

DIVISION HEARING

Rebuttal

EX MSS 6

30V.9157

SAC 67481

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT.

--oOo--

WOODS IRRIGATION COMPANY, a
corporation,

Respondent,

vs.

THE DEPARTMENT OF EMPLOYMENT OF
THE STATE OF CALIFORNIA (HARRY W.
STEWART, Director of Employment),

Appellants.

SAC 6748

ORIGINAL

FILED

SEP 17 1956

Wm. I. SULLIVAN, CLERK

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REPORTER'S TRANSCRIPT ON APPEAL

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APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SACRAMENTO.

HON. MALCOLM C. GLENN, JUDGE.

--oOo--
COUNSEL:

For Appellants:

HON. EDMUND G. BROWN, Attorney General
of the State of California,
IRVING H. PERLUSS, Assistant Attorney General,
WILLIAM L. SHAW, Deputy Attorney General,
Library and Courts Building,
Sacramento 14, California.

For Respondent:

JONES, LANE, WEAVER & DALEY,
By RICHARD DALEY, Esq.,
351 Wilhoit Building,
Stockton, California.

FILED

SEP 25 1956

DIST. COURT OF APPEAL-THIRD DIST.
L. S. ENDRES, Clerk

OFFICIAL COURT REPORTERS
306 COUNTY COURTHOUSE
SACRAMENTO, CALIFORNIA

mss-6

TESTIMONY OF

GILBERT L. JONES, witness called on behalf of Plaintiff, SWORN:

MR. DALEY: Before we proceed with the testimony, your Honor, I would like to offer into evidence these documentary records, and it may be that counsel will want to look at them before they are admitted. They are articles of incorporation of the Woods Irrigation Company, as Plaintiff's Exhibit 1 for identification.

THE COURT: Plaintiff's 1, articles.

(The articles of incorporation above referred to were marked Plaintiff's Exhibit 1 for identification purposes.)

MR. DALEY: Next will be marked the agreement between Jesse Lee Wilhoit, Mary L. Douglas and the Woods Irrigation Company.

THE COURT: What is this agreement?

MR. DALEY: This is the agreement for the canal, your Honor, which will be Exhibit 2 for identification, and to identify that, that is the agreement that is recorded September 30, 1911, in Book G, Volume 27 of Miscellaneous, Page 25, San Joaquin Records.

(The photostatic copy of the aforementioned agreement above referred to was marked Plaintiff's Exhibit 2 for identification purposes.)

MR. DALEY: Then Plaintiff's Exhibit 3 for identification will be the agreement between E. W. S. Woods and Woods

Irrigation Company being the agreement for canals, which was recorded on September 30, 1911.

THE COURT: Agreement between Woods and what?

MR. DALEY: E. W. S. Woods and Woods Irrigation Company, which is the agreement for canals.

THE COURT: Well, I had "agreement for canals" No. 2.

MR. DALEY: There are two of them, your Honor. You see, this is divided into two parts, the way this company is set up. For identification, that is the agreement that we looked at, in Book G, Volume 27 of Miscellaneous, Page 30, San Joaquin County Records.

(The photostatic copy of the aforementioned agreement above referred to was marked Plaintiff's Exhibit 2 for identification purposes.)

MR. DALEY: And then, your Honor, we have two contracts to furnish water also. The one I will offer as Number 4, Plaintiff's Exhibit 4 for identification is the contract to furnish water between Woods Irrigation Company and Jessé Lee Wilhoit and Mary L. Douglas which was recorded on September 30, 1911 in Book G, Volume 27 of Miscellaneous, at Page 28, San Joaquin County Records, and that will be four.

(The photostatic copy of the aforementioned agreement above referred to was marked Plaintiff's Exhibit 4 for identification purposes.)

MR. DALEY: And then as Exhibit 5 for identification I will offer the certified copy of the contract to furnish water

between E. W. S. Woods and the Woods Irrigation Company which was recorded September 30, 1911 in Book G, Volume 27, Miscellaneous, at Page 41, San Joaquin County Records.

(The agreement above referred to was marked Plaintiff's Exhibit 5 for identification purposes.)

THE COURT: This is between which parties?

MR. DALEY: This is between E. W. S. Woods and the Woods Irrigation Company. This covers the west side, and the one with Wilhoit and Douglas covers the east side.

Would you care to look at these, counsel?

I am sorry, Mr. Jones. Maybe, if we are going to take some time on this you had better step down.

(Pause.)

MR. DALEY: Ready to proceed, your Honor.

DIRECT EXAMINATION

BY RICHARD DALEY, Esq., of counsel on behalf of Plaintiff:

Q Your name is Gilbert L. Jones? A Correct.

Q And would you give the Court your address, Mr. Jones?

A I didn't hear you, Mr. Daley.

Q Mr. Jones, you are an attorney-at-law? A Yes.

Q Is that correct? A Yes.

Q And have you been associated in any capacity with the Woods Irrigation Company? A Yes.

Q In what capacity, Mr. Jones? A Well, in two capacities.

Q And what are those? A In the first place in 1932

1 on the death of Lloyd Woods, one of the sons of E. W. S. Woods,
2 I was engaged to probate his estate and at that time I first
3 became familiar with the operation of this organization. Later
4 on -- and I was familiar of course with it from that date on,
5 but I became more familiar with it when our firm, which was
6 then Jones & Quinn, was engaged to represent this irrigation
7 organization called Woods Irrigation Company and we have
8 continuously represented the firm, the company, from that date
9 on, to date.

10 Q In connection with that, Mr. Jones, where are the offices
11 of the company maintained? A In our office.

12 Q In your law office, and are the books kept there?

13 A Yes.

14 Q And are those under your supervision and control?

15 A They are.

16 Q And are you familiar with the method of assessment that
17 is handled by the district, let us say assessments upon the
18 water users within the boundaries --

19 MR. SHAW: Your Honor, I feel I must object to this
20 line of testimony. I hope my silence until this point will
21 not be deemed acceptance of the questions that have been asked
22 to date, but I was trying to see what foundation was being laid.
23 As I understand it the Plaintiff corporation was formed in
24 1910. Each one of these exhibits offered for identification
25 relate to the year 1911. This gentleman identified himself
26 as an attorney who first in 1932 came into the situation

1 allegedly when he probated the estate of a man named Lloyd
2 Woods; then subsequently apparently his firm represented the
3 corporation. Now, we submit that in connection with all of
4 the documents which have been received for identification so
5 far that this man's establishment in association with the
6 Plaintiff is completely irrelevant, immaterial and not tending
7 to prove or disprove any issue in this cause for the reason
8 that there is a lapse of over twenty years between the
9 formation of the corporation and the execution of the contracts
10 before he became identified with the company, so we object to
11 any further line of questioning.

12 MR. DALEY: Well, your Honor, after all we are dealing
13 with the years between 1946 and 1951 which is the taxable
14 period here that we are concerned with.

15 THE COURT: I don't know what is to follow. Whatever
16 has been put in so far is merely preliminary.

17 MR. DALEY: That is correct.

18 THE COURT: And I don't know what is to follow. We will
19 see a little later whether there is any materiality.

20 MR. DALEY: Yes. Was the last question answered?

21 THE WITNESS: As to the method of assessment.

22 (Record read by the reporter.)

23 A I am.

24 MR. DALEY: Q And referring particularly to the
25 period between 1946 and 1952, Mr. Jones, were you familiar
26 with it during that period? A I was.

Q And then referring to the land itself that is within the boundaries served by this company, have you had occasion to go out on the property and to see the works of the district?

A Yes, all of them many times.

Q And are you familiar, Mr. Jones, with the system of irrigation canals that were maintained there between 1946 and 1952?

A I was, and am.

Q And are you also familiar with the -- between that period of 1956 to 1952 are you familiar with the type of employees that were employed by this company?

A I am.

Q And were the records of their pay kept by your office as well?

A Kept by my employees.

Q Mr. Jones, we have offered for identification this certified copy of the articles of incorporation of the Woods Company. Are the records of that company kept in your office, that is, the corporate records as well as the bookkeeping records?

A Yes, with a certain qualification.

Q And what is that?

A The records, the minutes, and that sort of thing I kept at our office. I don't need to go any further than that.

THE COURT: Just a minute. You said the records and minutes of the corporation are kept in your office?

A Correct.

THE COURT: But nothing else?

A No, I didn't say that. I don't know what else is in mind

1 or what the questioner has in mind. We do have the articles
2 of incorporation. We have the minutes of the corporation. We
3 have the financial records of the company.

4 THE COURT: Go ahead.

5 MR. DALEY: Q And this certified copy of the articles
6 of the corporation is a copy of the articles that you have in
7 your office, is it not? A Yes, correct.

8 MR. DALEY: We will offer this in evidence, your Honor,
9 as Plaintiff's exhibit.

10 THE COURT: It will be received in evidence.

11 (The above referred to articles of incorporation
12 previously marked Plaintiff's Exhibit 1 for identification
13 purposes were received in evidence as Plaintiff's
14 Exhibit 1.)

15 MR. DALEY: Plaintiff's 2.

16 THE CLERK: Wilhoit and Douglas.

17 THE COURT: Agreement for canals.

18 MR. DALEY: This, of course, is, your Honor, a certified
19 copy of a record from the county recorder in San Joaquin County.
20 We will offer that into evidence.

21 MR. SHAW: Your Honor, objection is taken on the basis
22 that there has been no sufficient offer of proof to determine
23 for what purpose the document is being received. Therefore
24 it is inadmissible.

25 Apparently Number 2 was executed in September, 1911.
26 There is no indication of why it is material to the issues today --

1 and agreement between Wilhoit and Douglas and this company.
2 Wilhoit and Douglas are not parties to this litigation as
3 plaintiffs or defendants and we ask for a further indication
4 of the materiality of Numbers 2, 3, 4 and 5.

5 MR. DALEY: I think my opening statement, your Honor,
6 is in the nature of an offer of proof as to the materiality
7 of them.

8 MR. SHAW: Exactly what are Number 2, 3, 4 and 5, and
9 what parties to this action do they involve?

10 THE COURT: Of course, I guess none of us has read these
11 agreements, excepting very generally, as stated by counsel.

12 MR. DALEY: I will go into it a little more fully,
13 your Honor, if I may:

14 Q Mr. Jones, as far as the operation of the Woods Company
15 is concerned, generally can you tell us just briefly what it
16 does as far as supplying water and drainage to the lands?

17 A The system is a series of canals running generally
18 northerly and southerly through the middle division of
19 Roberts Island.

20 THE COURT: Through the center?

21 A Through the center and the middle division of Roberts
22 Island, which is divided into three divisions but this area
23 is in the middle of -- in the center of the middle division
24 of Roberts Island. The irrigation ditches take the water
25 out of the middle river in the southerly -- in the southerly
26 portion of the area that was formerly owned by E. W. S. Woods

1 on one side and Smithey Woods on the other. Jesse Lee
2 Wilhoit married Douglas, one of the daughters of Smithey Woods.
3 These two men owned the two adjoining parcels of land and then
4 these irrigation drainage ditches were constructed ultimately
5 on those lands and irrigation starting from the middle river
6 running north. The drainage ditches also run the same way
7 and by raising the center line on they are drawn together at
8 the northerly end where drainage pumps are installed to pump
9 the water, the drainage water out and into Burn's cutoff which
10 is a tributary of the San Joaquin River. The ditches that
11 are maintained are operated by the company and during the time
12 that I have represented the company --

13 THE COURT: (Interposing) Will you pardon me just a
14 minute? I don't suppose you have any map showing the --

15 MR. DALEY: (Interposing) Yes, I do, your Honor. I
16 have one which will be here shortly and also there are maps
17 attached to those exhibits, as soon as I get them into
18 evidence.

19 MR. SHAW: Your Honor, the defense has a map which we
20 will be glad to offer at this time if it will assist the Court.

21 THE COURT: Well, we will get the picture a little later.

22 MR. DALEY: Go ahead, Mr. Jones.

23 (Record read by the reporter.)

24 A (Continuing) Are such ditches as meet and are in
25 accordance with the requirements of the contract, that is to
26 say, that the company is obligated to maintain, construct and

maintain ditches to furnish irrigation to each forty acres of land and drainage to each eighty.

THE COURT: You are speaking about the corporation?

A Yes, under the contract between the Woods family and the corporation that contract had that provision and that is the way it is operated. After the -- and as the lands were subdivided in some portions broken up, more on the east side than on the west, the same -- there was no change in that method of operation because that was the contract obligation.

MR. DALEY: Q Now, Mr. Jones, you have referred to the contracts. Were there a series of agreements that govern the operation of this district or company?

A Yes, it is written into the contract between the landowners and the company. In one instance the company -- the landowners gave to the company rights-of-way and then the other contract, certain obligations were created upon the company to do, to furnish irrigation and drainage to these particular lands and there are certain rules and regulations laid down in those contracts.

Q I am going to show you Plaintiff's Exhibit 2 and 3 for identification, Mr. Jones. Do they represent any part of that arrangement that you have described? A Yes, they are the -- they form the basis of it.

Q Are those the agreements under which the landowner is granting the easements for canals to the company? I don't know whether you can tell from the photostats?

1 A Well, Exhibit E is merely the granting of easements.

2 Q That is Exhibit 2. A Or Exhibit 2, is merely the
3 granting of the easements by the east side whereas --

4 Q (Interposing) The east side is Wilhoit and Douglas,
5 isn't it?

6 A Yes. As we commonly call
7 between us Smithey Woods, as distinguished from Johnny Woods
8 on one side and Smithey Woods on the other, the two brothers.
9 And that is true also of three; in other words, this is the
10 grant of the rights-of-way and easements for the construction
11 of the ditches, which is merely that.

12 Q That just covers the west side? A That one covers
13 the west side.

14 MR. DALEY: We will offer two and three into evidence,
15 your Honor, as representing part of the operational setup
16 of this Plaintiff.

17 MR. SHAW: Your Honor, the defense renews its objection
18 on the ground that there has been no linking to the present
19 landowners today in Roberts Island of these agreements of
20 September, 1911 between the company and parties apparently
21 deceased.

22 MR. DALEY: Well, these are --

23 MR. SHAW: (Interposing) No showing that that binds
24 the Plaintiff growers in that area or that the present growers
25 are in effect Wilhoit and Douglas or E. W. S. Woods. We point
26 out the incompetency of attempting to rely upon documents which
may or may not have been executed by three individuals, Wilhoit,

1 Douglas and E. W. S. Woods in September, 1911 without any
2 continuity to the present time.

3 MR. DALEY: Your Honor, I want to be patient with counsel
4 but these represent easements that were granted by prior
5 owners of this land and of course bind the land even to the
6 present as to any grantee.

7 THE COURT: Let us see the documents.

8 MR. DALEY: Incidentally, Mr. Jones, the land described
9 by metes and bounds in those agreements describes the land
10 that is presently serviced by the Woods Irrigation Company?

11 THE COURT: Just a minute, would you mind?

12 MR. DALEY: Thank you, your Honor.

13 THE COURT: I think these signatures have all been
14 notarized and that would prove the signatures on these
15 documents so that their identity is verified. These two
16 documents are admitted in evidence.

17 (The aforementioned documents hitherto marked
18 Plaintiff's Exhibits 2 and 3 for identification
19 purposes were received in evidence and so marked.)

20 MR. DALEY: Q Mr. Jones, the last question I asked
21 you before his Honor asked me not to interrupt for a minute
22 was that the legal description contained in those documents
23 refers to the property which is presently served by the
24 Woods Irrigation Company, isn't that correct? A Correct.

25 Q It has been served all these years, to your knowledge?

26 A To my knowledge, extended back to 1932.

1 THE COURT: Back to what?

2 A Back to 1932.

3 MR. DALEY: Mr. Jones, the other --

4 A (Interposing) The system was in operation, that was in
5 full operation at that time.

6 Q Mr. Jones, you mentioned the other portion of the
7 arrangement between the company or this association and the
8 landowners, that on one side the landowners grant rights-of-
9 way and then on the other side there was an agreement to
10 furnish water on behalf of the company? A That is correct.

11 Q And I am going to show you Plaintiff's Exhibit 4 and 5
12 and ask you if those are the agreements that you have reference
13 to as far as the obligation to furnish water is concerned?

14 A Yes, that is correct. These are the counterparts.

15 THE COURT: If you know, do they cover all of the land
16 in the district?

17 A Yes, your Honor.

18 MR. DALEY: Q Mr. Jones, this Exhibit 4 would be
19 the agreement for the heirs of Smithey Woods, is that correct,
20 which is the east side? A That is correct.

21 Q And then Exhibit 5 is the agreement with E. W. S. Woods,
22 which is what you know call the west side?

23 A That is correct. Well, you had that wrong. The heirs
24 are Johnny Woods and E. W. S. was Smithey Woods.

25 MR. DALEY: Your Honor, we will offer this in evidence.

26 MR. SHAW: Your Honor, we renew our objection on the

1 ground there is no tracing of the continuity between the
2 apparent grantors, Wilhoit, Douglas and others, in September,
3 1911 to the present time, to the present landowners in that
4 area. There has been no showing that these easements are
5 appurtenant ~~for~~ run with the land. There is no showing that
6 these easements are fixed to the land.

7 MR. DALEY: Incidentally --

8 MR. SHAW: (Interposing) Your Honor, may I ask an
9 admonition to this witness? May he be instructed to avoid
10 whispering from the witness stand and apparently coaching
11 counsel as to the interrogation? I ask that he be admonished
12 to maintain silence until the questions are put to him.

13 MR. DALEY: All right, Mr. Shaw.

14 THE COURT: That is perfectly true. I did not notice it.
15 I usually caution them.

16 THE WITNESS: I merely commented that these documents
17 speak for themselves.

18 MR. DALEY: Yes, your Honor, both of these documents --

19 THE COURT: I know, but Mr. Jones, when you are on the
20 stand you are no longer an attorney, you are a witness.

21 THE WITNESS: I appreciate that, your Honor, but it is
22 hard to do at times.

23 MR. SHAW: Your Honor, may the witness -- may the comment
24 as to the contracts speaking for themselves be stricken from
25 the record?

26 THE COURT: Strike it out.

1 MR. DALEY: Then I will make the comment which will stay
2 in and ask it be noted these agreements do describe the same
3 land which is noted in the easements and it is the land which
4 is still served by the district at the present time and which
5 was served at the time in question.

6 THE COURT: The last part will be stricken out because
7 you are not a witness. However, the documents speak for
8 themselves.

9 MR. DALEY: The only reason I stated that, your Honor,
10 I understood the witness to say that it is the same land that
11 is described there.

12 THE COURT: I know, but then if he had already testified
13 that is his testimony.

14 MR. DALEY: Yes, your Honor.

15 THE COURT: So, we might be a little strict at times but
16 then Mr. Shaw is what we call a stickler in the parlance of
17 the attorneys. He takes advantage of all points, and that is
18 his privilege.

19 MR. DALEY: Q Mr. Jones, what is the source of water
20 that is used for this system? A It is pumped from the
21 middle river.

22 Q And are those -- is there more than one pump?

23 A Oh, yes. There is a series of pumps.

24 Q And are those pumps located on the land which described
25 in these agreements?

A Correct.

26 Q And that was land that was owned formerly by one of these

1 people part of this organization? A That is right.

2 Q Who was that, Mr. Jones? A Part or some of the pumps
3 were on land that were formerly owned by Johnny Woods and
4 part on lands that were owned by Smithey Woods.

5 Q Does that contract itself have any appropriation of
6 water that it has ever filed for, that is the Woods Company?

7 A Whether or not --

8 Q (Interposing) That you know? A Not that I know of.
9 As far as I know it is just merely a continued situation
10 over these years.

11 Q Now, from the period 1946 to 1952, Mr. Jones, would you
12 state the type of employees that were employed by the Woods
13 Company during this period of taxation?

14 A Well, we had a man who was familiar with the operation
15 of the west side and a man who was familiar with the operation
16 of the east side and they in turn hired such occasional labor
17 as was necessary to carry out the maintenance and operation
18 of this irrigation and drainage system. They were practically
19 the regular employees.

20 Q Are they called a superintendent? A Yes.

21 Q One for each side? A One for each side.

22 Q And then any additional help as I understand it was
23 merely occasional? A Occasional.

24 Q Were there any other employees that the district hired
25 during that period? A Well, two of the directors
26 of the district were paid compensation, some nominal

1 compensation, I believe of \$52.00 a month for their individual
2 general overseeing of the operations on each side, but outside
3 of that, dragline work was ordinarily done by contract and
4 most everything else was under contract except the type of
5 labor that I have already described, maintenance and operation
6 of the irrigation and drainage system.

7 Q Mr. Jones, you are personally familiar with the time when
8 these taxes were first assessed from 1946 clear up to 1951?

9 A I was.

10 Q And from the records kept in your office were they assessed
11 on these employees that you have mentioned, the superintendents
12 and the occasional ditch tenders that were hired?

13 A That is right.

14 THE COURT: Superintendents and who else, Mr. Jones?

15 A The occasional labor.

16 MR. DALEY: Q And those are the only employees that are
17 included here in the taxes here in question?

18 A Correct.

19 Q Are you familiar with the method of assessment upon the
20 landowners in the district? A I am.

21 Q Would you explain how that is done.

22 A Well, the owners of the land are in effect the owners
23 of the corporation; in other words, there is no difference
24 between the two and under their contract it is expressly
25 provided that the total expense of the operation of the system
26 shall be divided on a proportionate basis and each landowner

1 pays on the basis of his acreage and it is related in
2 proportion to the whole acreage involved and that in other
3 words there is no -- the company does not, has not and cannot
4 make any profit on this, it is merely a division of the actual
5 expense between the owners of the land and the -- just divide
6 it up on a proportionate basis.

7 Q . Is that arrangement provided in these original contracts
8 which have been introduced in evidence? A It is.

9 Q That has always been the procedure that has always been
10 followed? A Correct.

11 Q Incidentally, Mr. Jones, those contracts provide for
12 certain rules and regulations for operation of the district,
13 do they not? A They do.

14 Q In general, have they been followed throughout the years?

15 A They have. In other words, the rules and regulations
16 as to how the ditches are to be handled would govern control
17 of them and what is to be done and what is not to be done
18 and are still in force and effect and the district is operated
19 on that basis -- I shouldn't say "district," it is not an
20 irrigation district, it is not a mutual water district, it
21 is a corporate entity by which the owners of the land combine
22 themselves.

23 MR. SHAW: Your Honor, I must object to the last. I
24 object to that.

25 THE COURT: Yes, that is a legal question for the Court,
26 I suppose, ultimately to decide. Strike it out.

1 THE WITNESS: I was trying, your Honor -- I didn't want
2 to intrude -- because I used the word "district" and I wanted
3 to cure that so that there would be no implication that there
4 was a district. The rest of it is, as you say.

5 MR. DALEY: Q Now, you have mentioned the pumps with
6 water coming --

7 THE COURT: (Interposing) Well, I presume that we had
8 better take the usual noon recess. 1:30 this afternoon,
9 please. Oh, I have an Appellate Court department at 1:30.
10 I think we will be through by 2:00 probably. Let us reconvene
11 at 2:00 o'clock.

12 --o0o--

13 (Thereupon a recess was had to 2:00 o'clock in
14 the afternoon of said day.)
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AFTERNOON SESSION

(Pursuant to the morning recess the following additional proceedings were had and the following additional testimony was taken on Friday, September 16, 1955, commencing at 2:00 o'clock in the afternoon:)

MR. DALEY: Counsel, I have no objection as to which map is used. It is all right either way you wish to do it.

THE COURT: Are there two maps?

MR. DALEY: They are both the same.

MR. SHAW: They are both the same, your Honor. One is a little larger. Not much difference.

MR. DALEY: This is Plaintiff's Exhibit --

MR. SHAW: That will be Number Six.

MR. DALEY: Six? Do you have any objection to the introduction of this, counsel?

MR. SHAW: No.

MR. DALEY: We will offer it into evidence, your Honor, as Plaintiff's Exhibit 6.

THE COURT: It is received.

(The above referred to map was marked Plaintiff's Exhibit 6 and received in evidence.)

TESTIMONY OF

GILBERT L. JONES, previously duly sworn, testified further as follows:

DIRECT EXAMINATION (continued)

1
2 BY RICHARD DALEY, Esq., of counsel on behalf of Plaintiff:

3 Q Mr. Jones, are you familiar with the map comprising
4 Plaintiff's Exhibit 6? A Yes.

5 Q What is that a map of? A It is a map of a portion of
6 the middle division of Roberts Island on which is portrayed
7 in heavy black dashed line the area served by the Woods
8 Irrigation Company for irrigation purposes.

9 Q And is this the area that was served between 1946, the
10 period beginning with 1946 and ending with the end of 1951?

11 A It was. Just a second.

12 MR. SHAW: Counsel, could this be moved just a little bit?
13 It is completely in the way of our vision here.

14 (Counsel moving blackboard.)

15 MR. SHAW: Is this all right?

16 MR. DALEY: Just so that the witness can see it.

17 MR. SHAW: Can you see it?

18 MR. DALEY: Yes.

19 MR. SHAW: Can the Judge see it?

20 THE COURT: Yes.

21 THE WITNESS: There is one parcel there that I am not
22 too sure about as to just when this parcel, marked at this
23 point I. N. Robinson, Jr. was purchased from the estate of
24 Lloyd Woods, Jr., and he wanted his land, this land tied into
25 this irrigation system over here so that he took this out of
26 the Woods Irrigation Company system. Now, just what that date

1 was I am not too sure but it was apparently sometime prior to
2 1941 because it is so shown as included on this map so that
3 we would therefore say that from 1941 to present date the
4 areas delineated on this map are the areas that were served.

5 THE COURT: Do you mean by that that the whole outline
6 in dotted lines in the district, the irrigation district?

7 A It is not an irrigation district, your Honor. That is why
8 I made the distinction before.

9 THE COURT: Well, whatever we want to call it.

10 A Yes.

11 THE COURT: Land of the corporation.

12 A No, it is the land of the landowners who are served with
13 irrigation water by this corporation.

14 THE COURT: Show which part that is.

15 A It starts here, comes around this way.

16 THE COURT: It is all the dotted line?

17 A It is all within this dashed -- heavy dashed line.

18 THE COURT: Does that take in all of Roberts Island?

19 A There is not there, the Woods Irrigation Company does not
20 irrigate the land in this area which is served by a separate
21 system, which is this.

22 (Witness indicating on map.)

23 THE COURT: When you say "this area" --

24 A Well, it is the area which is dotted, it is this -- shown
25 on the documents here, this dotted area is served by the Woods-
26 Robinson-Vasquez.

THE COURT: I can't see any dotted area.

A You can see this is a little darker. This area here is a little darker than this area. It is merely a series of small dots over there to identify. This area is served by a joint venture, part of the Woods --

THE COURT: (Interposing) We are not concerned with that?

A Yes.

THE COURT: Not concerned with that?

A Not with that. Counsel's question was whether the area served -- everything that is dotted is not served for irrigation by the Woods Irrigation Company.

MR. DALEY: Q This dotted area is this portion that appears -- merely for the sake of the record -- below the Honker Lake tract on this west side?

A Including Honker Lake.

Q Mr. Jones, through the center of the area you described as being served by the Woods Irrigation Company runs another dotted line. What is that?

A That was to indicate the division line between the east and west side.

Q Now, would you indicate on the map --

THE COURT: (Interposing) Pardon me a minute. That is not a canal, that heavy dotted line through the center is not a canal?

A In part it is and in part it is not. It is a canal that runs along that line that serves in some instances both sides.

1 MR. DALEY: I think if his Honor were down closer he
2 would see part of it is a canal and at other places it is not.

3 THE COURT: Is it marked?

4 MR. DALEY: Yes, your Honor. Would you indicate,
5 Mr. Jones, where the irrigation pumps are that serve the
6 ditches that are used for irrigation.

7 A The extreme south end of the map, or middle river, at
8 the point I now indicate.

9 Q It says there, "irrigation pumps and flood gates"?

10 A That is correct.

11 THE COURT: Is that for pumping in or out?

12 A Pumping in. At times water is delivered in these canals
13 by gravity under high conditions of water or extreme high
14 tides, it is possible to run water into the canals by gravity
15 so that is what they mean by "flood" --

16 THE COURT: (Interposing) By pressure also?

17 A And as it gets lower we have five pumps in that area which
18 pump the water in to the two canals, one straight north and
19 one that swings off to the east.

20 MR. SHAW: Counsel, could you identify that point by
21 some symbol, such as X, Y or Z?

22 MR. DALEY: Yes, here is a crayon.

23 A Which point do you want to identify?

24 THE COURT: Where the pumps are.

25 A Where the pumps are? (Witness marking on map)

26 MR. DALEY: Q Now, is there another location where there

1 is an irrigation pump? A Yes.

2 Q Would you identify that as J-2?

3 (Witness writing on map)

4 MR. DAYLEY: Q Now, Mr. Jones, is the line where those
5 pumps are located part of the property that was subject to
6 these original agreements that you have already identified?

7 A It is.

8 Q Now, on this map is there any distinction as far as the
9 drawing itself is concerned between ditches and canals that
10 are used for irrigation and those that are used for drainage?

11 A Yes.

12 Q Would you explain that, sir? A The drainage ditches
13 are shown in a broken -- there is not a solid black line, there
14 is a broken line. The irrigation ditches are shown by a solid
15 black line.

16 Q And are there pumps that are used for drainage purposes
17 as distinguished from irrigation? A There are.

18 Q And where are those located, Mr. Jones?

19 A This is Burns cutoff, which is a branch of the San Joaquin
20 River which is on the right side of the map. San Joaquin River.
21 Burns cutoff is the north part of the map. Drainage pumps
22 are located at this point.

23 Q Would you mark that as J-3.

24 (Witness writing on map)

25 Q Now, Mr. Jones, does the Woods Irrigation Company furnish
26 any water for domestic purposes? A No.

1 Q And does it furnish any power to any person?

2 A It does not.

3 THE COURT: What is that? Does the company furnish any
4 water for what?

5 MR. DALEY: For domestic purposes, your Honor.

6 A It furnishes nothing but irrigation and drainage.

7 THE COURT: Well, now, let us get this down: are you
8 referring to the Woods Irrigation Company or the corporation
9 or what are you referring to?

10 MR. DALEY: The Woods Irrigation Company is the corporation,
11 that is the plaintiff in this action.

12 THE COURT: Then that would be the corporation?

13 THE WITNESS: That is correct, your Honor.

14 THE COURT: I will mark it "corporation."

15 MR. DALEY: Yes.

16 THE COURT: Furnishes no water for domestic purposes.
17 All right.

18 MR. DALEY: Q And does the Woods Irrigation Company,
19 Mr. Jones, furnish any irrigation water to any land lying
20 outside the boundaries that you have designated on this map?

21 A No.

22 Q And are the landowners within the boundaries you have
23 designated on this map the ones that pay the assessments that
24 you have described that share the cost of the district?

25 A They are.

26 Q Now, Mr. Jones, from the irrigation ditches of the Woods

1 Irrigation Company is any irrigation water supplied to these
2 lands for sub-irrigation?

3 A Certainly. These lands are a combination of sand, silt
4 and peat in varying proportions throughout that area all of
5 which lands are very porous and a great deal of water flows
6 from these irrigation canals into the surrounding lands.

7 Q And so far as surface irrigation of the various lands is
8 concerned are the lands prepared for irrigation by the Woods
9 Irrigation Company or by the farmer member himself?

10 A The farmer.

11 Q He prepares them for irrigation? A Correct.

12 THE COURT: Prepares what?

13 MR. DALEY: For surface irrigation, the farmer member
14 prepares the lands for surface irrigation himself.

15 THE COURT: Well, I presume you mean by that that each
16 farmer prepares his own ditches on his own land, is that what
17 you mean?

18 MR. DALEY: Yes, that is correct. So that for surface
19 irrigation the Woods Irrigation Company brings the water up
20 to the land itself, is that correct?

21 A To each forty acres.

22 Q To each forty acres? A In other words, under the
23 original agreements the company furnishes the water to each
24 forty acres and drainage to each eighty, and from there on
25 when the farmer himself takes the water from our ditches he
26 handles it as he sees fit.

1 Q During the period in question here, from 1946 to the end
2 of 1951, was there any asparagus grown within this area
3 described by you?

A Oh, yes.

4 Q And as far as irrigation of asparagus is concerned is
5 there anything done to the land at all to prepare it for
6 surface irrigation?

A Merely to open the gate.

7 Q So that it is flooded, is that correct?

8 A In other words, the gate from our ditch is opened and
9 the entire area is flooded. It sometimes happens that it
10 will be necessary for a farmer by reason of improper leveling
11 of his asparagus, for him to throw a dike up there to prevent
12 the water from getting too deep on any one portion and then
13 to divert water through the side ditch to get it to a separate
14 area, but ordinarily asparagus is flooded as an entity; in
15 other words, a sheet of water is put across the whole field.

16 Q Do you know, Mr. Jones, approximately how much of that
17 land was in asparagus in an average year, between 1946 and 1951?

18 MR. SHAW: Your Honor, I believe that calls for an
19 opinion and conclusion. As an attorney for the company I
20 don't think he can speculate or conjecture how much was grown
21 in this vast area in asparagus.

22 THE COURT: I doubt whether he can help us very much on
23 that.

24 THE WITNESS: We have the records in the office, your
25 Honor, on each particular crop.

26 THE COURT: I know, but it is not done for you.

Q A No, it is not for me. I will have to put a limitation and it would be a limitation based on two bases: asparagus was started to be grown there --

THE COURT: (Interposing) Well, I am going to sustain the objection. We are not going into every field. Aren't there other crops raised there?

A Barley, clover.

THE COURT: Do you raise any rice?

A Not in this area, no, your Honor. Alfalfa is usually checked, but I would say clover in this area, on, is not carefully checked. But, I would say asparagus and clover would be the major crops that are flooded.

THE COURT: Don't they have ditches in asparagus?

A Very seldom, your Honor, only drainage ditches.

THE COURT: They don't use those for irrigation?

A No.

MR. DALEY: Q Mr. Jones, as far as the irrigation system of the Woods Irrigation Company is concerned does that supply sub-surface irrigation for this area?

A Definitely.

THE COURT: Does that do what?

MR. DALEY: Supply sub-surface drainage for this area.

A Yes.

Q And would you explain how the drainage system operates in reference to the sub-surface drainage?

A All of these lands are irrigated to various crops depending

1 upon the particular crop. After the irrigation is completed
 2 the water that remains has to be drained off. The landowner
 3 usually has small, shallow ditches that will serve to remove
 4 the surface water into the drainage ditch. The drain ditches
 5 however are to go to a much deeper depth, probably, oh, as low
 6 as seven or eight feet below the surface of the ground so that
 7 they not only take the surface water that is flushed off after
 8 irrigation but the built-up underground water naturally drains
 9 into these ditches, drainage ditches, to hold the underground
 10 water levels somewhere comparable or nearly comparable to
 11 the height of the water in the drainage ditch. These drainage
 12 ditches in all instance or practically all are serving in
 13 conjunction with irrigation ditches that are located here.
 14 On both sides of that and midway between the other irrigation
 15 is the drainage ditch. The drainage ditch starts parallel
 16 and runs clear on and ties in here to the drain pump.

(Witness indicating on Plaintiff's Exhibit 6.)

18 Q For the sake of the record that is the ditch that runs
 19 from Sel D. and Jack Klein, Lorin C. Allen; that is the drain
 20 ditch that runs up in a northerly direction?

21 A That is correct. Now, there are irrigation ditches that
 22 run on both sides of that, approximately one thousand feet away.

23 Q That would be true again for this drain that runs through
 24 the land of Lloyd H. Woods and Audine H. Woods and Alice Woods
 25 Young?

A That is correct.

THE COURT: May I ask this, as a matter of information in

1 these agreements is there some provision in regard to the
2 matter of when irrigation should be applied in the main
3 ditches and also as to when pumping should be done?

4 A I think you will find specific reference to those matters
5 in those contracts.

6 THE COURT: Because oftentimes there is a serious dispute
7 when you pump for one the other doesn't need it; when you
8 drain for one, the other wants it. So I presume those are
9 all covered?

10 A The rules and regulations, they were incorporated so far
11 as their foresight went in 1910 or 1911 when they were drawn,
12 but they speak for themselves.

13 THE COURT: A lot of changes since then, I guess.

14 MR. DALEY: I have no further questions.

15 CROSS EXAMINATION

16 BY WILLIAM L. SHAW, Esq., Deputy Attorney General:

17 Q Mr. Jones, you referred to a Robinson pump?

18 A No, Robinson piece of ground.

19 Q And didn't you say that there is a pump there which is
20 not a part of the Woods Irrigation Company?

21 A There is a pump.

22 Q Will you identify it on the map, please?

23 A There is a pump which serves this dotted area which is
24 the joint venture that I referred to and that pump is over here.

25 Q Is that pump operated by Woods Irrigation Company?

26 A It is not.

Q Now, for the purpose of illustration will you designate on the map that privately owned pump?

A It is not privately owned, counsel.

Q Who owns it? A Mae Woods De Young owns about one thousand acres, New Robinson, Elizabeth Woods, each own this pump and this system in accordance with the acreage that each owns.

Q Will you identify on the map the location for that pump, please? A Yes. This, well, it is J-4.

Q Mr. Jones, directing your attention to Plaintiff's Exhibit 1 in evidence, being a copy of the articles of incorporation of the Plaintiff, have these articles been amended? A No, sir.

Q And these are the present articles which are in effect today? A Correct.

Q Directing your attention to the following clause in these articles I ask if you have read this clause which now reads:

"To acquire water and water rights and lands and rights-of-way for the purpose of constructing, operating and maintaining ditches for the irrigation of the lands of the stockholders of said corporation, and"

Please note this carefully, Mr. Jones:

"for the purpose of engaging in, maintaining and carrying on the business of supplying water to others than the stockholders of this corporation for all the purposes of irrigation."

1 I ask if you have read that portion of the articles?

2 A I am fully familiar with them.

3 Q Does that mean that the Woods Irrigation Company will
4 supply that service to those landowners who are not members
5 of the Woods Irrigation Company?

6 A It does not. It means they have the privilege of doing
7 so but they never did.

8 Q But they have the privilege under the articles of
9 incorporation?

A That is right.

10 Q As we said earlier today, the contract speaks for itself?

11 A That is correct.

12 Q So the articles speak for themselves? A Correct.

13 A Thank you for your frankness. Directing your attention
14 to Plaintiff's Number 4 in evidence I will ask you if this
15 purported contract has ever been modified by any subsequent
16 contract?

A No, sir.

17 Q Then it is as you see it in force today? A It is.

18 Q Directing your attention to that clause of this contract
19 which is found in Plaintiff's 4, page two, the second
20 paragraph from the bottom which I now read from:

21 "It is understood and agreed between the parties
22 hereto that this contract is not intended to does not
23 create or convey any lien, estate, easement, or
24 servitude, legal or equitable, in any manner upon or
25 in the canal or ditch of the first party, or in or to
26 the water flowing therein or which may hereafter flow

1 therein, nor does this contract create any equitable
2 covenant encumbering the said canals and disposition
3 thereof by the first party."

4 I ask you if you have read that clause?

5 A Yes.

6 Q Mr. Jones, did the Plaintiff file a petition for
7 reassessment with the California Department of Employment?

8 A I would only have to rely upon hearsay upon that score
9 as to just what was done. Mr. Daley handled it.

10 Q Oh, then you did not handle the tax dispute of the
11 Plaintiff with the State of California? A I did not.

12 Q Well, who handled it? A Mr. Daley did.

13 Q Then is he a member of your firm? A Correct.

14 Q Did he confer with you as to the progress of the claim?

15 A In a general way but not in detail.

16 Q Did he ever mention to you that the company had petitioned
17 for a reassessment with the State? A Yes.

18 Q Did he ever advise you that when that petition for
19 reassessment had been denied that the company filed a claim
20 for refund of tax paid to the State?

21 A I am not so sure that that claim against the State waited
22 until after the State decision. I think that claim for the
23 refund was filed before the decision of the Tax Appeals Boards
24 came down.

25 Q Oh, in other words in your exhaustion of administrative
26 remedies the company, the Plaintiff was premature, was that it?

1 A No. No. There was a 30-day period or something which had
2 gone by within which -- I am not familiar with the detail,
3 but as soon as the opportunity came to file we proceeded
4 immediately and without further delays.

5 Q And did Mr. Daley advise you as to the last step taken
6 by the company, that it file a petition for review of tax
7 payments?

8 A I don't recall as to the chronology of the events.

9 Q In other words you are not familiar with the tax status
10 of the claim for refund, are you, Mr. Jones?

11 A Not at all.

12 Q Mr. Jones, you stated I believe that the farmer prepares
13 his own land for irrigation; is that correct?

14 A Yes.

15 Q The farmer maintains his own system of ditches upon his
16 own property, does he not? If he so desires? Supposing he
17 does not desire, who does?

18 A If he desires ditches then he irrigates with the ditches.

19 Q But he can obtain water? A If he gets the water --
20 we deliver the water to him.

21 Q Will you indicate what growers do their own irrigation,
22 independent of the Woods Irrigation Company?

23 A I don't know what you mean by "independent of the Woods
24 Irrigation Company." They can't irrigate until they get the
25 water from the Woods Irrigation Company.

3 Q Exactly. So when you say the farmer prepares his land for

irrigation you mean the farmer maintains his own -- on his own property his own system of ditches, does he not?

A As I said before, if he desires ditches he builds his own sublaterals and so forth.

Q Yes.

A And if he does not desire them he puts the water on the ground as it is.

Q You stated that the farmer handles the water as he sees fit. Will you explain that?

A What I mean is this: if one man wants to put one inch of water on his alfalfa and another wants to put five inches, or if one man wants to have all the sub-water into his asparagus and another wants to flood his asparagus so that it is completely buried, that is up to him.

Q That is up to the grower? A That is right.

Q Mr. Jones, you identified the employees of the Plaintiff corporation from 1946 to 1951. You referred to a superintendent?

A Yes.

Q Now, how many superintendents are there? A Two.

Q And where do they work with reference to this map?

A One on each side.

Q Would that be one on the east side and one on the west side?

A Correct.

Q What is the name of the superintendent on the east side?

A Man named Thomas.

Q Do you recall his first name? A No.

Q Mr. Thomas, is that correct? A Wait a second. There

1 have been several men in there. Exactly whether he was there
2 all that period of time I wouldn't be too sure.

3 Q But there has been a superintendent there at that time?

4 A That is right.

5 Q Who is the superintendent working on the other side?

6 A Man named Gentilini.

7 Q G-e-n --

A G-e-n-t-i-l-i-n-i.

8 Q Hasn't a Mr. Scott worked there?

9 A Yes, that is the fellow, Scott. I said Thomas.

10 Q So that when you said Thomas you meant Scott, S-c-o-t-t?

11 A Yes.

12 Q When you look at the map, that would be on the left of
13 the map?

A No; right.

14 Q On the right of the map as you regard it? A Yes.

15 Q Would that be east or west? A East.

16 Q East.

17 Counsel, may I mark the map east and west?

18 THE WITNESS: It is already marked, counsel. In other
19 words your north is at the top of your map.

20 MR. DALEY: Like any other map.

21 THE WITNESS: And so forth, line point marked with this
22 identifying line.

23 MR. SHAW: Q But the legend doesn't show east and west?

24 A It shows north as the top of the map.

25 Q Then, Mr. Witness, would this on the right side be west
26 or east?

A East.

Q All right then, we may mark that with an "E" to indicate east. Conversely then, over here is west, is it not?

A Correct.

Q And I assume south would be at the bottom. Mr. Jones, does Scott function now as superintendent on the east side or the west side?

A The east side.

Q On the east side. Does the superintendent hire any employees?

A They do.

Q And does the company carry those individuals hired by the superintendents on the payroll of the company?

A Well, I don't know what you mean by "carry them on the payroll." The company pays the wages.

Q Then those individuals who may be hired by the superintendents are compensated by the company?

A Correct.

Q Are there any other employees besides the two superintendents and the labor hired by the superintendents?

A I can think of none.

Q Well now, this morning you mentioned two directors who were paid for doing services?

A Well, it is more in the management than just generally as I indicated, general management -- they didn't perform any actual labor, or anything of that sort.

Q Well, why were they hired then -- well, let us get at it this way: were they being paid simply directors' fees?

A No.

Q Then they were being paid compensation for service in

addition to functioning as directors?

A Well, of course I don't know what was in the mind of the directors when they passed the resolution authorizing them to be paid \$50.00 a month, but I assume the directors must have felt that they rendered some additional service to be warranted the payment. I can't answer for that.

Q You are not familiar with that phase of the operation?

A Well, it would be only my --

THE COURT: (Interposing) The corporation pays two men \$50.00 a month for something that they do? I don't know what it is.

MR. SHAW: Q Don't you have a general manager of the corporation? A No.

Q Who is Mr. Allen? A He is the director on the east side that makes the \$50.00 a month.

Q And he is a full-time employee, that is, he is carried full-time, is he not, every month of the year?

A Oh, yes, \$50.00 a month, straight through the year.

Q Six hundred a year? A Yes.

THE COURT: Is he chairman of the board?

A No, your Honor.

THE COURT: Who is president of the board?

A Mae Woods De Young.

THE COURT: Mae?

A Mae Woods De Young.

THE COURT: Is that a woman?

1 A Yes.

2 MR. SHAW: Q Mr. Jones, directing your attention to
3 Superintendent Scott, he is a full-time employee, is he not?
4

5 A Correct.

6 Q What is his monthly compensation at this time?

7 A Oh, I couldn't tell you.

8 Q He is furnished with a house, is he not, by the Plaintiff?

9 A That is correct.

10 Q Located near one of the pumping locations?

11 A Very close to J-1.

12 Q Thank you. And where does the other superintendent live?

13 A On the west side.

14 Q Is he furnished a house? A He is not.

15 Q One superintendent is furnished a house and the other is
16 not? A He is furnished additional

17 compensation to make up the difference.

18 Q He is furnished with a rental allowance by the company?

19 A Yes.

20 MR. SHAW: No further questions, your Honor.

21 THE COURT: Very well.

22 REDIRECT EXAMINATION

23 BY RICHARD DALEY, Esq., of counsel on behalf of Plaintiff:

24 Q Mr. Jones, you mentioned a Mr. Gentilini, who was the
25 superintendent on the west side. Do you mean that as of
26 present or over what period of time?

A Gentilini died about three years ago.

Q Was he the superintendent there all through the time these taxes were in question? A That was 1946 to 1951.

Q I take it you understood counsel's question, "Who was superintendent at that time"?

A I take it that was his purport.

Q The superintendent at the present time is who?

A Maurie Bianchini.

Q You have mentioned this Woods-Robinson-Vasquez operation that lies in this dotted area here. Is that incorporated?

A No.

Q It is operated under what sort of an arrangement?

A Joint venture partnership.

Q Does their system from the pump at J-4 serve the same function as the Woods Irrigation Company? A Identical.

Q And the members of that Woods-Robinson-Vasquez partnership all are landowners within that district as well?

A Landowners within the area served by Woods-Robinson-Vasquez operation.

Q By that system? A Yes.

Q And that is entirely separate from the Woods Irrigation Company? A So far as irrigation is

concerned the ownerships overlap.

Q Oh, yes, you have some common owners? A That is right.

MR. DALEY: That is all, thank you, Mr. Jones.

Mr. Jones, will you be available in court for the remainder of the day? A Oh, yes.

MR. DALEY: That is all. Call Mr. Bianchini.

TESTIMONY OF

MAURICE BIANCHINI, witness called on behalf of Plaintiff herein, SWORN.

THE CLERK: What is your name?

A Maurice Bianchini, M-a-u-r-i-c-e B-i-a-n-c-h-i-n-i.

You want the address, too?

THE CLERK: No.

A I know it is Maurie, but my real name is Maurice, M-a-u-r-i-c-e Bianchini.

DIRECT EXAMINATION

BY RICHARD DALEY, Esq., of counsel on behalf of Plaintiff:

Q Mr. Bianchini, you are the superintendent of the west side for the Woods Irrigation Company, isn't that correct?

A Yes, sir.

Q And incidentally, what is your salary a month?

A Three hundred a month.

Q And then you get a rental allowance, too?

A No, sir, not so far. I will after a while.

Q You will after a while? A Yes.

Q And Mr. Gentilini was superintendent there before his death, is that right? A Yes, sir.

Q And you have taken his place? A Right.

Q Now, are you familiar with the whole district or the land served by Woods Irrigation Company?

A I am familiar with the west side.

1 Q Well, do you have any familiarity with the east side at
2 all? A No, not too much to speak of.

3 Q Not too much to speak of. You have been over there
4 however, haven't you? A Yes, sir.

5 Q Do the two portions, that is the east side and the west
6 side, operate fairly independently as far as the superintendent
7 is concerned? A Well, yes.

8 Q Of course, it is the same system and everything, but
9 you make the decisions? A As far as the superintendent,
10 the district as a whole runs all together.

11 Q Mr. Bianchini, is there any other employee now employed
12 by the district besides you and Mr. Scott?

13 A Well, I do hire men when I do need it.

14 Q And what services do they perform, that hired help?

15 A Labor work.

16 Q Labor work? A Yes.

17 Q In what connection? A Oh, cleaning the ditches,
18 ditch bank, cut willows, and so forth.

19 Q General maintenance work on these ditches themselves?

20 A That is right, that is right.

21 Q Now, in these ditches is there some sort of a gate or
22 control that will control the water for the use of these
23 various farmer members within the district?

24 A Well, see there in the center of the ditch.

25 Q You mean, in the center of the ditch? A That is right.

26 Q Well, how is the water controlled where it goes onto the

1 individual land of each farmer member?

2 A Well, they have separate outlets.

3 Q Separate outlets? A That is right.

4 Q For each property? A That is right.

5 Q And are those controlled by you? When they want to
6 irrigate do you handle those ditch gates? A No, sir.

7 Q Who does that? A The farmers themselves.

8 Q The farmers themselves? A Yes.

9 Q And if a farmer requires water for the irrigation of his
10 land does he notify you in any way? A Yes, sir.

11 Q And how is that done? A Well, that is to notify me
12 at least a couple of days ahead of time in order to provide
13 and give services for the water for the irrigation.

14 Q Now, as far as drainage is concerned, Mr. Maurie, do they
15 have to notify you of any drainage? A They have to.

16 Q What was that, Mr. Bianchini? A They have to.

17 Q They have to? A Yes, sir.

18 Q Why is that? A Say, flooding asparagus, if
19 they all let loose at one time it would flood the lowland.

20 Q I see. A In other words, it has to be
21 a little bit at a time and then out so that the pump can take
22 care of it.

23 Q As I understood, they can't all flood asparagus at once
24 because it is too much for the system? A Yes.

25 Q So that they have to let you know so that that can be
26 controlled? A That is right.

MR. DALEY: I have no further questions, counsel, and if there are any questions you wish to ask, you may do so.

CROSS EXAMINATION

BY WILLIAM L. SHAW, Esq., Deputy Attorney General:

Q Mr. Bianchini, what is your full name? A Maurice.

Q Maurice? A M-a-u-r-i-c-e.

Q And how long have you been with Woods Irrigation Company?

A It will be three years next March.

Q Mr. Bianchini, are there any tomatoes grown on the west side?

A Any tomatoes?

Q Yes.

A Yes, sir.

Q Very extensively?

A Meaning what?

Q Much tomatoes?

A Well, it depends. You mean

on the acreage?

Q Yes.

A Oh, yes, around two, three, four, five -- it all depends. You don't put the same crop every year. Are you talking about the crop?

Q There are considerable tomatoes grown? A That is right.

Q Now, in the growing of tomatoes would you describe the irrigation by the farmer of his land in connection with

tomatoes?

A Meaning what?

Q . You were here earlier today, were you not? A Yes.

Q When Mr. Jones testified? A Yes.

Q You heard him testify as to asparagus, that one sheet

of water was laid upon the land? A Well, it all depends

on the ground.

Q That is, asparagus? A Yes.

Q And the irrigation of tomatoes my question simply is, is one sheet of water laid upon the ground?

A No, they put them in furrows.

Q All right, in fact, tomato irrigation is a system of furrows or ditches upon the land where the tomatoes are growing?

A Right.

Q And there has to be water laid into the furrows by the farmer during this season from time to time as he needs the water?

A Correct.

Q In other words, he does not irrigate once and for all, or in one big sheet of water? A No, you take a row crop they don't all irrigate all at one time, they irrigate as they need.

Q And when the farmer growing tomatoes wants water he controls the flow of water on his land? A Not his own -- on his land he does, but he has to ask me the amount of water he wants and I furnish that.

Q Isn't this it, Mr. Bianchini? The ditches bring the water upon the land? A Yes.

Q And if he wants water he takes the water?

A He does not take the water. He notifies me before he takes the water.

Q He notifies you before he takes the water and you send the water past his land by the outlet and he takes his water for his land?

A I want to know how much he uses

because for irrigation there is more than one party takes the water, sometimes four or five parties. Now, if you go in the ditches and take water without notifying me in the end the party can't get nothing.

Q I see.

A I have to know the amount to be used before I furnish the water for the irrigation.

Q You don't go upon the farmer's land and dig the furrows, do you?

A You mean, if I work on the farmer's land?

Q Yes.

A No, I don't.

Q You don't go on the farmer's land and dig for him?

A No.

Q You don't dig his ditches? A No, sir.

Q You don't dig his furrows? A That is out of our jurisdiction.

Q You are the ditch tender on the east side?

A No, I am on the west side.

THE COURT: He is on the west side.

MR. SHAW: Pardon me, on the west side.

A West side superintendent.

Q Superintendent on the west side for Woods Irrigation Company?

A Correct.

Q And you control the amount of water which goes in the company's ditches?

A I control the water requested by the farmer to be in the company's ditches.

Q He tells you how much water he will want and then you get

the water into the company's ditches but the farmer takes the water for his own business out of the company ditches?

A Well, naturally.

MR. SHAW: That is all.

MR. DALEY: That is all. Thank you, Mr. Bianchini.

Now, your Honor, counsel indicated at the time of his opening statement and I made no comment on it at that time, that he felt that he had some procedural defense in that we hadn't exhausted our administrative agencies or in some way we hadn't done it properly, but I would like to introduce at this time as part of our case the two petitions and the claims there set forth that were filed by us. Counsel indicated that he had the originals in his possession. I only have copies. If you will be so kind as to introduce the originals that will save us a great deal of difficulty. Now, there is a petition for reassessment which was filed first.

MR. SHAW: Just a moment. Your Honor, the State offers for identification a petition for reassessment, the original.

MR. DALEY: Just a minute, your Honor. I want to offer this as part of my case.

MR. SHAW: I must object, your Honor. This is the State's defense.

MR. DALEY: I don't care what it is.

THE COURT: He has the right to put it in as his part, too.

MR. DALEY: I want it to be part of my case.

THE COURT: I am talking about you, he wants to use those

question of having cases tried seems to be very important but not when they are decided. So, I have probably two thousand pages of different transcripts I don't know when I will ever reach them.

MR. SHAW: Your Honor, after the case closes would your Honor care to hear oral argument between counsel restricted to that point?

THE COURT: I would like to get those cases that you had, a number of them, and I may want to use them in another case similar to this one on this administrative procedure. Of course, we all know that they have held -- unless it is waived in some way -- that you have to exhaust your remedy, and the dates and things like that are important. I suppose you will have to give me a memorandum on it or something.

MR. DALEY: I think we will, your Honor.

THE COURT: But usually argument is a little better because the Court can ask questions which you can't really do on briefs and it sometimes saves a lot of time.

MR. SHAW: Yes, sir.

THE COURT: Because you gentlemen are familiar with this, you have been working on this and there are a lot of questions probably you can answer that I would have to look up. That is the only point. What are the numbers?

MR. SHAW: They are offered for identification as Defendant's B, C, D, E, F, G, H, I, J, K, L, M, N, O, and P.
(The above referred to photographs were marked

1 Defendant's Exhibits B, C, D, E, F, G, H, I, J, K,
2 L, M, N, O, P for identification.)

3 MR. SHAW: Q Mr. Jensen, directing your attention to
4 Defendant's B for identification, will you point out on the
5 chart where you took that picture on September 7, 1955?

6 A Exhibit B was photographed at the location on the map
7 designated as J-2.

8 Q And what is that picture? A The camera was facing
9 south at that particular point, approximately south, overlooking
10 a portion of the middle river. At the center of the
11 photograph is a small building with a pipe extending from the
12 floor of the building down to what appears to be the water
13 line with a horizontal pipe going to the left which would be
14 in the general direction of east, slightly north.

15 THE COURT: What is that, a pump? Is that a pumping
16 station?

17 MR. DALEY: Yes, your Honor. We will stipulate it can
18 be admitted. That shows the pump at J-2.

19 MR. SHAW: All right, and is Defendant's C for
20 identification another view of the same pumping station?

21 MR. DALEY: Your Honor can see it.

22 THE COURT: So that I can see it.

23 MR. SHAW: That is correct.

24 MR. DALEY: We will stipulate that that can be admitted
25 as showing the pump at J-2, which is Defendant's Exhibit C.

26 THE COURT: Is that large pipe underneath an intake pipe?

1 MR. DALEY: Intake.

2 THE COURT: Intake. Pretty heavy pipe. Pretty large pipe.

3 A I would say roughly twenty inches, perhaps.

4 MR. SHAW: I will show you Defendant's D for
5 identification and ask you what that picture is.

6 A This photograph was also taken in the general location of
7 J-2, camera facing roughly east. The position from which
8 this photograph was taken is roughly north and east of the
9 pump, the situation indicated in the last previous exhibits.

10 THE COURT: What does it show?

11 A It shows a field in the background with a portion of
12 an irrigation ditch leading into a pit.

13 THE COURT: I see.

14 MR. DALEY: I don't know how this is relevant, your
15 Honor.

16 MR. SHAW: Your Honor, this picture shows the complete
17 ditch immediately --

18 MR. DALEY: Just a minute, that is a conclusion, counsel.

19 MR. SHAW: No, you have asked what the picture is.

20 THE COURT: Well, there is a ditch there.

21 MR. SHAW: That is right.

22 THE COURT: Well, we don't know what it is.

23 MR. SHAW: That is J-2, your Honor. Leading into a
24 field of tomatoes. Showing you Defendant's E for
25 identification and ask you what that purports to be.

26 It is stipulated B and C might be received in evidence?

MR. DALEY: That is right, the first two, showing the pumps.

MR. SHAW: That is right, B and C, may they be received?

THE COURT: Yes.

(The above referred to photographs previously marked Defendant's Exhibits B and C for identification were re-marked Defendant's Exhibits B and C received in evidence.)

A This photograph was taken in the same location, J-2, camera is facing north and east. It was taken from the top of the road pointing slightly down. It shows a stand pipe of approximate diameter of two inches, and in the center of the photograph is a rectangular area with an irrigation gate visible, with the same field in the background that was referred to in the last previous exhibit.

THE COURT: It looks like an irrigation ditch there?

A That is correct. And there is a white point at the left-hand side of the photograph near the top which corresponds with the large white area in the previous photograph.

MR. SHAW: Your Honor, the purpose of this picture is to show that after the water leaves the pumping station there is not an unbroken ditch. The water proceeds by pipe and empties into that tank. The water literally goes under the highway.

THE COURT: What is the object in the center of the picture? It looks like a cement tank or something.

MR. DALEY: Now, counsel, you are not the witness.

MR. SHAW: That is --

THE COURT: I am asking the witness.

A That, your Honor, is a rectangular concrete or cement tank, you might call it. It has two inlets, or let us -- perhaps I had better say it has three openings. One is indicated by this metal gate; there is another one in this approximate location which is at the foot of this large 20-inch -- roughly -- pipe; on the righthand side of this tank there is another opening. It appears to be, you might say, a small reservoir.

THE COURT: All right.

MR. SHAW: The purpose of the picture, your Honor, is to show that besides the pump there is this small reservoir which was maintained by the Plaintiff as the outlet for the water which is taken at the intake at J-2.

MR. DALEY: I will object to that as being counsel's testimony.

THE COURT: Strike out the "testimony."

MR. DALEY: (Continuing) Your Honor, and ask that it be stricken.

MR. SHAW: Q I show you another, F for identification and ask you what that picture is?

A This is another photograph taken at J-2 and shows a similar area as was indicated in Exhibit E from a slightly different location. At this particular point and somewhat to the right of the large 20-inch pipe that extends down toward this cement tank which appears in the center of the photograph --

1 THE COURT: This looks very similar to the other one.

2 A It is. It is essentially the same area but from a slightly
3 different location which shows a little more of the pipe.

4 MR. SHAW: Q I show you G, Defendant's G for
5 identification, and ask you what that picture purports to be.

A This again is a photograph taken at the same location,
J-2, the camera facing north and east roughly. Similar to
the last two exhibits. This photograph was taken with the
camera pointing directly down at this large pipe, which as
indicated, opens into this cement tank. It is essentially,
more or less, the same as the last two photographs.

Q I show you Defendant's H for identification and ask you
what that picture purports to be.

A And H was also taken at J-2, the same location, same
general location. The camera was facing south and west or
the opposite direction from the last two exhibits -- last three
exhibits, pardon me. It shows a large pipe leading from the
top center of the photograph down to an opening. The opening
is the southwest opening in the cement tank area. The cement
tank area is partially obscured by weeds but is in general this
area in the foreground.

THE COURT: Let me see that one.

MR. SHAW: Yes, your Honor. I show you Defendant's I
and ask you what that picture purports to be.

THE COURT: Before we get into that, are we looking into
the tank in this picture?

Yes, your Honor. The more or less bare space in the background is the bottom.

THE COURT: Around here?

Yes, that is correct.

THE COURT: All right.

Defendant's I is another photograph taken at J-2, same location, and in general the same areas as the previous exhibit. The tank in the foreground is photographed, a slightly different position. It shows the metalwork of one of the gates, the tank again being this area in the foreground.

THE COURT: It looks like there is a good deal of ground in the tank and around the edges.

A I think the majority of the ground was around the edges. The tank appeared to be reasonably clear as far as the bottom is concerned.

MR. SHAW: Your Honor, at this time I offer in evidence Defendant's for identification D, E, F, G, H and I.

THE COURT: They are all received.

(Thereupon the above referred to photographs previously marked Defendant's Exhibits D, E, F, G, H, and I for identification purposes were re-marked Defendant's Exhibits D, E, F, G, H and I, received in evidence.)

MR. SHAW: Q I show you, Mr. Jensen, Defendant's J in for identification and ask you to state what that picture purports to be?

A Defendant's J is a photograph taken from the -- at the general location I have indicated on the map by J-1. The camera was pointing north and west in this location. It shows a body of water at the lefthand side of the photograph which was designated by a sign over a bridge as the middle river. On the righthand side is a sheetmetal building which is over the water itself, with the righthand side of the photograph, the extreme right -- there is another wooden building, more the residence type.

Q Mr. Jensen, when you referred to J-1, is this the point J-1 on Plaintiff's Exhibit Number 6, a map, in evidence?

A That is correct.

Q And when you referred to J-2 you were designating on the same map, Plaintiff's Exhibit Number 6, a point upon the map marked J-2?

A That is correct.

THE COURT: Where was this taken, close to the pumping station?

A At the pumping station.

THE COURT: And this body of water, what is the name of it?

A Middle river.

THE COURT: Middle river?

A There was a sign over the river farther down which designated it as such.

THE COURT: How wide would you say?

A The river at that point?

THE COURT: Yes.

A I would estimate roughly fifty feet.

THE COURT: It looks like a big body of water.

A The camera was pointing downstream which would include more water than would be included if it were taken directly across from bank to bank.

MR. SHAW: Q I show you Defendant's Exhibit K and ask you what that picture purports to be?

A Defendant's K is a photograph taken at location designated as J-1 on Plaintiff's Exhibit 6 which shows a platform over the middle river with several small sheetmetal covered buildings of a sort you might call them, and another shed over additional pipework. The camera was pointing roughly south in that photograph.

THE COURT: These two objects on the south appear -- I mean, on the left of the picture appear to be tanks, water tanks?

A No, your Honor, they are housing or shelters over electric motors.

THE COURT: Oh.

MR. SHAW: Q And were those electric motors a part of the pumping installation?

A They appeared to be.

Q I show you Defendant's L for identification and ask you what that picture purports to be.

A Defendant's L is a photograph taken with the camera facing roughly east and slightly down, also taken at location J-1.

At the lower left corner of the photograph can be seen a portion of the pipe, a large roughly 20-inch diameter pipe; in the background is what appears to be an irrigation gate. From the appearance it is capable of being raised up and down, allowing a flow of water from this lower area to another area.

Q I show you Defendant's M for identification and ask you what that picture purports to be?

A Defendant's N is essentially the same area as Defendant's L -- excuse me, I called that N. This should be Defendant's M. Defendant's M is essentially the same location as Defendant's L. Again the camera was facing generally east, at location J-1, showing again the large metal pipe at the lower left foreground, an area containing water in the background with what appeared to be an irrigation gate toward the upper portion of the photograph.

Q I show you, Mr. Jensen, Defendant's N for identification and ask you what that picture purports to be.

A Defendant's N is another photograph taken at location J-1. In the right background is the middle river. The area in the center of the photograph is a platform containing a couple of sheetmetal housing for electric pumps; a certain amount of bridgework, shall we say platform supports; set of wires. It will be noted that there is a pipe leading from the center of the photograph to the lower right. That pipe which appears in Defendant's N is the same pipe that appears in Defendant's M and L at the lower left corner of each of

those photographs. The camera facing roughly west, slightly north in that photograph.

Q I show you Defendant's O for identification, Mr. Jensen, and ask you what that picture purports to be.

A Defendant's O was taken at J-1 again. It is a closer photograph of one of those round sheetmetal-covered electric pumps or electric motors, rather. The door has been swung open, allowing a view of the motor itself.

Q Mr. Jensen, the motor which you are now just identifying is that house in one of the circular enclosures shown on Defendant's Number N in identification?

A That is correct.

Q In other words, O is a closeup of what is shown on N at a distance?

A That is correct.

Q And the last one, Mr. Jensen, I show you Defendant's P for identification and ask you what that picture purports to be?

A Defendant's P is another photograph taken at J-1, the camera facing generally south. In the right lower portion of the photograph can be seen the middle river. The center of the photograph has a wooden building with a rectangular opening in the face of it and a door on the left. Directly in the rectangular opening can be seen an electric motor.

MR. SHAW: Your Honor, there are offered in evidence for the Defense those previously offered for identification and being J, K, L, M, N, O, and P.

THE COURT: They are all received in evidence.

(The above referred to photographs previously marked Defendant's Exhibits J, K, L, M, N, O, P for identification were re-marked received in evidence, Defendant's Exhibits J, K, L, M, N, O, P.)

MR. SHAW: That is all, thank you, Mr. Jensen. Do you have any questions of Mr. Jensen?

MR. DALEY: No.

MR. SHAW: Call Mr. Greenwood. May Mr. Jensen leave the courtroom?

THE COURT: You are excused.

TESTIMONY OF

CHARLES O. GREENWOOD, Jr., witness called on behalf of Defendants herein, SWORN:

DIRECT EXAMINATION

BY WILLIAM L. SHAW, Esq., Deputy Attorney General:

Q Please state your business address, Mr. Greenwood.

A My business address is 2321 Twenty-First Street, Sacramento.

Q Please state your occupation. A I am a civil engineer.

Q And are you a member of a firm in Sacramento?

A Yes, I am a member of the engineering firm of Bleifuss, Greenwood and Hostetter.

Q And does your firm have any specialty in the engineering or irrigation field? A Our specialty is water supply, hydroelectric power and irrigation.

Q And do you specialize in those fields?

A I have had considerable experience in it.

Q Thank you. How long, Mr. Greenwood, have you been in the engineering profession?

A I have been in the engineering profession twenty-four years.

Q And will you please summarize your former employment for the Court.

A Yes. I was with the Department of Interior six years, seven years I was with the Bureau of Reclamation, three years with the United State Geological Survey. I was with the Corps of Engineers ten years. I was with the State Engineer of Oregon in the Division of Water Resources for two years. In private practice six years.

Q Thank you. Mr. Greenwood, have you at any time had occasion to visit Roberts Island near Stockton, California?

A Yes.

Q What was the time? A September 7, 1955.

Q And on that date did you visit Roberts Island as shown on this map which is Plaintiff's Exhibit 6 in evidence?

A Yes.

Q Have you had an opportunity, Mr. Greenwood, to observe or study this map of Woods Irrigation Company, Plaintiff's Exhibit 6?

A Yes.

Q Did you on your visit on September 7 to Woods Irrigation Company premises, did you in fact have this map with you at that time?

A I studied it immediately

A 1 before going on the trip and I have studied it since then.

Q 2 In fact, immediately at the conclusion of the trip to
3 Stockton did you not further study the map in Stockton?

A 4 Yes.

Q 5 What did you do on September 7 at the Woods Irrigation
6 Company premises? A I observed the irrigation

7 structures consisting of the pumps and the pipe through the
8 levy -- levies at --

9 THE COURT: (Interposing) You say, the height of the levy
10 work?

A 11 The pipes, the main canals, the diversion and gate
12 structures, the lateral canals, the head gate or outlet
13 structures.

14 THE COURT: You say "the head gate"?

A 15 The head gates.

16 THE COURT: For what?

A 17 Or outlet structures. They have been called outlet
18 structures here today, the farmers' head ditches, the minor
19 irrigation structures, such as siphons and pipes, the drainage
20 ditches.

21 THE COURT: Such as what kind of pipes?

A 22 Siphons.

23 THE COURT: I see.

A 24 And pipes, the drainage ditches and drainage canals. I
25 observed the crops that were under irrigation. I observed
26 also a dragline which was working in the vicinity -- in middle

river.

MR. SHAW: Q Mr. Greenwood, have you seen the pictures which have been received in evidence today as the Defense Exhibits B through P? A Yes.

Q In fact, you were present generally when those pictures were taken? A Yes.

Q In the various locations J-1 and J-2? A Yes.

Q On September 7 did you meet anyone at either J-1 or J-2, that is anyone with whom you discussed the operation?

A Yes, I met a Mr. Scott.

Q Is that S-c-o-t-t? A I would assume that to be correct.

Q Please, what were the circumstances under which you met Mr. Scott?

THE COURT: Let us see, was he the operator on the west or east?

MR. SHAW: He was on the east, your Honor.

THE COURT: East?

MR. SHAW: Yes, your Honor.

A Yes. We went to the pumping station which is immediately adjacent to the house occupied by Mr. Scott and at that time and place I talked to Mr. Scott about the functions of the irrigation system and as to his duties with respect to those functions and the usual duties of farm personnel with respect to the functions in the district.

Q Mr. Greenwood, did you ask any questions of Mr. Scott as

to his duties? A Yes.

Q How did Mr. Scott identify himself in his relationship to J-1? A He identified himself as being

ditch tender or superintendent of that personnel.

Q And did you ask Mr. Scott as to his duties in connection with the control of water received at J-1? A Yes.

Q How did Mr. Scott identify his duties at J-1 as ditch tender in connection with the control of water into the various ditches from that point?

MR. DALEY: Just a minute, your Honor, I will object to this question. First of all it lacks the proper foundation; secondly, even assuming this man identified himself as an employee of the Plaintiff the hearsay is only admissible if it constitutes admissions. We can't go on with a long recitation as to what constituted his duties as an admission against interest. I don't know what this is going to be, but I don't think this is the proper way of introducing the evidence.

MR. SHAW: Your Honor, I submit the witness testified he visited Woods Irrigation Company. He visited the various pumps in the area and he talked with the personnel of the Woods Irrigation Company at those places at that time, talked about their duties, and so forth. I submit that he may relate what questions he asked of Mr. Scott and what answers he received.

THE COURT: We haven't got Scott on the stand.

MR. SHAW: No, your Honor.

THE COURT: And so it couldn't be impeachment.

MR. SHAW: No, your Honor. It is not offered for that purpose, your Honor. It is offered to show what this specialist, this expert, Mr. Greenwood, gathered from his discussions with the company personnel at J-1, strictly confined to the operation of the ditches and company canals at that point.

THE COURT: Objection is sustained.

MR. SHAW: Q Mr. Greenwood, did you observe the ditches from J-1? A I did.

MR. SHAW: Now, may I, your Honor, use the blackboard? I would like to put on the reverse side of here a plain sheet of paper. I understand that is the custom of this court. I am going to ask Mr. Greenwood to draw a diagram showing the complete --

THE COURT: Go ahead and ask your question.

MR. SHAW: Q Mr. Greenwood, did you ask Mr. Scott whether he performed any services for the farmers or the growers on the land?

MR. DALEY: I will object to this on the same basis.

MR. SHAW: Your Honor, this goes to the point which was urged by the counsel as to admission. This is an offer of proof. I propose to show through Mr. Greenwood that Mr. Scott told Mr. Greenwood that Scott performed those services for the farmers or growers, that he was hired only by the company,

that he controlled the company's ditches, that he didn't go upon the property of the farmers and growers, that they controlled their own flow of water, that Scott --

THE COURT: Objection sustained. They have a right to cross examine him and he isn't here.

MR. SHAW: Q Mr. Scott, will you step to the board here and with reference to J-1 on the map will you show the ditches, the company ditches at that point and how the ditches run into or flow into the lands of the farmers adjacent to the ditches?

May I correct that? It is J-2 rather than J-1.

MR. DALEY: Would you repeat the question?

MR. SHAW: Yes, I will rephrase the question:

Q Mr. Greenwood, did you draw a chart or diagram showing the method of operation at J-2 on September 7 as to the company ditches and the flows maintained by the growers?

A Yes.

Q Do you have that present with you today? A Yes.

MR. SHAW: May I have it for a moment?

(Counsel receiving document from the witness.)

THE COURT: If you will get a blue or red chalk I think it would show up easier.

MR. SHAW: Your Honor, I have some colored crayons that I think would do the same thing.

THE COURT: All right, you can use those. Do you want a small diagram?

1 A Pardon?

2 THE COURT: Do you want a small paper?

3 A Well, I can start it without that thing.

4 (Thereupon the witness drew a diagram on a brown
5 sheet attached to the blackboard.)

6 MR. DALEY: Can I ask a question on voir dire, your
7 Honor, before we get everything into evidence?

8 Mr. Greenwood, you had never been on Roberts Island
9 before at this particular installation, had you?

10 A No.

11 Q So you weren't familiar with it, and in your diagram
12 here as I see from your rough sketch you purport to show
13 certain responsibilities of Woods Irrigation Company and
14 certain responsibilities of the farmers, as far as
15 irrigation draining are concerned, is that correct?

16 A As far as this is concerned, this is correct.

17 Q And the entire basis of your delineation on this little
18 map of the difference in responsibilities as far as the Woods
19 Irrigation Company are concerned and the farmers are concerned
20 is based on this conversation you had with Mr. Scott?

21 A No, that is not correct.

22 Q Do you have any other basis for the conclusion that you
23 have reached here as to the responsibilities between the
24 farmers and the Woods Irrigation Company?

25 THE COURT: Well, just a minute, I am not putting in
26 anything or not letting in anything as to responsibility.

1 All he is doing is drawing a diagram as far as the Court is
2 concerned.

3 MR. DALEY: He answered the question "Yes" your Honor.
4 That is what he was going to purport to show by this diagram,
5 the responsibility between these farmers and the Woods
6 Irrigation Company.

7 THE COURT: I don't know about that what he answered to
8 you but unless it appears from the very picture itself that
9 there were responsibilities he cannot draw that conclusion.

10 MR. DALEY: That is exactly my point.

11 THE COURT: He can draw a map of what he claims as to
12 how the pipes go here and how large they are and where they
13 drain. That was not a question of whose responsibility they
14 are.

15 (The witness drawing further on the above mentioned
16 paper.)

17 THE WITNESS: Would you like me to just explain?

18 MR. SHAW: Yes, please.

19 A Your Honor, this is more or less diagrammatical. The
20 purpose is to show functionarily the typical situation that I
21 observed, an irrigation pump set on the water side of the levy
22 in the middle river pumping over or through the levy into a
23 gate structure. This gate structure was obviously intended
24 to regulate the flow.

25 THE COURT: The gate what?

26 A Gate structure, and the gate structure is obviously

1 intended to regulate the flow into the lateral canals, in
2 the banks of the lateral canals are smaller outlet structures,
3 whereas these structures here are of a permanent type,
4 concrete and steel gates, the outlet structures were of a
5 semi-permanent type and obviously had been cut through the
6 bank a short time before. Now, from the outlet structure
7 the water obviously flowed into a head ditch and from this
8 head ditch the water was diverted into the -- was distributed
9 over the field by small pipe siphons.

10 THE COURT: Are you talking about just one field now?

11 A This is a typical situation. It was particularly typical
12 of the area.

13 THE COURT: Why is that separated into a number of
14 spillways?

15 A This is to indicate in this case corrugations. Now,
16 as the water is applied into the field it is typical that
17 the water goes down the corrugations and some of it spills
18 over into the drainage ditch and from there into the drainage
19 canal. The excess is pumped out into the part of the San
20 Joaquin River system. The purpose of the sketch is simply
21 to identify and to name particular types of structures which
22 in my opinion are those structures which are typically
23 operated by an irrigation company and those structures which
24 are typically operated by a farmer. In my opinion that
25 division point --

26 MR. DALEY: Just a minute, I am going to object to this

because here is a man who has never been in this area before, has no immediate knowledge of the operation of this particular system and he is going to say what his opinion is as to where the division of responsibility lies.

THE COURT: We are not going to put in anything except what he observed and his conclusions I don't think would go in.

MR. SHAW: Q Mr. Greenwood, would you identify on this map, what are the permanent structures that you mentioned? Will you give them a lettering?

A The permanent structures are labeled gates here and I will label that in addition "A" and the lesser substantial structures, that type of structure, would be here and I would label that "B".

THE COURT: And what are they made of, wood or something?

A This is made of sheetmetal, that particular one that I have in mind.

THE COURT: Is that a gate?

A That is a gate.

THE COURT: Made of sheetmetal?

A Well, it was a square box of sheetmetal with a sheetmetal gate. Very light construction.

MR. SHAW: Q Will you identify the point here, marked "pump" and which was the outlet for the drainage water?

A That would be "C".

THE COURT: Is that clear up to the other end of the

island?

A Pardon?

THE COURT: For the pumping out of the irrigation district, is that clear up to the other end of the island?

A It is at the northerly end, the approximately opposite end.

THE COURT: What?

A Approximately opposite end of the island or district -- of the area, yes.

MR. SHAW: Q Will you identify this, that you call the pump with pink chalk, which you established was a company pump?

A I will label that "D".

THE COURT: I guess that is pumped out of this creek -- what do you call this river?

MR. SHAW: Middle river.

MR. DALEY: Middle river, your Honor.

THE COURT: Middle river?

MR. SHAW: Yes, your Honor.

Q Mr. Greenwood, would this gate here be a permanent structure or impermanent?

A That is a permanent structure.

Q Will you identify that on the map, please?

A Both of these gates are relatively permanent structures, yes, they both are.

THE COURT: Is that gate -- is that to the left as you

1 face the map, or the intake pipe, clear over to your left
2 there?

3 A Over here.

4 THE COURT: Is that the intake pipe?

5 A This would be a canal also. That is a lateral canal.

6 MR. SHAW: Q Now, Mr. Greenwood, can you localize this
7 sketch with regard to our map, the Plaintiff's Exhibit
8 Number 6 in evidence, which point on the map would that be
9 with reference to pumps J-1, J-2, J-3 and J-4?

10 THE COURT: I believe he said it was J-2.

11 A That was J-2, correct.

12 MR. SHAW: Q So that this pump -- did you mark it --
13 this area here would be J-2? Mr. Greenwood, what crops were
14 planted in this area, farm area here? A Tomatoes.

15 MR. SHAW: May the map show, your Honor, that the
16 witness designates that the crops by the intake at point "B"
17 are planted to tomatoes?

18 THE COURT: How far would that area extend?

19 MR. SHAW: Q Was that an extensive area, Mr. Greenwood?

20 A I would say roughly five acres more or less.

21 MR. SHAW: That is all.

22 CROSS EXAMINATION

23 BY RICHARD DALEY, Esq., of counsel on behalf of Plaintiff:

24 Q Before sitting down, Mr. Greenwood -- I don't want to
25 keep you standing: this isn't intended to be an accurate
26 picture, is it? It is a schematic drawing?

1 A It is a schematic drawing.

2 Q And besides your field of tomatoes you saw asparagus
3 there, didn't you, sir, asparagus fields?

4 A I don't recall any particular location where I saw
5 asparagus.

6 Q Well, do you recall seeing any? A No, I can't say
7 that I did.

8 Q Do you know asparagus when you see it? A Oh, yes.

9 Q Did you make this little sketch? A Yes.

10 Q Did you see any clover? A No, if I may make a
11 point; on the sketch that I have, there are notes. The sketch
12 that I have on the board is not supposed to be a copy of
13 that sketch.

14 Q No, no, but on this piece of paper that you have made
15 you have written "asparagus, clover and barley" as being
16 irrigated, being flowed on, isn't that right?

17 A I am not testifying as to what was on the sketch.

18 Q I am asking you if you put asparagus, barley and clover
19 in your notes? A Yes.

20 Q And did you see asparagus out there or not?

21 A No, I did not.

22 Q Well, what -- A These notes, if I may beg your
23 pardon, my notes which I have kept continuously from that
24 day and through this trial are the notes on the sketch.

25 Q Oh, I see. The word "asparagus" didn't have anything
26 to do with what you saw out there the day you were there, is

I 1 that correct?

A No.

S 2 Q You saw other crops besides this five acres of tomatoes
E 3 that you mentioned?

A Yes.

A 4 Q Before I turn this board I want to show you one thing,
E 5 Mr. Greenwood: you notice you have here a canal that is

O 6 divided into two arms? A Right.

V 7 Q You have your main intake coming from the pump and the
S 8 one canal going to the right and the one canal going to the
E 9 left?

A Yes.

O 10 Q Are you sure that that depicts the situation at gate 2?
L 11 Would you like to step down?

S 12 A I know without looking more closely that it doesn't.
E 13 I merely depict the specific canal we have at location 2.
A 14 It is as I said principally a schematic drawing to indicate
E 15 the typical functions within the district and is rather
E 16 typical of that location.

V 17 Q You did not intend to show the Court at that particular
S 18 point the canal branches into two arms, that is all I am
E 19 trying to get at?

A No, however there is a gate.
O 20 There are two gates at that point, one gate which diverts
I 21 water into this canal and the other gate which opens -- which
S 22 could be opened to allow water to escape into the southeast.

E 23 Q For flooding possibly or something of that sort, it isn't
A 24 a canal there, that is what I am getting at?

A Possibly. I did not observe any.

E 25
E 26 MR. DALEY: That is all.

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MR. SHAW: Your Honor, I offer for identification this blackboard map drawn by Mr. Greenwood and ask that it be identified as Defense Number Q for identification.

MR. DALEY: We will object to it, your Honor, as being irrelevant and it doesn't show anything at issue.

MR. SHAW: It is for identification, Defendant's Q for identification.

THE COURT: You will have to put it in, otherwise we would have to come back and clear all these records.

MR. SHAW: Yes.

THE COURT: I have some cases where things were not put in but were kept out and they have had to come back. It will be admitted.

MR. SHAW: May the clerk, Mr. Fisher, identify this as Defense Q for identification?

Now I offer in evidence the Defense Q previously received for identification.

THE COURT: Defense Q?

MR. SHAW: The last picture was P, so that this would be Q.

THE COURT: Mark it admitted in evidence for what it is worth.

(The brown paper on which Mr. Greenwood wrote, previously referred to, was marked Defendant's Q and received in evidence.)

MR. SHAW: Q Mr. Greenwood, would you step up here

and on this board mark your name and the days date after the clerk is finished?

They are offered in for identification as next for the Defense, the notes taken and made by Mr. Greenwood on his visit on September 7 to Roberts Island.

MR. DALEY: At this point is that offered just for identification?

MR. SHAW: Yes, for identification preliminarily.

THE COURT: Why do you put this in for identification?

MR. DALEY: I am going to object to it, your Honor.

THE COURT: I don't want things going in for identification, otherwise we have got to come back. I have got three or four cases and they have got to come back. Either admit them or not to admit them.

MR. SHAW: Your Honor, I offer in evidence as Defense R in evidence this diagram or record of notes made by Mr. Greenwood on September 7 at Roberts Island.

MR. DALEY: We object to it, your Honor, on the basis that it shows that very conclusion that I have been objecting to, his conclusion of division of responsibility between the Woods Irrigation Company and the farmers as to the handling of that irrigation water. That has been the whole purpose of the drawing, it has been the whole purpose of introducing the man's conclusion. I have been opposed to it before in its oral form and I object to it in its written form. It is not based on what he saw out there that day, it is based on his

1 own opinion and something that was told to him, which is
2 entirely hearsay.

3 MR. SHAW: Mr. Greenwood can clarify that point.

4 Is that diagram based on your observation on
5 September 7?

6 THE COURT: Before you put it in he will have to take it
7 and he will have to go over all these items. We don't put
8 them in just because they are marked in the notes.

9 MR. DALEY: I object to it, y our Honor, on the basis
10 I have already indicated.

11 MR. SHAW: Your Honor, I will withdraw the exhibit,
12 which is the proposed Number R. No further questions.

13 MR. DALEY: I have no questions.

14 THE COURT: No further questions?

15 MR. SHAW: Your Honor, the Defense rests.

16 THE COURT: Have you got all of them now that were in
17 for identification, either in or out?

18 THE CLERK: All except that A, I believe.

19 MR. SHAW: Number A is the Defense exhibit which was
20 a statutory certificate under the Unemployment Insurance Act
21 Code. I offer it in evidence, renew my offer.

22 MR. DALEY: I objected to that, your Honor, on the basis
23 it is irrelevant. There is no issue in this case regarding
24 the payment of this tax.

25 MR. SHAW: Your Honor, that is ordy a part of the proof.
26 The State is relying on that for more than merely amount

I 1 involved.

2 2 THE COURT: It will be received.

3 3 MR. SHAW: Thank you.

4 4 THE COURT: It is a moot question.

5 5 MR. DALEY: My objection is overruled, your Honor?

6 6 THE COURT: Yes. I might say that when I get the legal
7 7 arguments and so forth I may disregard it. I don't know until
8 8 I have determined these points. You gentlemen probably know
9 9 that because it has been pending in another department for
10 10 a long time. I tried to read one of the opinions this
11 11 morning but I had no time so I have got to pass on these,
12 12 we might say with complete ignorance on some of these points.

13 13 MR. SHAW: Your Honor, would you consider setting this
14 14 down for argument so that all the Defense wants is twenty
15 15 minutes to come in and I have authorities and would like to
16 16 restate them on this very point.

17 17 THE COURT: I know, but they don't mean anything to me,
18 18 all your authorities, until I study it myself.

19 19 MR. SHAW: Yes, certainly.

20 20 THE COURT: I have got to see the various provisions.
21 21 One point I want to understand is the point you raise about
22 22 administrative procedure, exhaustion of administrative remedies.

23 23 MR. SHAW: Would you like to have discussion on that,
24 24 your Honor?

25 25 THE COURT: Either by a short brief or some other way.
26 26 I would prefer to get it orally so that I can ask some questions.

1 MR. DALEY: Can't we set it down for an oral argument
2 some day after your Honor has had an opportunity to get a
3 record in this case? I am perfectly willing to come up from
4 Stockton in order to provide oral argument.

5 THE COURT: Well, if you gentlemen will supply me with
6 the pamphlets you have, why, you can come up Monday --

7 Have we got anything more?

8 THE CLERK: No, your Honor, the case we had is going over.

9 THE COURT: You had better come up Monday morning.

10 MR. DALEY: Monday morning I am in San Francisco.

11 (Off the record remarks.)

12 THE COURT: Well, I think we had better continue it for
13 further hearing and get a mutual date for an argument.

14 Mr. Shaw, if you will send me a copy from the State Printing
15 Office of this pamphlet I will get a chance to read it.

16 MR. SHAW: Your Honor, may I leave it with the Court
17 at this time? It is the 1951 Statute.

18 THE COURT: Yes.

19 MR. SHAW: Your Honor, may I close with just one comment
20 of which I ask --

21 THE COURT: Would you mind marking on here what you claim
22 is the failure to exhaust the administrative remedy, what
23 they didn't do?

24 MR. SHAW: All right. Could I bring a letter over to
25 Mr. Fisher Monday so that we may clip the letter to the back
26 page and then I won't spoil it?

1 THE COURT: Send a copy to counsel then.

2 MR. SHAW: Yes, sir, gladly.

3 MR. DALEY: Your Honor, I had a brief bit of testimony
4 I wanted to put on. Counsel hasn't indicated he closed his
5 case yet.

6 MR. SHAW: Oh, yes. I said, "Defense rests."

7 MR. DALEY: Oh? Then, will you come forward please,
8 Mr. Jones? This will take just a minute, your Honor.

9 TESTIMONY OF

10 GILBERT L. JONES, previously duly sworn, testified further
11 as follows:

12 REDIRECT EXAMINATION

13 BY RICHARD DALEY, Esq., of counsel on behalf of Plaintiff:

14 Q Mr. Jones, I want to show you Defendant's Exhibit, I
15 believe that is G, which shows this concrete structure that
16 is called a tank I believe in testimony. Could you tell us
17 what that is?

18 A Water is discharged from the pump on the levee and at that
19 point where the velocity of the water comes down through this
20 pipe the velocity is broken and held by this concrete wall
21 and the gate is there placed so that the water may be diverted
22 from that point. It is not a tank in any sense of the word.
23 It is merely a receptacle to catch the force of the water as
24 it comes down from the pump from a higher elevation.

25 THE COURT: What you mean, this concrete thing is --

26 A Just to regulate the flow into the canal.

1 THE COURT: But it does contain a lot of water, doesn't it?

2 A Naturally the water builds up in this basin or whatever
3 you want to call it before it runs out into the canal, which
4 shows on the left of the picture.

5 MR. DALEY: Q Was that where --

6 THE COURT: (Interposing) Where is the canal in this
7 picture?

8 A The canal starts at the left. It is shown in this
9 picture here -- both of them. There is only one canal actually
10 out of that gate.

11 THE COURT: What is this pipe down here, Mr. Jones? Where
12 does this go, it is the bottom of the picture.

13 A That is the outlet. This is the main outlet or the
14 spillway from the pump. In other words the pump -- the water
15 is pumped into this pipe.

16 THE COURT: Is that the outlet that is eventually
17 pumped out of the district?

18 A Oh, no, your Honor. This is the water coming from the
19 intake pump. You see it in that pump -- this pipe here that
20 is referred to there, your Honor. Let us have it back there,
21 Mr. Daley, please. This area which is shown here, this pipe
22 that is in this picture, here, is this pipe here. This picture
23 is taken from the pump, looking down to this place.

24 (Witness indicating on photograph.)

25 THE COURT: That is the intake pipe?

26 A This is the -- well, properly speaking, the intake pipe is

1 where the water is pumped.

2 THE COURT: That is right, that is where it is pumped from.

3 A That is right, that is where the water is coming into
4 the area for irrigation.

5 THE COURT: What is the pipe I showed you?

6 A That pipe is this pipe here.

7 THE COURT: I see.

8 A Now, this "canal" there is no such thing. There is no
9 canal there like that. I don't know where the engineer got it,
10 but that just doesn't exist.

11 (Witness referring to diagram.)

12 MR. DALEY: Q Mr. Jones, is this concrete structure --
13 was that built by the Woods Irrigation Company? A It was.

14 Q Is that located on land that is owned by the company?

15 A Well, the Woods Irrigation Company owns -- in that sense
16 owns no land. All of its works and all easements, they are
17 on the lands of the people who are the stockholders in the
18 corporation. They have easements and rights-of-way over all
19 of these lands but the Woods Irrigation Company itself does
20 not own the land.

21 Q I see. And does it own any water rights?

22 A No water rights whatever are transferred by the owners
23 of this land to this company.

24 MR. DALEY: That is all, thank you.

25 MR. SHAW: That is all, your Honor.

26 THE WITNESS: All right.

1 MR. SHAW: Your Honor, may I ask that the Court take
2 judicial notice of one fact which is: I have here the 1951
3 Statutes and I mention the Codes of California, Volume 2,
4 direct the attention of the Court to Chapter 1758 which
5 shows the enactment of section 7.7 which has been mentioned
6 today.

7 THE COURT: Let me mark this. Statutes of what?

8 MR. SHAW: Statutes of 1951, Chapter 1758, the effective
9 date of section 7.7 is September 22, 1951.

10 THE COURT: September 22, 1951?

11 MR. SHAW: 1951.

12 THE COURT: I see.

13 MR. SHAW: The significance of that, of course is, your
14 Honor, that the petition for reassessment in this case, the
15 first document --

16 THE COURT: (Interposing) Let me get that.

17 MR. SHAW: Was filed in November or after the Statute.
18 I thank you for your patience, your Honor, today.

19 THE COURT: That is all right.

20 MR. DALEY: Of course, I would like to point out, your
21 Honor, that all these taxes accrued prior to the enactment
22 of that section.

23 MR. SHAW: That is not true.

24 MR. DALEY: Except those that were assessed for September,
25 October, November and December of 1951.

26 THE COURT: You folks do it on paper and I will read it.

1 MR. SHAW: That is not correct. It ran for fifteen
2 months after September, 1951 through December 31, 1952; in
3 other words, fifteen months.

4 THE COURT: Mark those. Well, we will adjourn to another
5 mutual date to be fixed that is available.
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7 --oOo--

8 (Thereupon the taking of testimony in the above-
9 entitled matter was concluded and the hearing of further
10 argument was adjourned sine die.)
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CERTIFICATE OF OFFICIAL SHORTHAND REPORTER

tate of California,)
 ounty of Sacramento.) ss.

I, EDWARD J. MERRICK, hereby certify that I am a certified official shorthand reporter of the Superior Court of the State of California, in and for the County of Sacramento, and that as such official shorthand reporter I took down verbatim in shorthand writing all of the proceedings had and testimony taken upon trial on Friday, September 16, 1955, before Honorable Malcolm C. Glenn, Judge of the Superior Court of the State of California, in and for the County of Sacramento, Department Number Three thereof, in that certain cause entitled Woods Irrigation Company, a corporation, Plaintiff, vs. The Department of Employment of the State of California and James G. Bryant, as Director of the Department of Employment of the State of California, Defendants, Number 96004, fully, truly and correctly, according to the best of my ability.

That my said shorthand writing so taken as aforesaid contains a full, true and correct record in shorthand writing of all of the said testimony and proceedings. That I have caused all my said shorthand writing to be transcribed into longhand typewriting and the foregoing pages numbered 1 to 142, both inclusive, constitute my said transcription.

That the foregoing is a full, true and correct transcription of all of my said shorthand writing so taken

as aforesaid and that the same constitutes and is a full, true, correct, accurate and verbatim transcript to the best of my ability of all of the testimony taken and proceedings had upon said Friday, September 16, 1955, as aforesaid.

Edward J. Wenick

Dated, Sacramento, California,
this 23 day of March, 1956.