

Monday, May 2, 1949

Cross Complaint ⁷⁴ Presentation Begun _{5/2/49}

Engineer Paul Maurer of La-Habra was called as the first witness in superior court today as the Donald R. Warren company began presentation of its cross-complaint against the Ventura county flood control district in regard to money assertedly due for work on Casitas dam, highway relocation and the Matilija-Casitas conduit system.

Maurer described his work in reconnaissance, design of alignment, grades and drainage and computation of earth quantities to be used in his work on Casitas area road relocation.

He came to the stand after Warren's attorney, Stanley Burrill, had filed with the court, for identification, numerous Warren company claims and invoices, some letters and portions of minutes of the flood control district supervisor.

Warren Testifies On Dam Plans

Final plans and specifications for Casitas dam, highway relocation in the Casitas area and the Matilija-Casitas conduit system have been kept by the Ventura county flood control district and never returned to the Donald R. Warren company, Donald R. Warren testified in superior court today.

Warren, testifying in the section of the dam trial pertaining to payments assertedly due the Warren company from the district, contended that final plans on the three portions of the zone one project had been delivered to the district supervisors; that the district had returned none of the documents, and had not advised the Warren company that the plans and specifications were rejected nor asked for changes.

CONSIDERED PLANS OK

Warren said he considered the final plans and specifications for Casitas dam, the highway relocation and the conduits were suitable for construction purposes and were proper reduction of preliminary plans. He also testified that when he delivered preliminary plans for Casitas dam on Aug. 13, 1946, supervisors indicated they wanted him to hurry up and complete final plans for the second dam of the zone one project so the project could get under way as soon as possible. He also indicated the procedure was similar when preliminary plans of the conduit system were presented to the board.

He also testified that when he delivered final plans and specifications of the conduit system on Feb. 18, 1947, a motion was made to approve the plans and there was no dissenting vote among supervisors. At that time, he said, a photograph (which was introduced in court) also was taken showing Supervisor Robert Lefever examining plans of Casitas dam.

MANY DOCUMENTS

Warren's attorneys, who had offered a multitude of documents yesterday and today as court exhibits, introduced documents and letters to show that the district had applied and received an allocation from the state for matching funds for the highway relocation project, based on Warren's plans.

During this presentation, they told the court that the original document of a state allocation board letter could not be found in the files of the clerk of the supervisors nor in the county surveyor's office but that a copy of a photostat was found in Ryan's office.

During yesterday afternoon's session, Warren was called to the

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Engineer Maurer Describes Work on Casitas Road Relocation

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stand. He testified that when the Warren company was incorporated all accounts except that of the Ventura county flood control district were transferred from the Warren company co-partnership to the corporation.

Warren also told of filing and receiving fees for preliminary plans on Casitas dam, the conduit system and road relocation. He said contract plans for Casitas dam had been endorsed by the state engineer and that sheet one of the plans was signed by the late Percy W. Dennis, former chairman of the flood control district.

Engineer Paul Maurer of the Warren company in describing the work he had done on road relocation in the Casitas dam area said that the final plans and spe-

cifications were suitable for construction purposes in accordance with ordinary engineering practices.

CHECKED PLANS

Maurer also testified that he had checked the plans with officials of the state division of highways and that corrections suggested by them were incorporated.

He said the survey work for the conduit system and design for the pipeline was done under his supervision. Maurer explained in detail plans for road relocation work and for the various branches of the Matilija-Casitas conduit system. He said the conduit system plans were proper reductions of preliminary plans and were adequate for proposed transportation of water. He also contended that the proposed conduit line had been shown in the field to a representative of the county surveyor's office in June, 1947.

Under cross-examination, Maurer said the bulk of the work on conduits and road relocation was done between June 1946 and January or February 1947. Topography on the plans was obtained from a field survey and a stadia (instrument for measuring distance) survey. Preliminary lines were obtained by transit and chain work and final location lines on the plans were made by reference to preliminary maps, he said.

Maurer said that in the great bulk of the lineage for the conduit system there was no indication for bidders as to the amount of excavation that could be anticipated. If plans and specifications were let for bid it would be necessary to more accurately locate the proposed conduit line in the field, he said, explaining this could be done by staking the center line at construction time.

Maurer contended the plans were sufficient for contract bidding; that contractors could come within 10 percent of the quantities; that it was the usual practice to require the contractor to make his own quantity estimates. He said there had been no subsurface study of how much excavation there would be through rock or earth.

LINES NOT STAKED

Final lines for road relocation were not staked in the field because it would be an added expense to the district and such expense would not be warranted until construction was ready, Maurer said. There was no subsurface exploration on road relocation, he said. Maurer was shown regulations from the state division of highways manual in regard to road work. The manual stated that staking should not be in the contract but should precede final plans and specifications.

Maurer answered that such practice is not rigidly adhered to. When it was pointed out the manual said staking is necessary for review by bidders, Maurer declared that in general may be a true statement but he had been on many jobs where there was no such staking.

He admitted that final lines for the plans were "paper locations." Shown the state manual that said preparation of plans for construction from paper location on preliminary data should be employed only in special instances where approval from the state division has been given, Maurer answered that it is not usual in mountainous country to follow such procedure and that mountainous country such as Casitas area is generally classed as an exception.

Neil Stiver Testifies On Zone One Claims

Neil J. Stiver, zone one manager, county flood control district, today was called in superior court as a Donald R. Warren company witness as the company presented testimony on its cross-complaint against the district.

Shortly before the noon recess, Stiver, over protests of district attorneys, was called to the stand to describe procedure of handling invoices and claims for zone one.

Stiver followed Warren, who had been testifying in regard to his company's contention money is due for work on Casitas dams, road relocation and conduits. Before Warren left the stand he was queried on cross-examination by S. V. O. Prichard about occurrences at an Aug. 13, 1946 supervisors meeting and meetings in May 1947.

NEWS ARTICLES

Prichard used articles from The Star-Free Press in questioning Warren about conversations with supervisors. The newspaper's August article indicated Warren urged advertising for Casitas dam bids in September 1946. Warren indicated this was a misstatement, saying it was the board that wanted him to get bids out by that time. He did not recall, as the story indicated, that Supervisors Robert Lefever and Lester Price had opposed going ahead with the second dam and then seeing what funds were needed or that Price proposed the matter be referred to the zone one advisory committee. Warren declared that "lots of things in that paper were contrary to my statements."

NO COMPLAINT

Warren said he had not complained about the article to the newspaper "because people know inconsistencies of newspapers" and that he did not recall talking to Price about the article. He said it was probable he never read it.

The May, 1947 newspaper articles indicated supervisors were to secure consultants, mutually approved by the Warren company, to review the Matilija dam picture, that supervisor indicated they wanted an independent man of their own for the review and had so informed Warren when he told them he had secured Consulting Engineer William P. Creager on his own responsibility.

Warren said the statement about an independent man was brought out but that supervisors never told him they did not want Creager. They were pleased about Creager's coming to review the dam picture but wanted an independent check, the witness said. He denied supervisors ever had said they would not pay for Creager's services but admitted supervisors did not nominate Creager's name as a consultant.

At yesterday's session, Warren

Wednesday, May 4, 1949

Meetings With County Supervisors Described on Stand by Warren

(Continued from page 1)

testified in percentage terms as to what he considers reasonable value for his services for plans and specifications and for engineering services on Matilija dam and for plans and specifications, based on either the construction or estimated cost, of Casitas dam, highway relocation and the conduit system.

Warren under direct testimony explained to the court why he felt he should receive fees for answering a report on sand and aggregate made by Ventura Architect Harold Burket, for answering a hydraulic report prepared by Ventura Engineer E. E. Everett, for obtaining services of Dr. John B. Buwalda prior to November 1946 and for obtaining services of Consulting Engineer William P. Creager.

DESCRIBES MEETING

Warren also gave his version of what took place on Feb. 6, 1948, when he resigned by request as engineer on zone one projects. He declared that in an executive session alone with supervisors he was told by board members that S. V. O. Prichard, the district's attorney, had advised them Warren should be fired and that they felt they must follow his advice. Lester Price, Warren contended, declared he didn't know what was right or wrong, that it was a sad day for him and that he was nothing but a farmer and had to take advice Prichard forced on him.

After this session, Warren said, he offered to resign after he talked to his attorneys and his attorneys told him that he would not be forfeiting his legal rights by resigning.

Warren said that after this action he offered to do anything he could in furthering the interests of the project, and later, at the request of County Surveyor Robert L. Ryan, sent his resident engineer, Howard Taylor, to Matilija dam to help out in the transitory period. He said that at Ryan's request he also started work on as-built drawings of the dam.

Under cross-examination, Warren was queried about some cost items tacked up to the district after the Warren company's resignation and as to whether he ever had delivered as-built drawings to the district. Warren contended he did not deliver but offered to deliver the drawings of Matilija dam as completed before the cross-complaint was filed against the district.

QUERIED ABOUT CASITAS

Warren contended the district supervisors did not tell him they were unwilling to have Creager employed; they said nothing against Warren's hiring him, the witness testified. He said he did not believe supervisors ever requested him to employ Dr. Buwalda.

Questioned about his Casitas dam plans, Warren said he showed supervisors revisions as required by the state division of dams but did not make any requests of the supervisors about the plans or specifications after revisions were made.

Queried about events that occurred when he presented preliminary plans of Casitas dam to supervisors on Aug. 13, 1946, Warren denied he had urged supervisors to go ahead with the second zone one dam. He did not recall, he said, that Price had declared he was not going to vote to build any more dams until he knew where pipeline money was coming from. Warren denied he urged supervisors to advertise for bids or that Price had proposed the zone one advisory board be consulted before any action was taken. He, too, denied that he had told supervisors on that date that "if there's gas in the well a way will be found to get a hose to it."

5-5-49

County Begins Answering Cross-Complaint

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5/5/49

Supervisor Lester Price was first witness this morning in superior court when the Ventura county flood control district began its answer to the Donald R. Warren company's cross-complaint for money assertedly due for work on Casitas dam, road relocation and the conduit system and remaining fees for Matilija dam.

Price reported that Warren on Aug. 13, 1946, when presenting preliminary plans for Casitas dam, had urged construction of the second zone one dam and had said, in effect, when Price raised a question about money needed for the project that "if there is gas in a well a way will be found to put a hose in it." Price also declared he had no recollection of supervisors' adopting the plans. The witness declared that he did not recall that final Casitas dam plans nor conduit plans ever had been approved by the board.

Price testified that he recalled that supervisors in May, 1947, when hiring Matilija dam consultants was discussed, asked County Surveyor Robert L. Ryan to submit a list of consultants and said the list would be submitted to Warren for approval. Ryan said he told Warren the board wanted an independent man when Warren informed supervisors that he had hired William P. Creager of Buffalo on his own responsibility. He said he had no knowledge of the board's ever hiring Creager.

Under cross-examination, Price told Warren-attorney Charles Loring that he did not recall whether the district's consultant list ever had been submitted by supervisors to Warren.

He told Loring he presumably had voted Feb. 11, 1947 for a \$30,296 payment to the Warren company for preliminary Casitas plans and that he never had checked the board records to find out if approval for the plans had been given by supervisors.

As John Hallock finished testimony, the Warren company completed presentation of its cross-complaint.

Cross-Complaint is Completed

(Continued from page 1)
complaint against the district in which it seeks funds for work on Casitas dam, road relocation in that area, the conduit system and for final fees on Matilija dam.

Hallock, Warren company engineer, yesterday afternoon testified that plans and specifications for Casitas dam are adequate, follow good engineering practice and would result in erection of a safe structure. He also indicated that the fees the Warren company seeks for Casitas and the conduit system are reasonable figures.

DESCRIBES SESSIONS

Hallock also related conversations he said he had with supervisors and district officials in regular and executive meetings. He said supervisors had concurred with his explanation that it would be a waste of funds to stake out lines for road relocation in the Casitas area and for the conduit system until time for bids.

He told of making a report, at the request of district legal counsel, to supervisors in January, 1948, on work to be completed at the dam and of pointing out this work in the field. He also declared that early in February, shortly before the Warren company was asked to resign, he was asked by Attorney S. V. O. Prichard to discuss with Warren the possibility of county forces completing work at the dam so the contractor could withdraw.

Hallock also described "star chamber" sessions with supervisors or other district officials in the summer and fall of 1947, and he contended that at these sessions the late Percy W. Dennis, then chairman of the supervisors, indi-

cated that the Warren company had done work on Casitas dam and the work would have to be paid for. Hallock also contended that Prichard had asked for plans and specifications of Casitas dam, road relocations and the conduits from the Warren company because he had said the county surveyor's files were so chaotic it was difficult to find anything in them.

Hallock, too, reported that at least three of the supervisors had indicated they did not want to sue the Warren company after Warren's resignation. He also reported that County Surveyor Robert L. Ryan had visited the Warren office after Warren's resignation to see about obtaining pictures and drawings. Hallock said he promised cooperation if assurance was given the Warren company would be paid for the work and that Ryan answered he would try to get the board to set up a pay order so the drawings could be obtained. He reported that Ryan said he preferred not to be furnished cloth tracings of contract drawings of the highway relocations and conduits if cloth tracings of as-built drawings were furnished after the projects were built.

NELSON APPEARS

Carl E. Nelson of the Warren company described presentation of final plans of Casitas dam to supervisors on Sept. 3, 1946, saying the documents were turned over to Ryan for inspection. Nelson said he returned the following week and that plans were approved by the board at that time and were sent to the state.

Under cross-examination, Nel-

son said specifications were later recalled for revisions but that plans were not. Revisions made in plans were sent to Ryan, he said, but were not taken back to the supervisors for approval because scope of the work had not changed.

Donald F. Warren reported he attended a Feb. 18, 1947 meeting of supervisors, saying that at that time his father, Donald R. Warren, presented final plans of the conduit system and revised plans for Casitas. He said he took a photograph of Supervisor Robert Lefever and Warren looking at Casitas plans, and he identified the photograph in court.

Petite and pretty Mrs. Alice Hovey of the Warren company took the witness stand to describe methods of company book-keeping and accounting. She said the district accounts had not been transferred from the partnership of the Warren company when the Warren company corporation was formed in the spring of 1948. She said she had not notified concerns with whom the Warren partnership had been doing business that the corporation had been formed.

(See CROSS-COMPLAINT P-22)

Matilija Trial Near End

5/6/49

By MIDGE MOSSBERG

[T'S ALL over except for the arguments!

Presentation of testimony on all issues on the Matilija-Casitas dam action wound up in superior court yesterday afternoon, leaving only arguments of attorneys of the Ventura county flood control district and the Donald R. Warren company to be presented before Superior Judge L. N. Turrentine takes the complicated case under submission.

Arguments will be presented, starting Monday, by S. V. O. Pritchard, counsel for the district, and Stanley Burrill, counsel for the Warren company.

MANY TESTIFY

Court closed yesterday afternoon after a day-long parade of district witnesses who testified in answer to the Warren company's cross-complaint for monies assertedly due for work on Casitas dam, road relocation and the conduit system and final fees on Matilija dam.

Supervisor Robert Lefever appeared on the stand to testify that Warren, when presenting preliminary plans for Casitas dam on Aug. 13, 1946, had urged speed on the project and that such a move had been protested by himself and Supervisor Lester Price. Lefever said Price wanted to know where money was coming from before approving the plans and that he, himself, wanted to see the conduit system built prior to Casitas dam so that Matilija dam could be placed in production.

Lefever said he did not recall that any resolution was authorized that day to accept the plans and specifications. He also said that there was no approval of final plans for the conduit system on Feb. 18, 1947, as contended by Warren.

The witness also described happenings in May, 1947, when matter of consultants for Matilija dam was discussed. He said Warren was informed by Supervisor Price that the board wanted an independent man, rather than Warren's choice of William P. Creager, as consultant. The board never ordered the hiring of Creager, Lefever said.

Under cross-examination, Lefever said he did not recall that supervisors ever asked Warren for his approval or disapproval of Dr. Charles P. Berkey, geological consultant called in by the district. When it was pointed out to Lefever that board minutes for Aug. 13, 1946, indicated a \$6,000 check had been issued that day to the state division of dams for approving Casitas dam preliminary plans and specifications, Lefever declared that evidently the board had accepted the plans.

He testified it was his under-

(See MATILIJIA page 2)

Matilija Dam Trial Nears Conclusion

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standing the board had accepted final plans for the dam on Sept. 10, 1946.

WAITE ON STAND

District Attorney M. Arthur Waite, who questioned some of yesterday's witnesses, also went on the witness stand. It was his recollection, he said, that the final plans and specifications for the conduit system never were brought before supervisors for action. He said he was aware in the spring of 1947 such plans were in the county surveyor's office. He said he suggested that consultants be hired to look over these and Casitas plans to determine whether they were "just rough estimates like those for Matilija dam."

As far as he knew, Waite said, the supervisors never ordered the plans returned to the Warren company nor ever ordered them rejected. Waite also told about meeting in the spring of 1947 in which hiring of consultants to review Matilija dam was discussed. He said supervisors told Warren that if he hired Creager he would do so at his own expense. He said the district did not hire an engineer at that time, that Warren objected to some engineers the district wanted; he could not recall which engineers Warren objected to. He also said the district objected to others than were proposed and that it was hard at that time to secure an engineer. Dr. Berkey was hired and Warren did not object to him, Waite declared.

James W. Pool, clerk of the board of supervisors, was on the stand to testify that neither the completed minutes of the supervisors nor rough drafts showed any acceptance of preliminary plans and specifications of Casitas dam nor final plans for the conduit system.

County Surveyor Robert L. Ryan returned again to the stand, this time to report that there are no cloth tracings of Casitas or Matilija dams or the conduit systems on file with his office.

Engineers D. L. Reaburn of Los Angeles and Edward Koenig of Hermosa Beach were on the stand to describe usual engineering practices followed in locating highways and conduit systems.

Ralph Francisco of the surveyor's office told of going with a Warren company representative in the summer of 1947 over the routes of the conduit system, as set on maps by the Warren company.

Geologist Rush T. Sill was questioned about the plans and specifications for Casitas dam and as to whether they were adequate and proper from an engineering standpoint. He said he did not consider that they were, declaring that more of the area would have to be stripped than indicated by the plans and that the abutments could not be made water tight with the impervious core proposed.

5-9-49

Prichard Asks:

Who Tells Truth?

5/9/49

By MIDGE MOSSBERG

WHO is telling the truth?

That, S. V. O. Prichard, counsel for the Ventura county flood control district, said today was the crux of the district-Donald R. Warren company action over Matilija dam which must be decided by Superior Judge L. N. Turrentine of San Diego.

SCORES WARREN

Prichard, giving the argument in superior court for the district as the dam trial draws toward its close, declared the judge must sift the veracity of witnesses and the facts of the case for himself, but he indicated that throughout the whole case the central figure is Warren himself. He charged that the responsibility for adequacy of the dam structure and foundation is Warren's and that Warren had admitted it in correspondence with the contractors on the project.

Prichard declared that Warren had been the trusted agent of the district and that the district now stands before the court and declares that Warren "deliberately misrepresented, deliberately falsified, deliberately cheated." The solution of the lawsuit, he said, depends greatly on the court's interpretation of the integrity and veracity of Warren.

The attorney declared that Warren in January 1946 had prepared estimates which placed cost of the dam at \$1,128,000. This estimate he never showed the supervisors and he so indicated by his own testimony, Prichard said as he told the court Warren had deliberately withheld information from the supervisors.

Prichard also quoted from the Buwalda report that recommended stripping of the damsite before final type of dam was decided on. Warren declared he showed this report to the board while the supervisors, district attorney and a newspaper report declared he didn't, Prichard said.

In order to determine who is telling the truth, Prichard suggested a look at the situation. The supervisors would not have been able to go ahead as they did if the report had been revealed, Prichard contended. He said the newspapers would have carried the story if the supervisors attempted to proceed without such stripping. It would have been political suicide for every member. He also contended that action of supervisors indicated they did not know about the report until the spring of 1947.

SAFE YIELD CRITICIZED

He declared that Warren's testimony that he delivered a cost estimate upward of \$900,000 for Matilija in the spring of 1946 was another matter on which Warren was deliberately untruthful. He said the fact that Warren had not presented such an estimate was disclosed by a newspaper reporter's testimony there had been no such estimate given and by the fact that no such estimate had been found either in district or Warren company files.

Prichard said that Warren, as an engineer, should have had professional know-how and that he was so considered to have by a group of "ignorant laymen" who trusted and accepted him.

Prichard also charged that Warren, in making his safe yield report in the zone one report knew the elements to be considered, that he had reports available to determine claims for water rights but ignored them in telling the district it would have a safe yield of 4,000 acre feet to dispose of.

Prichard also contended Warren knew the bond issue was to be only for \$3,400,000 and that he knew the district could not legally spend beyond that amount. Yet, he contended, Warren even in a supplemental report before the bond issue indicated that \$680,000 would be adequate cost for the dam and that contingency funds were ample to take care of unforeseen factors. He also charged that Warren had played an important part in drawing his own contract with the district and that if there were any ambiguities in it, he was responsible for them.

District Continues Matilija Argument

S V. O. Prichard, attorney for the Ventura county flood control district, continued with the presentation of his argument before Superior Judge L. N. Turrentine in today's session of the district-Donald R. Warren company action over Matilija dam.

Prichard contended that the contractors on the dam were entitled to extra funds because the work conditions were changed and he contended that the only real matter ever in dispute was how much the contractors would receive. He said Warren was in the position of having conceded that the contractors had a premise for a claim and that Warren had approved extra time for the contractors to complete the job.

He contended that it was Warren's direct orders, and not those of supervisors, that had changed the working conditions of the contractor. He said a settlement of \$86,000 finally was made with the contractors and that he felt the Warren company was liable to the district for this amount. "If you're asking me, I think the district got off lucky for \$86,000," Prichard declared.

The attorney also contended the district was entitled to general damages on the grounds it did not get the project it contracted for—the most suitable and economical project to meet the needs of the district. He said that both dams — Matilija and Casitas — would have to be built to full height to meet district needs by 1969, and that about the only way to increase Matilija's height now is by a new dam up or downstream or additional concrete on the present dam.

Prichard said that Warren by his own statements has indicated cost for such increase would be around two and one half to three and one half million dollars instead of the estimate of \$800,000 set out as cost of the high dam in the zone one report. He added that judging by the way the Warren company has calculated costs the figures would probably rise to between four and six million for raising the dam.

Prichard insisted that the kind of dam that would be most economically fitted to the Matilija site would have been an earthfill or a combination rock and earthfill. Even if the original cost was

a little higher than the arch dam, the earth or rock and earthfill dam could be enlarged without interrupting the safe yield and use of the reservoir, he contended. He said if Warren's plans for increasing the arch dam were used the reservoir would have to be de-watered during the enlargement program.

He said the district had suffered upward of \$500,000 on this aspect and that the dam sits on a dubious and marginal site. He said there is no upstream cutoff wall or blanket or no downstream cutoff wall and that there should be to increase the path of percolation. He suggested that \$150,000 each for such installation was a likely figure and that \$86,000 was reasonable for the cost of grouting beyond that planned by the Warren company.

In describing the need for a downstream cutoff wall, Prichard painted a picture of the turbulence that can be caused by water spilling over the dam in an extreme storm and told of the possibilities for the apron to be undercut in the process.

Prichard said that even if it were assumed the dam was perfectly safe the district had not received what it contracted for—that the project was not economically justified because 4,000 acre feet of water could not be sold. He said that instead there was only 1,800 acre feet for sale or, at the most, using figures of Warren witnesses, 2,500 acre feet when downstream rights of 2,500 were taken into consideration.

In the courtroom audience yesterday and today were several engineers from the Los Angeles area. They indicated they are appearing as individuals, and not representing any organization, to listen to both sides of the argument.

In yesterday's portion of his argument to the court, Prichard declared that Warren never told supervisors until after bids were opened that he had discovered his original surveys were incorrect and that the Matilija dam would

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Prichard Blasts Ex-Supervisor Cook in Matilija Dam Argument

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be 25 percent bigger than he had allocated in his original estimate. Prichard said all supervisors with the exception of ex-Supervisor Russell C. Cook were emphatic about one thing: They remembered that Warren had said the zone one dam projects could be built for the bond issue of \$3,400,000 even though the bid on Matilija dam was \$600,000 over Warren's estimate.

CRITICIZES COOK

As for Cook, Prichard told Superior Judge L. N. Turrentine, the court can't find out about him by reading Warren's diary. Cook had been in the Warren camp long before the contract was let. Prichard declared. He said Cook had consulted and advised with the Warren company and its attorneys, according to Warren's diary, many times and had told the members of the Warren company the secret things which were being done by the board of supervisors.

Cook, Prichard said, advised the Warren company all along as to what the program was, and what the district attorney was thinking, what the grand jury was doing.

"I respectfully submit that if they ever elect that man to dog catcher, they ought to be hung in Ventura county for the simple reason that that man does not know how to be faithful to a trust," Prichard declared. "That man doesn't know obviously where his loyalty should be, and when he is a member of the board of supervisors he has no right behaving as the evidence in this case discloses that he did behave."

Prichard said it was not until two days after the contract for construction of Matilija dam had been signed that Warren let supervisors and the advisory committee know that zone one projects were going to cost one million in excess of the bond issue. He said that the Casitas dam plans, with its stipulation that excavation will be to plus or minus three feet, would be in cost a repetition of the debacle of Matilija dam and that nobody knows where the conduit cost would go, with its line laid out by a paper location.

MONEY LACKING, HE SAYS

The acts of Warren, the attorney said, have completely deprived zone one of the thing it wanted: the Matilija and Casitas dams and conduit system. It's impossible to build the conduits, there is no money for them, Prichard declared. He also told the court there is no evidence the people of the state will vote more money to a project smashed as completely as this.

In discussing the building of Matilija dam, Prichard contended that the field notes of Warren's geologist, Dr. John P. Buwalda, and Dr. Buwalda's testimony on the stand showed that the damsite earth strata went through a re-

markable contortion. He reminded the court Dr. Buwalda's notes showed he "would have preferred an earthfill dam" at the Matilija site even though Dr. Buwalda did not have strength of character or something" to tell Warren it wasn't a good damsite. The geologist observed the rock was none too strong, that there was white material in the bottom "that breaks up like this," Prichard declared as he crumpled rock material from a core in his hands.

Prichard declared that Dr. Buwalda had to defend himself on the witness stand and that he, therefore, was a biased and prejudiced witness. Prichard said testimony of Dr. Franklin P. Thomas and William P. Creager for the Warren company therefore "wasn't worth the paper it was written on" because the two predicated their opinions on worthiness of the damsite on Dr. Buwalda's testimony.

The attorney declared that even Dr. Buwalda had not been given all information by the Warren company, that he never had been told a map of the earth structure of the damsite had been made by a Warren company employe, John Southworth. He contended, therefore, the best evidence of the earth formation at the bottom of the dam is Southworth's map, for that map, he said, was made from actual observations and demonstrates the damsite is dubious and ad marginal.

Prichard also declared that Wayne Perkins of the state dam department had to be defensive, that Perkins did not make a re-

turn trip to the dam from the time the floor was excavated until the floor had been poured with concrete up to the left abutment.

Describing the troubles encountered at "N" and "O" blocks on the left abutment, Prichard said that "the saga of Matilija dam is going to be one for the books."

He said that "N" block was poured with concrete March 18, 1947, in spite of a March 13 notation in the diary of Howard Taylor, resident engineer, that slip planes filled with 2 to 12 inches of clay were noted in the area. He recounted that Taylor had told John Spielman of the state dam department that material just as bad had been covered up downhill. Nobody denied this, Prichard declared, pointing out to the judge that the Warren company did not produce Taylor as a witness.

Prichard also declared that Warren in testimony had said there were lots of places at the damsite where the dam did not rest on sound ledge rock in place free from open seams and other defects.

Prichard contended that the testimony should be given credence with that of Dr. Charles P. Berkey, the district's engineering geology consultant. Prichard declared that Dr. Berkey's opinions on the dam had been formed as the job itself progressed and information became available. He said that Warren, instead of taking advice from "the dean of them all" took the attitude "the king can do no wrong" and slapped Dr. Berkey for "being an old man."

If Warren had taken Dr. Berkey's advice, the job could have been salvaged, Prichard declared.

The attorney read portions from Dr. Berkey's report on poor foundation conditions, pointing out the opinions were corroborated by Engineer Randall Cremer. These opinions were given when there was no thought of a lawsuit, Prichard contended.

Prichard also talked to the court about work done in the field by Warren company employes. He declared that the diary of Joseph Hyde shows that dam revision work was under way from August to December, 1946, and that the Warren company therefore was not entitled to payment for this work on the basis of construction supervision. Claims signed by Warren for such work as construction supervision were false claims, Prichard said. He declared such tactics further demonstrate the character of the defendant. He said it was also the attitude of the defendant that "we got away with it, so what?"

Prichard said that the district was entitled to recover \$12,075 on this phase of the case and \$19,987 for money spent on "N" block and \$57,733 for money spent on "O" block. He said trouble at "N" and "O" could have been avoided by excavating soft material before concrete was poured.

The attorney declared that the structure designed by Warren in the first instance was one of the most amazing and daring designs, especially for the type of foundation. It had to be redesigned to approach support, he declared.

Matilija Building Defended

ATTORNEY Charles Loring today upheld the actions of Donald R. Warren and his company in matters regarding Matilija dam when he continued his argument in the dam case before Superior Judge L. N. Turrentine.

Loring declared the hydraulics of the dam's apron were well handled by Warren, that he could have extended the apron, he could have paved the stream's channel to the Pacific ocean but that he was faced both with an engineering and economical problems and had to give fair balance to both. Warren's engineering experience told him further extension of the apron was unnecessary and he made a conscientious effort to avoid wasting the people's money, Loring said.

SCORES PRICHARD

The attorney declared it did not take an engineer or geologist to know that the apron is not going to move in floods that hit the Matilija area. He said state studies showed the state had planned only for a spillway to handle 27,500 second feet. If the state thought that capacity was adequate and since the testimony is uncontradicted that the Matilija spillway as built will carry 30,000 second feet, the engineer has done all that is required of him, Loring contended.

He labeled as atrocious legal practice district counsel S. V. O. Prichard's calling of a witness in regard to size and location of the dam. Loring said the exhibit entered in connection with Engineer Arthur Taylor's testimony was a deliberate calculation to mislead the court. He said the defense got Taylor to admit he was wrong in testifying that Warren had placed his dam at a larger site than he originally intended. He said there was nothing in the evidence to indicate Warren ever intended to build the dam 200 feet upstream. Testimony of supervisors show the dam was built on the site which was under primary consideration and testimony of Geologist Hyde Forbes showed it was built on the site selected by the state, Loring declared.

He spoke at length on the matter of net safe yield of the dam. He declared the district's own witnesses could not agree on what the safe yield would be, and he contended there is no evidence that the district won't have 4,000 acre feet on the average to sell during life of the bonds.

UPHOLDS ESTIMATE

Loring said net safe yield is not an issue in the law suit because supervisors testified that they understood they would have 4,000 acre feet to sell year after year and not during the dry period only. Weight of the evidence on what is the safe yield should be judged by the persons testifying, Loring indicated. He declared that in that regard the Warren company had produced Dr. Franklin P. Thomas, national president of the American Society of Civil Engineers, and that the district had not produced a man of his stature. No law suit that arises would color or compromise the judgment of Dr. Thomas, Loring declared.

Loring upheld Warren's cost estimate and said they were honestly made. He said more money still could be spent on the zone one project and the project still be economically justifiable. He denied that Warren would have any motive in withholding, until after the Matilija dam contract was signed, information that the zone projects were going to cost more than the bond issue. The district could have withdrawn under terms of its contracts when it was informed on costs, he contended.

The attorney contended the district had no cause for action on the situation that developed at "N" block. He said that meant only that latent defects were discovered and were corrected by proper engineering steps when it was discovered. He said the situation was delicate because of Wayne Perkins of the state division of dams.

Loring, who began his argument (See WARREN, Page 3)

Warren Argument Begins in Dam Trial

(Continued from page 1)
ment for the Warren company yesterday afternoon, contended the evidence in the case failed to support the district's allegation there had been fraud and misrepresentation on the part of the Warren company. He said testimony of supervisors showed Warren had made no representation to them whatsoever regarding the matter of exploration.

Loring declared the district's own witnesses admitted Warren wanted stripping done at Matilija damsite to expose rock for bidders and for state inspection. He said district witnesses revealed they knew the purpose for the sinking of a test pit and that the conclusion was inescapable that County Surveyor Robert L. Ryan had time to sink such a pit after his appointment as district engineer and before the construction contract was signed if the board wanted to know the cost of the dam.

The evidence, he said, was uncontradictory that Warren said stripping would cost about \$15,000 and that only \$1,000 was spent on the work. It doesn't take an engineer to figure out there's a difference between the two figures and that the work was not performed, Loring declared.

DENIED WARREN GOT ALL

He denied that Warren got all he asked for from the board, and said Warren didn't get stripping, a test pit nor a consulting board in the spring of 1947. "Warren asked for a lot of things he didn't get," Loring charged.

Loring declared the transcript showed supervisors were aware in the spring of 1946 that Warren was not satisfied with stripping, that he had to guess or assume location of bedrock, that they knew changes would have to be made in plans and that the number of units of the dam would depend on where bedrock was encountered. Knowing these things the board as a matter of business policy decided to go ahead with the dam because of the water shortage, he said.

The attorney contended Warren ultimately gave the board the stripping advice of his geologist, Dr. John P. Buwalda, and that the board failed to follow the advice. By filing the report with the state, Warren demonstrated he was not trying to conceal or hide anything, Loring contended. Loring said counsel for the district called Warren a fraud and a cheat because he has a glib tongue and a ready answer. Loring said he did not believe that necessarily followed, but, he declared "I know the counsel has a glib tongue and a ready answer.

At another time he remarked that district counsel was correct when he said a man's integrity is on trial. "He's right," said Loring, "but it isn't Warren."

Loring admitted there was conflict in evidence as to the geology of the damsite but he declared the district had only two witnesses who had seen material under the dam—Dr. Thomas Bailey and John Southworth, ex-Warren employe. The material looked all right to Dr. Bailey in October 1946, Loring said. He declared the district was left to predicate its geological testimony on Southworth, "a young kid with no prior experience on dams."

EYEWITNESSES CITED

On the other hand, Loring said, the Warren company had such eyewitnesses as D. Buwalda and leaders from the state division of dams. All of them, said Loring, called the site adequate and they denied it was a dubious and marginal site. He said S. V. O. Prichard, district counsel, had viciously and vehemently attacked Dr. Buwalda but that Dr. Buwalda had not toppled and needed no defense. Loring likened Prichard's attack to a "mouse gnawing on the Washington monument."

In regard to earth formation at the bottom of the dam, Loring declared that the district was in the position of saying the rock from "C" to "F" blocks was of soft, uniform character. He said either the rock was not uniform or

rock samples shown in court were not typical.

Loring said that when court was held at the dam site rock so hard that sparks flew was dug up from a pit. Holding up the sample, Loring said he'd like to see Prichard dramatically crush the sample. He said this sample compared favorably with a sample Warren took from the damsite in Oct. 24, 1946. Loring said tests of rock in place at the damsite showed the material had bearing strength far in excess of that required by the district.

Even if it were assumed stream-bed rock is not of such high quality as desired, the abutments are of far greater importance because they carry the stresses, Loring said. He declared evidence was uncontradictory that abutments of the dam are far superior to abutments on most sites on Matilija creek.

Loring said the Warren company by the zone one bond issue was obligated to construct an arch-type dam on Matilija creek, and he said the district did not attempt to prove the Warren company did not choose the most ideal site on the creek. There's not a shred of evidence, he said, that the concrete arch-type dam de-

signed was not the most suitable concrete arch-type that could be built under terms of the contract. He said it was undisputed in the record that an arch-type dam is the safest and that there never has been a failure of a major arch structure.

Saying there was a conflict of testimony between Engineer Arthur Taylor and Engineer William P. Creager as to whether an earth-fill or composite rock and earth-fill dam would be more expensive than an arch dam, Loring indicated the weight of the testimony should go to Creager because of his vast experience. He reminded the court that Creager, Dr. Buwalda and Perkins had said the dam is built on the most suitable site on Matilija creek.

Talking about the matter of a fault through the damsite, Loring reminded the court that Dr. Buwalda said there was none. He said Southworth's map placed the fault at "C" block but that his field notes failed to disclose this and cores from one hole in "C" block showed 99 percent recovery of material.

LORING CONTINUES

Loring made light of district witnesses' contention additional work is needed on the dam. Such contentions, he said, were being made by men who did not see conditions in the field, men who base their testimony on Southworth, men who are not qualified. He listed Randall Cremer, Dr. Bailey, Taylor and Rush Sill. On the other hand, he said, men such as Perkins and Dr. Buwalda, men experienced in dam construction, say no further work is necessary.

Loring said the district had not proved Warren did not follow common and accepted engineering practices; the district, he said failed to prove there is any customary practice in the construction of dams. He said the engineer must perform according to his own skill and judgment and is not actionable for errors in judgment.

Loring declared that where there is divergence of opinion on experts, concerning core borings, the professional man can not be held liable for all opinions. No amount of skill or judgment could have guarded against conditions encountered, he declared.

Loring said it was a tremendous presumption on the part of any lawyer to go outside the field of law and criticize the work of a qualified engineer. He listed Warren as a qualified engineer and said members of his company were likewise highly experienced. Loring said the presumption became unmitigated when attempts are made to criticize an engineer by relying on photographs and opinions of people who did not see conditions in the field. He said he had been amazed at things that happened in court.

Thursday, May 12, 1949

LATE BULLETIN ^{5/12/49}

Judge L. N. Turrentine took the Matilija dam case under submission at 12:15 p.m. today after seventy days in court. The trial in superior court ended after District Counsel S. V. O. Prichard finished his morning-long rebuttal argument.

Judge Turrentine's decision in the case is not expected to be made for some weeks.

Prichard Speaks:

Dam Trial Enters Last Day

By MIDGE MOSSBERG

S. V. O. Prichard, county flood control district counsel, today defended his appearance as a witness in the district-Donald R. Warren company superior court action over Matilija dam as he presented his closing argument on the 70th—and last—day of the trial.

Responding to charges made by Charles Loring, Warren attorney, Prichard declared that he felt it had not been improper for him to go on the witness stand because of the testimony given by Warren regarding conversations between only Warren and himself. Warren, he said, accused Prichard of wanting Warren to perjure himself. Prichard declared he would have been derelict to himself and his client if he had allowed the matter to go unchallenged.

STRIKES BACK

He cited cases to show that it can be proper for an attorney trying a case to take the witness stand. He told the court that if he had offended, he apologized.

Prichard also struck back at an accusation Loring had made that Prichard and County Surveyor Robert L. Ryan had tried to conceal evidence in regard to water storage and had deliberately failed to store water. Prichard told the court Ryan had a consulting board to work with in the matter of storage and that he is responsible to determine with his best skill and advise what should be done.

Prichard said it was a bit absurd to charge that full water storage had been impeded. "God has a little bit to do with it. It has not rained enough any time to fill the dam with water," he declared.

The district's attorney also defended the testimony of John Southworth, ex-Warren employe. Southworth, he declared, demonstrated "he was more than a kid." He came to the same conclusions about the damsite as did Dr. Charles P. Berkey but without the assistance of anyone, Prichard declared. He declared that Southworth had been on the grounds during excavation whereas Dr. John P. Buwalda, Warren's geologist had not been on the site from Oct. 25, 1946 until April, 1947.

CITES BERKEY

Prichard also pointed out to the court that Dr. Berkey had offered to show Defense Attorney Stanley Burrill the fault in the Matilija area but Burrill refused to take the challenge.

Even assuming the dam and site are all right, said Prichard, the district still did not get what it wanted. It's going to spend the next 40 years paying for something it hasn't got, he declared. He charged that the Warren company by its contract terms could have built any kind of dam and wasn't limited to an arch type.

Neither Loring nor Warren were in court during Prichard's argument. Loring has left to present a case in Seattle, Wash.

In bringing his argument to a
(See LORING, page 26)

Loring Scores District in Matilija Trial

(Continued from Page 1)

close yesterday afternoon Defense Attorney Charles Loring praised ex-Supervisor Russell C. Cook and denounced Prichard and County Surveyor Robert L. Ryan.

Loring charged that Prichard in his opening argument before Superior Judge L. N. Turrentine had attacked Cook because Cook could not be bulldozed and browbeaten to testify to an untruth. Cook, said Loring, acted the way he did (testified as a Warren witness) because he felt that right and justice were with the defendant. A man's greatest loyalty and fidelity, said Loring, is to that which he believes is right and just.

Loring accused Prichard of violating the ethics of the bar association in court conduct. He said ethics of the association prohibit a lawyer from testifying and arguing where he must argue to the court on his own veracity. Counsel by his own conduct forfeited the right to criticize Warren, Loring contended.

ACCUSES DISTRICT

The Warren attorney declared that the district did not want water to be impounded behind the dam to its complete height because the district did not want the court to observe the dam is adequate. He declared he saw no reason why the rule of "evidence suppressed is deemed adverse evidence" in the matter of impounding water.

Loring said Prichard several times had been instrumental in keeping supervisors from applying for a water storage permit. He said he thought the motivation of the lawyer could be best seen in correspondence between Ryan and Dr. Charles P. Berkey, the district's geologist.

He quoted from an October 1948 Berkey letter that said "that (water storage) would have great weight in the coming trial no matter what happens later." He quoted a letter from Ryan to Dr. Berkey which said "as the board was determined to ask for temporary storage there was little we could do about it anyway."

It was Ryan's office that had charge of the papers, the documents which have not been produced, declared Loring. Ryan is not qualified on dams, Loring continued, no witness of the plaintiff is qualified to overrule the state division of dams. Yet, he said, here is a public official stating he attempted to obstruct the application for water and had been unsuccessful.

There is only one reason Ryan and counsel did not want authorization for use of the reservoir to be granted, Loring declared. Loring said Ryan and Prichard wanted to induce the court to believe that since no application was issued by the state it must appear

that the dam was inadequate. Ryan and counsel are guilty of a deliberate and calculated effort to deceive and mislead this court, Loring charged.

He said it would have been very easy for Prichard to find out what the dam would have done under a full head of water but, he declared, the needs of the people for water in this area had been made secondary to winning a lawsuit. The whole lawsuit, Loring declared, has been aimed to create a smoke screen, befog the issue and defeat the Warren claims.

'COINCIDENCE'

Loring said another key to the situation might be the appearance in the picture of Walter Hoffman. He said that when on July 1, 1947 supervisors authorized the condemnation of Hoffman's property for construction of Casitas dam, Hoffman on that date presented his geologist (Dr. Thomas L. Bailey) to the board, the geologist filing an adverse report on the site.

Loring said it also was more than coincidence the contractors on Matilija dam had hired a so-called engineer and geologist when they had a claim pending which Warren refused to approve. The employment of Rush Sill by the contractors was to bring pressure to get approval on unjustified claims, the attorney declared. He said that it was more than coincidence that Warren was forced to resign within a few minutes before a settlement of claims was made by supervisors with contractors.

Warren, said Loring, had an obligation to protect the district against unjustified claims; he refused to approve a \$95,000 payment to the contractor even at the risk of his own discharge and the lawsuit. Loring declared that the record showed Warren was the most able engineer who had been produced in court, that he did his task over all obstacles. All the evidence in this case shows no man adhered to the task with more fidelity and with less thanks than Warren, Loring told the court.

The defense attorney charged that criticism by plaintiff witnesses had been based on hindsight or ignorance. He said examples of ignorance could be seen in the testimony of Engineer Randall Creamer, Sill, Dr. Bailey, Dr. Vito Vannoni and also by Prichard in the understanding of issues of the case.

EXCAVATION DESCRIBED

Loring described the matter of excavation at "N" block a delicate and painful problem because of Wayne Perkins of the state dam department. He said Perkins was one of the finest gentlemen who ever walked into this or any other courtroom and that he had the highest regard and respect for him. The fact remains, said Lor-

ing, that he is a human being just like everyone else. He declared that when the situation developed over "N" block Perkins found himself in an embarrassing position. Four witnesses, declared Loring, say Perkins gave approval for pouring of "N" block subject to cleanup on March 18, 1947.

He told the court Perkins was talking at that time about a clay seam at "M" and not "N" block. He said the diary of Resident Engineer Howard Taylor showed Perkins had talked to Joe Hyde on the telephone March 20, 1947. Loring declared that if Perkins had not approved "N" block for pouring he could have and would have ordered removal of that concrete on March 20 because he was informed that day "N" had been poured.

Loring said it was with reluctance he called the court's attention to the fact Perkins had not written his memo on "N" block until after William Holmes, principal engineer of the dam department, had visited the damsite on March 28. Loring said it was to the everlasting credit of Perkins that in court he did not deny he had approved "N" for pouring but merely stated he did not intend to do so.

Loring said that the Warren company was entitled to fees sought in the cross-complaint and that supervisors by their conduct indicated they had accepted Casitas dam plans. He said supervisors had kept Warren until Matilija was completed and had even requested him to do work after he had resigned.

BURRILL SPEAKS

He said the completion of the project could be financed because the district can issue bonds, can ask for government help and can raise taxes for Casitas dam and the conduits. The salt test of the district shows there is no leakage at the dam and the quantities of grout used show the dam has a tight and impervious foundation that is superior to most formations, Loring declared.

Defense Attorney Stanley Burrill also argued before the judge, going over some of the material Loring had covered and adding more. Burrill contended the basic problems presented to the court were engineering and contract problems.

Burrill declared matters of concern were whether the engineer had performed his job with requisite skill and ability, whether a proper structure resulted from the engineer's services, whether the engineer is entitled to fees and whether contracts were followed. It was his contention that all these things had been followed.

As Loring had done, Burrill covered the matter of safe yield, of

stripping of examination by witnesses of the damsite excavation. He charged that Dr. Berkey's entire complaint against the dam had been based on hearsay evidence and that the geologist was given only one side of the issue.

Burrill decried the claims of the contractors and said that by the very fact the contractors had submitted different claims in April and December of 1947 from those of December 1946 they had admitted the first claims were padded.

Friday, May 13, 1949

Dam Attorneys Complimented

5/13/49
Superior Judge L. N. Turrentine of San Diego indicated at the close of trial yesterday that the Matilija dam action will be decided within 90 days, but beyond that, he gave no indication of specific time for handing down a decision in the county flood control district-Donald R. Warren company lawsuit.

When he took the case under submission shortly after noon yesterday, Judge Turrentine told both sides that starting next Monday he is going to devote his entire time to resolving the case. He complimented attorneys and court attaches of the county, saying he appreciated the courtesy and consideration that had been shown him.

Judge Turrentine estimated that attorneys had devoted at least five hours a day on the case in addition to work in court, and he declared that he did not believe there had been lost motion in presentation of the case. He estimated that not more than one day's time had been consumed in arguing about law during the trial. That, he believed, was attributable to the careful consideration given by the attorneys in preparation of the case. He said that in doing his work he had found it a pleasure to work with such competent, careful and thorough counsel.

Bonner Files Report On Matilija Dam

(Continued from page 1)
the stilling pool at the downstream base of the dam provides adequate protection against undermining of the dam structure at the downstream toe."

If it doesn't, Bonner suggests extending the apron and thickly paving the stream channel downstream far enough to effect a cut-off wall connection to sound rock formation. The cost of such a project, Bonner states, would be substantial.

The other alternative, according to the report, is the construction of an independent spillway. Bonner suggests a tunnel around the right abutment, starting with three bays 45 feet wide with tunnels 10 feet in diameter, converging into a single concrete-lined tunnel, 16 and one-half feet in diameter extending about 650 feet to a junction with Matilija creek above Matilija hot springs.

The project which would discharge about 16,000 second-feet, would cost about \$670,000, Bonner estimates. He points out that it would reduce the capacity of the dam 1,200 acre feet. The installation of crest gates, to preserve the full capacity of the dam would cost an additional \$60,000.

The board accepted the report without comment.