

STATE OF NEW YORK

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ANNUAL REPORT

of the

**ATTORNEY-GENERAL**

for the

Year Ending December 31, 1940

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**JOHN J. BENNETT, JR., Attorney-General**



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## XVI. WATER POWER AND UTILITIES BUREAU (Albany)

Legal work in connection with water power, water supply, boundary waters, drainage improvement districts, use of Forest Preserve lands for municipal water supply, and the various State bridge authorities is handled by this bureau.

The Attorney-General is a member of the Water Power and Control Commission which administers the provisions of Articles VI to XIV, inclusive of the Conservation Law. The legal work of the Commission is performed by this bureau. In addition, it handles, on appeal, temporary rate cases of the Public Service Commission.

The bureau also handles the legal work of the Drainage Improvement Districts. There have been rendered during the year 168 approval decisions of water supply applications.

Some of the activities of the bureau for 1940 follow :

### *Water Supply*

#### *New York Water Service Corporation—Application No. 1285.*

This was an application by the New York Water Service Corporation for permission to sink wells in Queens county for its Flatbush plant. The applicant requested permission "to operate the proposed new wells only temporarily until the so-called Delaware supply became available to the city of New York."

The application was rejected on the ground that the requested period of operation was too indefinite.

On July 11, 1939, the Appellate Division annulled the determination of the Commission (257 App. Div. 590).

Upon appeal to the Court of Appeals the order of the Appellate Division was modified and the matter remitted to the Water Power and Control Commission with instructions to make Findings of Fact (April 23, 1940; 283 N. Y. 23).

It was stipulated that the Decision in Water Supply Application No. 1285 would apply to Application No. 1286 also. The petitioner subsequently discontinued both cases.

#### *City of Syracuse—Water Supply Application No. 1049*

The City of Syracuse applied to the Water Power and Control Commission for approval of a project for taking an additional water supply from Skaneateles Lake. On September 22, 1931, the Commission approved the application. It declared Skaneateles Lake to be a natural source of water supply for any part of the town of Elbridge and provided that any municipality in the town should have the right to take the necessary amount of water from the Syracuse conduits, paying for such water at an agreed rate or, in default of any agreement, at a rate to be fixed by the Commission.

On March 19, 1935, the Commission authorized the Village of Jordan to take water from the Syracuse conduits. Jordan and Syracuse could not agree as to the price to be paid for the water. The Village of Jordan then made its application to have the Commission fix the amount of water it could take and the price it should pay. On August 20, 1936, the Commission approved the application permitting the Village of Jordan to take not in excess of 69,000,000 gallons per year at 2c. per hundred cubic feet.

Proceedings to review the determination of the Commission were instituted by Syracuse.

In January, 1940, the determination was annulled (258 App. Div. 405).

Heffernan, J., dissenting in part, held that the Commission had the power to fix the rate to be charged but that the formula used by the Commission in fixing the rate was not proper.

Upon appeal to the Court of Appeals the order of the Appellate Division was unanimously reversed and the determination of the Commission confirmed (283 N. Y. 275).

This decision clarified the jurisdiction of the Water Power and Control Commission over the water resources of the State. No municipal corporation can take a water supply or an additional water supply without the approval of the Commission.

#### *Drainage Improvement Districts*

The Water Power and Control Commission is concerned with three active drainage improvement districts:

- A. Wallkill Valley Drainage Improvement District.
- B. Lenox-Sullivan Drainage Improvement District.
- C. Bridgeman Drainage Improvement District.

There is one inactive district—Cromline-Seeley.

On January 26, 1938, the Water Power and Control Commission made an apportionment of cost of drainage improvements in the Wallkill Valley Drainage Improvement District. This apportionment was duly filed in the office of the Clerk of Orange County and a public hearing held thereon March 22, 1938.

Proceedings to review the apportionment were instituted by eight property owners in the district. The Appellate Division annulled the apportionment as made by the Commission (258 App. Div. 440). The apportionment was refiled and hearings have been held both in Goshen and Albany.

#### *Niagara Falls*

*Water Power and Control Commission v. Niagara Falls Power Company—15,100 c. f. s.*

This action was begun on May 19, 1938, which asked for a declaratory judgment defining the precise rights of the State of New York in and to the waters of the Niagara River and for an