, Department of Water and Power, that the State does not own the bed of Owens Lake because of the recession of waters.

CALENDAR ITEM 22. (CONTD.)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FILE A CLAIM AGAINST THE CITY OF LOS ANGELES, DEPARTMENT OF WATER AND POWER, FOR DAMAGES AMOUNTING TO \$42,179.90 FOR THE PERIOD MARCH 1, 1969, TO MARCH 15, 1971, ARISING FROM LOSS OF ROYALTIES DUE TO THE FLOODING OF OWENS LAKE.
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