

## YOSEMITE VALLEY RAILROAD RIGHT OF WAY

MARCH 3, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

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Mr. SWING, from the Committee on the Public Lands, submitted the following

### REPORT

[To accompany H. R. 7979]

The Committee on the Public Lands, to whom was referred the bill (H. R. 7979) granting to the Yosemite Valley Railroad Co. the right of way through certain public lands for the relocation of part of its existing railroad, having had the same under consideration, report the same back to the House without amendment and recommend that the bill do pass.

H. R. 7979 grants to the Yosemite Valley Railroad Co. the right of way through certain public lands in Mariposa County, Calif., for the relocation of about 17 miles of railroad, in order that the Merced irrigation district may proceed with the development of an irrigation and power project for which the Federal Power Commission granted a license to the district June 10, 1924.

#### MERCED IRRIGATION DISTRICT

The Merced irrigation district comprises about 190,000 acres in Merced County, Calif. It is classified as a municipality by the Federal Power Commission. The district has issued bonds to the amount of \$15,250,000, most of the proceeds of which have been expended in the construction of works for the irrigation of lands within the district. The project includes a dam 326 feet high across the Merced River at Exchequer, in Mariposa County, Calif.

This will create a reservoir over 10 miles long and with a capacity of 280,000 acre-feet. The district is also constructing a power plant immediately below the dam, which will have a capacity of about 40,000 horsepower. This power has been sold under contract at a price that would yield to the district an annual revenue of about \$500,000. The rest of the district's annual budget is raised by taxation.

## THE YOSEMITE VALLEY RAILROAD

The Yosemite Valley Railroad extends from Merced to El Portal and passes through the entire length of the reservoir site. The existing right of way was obtained by the railroad under the act of March 3, 1875. Practically no storage of water is possible without submerging about 17 miles of the existing railroad, which now passes through an arched opening in the dam more than 200 feet below the top. Prior to the beginning of construction of the dam the irrigation district entered into an agreement with the railroad providing that it would construct a new line of railroad along the westerly side of the proposed reservoir, thence crossing the reservoir on a bridge about 250 feet high, and along the easterly and southerly side, in all about 17 miles and connecting at either end with the present line. It is estimated that this construction will cost the irrigation district over \$4,000,000, but without relocation of the road the reservoir can not be used. Upon the acceptance of the relocated line, that portion of the existing road between Merced Falls and Detweiler, about 17 miles in length, will be turned over to the district for the purpose of salvage.

## NECESSITY FOR THIS LEGISLATION

The irrigation district has agreed with the railroad company that the right of way for the relocated line shall be as full and secure as that now held for the existing line.

The land affected does not lie within a forest reserve or a national park, but most of it has been classified as power-site land by Executive order. The present right of way has not been affected by classification or withdrawal for the reason that the right of way was obtained prior to the withdrawal of the land for power purposes.

This legislation is deemed necessary in order to secure to the railroad company as full and complete a right of way as that which it now enjoys. Under the language of section 24 of the Federal water power act, land withdrawn for power purposes and thereafter declared open to location, entry, or selection shall be subject to the right of the United States, or its permittees or licensees, to occupy and use said land for power purposes, and such right shall be expressly reserved in every patent issued for such land. This bill will give to the railroad company substantially the same rights in the new location that it had in the old.

## NECESSITY FOR EARLY ACTION

The Exchequer Dam of the Merced irrigation district is now nearing completion and it is highly important that water for irrigation and power purposes be stored during the run-off of the present spring. Over 100,000 acres of land within the district are already under cultivation or will be planted this year, and adequate irrigation for this area will not be possible unless the reservoir can be used. The irrigation district desires to commence the storage of water about April 1, 1926, but can not do so until the line of the Yosemite Valley Railroad Co. has been relocated.

The following letters to the chairman of the Committee on the Public Lands from the Federal Power Commission and the Secretary of the Interior recommend that H. R. 7979 be enacted:

FEDERAL POWER COMMISSION,  
Washington, January 26, 1926.

Hon. N. J. SINNOTT,  
Chairman Committee on the Public Lands,  
United States House of Representatives.

DEAR MR. SINNOTT: Reference is made to your request of January 22 for a report upon (H. R. 7979) a bill granting to the Yosemite Valley Railroad Co. the right of way through certain public lands for the relocation of part of its existing railroad.

The Merced irrigation district, a municipal corporation of Merced, Calif., is constructing under a license granted June 10, 1924, by the Federal Power Commission, a dam on the Merced River about 8 miles above the town of Merced Falls. This dam is to be 320 feet high and is to store water for irrigation and power purposes. The backwater from this dam will extend up the river about 12 miles, flooding the right of way of the Yosemite Valley Railroad which follows the stream for this entire distance.

Under an agreement between the railroad company and the district dated July 10, 1923, the district agreed to make a satisfactory relocation of the railroad past the reservoir; to construct this relocated section and to turn it over to the company with right of way as good as that which was given up by it. Under the terms of this agreement the district has nearly completed  $17\frac{1}{2}$  miles of very heavy construction work at a cost of about \$2,500,000 and everything appears to be adjusted to the satisfaction of the railroad company except the character of the right of way on public lands crossed by the relocated line. Certain of these lands had been withdrawn for power purposes by Executive order and were also included in the area withdrawn under section 24 of the Federal water power act for project No. 88 of the Merced irrigation district covering this development.

Since the granting of any right of way across these lands must carry a stipulation which would permit the taking of the same for power uses without compensation other than that provided in section 24 of the Federal water power act, this substitute right of way was not acceptable to the railroad company. It was then suggested that the power commission might vacate the reservation made upon the filing of the application for license so far as necessary to permit of the location of the right of way under the act of March 3, 1875 (18 Stat. 482), and that the reservation made by the Executive order might also be modified to the extent necessary to permit such right of way for the relocated line.

The railroad company was indisposed to accept this procedure also, since its attorneys questioned the authority of the commission to release from any reservation, lands reserved on the filing of application for license under the first sentence of section 24 of the Federal water power act, except subject to the power reservation specified in subsequent provisions of the section. It is the view of this office that the commission is vested with authority to completely release from reservation lands so reserved, the release being of the same character as if directed by Congress. However, the commission recognizes that there is room for difference of opinion on this question and under the circumstances the proposed special act giving the railroad company substantially the same rights in the new location as it had in the old seems to be the best solution.

The bill submitted by Judge Raker has been carefully reviewed in this office, its form and provisions are satisfactory, and I recommend that it be passed. To indicate the desirability of early action I will add that the irrigation district is extremely anxious to close the dam by April 1 and begin to store water for the coming irrigation season, but this can not be done unless this right of way question is settled in a manner satisfactory to the railroad company.

Very truly yours,

O. C. MERRILL, *Executive Secretary.*

DEPARTMENT OF THE INTERIOR,  
Washington, February 25, 1926.

Hon. N. J. SINNOTT,  
Chairman Committee on the Public Lands,  
House of Representatives.

MY DEAR MR. SINNOTT: Reference is made to your letter of January 22, 1926, transmitting copy of H. R. 7979 for report. This bill is entitled "A bill granting to the Yosemite Valley Railroad Co. the right of way through certain public lands for the relocation of part of its existing railroads."

Pursuant to the provisions of the act of March 3, 1875 (18 Stat. 482), which grants rights of way to railroad companies over the public lands of the United States, the Yosemite Valley Railroad Co., a beneficiary thereunder, obtained right of way for the section of its road coterminous with that covered by the bill. The company has applied under the provisions of this act for the amended and revised location described in the bill, and this application is now pending before this department. Part of the land affected by the proposed right of way is embraced in power-site classification No. 43 (California 15), created by the Secretary of the Interior on June 6, 1922 (Merced River, 1044231); part within power site reserve No. 328, created by Executive order of December 31, 1912; part within power site reserve No. 752, created by Executive order of October 13, 1920 (Merced River, 946723); and part of it reserved November 11, 1920, under the provisions of the act of June 10, 1920 (41 Stat. 1063), known as the Federal water power act for Federal Power Commission project instituted by the Merced irrigation district. In accordance with the practice, the application was referred to the Federal Power Commission for consideration and report, and under date of January 24, 1925, the executive secretary of the commission reported as follows:

"This matter was presented to the commission for consideration at its meeting of January 2, 1925, and action was taken thereon as indicated by the following extract from the minutes of the meeting of said date, which is self-explanatory:

"The executive secretary stated that the Commissioner of the General Land Office had referred to the commission the application of the Yosemite Valley Railroad Co. (Sacramento, 014917) for right of way under the act of March 3, 1875 (18 Stat. 482), for consideration as to whether the location across certain lands of the United States reserved or classified for power site should be approved, that the railroad line involved is a relocation of an old constructed line so as to allow development of a power project on Merced River, Calif., for which the commission issued a license to the Merced irrigation district (project No. 88) on June 10, 1924, which license contemplated the location of the railroad as now proposed; that approval of the present application is a logical sequence of such previous action, and that no special conditions other than those included in the reservation of section 24 of the Federal water power act are necessary for the protection of the public interest. The executive secretary recommended that favorable action be taken upon the application.

"The commission thereupon voted to determine that the value of lands of the United States reserved or classified for power sites which are affected by the right of way applied for by the Yosemite Valley Railroad Co. (Sacramento, 014917) under the act of March 3, 1875 (18 Stat. 482), and shown on a map filed in the United States land office at Sacramento, Calif., on May 13, 1924, will not be injured or destroyed for purposes of power development by disposal thereof to the extent involved in the approval of said application and subject to the limitations and conditions of section 24 of the Federal water power act."

As a condition precedent to the approval of its pending application, the company was called upon to relinquish the grant made to it for the section of road coterminous with that which it proposes to revise and amend, such relinquishment to take effect upon the approval of the new applications; also to file an election to take the right of way subject to the conditions and restrictions of section 24 of the Federal water power act. It has filed the relinquishment, but counsel for the railroad company has advised against complying with the requirement as to the election on the ground that it would be unjust if not inequitable for the company to surrender title to the unconditional right of way it now has for one less secure by reason of being limited by the conditions of section 24 of the Federal water power act.

The attitude of the railroad company is easily understood. It is willing to change its roadbed, but it insists that it shall receive the same right or title to its new roadway that it has in the old. Under existing law any approval of the application for amended right of way must be subject to the conditions and restrictions of section 24 of the Federal water power act. The bill if enacted would secure to the railroad company in the new right of way the privileges it now enjoys under the present one, and I see no reason why the bill should not be enacted. It is suggested, however, that it be referred to the Federal Power Commission for consideration.

Very truly yours,

HUBERT WORK.