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MESSAGES OF THE GOVERNOR

AND THE

DECISIONS; OPINIONS AND RULINGS

OF THE

State Officers, Departments, Boards
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In the Matter of the Petition of the CITY OF ROCHESTER
to the NEW YORK STATE WATER POWER AND CONTROL
COMMISSION for Permission to Provide Additional
Facilities for Water Supply

HONEOYE LAKE—MUD CREEK

Water Supply Application No. 439

(Water Power and Control Commission, June 22, 1928)

Memorandum.

This is an application from the city of Rochester, Monroe county, whereby approval is asked of a project involving the use and development of Honeoye creek and Mud creek as new and additional sources of water supply for said city, of the acquisition of the necessary lands and other rights and of the plans of the proposed construction. This application was signed by Martin B. O'Neil, mayor, Harold W. Baker, commissioner of public works, and C. Arthur Poole, city engineer, on April 30, 1927, and was filed on May 2, 1927.

Notice of the hearing thereon was given by publication in the *Daily Messenger*, *Ontario County Journal* and *Ontario County Times* of Canandaigua; the *News* and the *Record* of Naples; *Times* of Honeoye Falls; *Recorder* of Lima; *Democrat and Chronicle*, *Journal and Post Express* and *Times-Union and Advertiser* of Rochester.

The hearing on this project consumed nine days and nearly 600 different objections and protests were filed. Not since the first application of the city of New York has this Commission or its predecessors in office had before it an application which aroused more wide-

spread interest, nor many which have been more thoroughly tried out at the hearing.

The Commission has caused its engineers to inspect and study this project and to report thereon.

It is impossible in this memorandum to take up each individual objection in detail or minutely to discuss the great volume of testimony, exhibits, briefs and reports which comprise the record in the case. All these have been carefully studied, but are discussed only in general terms.

Rochester proposes to develop Honeoye creek as an additional source of water supply by the construction on that stream, about five miles south of the village of Honeoye Falls, of an earthen dam 800 feet long by 60 feet high. The reservoir thus formed is to have a tributary drainage area of 187 square miles, to store 45,200,000,000 gallons of water, with a surface area of twelve and one-half square miles, at elevation 830. This reservoir is to submerge the present Honeoye lake, forming a pond three times as long as that body of water. Water is to be conducted from the reservoir to the city by conduits, of which two will eventually be built. These probably are to be sixty-inch diameter steel pipes and to go directly to Cobbs Hill reservoir without passing through Rush reservoir. It is estimated that this project will make available for the city the additional amount of 55,000,000 gallons of water per day. Land which will be inundated by this reservoir is to be purchased, also a liberal marginal strip for protective purposes; the maps filed showing that a tract of land approximately fifteen miles in length by three miles in width is to be acquired. This land is to be depopulated and either reforested or parked. All the land holdings of the city are to be protected by the enactment of sanitary rules and regulations and by strict patrol. All water drawn from the reservoir is to be chlorinated.

Honeoye reservoir and one conduit are estimated to cost about \$12,000,000.

In addition it is proposed to obtain water from Mud or Canarque creek immediately east of the watershed of Honeoye lake. On this stream, between Vincent and South Bloomfield, it is proposed to erect a diverting dam, forming a reservoir at elevation 864, which will have a tributary drainage area of about thirty-two square miles. From this reservoir it is proposed to drive a six-foot tunnel westerly, for about five miles, into the proposed Honeoye reservoir. Storage in Honeoye reservoir is to be utilized to equalize the flow of Mud creek. It is estimated that this development will make available an additional amount of 15,000,000 gallons of water per day. It will cost about \$3,000,000.

It is estimated that the full development will cost about \$23,000,000. This amount includes \$6,600,000 for conduits and \$4,800,000 for a filter plant. The cost of water per million gallons delivered is estimated at \$54 when these works are used to capacity.

Rochester is a city in Monroe county, situated on Genesee river and Lake Ontario. It is served by the New York Central, the Erie, the Buffalo, Rochester and Pittsburgh, the Pennsylvania and the Lehigh Valley railroads, by numerous interurban electric railways and by the Barge canal. It is an important industrial center. The population in 1925 was 316,786. The gross bonded indebtedness at the time of the filing of the application was \$62,085,880. There was in the sinking fund at that time \$4,738,176.58. The net outstanding water debt was \$9,095,203.67, which included water debt outside of the debt limit amounting to \$6,514,744.93. The assessed valuation of taxable property within the city was \$522,453,327.

This project was authorized by an ordinance adopted by the common council on April 26, 1927, which was approved by the mayor.

Rochester has its own engineering department, but for this work Allen Hazen of New York, Harrison P. Eddy of Boston, and Edwin A. Fisher of Rochester were called in consultation. The report recommending the project now before us was signed by these three engineers.

A public water supply system for Rochester was first discussed about 1850. In 1873 the city took the matter in hand and proceeded to install such a system. The use of Hemlock and Canadice lakes as sources of water supply therefor was authorized by chapter 754 of the Laws of 1873.

Hemlock lake is situated some thirty miles south of Rochester. It is about six and one-half miles long by one and one-half miles wide, has a drainage area of forty-eight square miles and is 386 feet higher than the city. This is a natural body of water, the size of which has been increased by the construction of a dam across the outlet end. This dam has recently been raised. The greater part of the shore of Hemlock lake has been purchased by the city; these holdings generally constituting a 200 foot strip around the edge of the water. The sanitary condition of the watershed is protected by Health Department rules and regulations.

Canadice lake is about one-third the area of Hemlock lake and is about 196 feet higher. It has a drainage area of about twelve and four-tenths square miles. The capacity of this lake has also been increased by a dam across the outlet. Water discharged from it flows down the natural outlet to a small diverting dam near Hemlock lake and from thence through a conduit into Hemlock lake. The watershed below the lake and above the diverting dam is five and eight-tenths square miles. Rochester owns a large amount of land about this lake, it having adopted the policy of purchasing entire farms rather than a narrow strip

along the water. This watershed also is protected by rules and regulations. Between the outlet of the lake and the diverting dam the water is exposed to some pollution and becomes roily during times of storm. As it is discharged into the lower end of Hemlock lake, relatively near the outlet pipes, this condition is objectionable and it is necessary on such occasions to retain water in Canadice lake and allow the water originating on the outlet area to run to waste. All water from both lakes is chlorinated.

Both Hemlock and Canadice lakes are tributaries to Honeoye creek and are included in the watershed above the proposed Honeoye reservoir.

From Hemlock lake to the city the water is carried in three conduits; all of which enter Rush reservoir. The carrying capacity is 40,000,000 gallons per day to Rush reservoir and 44,250,000 gallons per day from that basin to the city.

Rush regulating reservoir is situated on a hill north of Honeoye creek and nine miles south of the city. It has a capacity of 63,400,000 gallons. In the city there are two distribution reservoirs: Mt. Hope, 22,500,000 gallons, and Cobbs Hill, 144,000,000 gallons. These reservoirs are approximately 125 feet higher than the general level of the city.

In addition there is another city owned waterworks system in Rochester, commonly known as the Holley system. This is a high pressure fire system serving the down-town section, water from which is pumped from the Genesee river.

Much of the territory surrounding Rochester, certain industries in the city and certain recently annexed sections of the city, notably the former villages of Brighton and Charlotte, are supplied with water by the Rochester and Lake Ontario Water Service Corporation (formerly Rochester and Lake Ontario Water Company). This company pumps water from Lake

Ontario, purifies it by filtration and chlorination and distributes it through an extensive system of pipe lines.

The plant of the Eastman Kodak Company in Rochester has a special supply of industrial water, which is pumped from Lake Ontario filtered, but not chlorinated. This water is not used for drinking.

Rochester now has a population of about 320,000 persons, which has increased during the last forty years at a rate, including annexation, of 3 per cent per annum compounded annually. The rate has been somewhat less for the last few years, but the *per capita* use of water is increasing, so that it may be assumed that the annual increase in the water business will be at the above rate. In 1926 the consumption of water was 28,100,000 gallons per day. On the basis of a thirty year record of gagings of the present sources of supply, a flow of not less than 32,000,000 gallons per day could have been maintained. Messrs. Hazen and Eddy state that this amount cannot be depended on and that the safe yield of the existing sources is not in excess of 26,000,000 gallons a day. The recent raising of the the level of Hemlock lake and the proposed lowering of the draft line in the same body of water will increase the useful storage in both lakes from 7,270,000,000 to 11,530,000,000 gallons, which will increase this safe yield to 30,000,000 gallons a day. Generally a larger continuous rate of flow can be depended upon, but at any time the yield may drop to this figure. When this will occur cannot be predicted. From this it appears that the present sources of supply can be relied on to meet the needs of the city only until 1930, assuming that no additional population is taken on.

Virtually all taps in Rochester, whether publicly or privately owned, are metered. On account of the several systems operating in the city, it is not easy to

compute the *per capita* consumption of water therein, but it seems not far from 100 gallons per day for all purposes, except the water used by the Kodak works and such other industries as have their own sources of water supply. Probably no large city in the State can show a lower per capita rate of consumption and in our opinion there is no expectation that this rate can be reduced.

Thus it seems that public necessity exists for an additional supply of water for the people of this city.

Several projects for augmenting the water supply of this city have been considered. Genesee river has ample water, but is too highly polluted within a reasonable distance. Canadice lake can be more highly developed, but the same results can be more cheaply obtained by the project under discussion. Conesus lake, west of Hemlock lake, has been carefully studied. The yield available from it is not equal to that of this project, the water would be of less desirable quality and the cost would be higher.

The only other source of water supply which has seriously been discussed at this time is Lake Ontario; the availability of this source has largely been relied upon by the objectors in their arguments against the granting of this application. Lake Ontario will supply all the water needed by the city. By suitable treatment that water can for the present be made to meet existing sanitary requirements. It would be somewhat harder than the proposed supply, would require elaborate purification and, as Rochester is at a higher elevation above the lake than most lake cities, the cost of pumping this water would be unusually great.

Lake Ontario water could be obtained by the city by purchase from the Rochester and Lake Ontario Water Service Corporation, by the purchase by the city and subsequent municipal operation of the plant of that company, or by an independent city **development**.

The location of the intake of the Water Corporation, 4,000 feet from the shore of the lake, one and four-tenths miles from the mouth of the Genesee and three and six-tenths miles from the Rochester sewer outfall, is not entirely desirable in view of the rapid growth of population and accompanying pollution in the Great Lakes basin and the increasing severity of sanitary requirements for drinking water. The water now delivered by the Water Corporation is of good quality. This has been due to careful operation and skilled technical supervision of the purification plant. Better raw water and a lighter load on the treatment works could be had were the intake more remote from immediate sources of pollution.

The city's engineers have studied a plan with an intake 9,700 feet long at Bogus Point, eleven and three-tenths miles west of the sewer outfall and nine and three-tenths miles west from the mouth of the Genesee. They have made comparative estimates of cost, which indicate that water can be obtained from Honeoye lake at materially less cost than from Lake Ontario. The objectors introduced testimony to show that the cost of Lake Ontario water would be materially less and that it would be cheaper than Honeoye water.

It is not necessary to make a determination of the exact costs of these two projects. The people of Rochester do not want Lake Ontario water and are willing to pay more for upland water if it can be obtained. Except for convincing reasons to the contrary, the Commission will approve the use of that source of water supply desired by the applicant. More proof of the availability of another source of supply, or even proof that such other source would be cheaper, or, in the opinion of the objectors or of the Commission, better for the people of the city, would not alone justify us in rejecting an application. Such rejection must be based on positive proof of undesir-

ability or of inequitable conditions arising from the execution of the particular project for which application is made.

In this case, we believe that the proposed project is safer, more reliable and will give a better supply of water to the people of Rochester than will Lake Ontario.

The plans for the proposed works have been submitted only in the most general form. There is no need for the city to go to the expense of making the preliminary investigations necessary for the final design of these works until the project had been approved. It should be required that full detailed plans and specifications for all structures be submitted to and approved by the Commission before work on such structures is started.

It was shown by the testimony of the city's engineers that Mud creek would not be needed prior to 1957. We have found it to be impossible and undesirable to attempt to plan too far ahead in water supply matters. We have long followed the policy of not approving of projects for developing sources of water supply at remote periods in the future. Therefore we believe that we should eliminate Mud creek from this project. This elimination to be made entirely for the reasons above stated and without respect to the particular merits of this source, except that it is not immediately needed. The Commission recognizes it as a possible source for the city and that it is so considered by the applicant. Application for its use may be made at any future time when the city believes itself to be in imminent need of a supply of water in addition to that made available by the development of Honeoye creek.

A considerable percentage of the watershed of the proposed Honeoye reservoir is to be purchased by the city, reforested, perhaps used as a park, protected by

rules and regulations and carefully patrolled. All water drawn from the lake is be chlorinated. The petitioner states that under these circumstances the water drawn from behind the new dam should be at least as good as that now in use.

Hemlock lake is particularly well adapted for the purification of water by prolonged storage. The lake is long, deep and narrow, virtually its only tributary is the stream entering the extreme southerly end. As the village of Springwater, the only dangerous source of pollution, is situated on that stream, whatever pollution from it reaches the lake must pass down the entire length thereof before arriving at the intake works. Water in Canadice lake itself is probably as good as that in Hemlock, but it is subject to some danger of pollution and also may become more or less turbid in passing from Canadice outlet to Honeoye lake. The present practice is not to use Canadice water when it is roily, but to allow it to run to waste.

Honeoye reservoir will be much larger than Hemlock lake and the project of the city contemplates the purchase of a wide marginal strip about it for sanitary protection. Nevertheless Honeoye lake will not be as good a purifier of water as Hemlock lake. There are numerous tributaries which will enter the northerly end of the reservoir, the principal ones being: Mill creek, draining Berby Hollow, which comes in at Honeoye village; Hemlock outlet, draining Hemlock village, which enters at Richmond Mills, and a number of small streams draining the territory about Allen's Hill.

Cleaning up the watershed should so far remove danger of disease bearing pollution that chlorine treatment would probably be adequate except when the water is turbid, but on the average the Honeoye water would not be as safe as the Hemlock water.

Aesthetically, particularly in the earlier years of its use, the water from this reservoir will at times be

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considerably below the present standard of the water supply of Rochester. The lower part of the reservoir will have an irregular shore line with steep banks. There will be times when this water will be turbid, colored and affected by algae. It is expected and probable that this condition will improve with age. Whether it will completely disappear or not cannot be foretold.

Although for some years the waterworks system of the city will be so flexible as to permit water from Honeoye reservoir to be used only when it is in the best condition, it seems probable that this project, as set forth by the city authorities, would result in a lowering of the average quality of the water supplied to the city. The people of Rochester justly pride themselves on the purity and clarity of their water and they would not tolerate a supply of inferior quality, even though we were justified in approving of such a supply. We consider that we should require the city to provide an adequate filter plant to treat the water drawn from Honeoye lake. At present a filter plant only of sufficient capacity to treat the amount of water actually to be used need be constructed. Whether ten or twelve years from now the new reservoir will have so stabilized itself as to render filtration unnecessary can be decided then; the Commission should allow the matter to be reopened and consider modifications of its order requiring filtration when enlargement of the plant is under consideration.

Honeoye lake is the logical source of water supply for the village of Honeoye Falls and perhaps for Lima, both of which are otherwise supplied. It could be used at several other places in the valley of Honeoye creek and Genesee river as well as by Pittsford, Fairport and other places east of Rochester. The rights of all these places must be protected and this can readily be done by reserving the right to

authorize them to obtain supplies of water from the city system if they shall so desire; such authorization to be made under the provisions of section 528 of the Conservation Law.

Damages resulting from the carrying out of this project will be large in amount and of unusual kind. About 45 square miles of land are to be taken over by the city and removed from the general uses of the people of the State. The town of Richmond, Ontario county, will be cut in two, greatly reduced in productive area and will lose its largest community. The villages of Honeoye and Richmond Mills and possibly that of Hemlock will be entirely wiped out. All this will result in severe social dislocation. Nearly complete diversion of water from the shed tributary to Honeoye reservoir must greatly reduce the flow in Honeoye creek, particularly at Honeoye Falls. The Commission was of the opinion that the damages to be caused by the carrying out of the project would be such that they should be determined and compensated for on the same liberal scale as has been provided by legislation affecting the new water supplies of the cities of New York and Albany. Although the Conservation Law requires the Commission to make determination as to the sufficiency of the method established for the determination and payment of any and all legal damages, both direct and indirect, the Commission seemed without power to require or to authorize the applicant to pay for damages on any scale other than that provided by the general laws of the State. That being the case, the best procedure appeared to be to suspend action on the application until the matter could be referred to the Legislature. This was done by the Commission in its decision of December 14, 1927. In that decision the Commission decided that the city should be permitted, after sufficient time to enable it to apply to the Legislature for

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relief and additional authority, to file an amended plan or scheme for the determination and payment of damages. The city sought such relief; resulting in the enactment of chapter 862 of the Laws of 1928. That statute authorizes us to direct the determination and payment of direct and indirect damages on the same scale as is applicable to the projects of the city of New York and also specifically authorizes other municipalities to be supplied with water from the water system of the city on determination by us that such supply of water is necessary and proper. Thereafter said city, on April 18, 1928, filed a supplemental petition with the Commission, setting forth its amended plan or scheme for the determination and payment of damages. After due notice to the parties interested, the adjourned hearing was continued on May 1, 1928, and finally closed. We believe we should extend the provisions of the above mentioned statute to this particular project and that, if that is done, all damages of every sort will be sufficiently provided for.

In coming to this decision the Commission has been largely guided by its experience and the experience of its predecessors in office with the new water supply developments of the city of New York.

The city states that it proposes to acquire immediately the land necessary to enable it to construct the required works, raise the level of Honeoye lake and for a marginal protective strip about that body of water. It stated that a much wider margin was eventually to be bought, the land to be acquired from time to time when it came into the market. It is contended by the objectors that such procedure would be unjust to them. It seems obvious that Rochester would be the only available purchaser for any land inside the proposed taking line and might force the sale of this land at a price favorable to it, but unjust to the present owners. Further, if the land is needed

at all, it is needed for purposes of sanitary protection and therefore should be acquired practically by the time the water from this lake is to be used. We think the city should be required to make a definite statement as to the lands which it proposes to acquire and also that it should acquire them or start condemnation proceedings for such acquisition prior to a definite date.

Certain residents in the village of Honeoye Falls pointed out that the reduction in volume of flow of Honeoye creek resulting from the diversion of water to the city would result in a local nuisance at that place. Provision must be made for the maintenance of the flow of this stream at or above a fixed minimum. This minimum should be sufficient to permit of the discharge into the stream of the settled sewage of the community; this we understand being the minimum requirement which would be imposed by the State Department of Health. If the city of Rochester desires to divert more water than this, it should be allowed to do so, provided that it installs and operates at its own expense such additional purification works as may be required to prevent a local nuisance at Honeoye Falls or elsewhere.

It was urged by objectors that the use of Honeoye lake as a water supply reservoir should not be permitted on account of the value of that body of water for recreational purposes and because such use would conflict with the park policy of the State. It is true that, if used as a source of water supply, Honeoye lake cannot be recreationally used in the precise manner which otherwise would be permissible. Cottages cannot be built about its shores, as has been done at neighboring lakes, nor can it be freely and unrestrictedly used for boating, bathing and fishing. Nevertheless we believe that the recreational value of this lake will be far from destroyed. It will be

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greatly increased in area and the lands surrounding it will be reforested and used to a certain extent for park purposes. We think that the scenic beauties of the lake will be enhanced rather than diminished and that the park area of the State will be increased by the carrying out of this project.

There remains for consideration the fact that the execution of this project will work changes in the lives and habits of many people of the State, compel them to move from their homes and to separate themselves from familiar surroundings and associates. These are intangible matters which are very real to the persons concerned and cannot entirely be met by the most liberal monetary awards. Unfortunately they are inseparable from most large water supply developments. The very existence of the Condemnation Law shows that such consideration must not be allowed to stand in the way of needed improvements. The specific question before us is whether the superior advantages of this source of supply for the people of Rochester outweigh the inconvenience and annoyance which will be caused to the people of this region. After careful consideration of all the matters presented to us and study of the effects of similar projects elsewhere, we are of the opinion that public necessity exists for the carrying out of this project and, under the safeguards and with the conditions above suggested, the applicant should be authorized to proceed therewith.

In view of all the above we believe that a decision approving this application should be drawn in conformity with these views.

In the Matter of the Petition of the CITY OF ROCHESTER,
to the NEW YORK STATE WATER POWER AND CONTROL
COMMISSION for Permission to Provide Additional
Facilities for Water Supply

HONEOYE LAKE—MUD CREEK

Water Supply Application No. 439

(Water Power and Control Commission, June 22, 1928)

Application approved as modified.

The city of Rochester, in the county of Monroe and State of New York, having on May 2, 1927, filed, under the provisions of article IX (since amended to be article XI) of the Conservation Law, an application to the Water Power and Control Commission for approval of the plans of said municipality for the acquisition and taking of Honeoye creek and Mud creek as new and additional water supplies for said city and the taking or condemnation of lands for such new and additional sources of water supply and of the construction proposed in connection therewith; and

After due notice, published as required by law, the hearing on this application having been held in the Liberty theatre in the city of Canandaigua on May 25, 1927, at 10:00 o'clock in the forenoon, and thereafter immediately adjourned to the Ontario county court house in said city of Canandaigua and thereafter continued, pursuant to adjournments duly taken, in said city of Canandaigua on July 16, 19, 20, 21 and 22, 1927, and in the Monroe county court house in the city of Rochester on September 15, 1927, and in the office of the Water Power and Control Commission in the city of Albany on October 8, 1927, and the council chamber in the city hall in the city of Rochester on May 1, 1928, when it was finally closed; the applicant herein having been represented by Claude S. Smith, and by George B. Draper, deputy corporation

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counsels; and objections having been filed by the board of supervisors of Ontario county and the town boards of the towns of Bristol, Canadice and Richmond, all of Ontario county, represented at the hearing by Earle S. Warner; by W. Scott Short and some fifty others, represented by Earle S. Warner, and by Nathan D. Lapham of counsel; by the Lakeview Cemetery Association, represented by Nathan D. Lapham; by the town of Mendon, Monroe county, represented by James R. Martin; by the town of Lima in Livingston county, Alexander Menz; the Honeoye Falls chapter of the Isaak Walton League of America; the village and some fifty-seven residents of the village of Honeoye Falls, Monroe county, represented by James M. Heath; by some seven residents of Ontario county, represented by Messrs. Warren, Shuster & Case, Earl F. Case and Clarence E. Shuster, of counsel; by seven members of the executive committee of the Finger Lakes association, represented by Leonard H. Scaring; by the Rush board of trade and some thirty-five residents of the town of Rush, Monroe county, represented by the Rev. M. J. Cluney; by the New York Conservation Association, Erie County Conservation Society, Buffalo chapter of the Isaak Walton League of America, Ellsworth N. Croll, Lewis M. Weber and Anna Weber, represented by Thomas E. Lawrence; by some fifteen business firms of the village of Hemlock in Livingston county, represented by Albert C. Olp; by Harwood Martin, James P. Wells and Carl Ashley, each appearing in person; by the Municipal Commission of the Village of Fairport, Monroe county, represented by Sidney Scarth, superintendent; by the village of Macedon, Wayne county, A. B. Nichter, Louise F. Morris, the municipal board of the village of Newark in Wayne county, Arthur J. Mens, some seventeen residents of the town of Bristol in Ontario county, some forty-one residents of the town of Canadice in Ontario county, some

one hundred and ten residents and taxpayers of the town of Richmond in Ontario county, W. J. Kinnear, none of which or whom were represented at the hearing, although many of these objectors were present in person; and in addition some two hundred and thirty-four individual objections on newspaper clippings having been filed, some of the signers of which were represented by T. E. Lawrence; and some three hundred and eight individual protests, not in the form required for objections having also been filed; and the Niagara, Lockport and Ontario Power Company having appeared by Warren Tubbs; and the Genesee County Association having appeared by Austin W. Erwin, neither of these organizations having filed objections; and

The Commission having on December 14, 1927, made a decision in this matter permitting the applicant, after sufficient time to enable it to apply to the Legislature for relief and additional authority, to file an amended plan or scheme for the determination and payment of all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands, and adjourning the hearing for that purpose; and said applicant having on April 18, 1928, filed a supplemental petition setting forth such an amended plan or scheme; and, after due notice to the parties interested, such adjourned hearing having been had in the council chamber of the city hall of the city of Rochester on May 1, 1928; and

The petition, maps and profiles submitted by the petitioner having been examined, the witnesses called having been heard, together with arguments of counsel, and due deliberation thereon having been had, the Commission finds that it is necessary, in order to protect the water supply and the interests of the applicant and of the inhabitants of the territory supplied by it with water, to protect the water supply and

interests of other municipal corporations and other civil divisions of the State and the inhabitants thereof, to protect the water supplies and interests of other persons and waterworks corporations engaged in supplying water to municipal corporations and other civil divisions of the State and the inhabitants thereof, to bring into cooperation all municipal corporations and other civil divisions of the State which may be affected thereby, to make just and equitable the submitted plan or scheme to determine and provide for the payment of the proper compensation for any and all legal damages to persons or property, whether direct or indirect, which will result from the acquiring of said lands and the execution of said plans and to make safe all dams or reservoirs to be constructed by said plans, that the application, maps and plans submitted should be modified to conform to the following:

1. Mud or Canargua creek, as a source of additional water supply for the city of Rochester, is eliminated entirely from this project. This elimination is made without prejudice to the right of the city of Rochester to make a new application for approval of the use of this stream and its tributaries as an additional source of water supply at any time the city deems that water in addition to that obtainable from Honeoye creek will soon be needed.

2. Full detailed plans of and specifications for any structures to be built under authority of this decision must be submitted to this Commission for approval before work on such structures is started and all such structures must be fully constructed in strict conformity with plans thereof and specifications therefor which have been so submitted to and approved by this Commission.

3. Before any water made available by this project is delivered to the city of Rochester or elsewhere for domestic use, the applicant must have procured the enactment by the State Department of Health of rules

and regulations for the sanitary protection of the additional watershed now proposed to be used, must have put such rules and regulations into effect and have put such watershed in condition conformable with such rules and regulations. Thereafter the provisions of such rules and regulations shall be diligently enforced.

4. All water drawn by the applicant from the proposed Honeoye reservoir shall be filtered, to the satisfaction of this Commission, before delivery for any purpose to any individual, municipality or corporation. The Commission will, in the future, consider applications from the city for modifications of this condition if the city believes that experiences with the reservoir and the water therefrom justifies such action.

5. All water drawn by the city from Honeoye reservoir for distribution shall be sterilized to the satisfaction of this Commission.

6. On order of the Commission, given after due consideration of future analyses and inspections, the applicant shall install and operate in a satisfactory manner, approved apparatus for the future purification of this water, or take additional precautions to protect the watershed and water supply from contamination.

7. Nothing in this decision and approval contained shall be held to bar any community on the watershed of Honeoye creek above the proposed dam from obtaining, through public or private agencies, a supply of water from sources on said watershed, nor shall the city be considered to have any claim for payment for water so used.

8. Nothing in this decision contained shall be held to authorize the city of Rochester to supply or distribute water outside of or for use outside of the limits of that city except with the further consent and approval of this Commission.

9. Damages resulting from the execution of this project shall be determined and paid in accordance with the provisions of section 527 of the Conservation Law. The date used in the determination of such damages shall, unless hereafter modified, be the date of this decision and determination.

10. Within two years of the date of this decision the city must submit to this Commission for its approval maps showing the outside boundaries of the lands proposed to be acquired about Honeoye lake. The Commission may require changes in this boundary if it finds such changes to be required by sanitary considerations. All that part of this area which is actually to be flooded or built under, over or upon, including a marginal protective strip about the reservoir at least 200 feet in width, shall be acquired before any of the water from the reservoir is used. All of the remainder of the land shown on such map must have been acquired or proceedings for the condemnation thereof must be under way within eight years of the date of this decision.

11. Where, as part of this project, any highway or part of a highway which is to be submerged is to be relocated on higher ground, such relocation must be completed before water may be impounded in the proposed reservoir to a height such as to submerge the existing road.

12. After the dam on Honeoye creek is completed, the city of Rochester shall allow water to escape over or through the outlet works of that structure in amount such that the flow of Honeoye creek at Honeoye Falls shall not be less than seven cubic feet per second for each thousand persons dwelling in that village. The city may conserve a part of this water for its own use if it shall construct, maintain and operate at its own expense sewage disposal and waste treatment works, which will permit of the desired further reduction in the extreme low water flow of this stream without the

creation, in the determination of the State Commissioner of Health, of a local nuisance.

The Water Power and Control Commission having given due consideration to the said petition and its exhibits, the proofs and arguments submitted at the hearing and the reports of its engineers thereon, finds and determines:

That the execution of this water supply project by the city of Rochester will result in damages to persons and property, the determination of and payment for which are not provided for by law otherwise than by the provisions of sections 526 and 527 of the Conservation Law.

It further determines and decides as follows:

First. That the application, maps and plans submitted are modified as set forth above and, as so modified, are the plans hereinafter mentioned.

Second. That the plans proposed are justified by public necessity.

Third. That said plans provide for the proper and safe construction of all work connected therewith.

Fourth. That said plans provide for the proper protection of the supply and the watershed from contamination and for the proper filtration of such additional supply.

Fifth. That said plans are just and equitable to the other municipalities and civil divisions of the State affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply.

Sixth. That said plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands.

Wherefore, the Water Power and Control Commission does hereby approve the said application, maps and plans of the city of Rochester as thus modified.