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CAT: Transcripts and Exhibits

Begin Date : 10/20/1938 End Date : 10/20/1938

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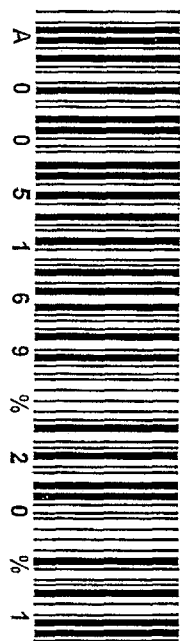


EXHIBIT
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DEPARTMENT OF PUBLIC WORKS,
DIVISION OF WATER RESOURCES,
Suite 401, Public Works Building,
1120 N Street, Sacramento, California.

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Before HAROLD CONKLING, Esq., Deputy Engineer.

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In the Matter of Applications:

APPLICANTS

5169) Washoe County Water Conservation
6534) District

5170)
9227) Sierra Pacific Power Company
9267)

Original

6131) Truckee-Carson Irrigation District

PROTESTANTS

5169) U. S. Bureau of Reclamation
Truckee-Carson Irrigation District

5170) U. S. Bureau of Reclamation
Truckee-Carson Irrigation District

6131) Washoe County Water Conservation
District

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TUESDAY, OCTOBER 4, A. D. 1939.

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REPORTER'S TRANSCRIPT OF TESTIMONY
GIVEN AND PROCEEDINGS HAD UPON HEARING.

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JOS. S. RIPHER
W. E. COMBRINK
THOMAS J. FRANKLIN
ROOM 3061 COURT HOUSE
SACRAMENTO, CALIFORNIA
OFFICIAL SHORTHAND REPORTERS

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5170)
9247) Sierra Pacific Power Company
9267))

6131) Truckee-Carson Irrigation District)

PROTESTANTS)

5169) U. S. Bureau of Reclamation
Truckee-Carson Irrigation District)

5170) U. S. Bureau of Reclamation
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APPEARANCES:

For the Applicant Washoe County Water Conservation District:

ROBERT M. PRICE, Esq.,
Reno, Nevada.

THOMAS R. KING, Esq.,
29 East First Street,
Reno, Nevada.

For the Applicant Sierra Pacific Power Company:

MESSRS. ORRICK, DAHLQUIST, NEFF & HERRINGTON,
By JUSTIN JACOBS, Esq.,
Financial Center Building,
San Francisco, California

and

GEORGE DEVORE, Esq.,
21 East First Street,
Reno, Nevada.

For the Applicant Truckee-Carson Irrigation District:

A. L. HAIGHT, Esq.,
Attorney-at-Law,
Fallon, Nevada.

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6534) District
- 5170)
9247) Sierra Pacific Power Company
9267)
- 6131) Truckee-Carson Irrigation District

PROTESTANTS

- 5169) U. S. Bureau of Reclamation
Truckee-Carson Irrigation District
- 5170) U. S. Bureau of Reclamation
Truckee-Carson Irrigation District
- 6131) Washoe County Water Conservation District)

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TUESDAY, OCTOBER 4, A. D. 1938.

The above named applications came on regularly this day
at 10:00 o'clock in the morning for hearing before Harold
Conkling, Esq., Deputy Engineer. The applicant Washoe
County Water Conservation District was represented by
Robert M. Price, Esq., and Thomas R. King, Esq.; the
applicant Sierra Pacific Power Company was represented by

1 Justin Jacobs, Esq., and George DEVORE, Esq. The
2 applicant Truckee-Carson Irrigation District was represented
3 by A. L. Haight, Esq.

4 The following proceedings were had, to wit:

5 MR. CONKLING: The hearing will come to order. This is a
6 hearing on Applications 5169, 5170, 6131 and 6534. There
7 are also two applications numbers 9247 and 9267 by Sierra
8 Pacific Power Company which are completed and have not been
9 protested before this office but which I believe desirable
10 to put into this hearing inasmuch as it contemplates storage
11 on the Truckee River Drainage, and if protests should come in
12 before we act on them, why, we would have to hold a hearing.
13 So, if you will stipulate that they be heard at this time in
14 connection with the others so that if later protested we
15 won't have to hold a hearing. If you will do so, I will
16 be glad to have you. Is that all right with you, Mr. Jacobs?

17 MR. JACOBS: Yes, Sir, quite all right.

18 MR. CONKLING: How about you?

19 MR. PRICE: No objection on the part of the District.
20 That is, the Washoe County Conservation District.

21 MR. CONKLING: We will take the others as they come in.
22 Application 5169 is by Washoe County County Water Conservation
32 District for diversion from the Little Truckee River to the
24 extent of 40,850 acre feet per annum. The storage is in
25 Boca Reservoir.

26 MR. CHRISTIANSEN: Isn't the application for 60,000?

27 MR. CONKLING: There is more. There is another application.

1 Diversion season is October 1 to July 1 for irrigation and
2 domestic, for use on 30,000 acres of Washoe County Water
3 Conservation District land. Protestants are the Bureau of
4 Reclamation and the Truckee-Carson Irrigation District.
5 The second one is Application 5170 by Sierra Pacific Power
6 Company from Truckee River and Little Truckee River for
7 500 cubic feet per second to be taken as available from
8 either source. It is to be used for power and incidental
9 domestic use and to be returned to the Truckee River. Also
10 protested by the Bureau of Reclamation and the Truckee-Carson
11 Irrigation District. The next one is Application 6131 by
12 the Truckee-Carson Irrigation District from Donner Creek
13 and Cole Creek. It contemplates storage in Donner Lake.
14 The 15000 acre feet to be taken from either of the sources
15 or both and diverted into Donner Lake at the rate of 500
16 cubic feet per second. For irrigation use on the Truckee-
17 Carson Irrigation District project. Next is application 6534,
18 Washoe County Water Conservation District from Little
19 Truckee River in the amount of 19,150 acre feet to be stored
20 in Boca Reservoir. The total amount under this and the
21 other application, 5169, of the Washoe County Water
22 Conservation District exceeds the capacity of the reservoir,
23 but it is thought by the applicants that there would be
24 some emptying of the reservoir during or intermediate to
25 the filling periods. It is to be used on the Washoe County
26 Water Conservation District. Now, I have already mentioned
27 the other two applications, 9247 and 9267 of the Sierra

1 Pacific Power Company.

2 MR. PRICE: I stated, Mr. Devore, that the Washoe County
3 Water Conservation District would not object to those.

4 MR. DEVORE: All right.

5 MR. CONKLING: These hearings are held under Section 1a
6 of the Water Commission Act for the purpose of getting at
7 the existence or nonexistence of unappropriated water and
8 the possibility of beneficial use. Witnesses are sworn and
9 the rules of evidence are not observed. All those making
10 an appearance will pay for the cost of the hearing. The cost
11 is, first, an item of \$12.50 per diem for the reporter which
12 is divided equally among those making an appearance and the
13 second item is the cost of the transcript for the Division
14 of Water Resources files which is charged for by the reporter
15 at the rate of 20 cents per folio one hundred words. This
16 cost is borne in proportion to the space occupied in the
17 transcript. The space occupied by the examiner is divided
18 also in proportion among those making an appearance. I will
19 now take the appearances: The applicants first. Who is
20 appearing?

21 MR. JACOBS: The Sierra Pacific Power Company. Oh,
22 which application is this?

23 MR. CONKLING: Well, we will take all the appearances
24 right now.

25 MR. JACOBS: The Sierra Pacific Power Company is appearing
26 by Mr. George Devore, Engineer, and Orrick, Dahlquist, Neff &
27 Herrington by Justin M. Jacobs, attorneys.

1 MR. CONKLING: Now, that is Wirick?

2 MR. JACOBS: Orrick, O-r-r-i-c-k; Dahlquist, D-a-h-l-q-u-i-s-t
3 Neff, N-e-f-f, and Herrington, H-e-r-r-i-n-g-t-o-n, by
4 Justin, J-u-s-t-i-n M. Jacobs, J-a-c-o-b-s.

5 MR. CONKLING: Thank you.

6 MR. PRICE: The Washoe County Water Conservation District
7 is appearing by L. M. Christiansen, President of the District,
8 and Robert M. Price, attorney for the District. There are
9 other representatives of the District here. Now, this is --

10 MR. CONKLING: Well, we don't need to take the
11 appearance of all of them.

12 MR. PRICE: Yes.

13 MR. CONKLING: The Truckee-Carson Irrigation District?

14 MR. HAIGHT: George G. Miller, President; H. W. Emery,
15 Secretary; W. H. Wallace, Manager.

16 MR. CONKLING: No need of taking the appearance of all
17 of you.

18 MR. HAIGHT: A. L. Haight, attorney.

19 MR. CONKLING: H-a-i-g-h-t?

20 MR. HAIGHT: Yes.

21 MR. CONKLING: Now, there is a protest against the
22 Application 6131 by the Orr Ditch and Water Company. Is
23 there a representative of the Orr Ditch and Water Company
24 here? Just before the representatives of the Truckee-
25 Carson Irrigation District came in I stated that there were
26 two applications which we had here which we desired to put
27 in the hearing if it could be so stipulated. Application 9247

1 and 9267 by the Sierra Pacific Power Company which propose
2 storage, I believe, from Independence Lake, a tributary of
3 the Truckee River. If there is no objection on the part of
4 the Truckee-Carson District, we will do so.

5 MR. HAIGHT: Object to it?

6 MR. CONKLING: If there is no objection to bringing them
7 into the record by stipulation, why, we will do so.

8 MR. HAIGHT: Why, no.

9 MR. CONKLING: Well, I am somewhat at a loss as to the
10 reason for these protests inasmuch as we understand that
11 there is a complete agreement there on the Truckee River.
12 If one of the protestants will briefly outline the matter
13 to me, I think I will have a clearer understanding of what
14 we are trying to arrive at at this hearing.

15 MR. HAIGHT: Mr. Conkling, my name is Haight, and I am
16 attorney for the Irrigation District. I was in hopes that
17 Mr. Osgood would be here as he is our engineer and he has
18 more technical knowledge of this than I have. But briefly,
19 the situation is this in connection with 5170, isn't it?

20 MR. PRICE: The power application.

21 MR. HAIGHT: The Power Company application 5170, is that
22 the one?

23 MR. CONKLING: 5170 is by the Sierra Pacific Power
24 Company and also the two that I just named.

25 MR. HAIGHT: Well, all right, 5170. 5169 and 5170, as we
26 understand it, were filed at the same time and have equal
27 priority. One of them is for storage and the other is for
power purposes. Storage for irrigation uses and the other is

1 for power purposes and direct diversion. In 5170 -- these,
2 by the way, are both supposed to be owned by the -- or
3 controlled by the Washoe County Water Conservation District.
4 We entered into the Truckee River Agreement; that is, our
5 District did.

6 MR. CONKLING: By the way, there is another one we might
7 as well include and that is 6534 by the Washoe County Water
8 Conservation District.

9 MR. HAIGHT: Well, I don't think there were any protests
10 filed against that; is that correct?

11 MR. CONKLING: Yes.

12 MR. HAIGHT: Are there?

13 MR. CONKLING: No, no formal protests were filed.

14 MR. HAIGHT: Yes. The purpose of the Irrigation
15 District in entering into the Truckee River Agreement and
16 the principal purpose of the United States was to provide
17 upstream storage for what we call our bench lands. That is,
18 the higher lands in the Hazen District and the Fernley
19 District and the Swingle Bench District also and it is the
20 theory that under 5169 and 6534 the water would be stored in
21 the Boca Reservoir on the Little Truckee River and retained
22 there until such time as it was needed for irrigation
23 down below. Of course, that would be during the irrigation
24 season and during the time when your bench lands are needing
25 water. Of course, for many years it has been practically
26 impossible to provide an adequate water supply for our bench
27 lands. They get their water directly from the Truckee

1 Canal which is a diversion of the Truckee River proper.
2 Under this 5170, however, which is the power diversion
3 application there are two points of diversion. One of them
4 on the main Truckee River about a mile or a mile and a half
5 above Boca and the other one is on the Little Truckee River
6 and that is up above the outlet of the Boca Reservoir, having
7 equal priority then it would be possible for the owners of
8 5170 and by reason of using the water pursuant to 5170 to
9 divert the water above the outlet of the Boca Reservoir and
10 bypass it around the Boca Reservoir. As I said, our
11 principal purpose of entering into the agreement was to
12 secure the storage of water in Boca Reservoir and the
13 release of that water during the irrigation season only.
14 5170 was at the time the Truckee River Agreement was negotiated
15 and executed, was the exclusive property of the Washoe County
16 Water Conservation District and we assumed that nothing would
17 be done to undermine the Truckee River Agreement through the
18 medium of 5170. It is now proposed to, as we understand it
19 and as we have been informed, to assign the rights under
20 this 5170 to the power company. I can't conceive that the
21 power company --

22 MR. CONKLING: Well, the power company is the applicant
32 for 5170 as it is given here.

24 MR. HAIGHT: Is that right, Mr. Devore?

25 MR. DEVORE: No, it has never been assigned.

26 MR. CONKLING: Never has been assigned. It is still in
27 the name of the Washoe County Water Conservation District?

1 MR. DEVORE: Yes.

2 MR. HAIGHT: So, as I was going to say, we can't conceive
3 that it would be to the interest of the power company to
4 divert water above the outlet of Boca Reservoir and bypass
5 it. Nevertheless, the power company might do that or it
6 might pass this application to some third party interest
7 not presently connected and whose interests are not identical
8 with ours and that would be the result. The result would
9 be that the water would be bypassed and go into the Truckee
10 River and unless it were possible to store it in La Junta
11 Reservoir it would go to waste in Pyramid Lake. We have
12 no objection, as I say. We have entered into an agreement
13 for the storage of water in the Boca Reservoir. We desire
14 that to be done and we don't desire to see anything happen
15 which would in any respect undermine the Truckee River
16 Agreement providing for that storage. We made the proposition
17 to the -- or made the request, rather, to the Conservation
18 District and also to the power company that they consent that
19 5170 be made junior to 5169. They verbally agreed to that
20 and then later, as I understand it, retracted that agreement.
21 That's all we ask in connection with these two applications,
22 and if that were done the whole Truckee River Agreement
23 would be entirely workable and there would be no possibility
24 of anybody doing anything to defeat its purposes. In other
25 words, let the storage come first and that coming first it
26 would naturally be governed by the terms of the Truckee
27 River Agreement. But, if the water doesn't get into the

1 reservoir, why, naturally it cannot be governed by the
2 terms of the agreement providing for the release of water
3 from the Boca Reservoir.

4 MR. CONKLING: The point of diversion is apparently
5 about the center of the reservoir.

6 MR. HAIGHT: Yes.

7 MR. CONKLING: Rather than above the reservoir.

8 MR. HAIGHT: As I said, it was above the outlet of the
9 reservoir.

10 MR. CONKLING: Yes.

11 MR. HAIGHT: That, of course, might be changed. I
12 don't know whether it will be practicable to release it at
13 that point or not, but it might be changed if they had the
14 right to release it at one place and something happened they
15 can't release it or divert it at that point, they might
16 make application to have it diverted at some higher point
17 with the same result. But, I think in fairness to everybody
18 concerned with the Truckee River Agreement that it should
19 be stipulated or noted in some way in the records of this
20 Office that 5169 is senior to Number 5170 and that will
21 clear up our objection.

22 MR. CONKLING: It also might be cleared up by changing
23 the point of diversion of 5170.

24 MR. HAIGHT: If that point of diversion could be
25 abandoned that would also do it. They have another point
26 of diversion on the Truckee River under this same
27 application, you understand. At least, that's my understanding.

1 MR. OSGOOD: Yes, we have.

2 MR. CONKLING: Now, maybe we haven't jurisdiction over
3 this matter. I don't know. I would like to ask the Sierra
4 Pacific Power Company or the Washoe County Water Conservation
5 District what would be the objection to this change? If I may
6 do so, who is the person to answer this question? You, Mr.
7 Devore?

8 MR. DEVORE: Well, it is my understanding with Mr. King
9 that the two filings would be the same water and stored in
10 the same reservoir. That was the intent.

11 MR. CONKLING: Then Mr. King is the proper person to
12 interrogate about that. Let's see if I understand that
13 correctly. Mr. Haight, you request that they abandon 5170
14 or make it --

15 MR. HAIGHT: Make it junior.

16 MR. CONKLING: -- junior to 5169.

17 MR. HAIGHT: In other words, have the right to store for
18 irrigation purposes senior to the right to divert for power
19 purpose above the outlet of the Boca Reservoir.

20 MR. CONKLING: What is the matter with your application
21 here, Washoe County Conservation District? Can we go ahead
22 with the hearing or are you waiting for somebody else?

23 MR. CHRISTIANSEN: Well, we were waiting for Tom King
24 but we can't catch him.

25 MR. CONKLING: Well, we can't wait for him.

26 MR. CHRISTIANSEN: Well, there he is now. He can have
27 his appearance entered.

1 MR. CONKLING: All right.

2 MR. CONKLING: Now, Mr. King wasn't able to listen to the
3 statement that Mr. Haight made but, in brief, Mr. King, I
4 am making a little preliminary examination prior to a formal
5 hearing and the statement of the Truckee-Carson Irrigation
6 District was that their protest would be withdrawn if the
7 point of diversion of 5170 to Boca Reservoir were changed or
8 if it was made clearly junior to the right under 5169. I
9 asked why that couldn't be done and you were elected to answer
10 it.

11 MR. DEVORE: You might state what I said so that --

12 MR. CONKLING: Will you state it again, Mr. Devore?

13 MR. DEVORE: My understanding was that 5169 and 5170 was
14 to be stored in the same reservoir, being the same water.

15 MR. KING: That's correct. In other words, it is the
16 intention to transfer the point of diversion under 5170 as
17 stated in the application applied for to the same reservoir
18 as 5169. 5169 has been amended in all respects and it is
19 the understanding of our District that it is in proper shape
20 and form. 5170 is to be stored in the same reservoir.

21 MR. OSGOOD: Well, that purpose is accomplished, is it
22 not, Mr. Haight, by the fact of making it junior?

23 MR. HAIGHT: No.

24 MR. CONKLING: 5170 does not call for any storage.

25 MR. HAIGHT: That is direct diversion.

26 MR. CONKLING: Yes, 5169 calls for storage. 5170 is
27 direct diversion from two points; one on the Little Truckee

1 and one on the Truckee River for a power house down below
2 the junction. That is, in other words, it is felt that
3 5170 would give the right to release the water for power
4 during the wintertime?

5 MR. KING: 5170 was to utilize water that is released
6 from the reservoir under 5169.

7 MR. CONKLING: Well, then it is subordinate to 5169; is
8 that it?

9 MR. KING: Not as to priority.

10 MR. CONKLING: Well, it is one number behind it. But,
11 you mean the control of the release would lie with 5169?

12 MR. KING: Yes.

13 MR. CONKLING: And 5170 would merely pick up the water
14 released by 5169 for irrigation?

15 MR. HAIGHT: Well, if that can be noted on your records
16 so that that would be final and conclusive, that removes
17 our objection.

18 MR. KING: Have you any objection, Mr. Devore?

19 MR. DEVORE: No.

20 MR. CONKLING: Well, are you asking then that your
21 application be amended to state that Application 5170 is
22 to use water which has been released primarily for
32 irrigation demand?

24 MR. HAIGHT: Under the terms of the Truckee River
25 Agreement.

26 MR. CONKLING: Under the terms of the Truckee River
27 Agreement?

1 MR. KING: And the waters are stored under 5169. I am
2 perfectly willing.

3 MR. HAIGHT: Are you?

4 MR. DEVORE: Yes.

5 MR. CONKLING: Well, we will so amend it.

6 MR. OSGOOD: That is, pond waters that are released under
7 5170 are then subject to the terms of the agreement?

8 MR. CONKLING: 5169.

9 MR. OSGOOD: Well, released under 5170, or waters
10 required?

11 MR. HAIGHT: Well, they can't be diverted above the
12 outlet of the Boca Reservoir under 5170.

13 MR. KING: That's right.

14 MR. HAIGHT: And that they will only be released under
15 the provisions of 5169 and the terms of the Truckee River
16 Agreement.

17 MR. CONKLING: And all the way down the River they will
18 be used for the purposes of 5170.

19 MR. HAIGHT: That's all we ask.

20 MR. CONKLING: Well, then I take it with that amendment
21 the protest of the Truckee-Carson Irrigation District will
22 be satisfied?

23 MR. HAIGHT: That is correct.

24 MR. KING: That is, there is a withdrawal of the protest
25 on 5169 and consent --

26 MR. HAIGHT: Yes.

27 MR. KING: -- to an extension until after the operative

1 date of the Truckee River Agreement under 5170.

2 MR. HAIGHT: Well, yes, that's all right.

3 MR. KING: With this notation, an extension until after
4 the operative date of the Truckee River Agreement.

5 MR. HAIGHT: Well, make it until the operative date of
6 the Truckee River Agreement. "After it" is rather an
7 indefinite term.

8 MR. KING: That's satisfactory.

9 MR. CONKLING: Now, that takes care of 5169 and 5170 and
10 I take it the United States Bureau of Reclamation's protest
11 is on all fours with the protest of the Truckee-Carson
12 Irrigation District.

13 MR. HALE: Well, I am not appearing for the United
14 States Bureau of Reclamation so I wouldn't care to make any
15 statement.

16 MR. CONKLING: Oh, the United States Bureau of Reclamation
17 is not represented here?

18 MR. HALE: Well not represented officially, no.

19 MR. CONKLING: Well, we will assume that Application 6131
20 by the Truckee-Carson Irrigation District was protested by
21 the Washoe County Water Conservation District and by L. H.
22 Taylor and by Orr Ditch and Water Company. I don't see Mr.
32 Taylor here nor any representative of the Orr Ditch and
24 Water Company and there remains only the Washoe County
25 Water Conservation District as a protestant against this
26 application of Truckee-Carson Irrigation District for storage
27 of 15,000 acre feet in Donner Lake and diversion in Cole

1 Creek --- in Donner Lake with diversion on Cole Creek.

2 MR. HAIGHT: I will add, Mr. Conkling, the Irrigation
3 District would request that the hearing be postponed until
4 the operative date of the Truckee River Agreement if the
5 Truckee River Agreement -- if and when the Truckee River
6 Agreement goes into effect and operation that will dispose
7 of our upstream storage for our bench lands. If, on the
8 other hand, anything should happen to prevent the operations
9 under the Truckee River Agreement, we would like to preserve
10 this Donner Lake site for additional storage to take care of
11 our bench land.

12 MR. CONKLING: You would like to preserve it?

13 MR. HAIGHT: Yes, it is our application.

14 MR. CONKLING: Oh, yes, I see.

15 MR. PRICE: Any objection to that, Tom?

16 MR. KING: What is the status of 6534?

17 MR. HAIGHT: No protests filed.

18 MR. KING: No protests filed?

19 MR. CONKLING: Yes, there is a protest filed by the United
20 States Bureau of Reclamation but the Truckee-Carson did not
21 file a formal protest.

22 MR. KING: Well, coming back to your horse trading, what
23 you will do on 5169 vs. 5170 we will do on 6534 vs. 6131.
24 In other words, if your protests are withdrawn and the
25 United States not continue to protest in the matter of 6534,
26 we will consent to the operative date of the Truckee River
27 Agreement as the date of a hearing on 6131.

1 MR. HAIGHT: Well, as I said before, I don't know whether
2 it was before or after you came in, we have no objection to
3 6534 or 5169 either. Of course, we can't speak for the
4 Bureau of Reclamation, but their interests are identical
5 with ours and I don't think that their protest, if they
6 have filed one, will be pressed.

7 MR. KING: Mr. Conkling, at this hearing, if the protest
8 of the United States is not pressed and they are not
9 represented officially, what is the usual ruling in the
10 matter by your Office?

11 MR. CONKLING: Well, we are rather inclined to assume
12 that if a person doesn't appear at a hearing their interests
13 aren't very great in the matter. Of course, we will accept
14 the testimony that is given. We are not bound, however,
15 by legal -- or by only the material presented at the hearing.
16 But, in general, we will overrule protestants that do not
17 appear unless the facts are so strong the other way that
18 we can't make any other ruling except for them. But, I don't
19 like this idea of deferring this hearing on 6131 or
20 deferring the hearing on 6534. That ought to be heard or
21 not heard or they should be heard and a ruling made and then
22 you can abandon them later if you want to.

23 MR. HAIGHT: Well, all of these have been pending for
24 ten to twelve years or more and the Truckee River Agreement,
25 if it ever becomes effective, will probably become effective
26 within a year, won't it, Tom?

27 MR. CONKLING: What is holding back the Truckee River

1 Agreement?

2 MR. KING: The construction or completion of Boca Dam
3 ready to operate.

4 MR. CONKLING: It becomes effective when it --

5 MR. HAIGHT: You might say when operations are commenced
6 with the dam.

7 MR. KING: When the Secretary of the Interior deems it
8 completed and turns it over to the Washoe County Water
9 Conservation District for irrigation. Then all of the
10 terms of the Truckee River Agreement become effective. At
11 this time there are only certain portions of it effective.
12 In other words, we have entered into an agreement to spend
13 a million dollars, the power company to spend a certain sum
14 to build a reservoir and when that is done and the Secretary
15 turns it over to the Washoe County Water Conservation District,
16 then, all of the terms as to the distribution and use of the
17 water become effective. Now, the point on 6534 is simply
18 this that we have transferred such rights as we have under
19 that application to the Boca site from the original Star
20 Reservoir site four miles upstream. The priority to that
21 application in January, 1930, the application 6131 at
22 Donner Lake was 1928. We have shown our good faith;
23 obligated ourselves for a million dollars and proceeded to
24 erect a reservoir which is about 50 per cent complete. If
25 6131 is to intervene with its priority and jeopardize our
26 rights to store under 6534, we are just out of luck and
27 consequently we will never consent to it. In other words,

1 we can continue our protests and have the hearing and have a
2 decision --

3 MR. HAIGHT: Why not do the thing we did in the other
4 thing; stipulate that no operations that might be conducted
5 under 6131 will ever be in conflict with 5169 or 6534 or
6 prior to the rights under 5169?

7 MR. CONKLING: Well, doesn't your Truckee River Agreement
8 rather supercede all these technical rights?

9 MR. HAIGHT: Yes. When that becomes effective. That's
10 what I say. When that becomes effective, why, all of this
11 is in the discard, but up to that time we would like to
12 preserve our rights. In other words, the government might
13 theoretically or possibly abandon the construction of the
14 Boca Reservoir. The cost might exceed the amount available
15 and they might suspend work and perhaps if it were never
16 completed why we would want our Donner Lake site available.

17 MR. CONKLING: Well, now taking into consideration the
18 present situation, the Division of Water Resources here
19 could issue permits to all of these applications perhaps
20 subject to vested rights and by your agreement the rights
21 would be changed entirely at some later date. So, they would
22 all be subject to any agreement that was made in the future.

23 MR. KING: It wouldn't seem to me that that would be a
24 proper procedure. Rights under 5169 are the prior rights on
25 the Truckee River.

26 MR. HAIGHT: Under the Truckee River Agreement.

27 MR. KING: Under that and the agreement both. That is

1 exclusive of La Junta. In other words, the rights of the
2 Washoe Valley or Truckee Meadows to store are dependent upon
3 that priority and that is regardless of the Truckee River
4 Agreement. If the United States should fail to complete
5 this reservoir or we should fall out with them in some way
6 we still wish to maintain our rights under 5169 and I
7 believe that our permits should be granted. That is
8 regardless of all other considerations or all other
9 applications considered.

10 MR. CONKLING: Well, the protest against that has been
11 withdrawn.

12 MR. HAIGHT: Yes, no protest on that.

13 MR. CONKLING: I am discussing 6534 and 6131. The
14 observation was made that we postpone hearing on those two.

15 MR. HAIGHT: No, pardon me. That's the point. Not 6534;
16 that was 6131 only.

17 MR. CONKLING: All right, 6131.

18 MR. KING: Well, I will consent to postponement of the
19 hearing on 6131 provided that the clause comparable to the
20 clause we made on 5170 is noted in the application. In other
21 words, it is subservient to 5169 and 6534.

22 MR. HAIGHT: Well, of course, 5169 is prior anyway.

32 MR. KING: Yes.

24 MR. HAIGHT: The only thing that we had in mind was this,
25 Tom, that when the Truckee River Agreement becomes effective
26 we won't have any use for this anyway and if the Truckee
27 River Agreement should not become effective, we might have to

1 utilize it. What I suggested was that we stipulate that
2 operations under 6131, if that permit were granted, could
3 not in any way conflict with operations under the Truckee
4 River Agreement. Now then, if you complete your reservoir
5 the Truckee River Agreement is going to become effective and
6 you have got a priority. If you don't complete the Boca
7 Reservoir then the Truckee River Agreement would not become
8 operative and we would be back where we are now. You would
9 have a prior right under 5169 and then would come in 6131
10 and then would come 6534 and that is just exactly the way
11 it should be, I should think.

12 MR. KING: Well, I think we are pointing at exactly the
13 same thing.

14 MR. CONKLING: It isn't the intention to construct a
15 reservoir at Donner Lake?

16 MR. HAIGHT: Not unless we have to provide upstream
17 storage and we won't have to do that if the Boca Reservoir
18 is completed and the Truckee River Agreement becomes
19 operative.

20 MR. CONKLING: Well, maybe we could complete the hearing
21 on this and reserve decision on this Application 6131 and
22 you may withdraw it later. Would that be satisfactory?
23 That would be really the proper course, wouldn't it?

24 MR. HAIGHT: Well, yes, if you want to do it that way.

25 MR. KING: That is, providing that you attach to your
26 application a statement similar to the one respecting 5170.
27 In other words, that 6534 has a junior right, priority of

1 1930, and when the Truckee River Agreement becomes operative
2 it shall precede 6131.

3 MR. CONKLING: Well, I think that is something that you
4 would have to agree among yourselves. We can't be issuing
5 permits with such agreements as that on them. Make it
6 subject to prior rights and you agree as to what their prior
7 rights are outside.

8 MR. HAIGHT: Well, that is complicating things, if you
9 can't do that.

10 MR. KING: Well, when do you issue permits, for instance,
11 under 5169?

12 MR. CONKLING: When?

13 MR. KING: Yes.

14 MR. CONKLING: We couldn't get around to it until after
15 the hearing.

16 MR. KING: All right. Let's take 6534. When do you issue
17 your permit under it?

18 MR. CONKLING: Well, if 6534 now is not bound up in this
19 agreement in any way and would stand and be maintained even
20 in spite of the agreement, the Truckee River Agreement, --

21 MR. KING: Well, it seems to me it should. We have
22 obligated ourselves to a million dollars and have a dam half
32 completed under 6534 and there has never been anything done
24 under 6131.

25 MR. HAIGHT: Well, there are no protests against 6534
26 excepting the --

27 MR. CONKLING: Bureau of Reclamation. Well, they are not --

1 MR. KING: The Bureau of Reclamation.

2 MR. CONKLING: -- appearing in this hearing. Suppose we
3 issued a permit under 6534 and withheld action under 6131.

4 MR. PRICE: And 5170?

5 MR. CONKLING: No.

6 MR. KING: Yes, and 5170.

7 MR. CONKLING: 5170?

8 MR. KING: That's the power application.

9 MR. CONKLING: Why 5170? Isn't 5170 to be used?

10 MR. KING: Yes.

11 MR. CONKLING: Well, then why withhold action on it?

12 MR. KING: Give us time to complete our arrangements with
13 the power company. We have an agreement at this time to
14 transfer to the power company our rights. Not under
15 Application 5170, but the use of water of the reservoir which
16 we release, having stored for irrigation purposes and
17 released for irrigation purposes. Now, that's to be
18 completed upon the operative date of the Truckee River
19 Agreement. In other words, when our reservoir is complete
20 then we will complete our agreement with the power company
21 before that right to use the water which we release from
22 Boca Dam. So, we would like to maintain that in its
23 present status and condition, however, until the operative
24 date of the agreement upon which we will complete our
25 arrangements with the power company.

26 MR. CONKLING: Well, of course, I was trying to act
27 in this matter in accordance with the wishes of the people

1 in Nevada. We don't want to do anything to embarrass the
2 people down there in Nevada. In fact, I think out of
3 courtesy to the residents of a sister state we could go a
4 little further than we could in California entirely. I
5 think if this hearing were in California entirely we would
6 just act right now on this thing and get it all settled.
7 Let me get this down. Application 5169^{5170 Hz} is to be amended --

8 MR. KING: It is amended.

9 MR. CONKLING: It is amended and in good shape.

10 MR. KING: And in good order.

11 MR. CONKLING: There is a desire that we act upon that now.

12 MR. HAIGHT: Which one is that? 5169? 5170 Hz

13 MR. KING: Yes, on our part.

14 MR. HAIGHT: No, no objection.

15 MR. CONKLING: How does it come into the Truckee River
16 Agreement?

17 MR. KING: It is the foundation for our storage right in
18 Boca Reservoir.

19 MR. CONKLING: All right. Now, 5170 is now tied up in
20 the negotiations between Washoe County Water Conservation
21 District and the Sierra Pacific Power by which it is assumed
22 that whether the application is transferred to the Sierra
32 Pacific Power or whether it is not, at least the right to use
24 the water in some way will be transferred to the power
25 company. Is that right, Mr. Devore?

26 MR. DEVORE: That's right, generally, yes.

27 MR. CONKLING: Well, my conception of it is that you will

1 take over the application?

2 MR. DEVORE: Well, that has not been discussed but it
3 will either be the application or something parallel to it.

4 MR. HAIGHT: If you had the priority you would have to
5 take over the application.

6 MR. CONKLING: I presume you would have to take over the
7 application. But, for reasons which I do not comprehend at
8 this time it is desired that we do not act on this application
9 until negotiations have been completed between the two
10 entities which are now negotiating. I do not understand
11 why that should be. Why shouldn't we act on that now?

12 MR. KING: For the reason that something might intervene
13 and prevent completion of our dam and our reservoir. Then
14 we would not have this stored water to release for the benefit
15 of the power company. Therefore there would be nothing for
16 them to acquire except, we will say, an existing right. But,
17 if we complete our reservoir then we will transfer to them
18 a very material and substantial right for power use.

19 MR. CONKLING: Well, supposing you didn't complete the
20 reservoir?

21 MR. KING: I don't know. You have got me there.

22 MR. CONKLING: Well, you say you haven't any right. Well,
32 that's true. You haven't a right under 5170 of any
24 magnitude.

25 MR. KING: That's correct.

26 MR. CONKLING: But I don't see why that should call for
27 a delay on the part of our Office. Whether they get anything

1 or not would be immaterial to this office.

2 MR. KING: Well, as far as our District is concerned --

3 MR. CONKLING: It seems to me that I would a lot rather.
4 go right ahead and act on that and then if it falls down,
5 why, you can cancel it.

6 MR. KING: That's perfectly satisfactory with our District.
7 Of course, I understand the Carson District and the
8 Reclamation Bureau object to that.

9 MR. CONKLING: No, not when clearly understood that water
10 under 5170 is only water which is released for use under
11 5169.

12 MR. KING: That's entirely satisfactory.

13 MR. DEVORE: When you grant the permit doesn't that
14 require a federal power permit?

15 MR. CONKLING: Yes, that's right. That's something I
16 wanted to find out about, too. Is an application necessary
17 with the Federal Power Commission under 5170?

18 MR. DEVORE: I think it probably may be, but it would be
19 granted.

20 MR. CONKLING: Well, we wouldn't grant it without
21 concurrence with the Federal Power Commission and until
22 everything else had been cleared. That, along with these
32 reasons, might delay it.

24 MR. DEVORE: We are not ready to go ahead and get the
25 permit until the operative date of the agreement.

26 MR. CONKLING: Well, in spite of our desire to proceed
27 with this high speed, we will have to wait a while.

1 MR. KING: Why not proceed under the proposition outlined
2 a short time back and just postpone the agreement until the
3 operative date of the agreement?

4 MR. CONKLING: Well, let's go as far as we can now. You
5 don't want to come over to Sacramento again.

6 MR. HAIGHT: Well, as I understand it 5170 is deemed to
7 be amended in accordance with our understanding?

8 MR. CONKLING: That will be amended. You have made a
9 request for an amendment and I guess we will ask the parties
10 to amend it right while they are here. Now then, Application
11 6131 is to be abandoned, is it? If the Boca Reservoir is
12 completed?

13 MR. HAIGHT: We will have no further use for it.

14 MR. CONKLING: So action on that question will be
15 postponed until the Boca Reservoir is completed.

16 MR. HAIGHT: I think so.

17 MR. CONKLING: That is protested by the Washoe County
18 Water Conservation District. How about that?

19 MR. KING: That is satisfactory provided that 6534 is
20 granted along with 5169.

21 MR. CONKLING: Well, 6534 is just additional storage in
22 the Boca Reservoir, isn't it?

32 MR. KING: That's right.

24 MR. CONKLING: Well, then is there any objection to
25 acting on 6534 at this time if we find it desirable to do so?

26 MR. HAIGHT: No objection as far as we are concerned on
27 6534 or 5169.

1 MR. KING: You haven't any protest on 6534?

2 MR. HAIGHT: I have said that, my dear Sir.

3 MR. CONKLING: You have no protest on 6534. It is
4 behind -- no, it wouldn't be behind the Truckee-Carson --

5 MR. KING: Yes, it is.

6 MR. CONKLING: Well, yes it is, but if that is abandoned
7 it would still be ahead of it, but is it the desire -- no,
8 that has no tie-up. This is purely for storage and the
9 Truckee-Carson District has no objection to it. Now, as
10 I understand it now we have your agreement that we should
11 act on 5169 and 6534 and that we shall not act on Application
12 6131 and we'll wait until we see what happens to the
13 agreement. And that 5170 cannot be acted on now, anyway
14 because of lack of right-of-way.

15 MR. KING: That is entirely satisfactory to our District.

16 MR. CONKLING: Well, is that satisfactory to Counsel?

17 MR. HAIGHT: Satisfactory to us, Mr. Conkling.

18 MR. CONKLING: All right.

19 MR. DEVORE: Of course, with the understanding that
20 application of the Truckee-Carson Irrigation District will
21 be withdrawn in case that the Boca Dam is completed and the
22 Truckee River Agreement becomes operative.

23 MR. CONKLING: That is my understanding. Do you
24 coincide with that, Mr. Haight?

25 MR. HAIGHT: Well, we are not under that agreement to
26 abandon in connection with that, but as I say there will be
27 no further use for it on the part of the Truckee-Carson

1 Irrigation District.

2 MR. CONKLING: Well, do you withdraw it?

3 MR. HAIGHT: I won't agree to withdraw it because that
4 would be obligating the future Board of Directors of the
5 Truckee-Carson Irrigation District.

6 MR. CONKLING: Well, then in order that we may know how
7 to act on it, it is our understanding that that will be
8 useless when that agreement becomes effective which in turn--
9 the agreement will become effective when the Boca Reservoir
10 is built.

11 MR. HAIGHT: It will be entirely junior to any rights
12 under the Boca Reservoir.

13 MR. CONKLING: And that at that time we can use our own
14 judgment about canceling if the District does not withdraw it?

15 MR. HAIGHT: Yes.

16 MR. DEVORE: The point I had in mind is if we wish to
17 prove on rights that are filed junior to that and we proceed
18 with the construction, we don't like to have too many
19 filings standing up there that would be senior in case they
20 are not utilized.

21 MR. CONKLING: Well, we wouldn't allow them to remain on
22 our files if they are not going to be utilized. They would
23 be canceled.

24 MR. KING: Couldn't they be heard at that time, Mr.
25 Conkling?

26 MR. CONKLING: Well, we are trying to hear 9247 and 9267,
27 which, I presume, are the applications to which Mr. Devore

1 refers; is that not true?

2 MR. DEVORE: Correct.

3 MR. CONKLING: And we have taken them into the hearing.
4 They haven't been protested, but we thought we would get
5 the whole matter straightened up while we are here. Now,
6 you want to act on those when it is cleared with the Federal
7 Power Commission, I take it?

8 MR. DEVORE: It is cleared now.

9 MR. CONKLING: Is it clear? Have we got that in our
10 files?

11 MR. DEVORE: I don't know whether you have or not, but
12 we have a clearance.

13 MR. CONKLING: Well, if we haven't it now, we will
14 have it shortly. Well, then we will act on them very
15 shortly and we will not at this time act on 6131, if that
16 is agreeable. As everybody assumed, I presume the United
17 States will go ahead with the Boca Reservoir and build it
18 and the thing will be ironed so that as far as any human affair
19 can be foreseen, it looks like the matters will solve
20 themselves without further hearing.

21 MR. HAIGHT: We will all get along all right, Mr.
22 Conkling.

23 MR. CONKLING: Well, I do see that you have a few scraps
24 in Nevada. All right, if there is nothing more to come
25 before the hearing it will --

26 MR. HAIGHT: Mr. Conkling: In connection with those
27 Independence Lake applications, I presume you will figure

1 that this is none of your concern, but, well, our Board
2 desired me to make a brief statement. We understand that
3 the power company has applied for 17,500 acre feet of
4 storage of unappropriated water and incurred a right to
5 2500 or 3000 acre feet of vested storage right and we merely
6 want to go on record as not acknowledging that there is any
7 vested storage right in Independence Lake that would be
8 subject to operation.

9 MR. CONKLING: Well, that is entirely outside of our
10 jurisdiction.

11 MR. HAIGHT: I understand that but they wanted me to get
12 that into the record at this time.

13 MR. CONKLING: I think I ought to throw that out of the
14 record. (Laughter)

15 MR. HAIGHT: Do just as you like about it. I have made
16 the statement.

17 MR. CONKLING: Well, if there is nothing more to come
18 before the Division, the hearing is adjourned.

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1 CERTIFICATE OF PHONOGRAPHIC REPORTER:

2 State of California,)
3 County of Sacramento.) ss.

4 I, B. A. RICE, hereby certify that I am an official
5 shorthand reporter of the Superior Court of the State of
6 California, in and for the County of Sacramento, and that as
7 such reporter I took down in shorthand writing on the fourth
8 day of October, A. D. 1938, the testimony and proceedings
9 had in the matter of Applications Nos. 5169, 6534, 5170,
10 9247, 9267; and 6131 of the Washoe County Water Conservation
11 District, Sierra Pacific Power Company and Truckee-Carson
12 Irrigation District, respectively, on hearing before Harold
13 Conkling, Esq., Deputy Engineer, at Suite 401, Public Works
14 Building, 1120 N Street, Sacramento, California, fully,
15 truly and correctly, to the best of my ability; that I
16 thereafter caused my said shorthand writing to be transcribed
17 into longhand typewriting, and the foregoing 33 pages
18 constitute said transcription; that the same is a full, true,
19 accurate and correct transcription of the testimony given
20 and proceedings had on the hearing of said matter mentioned
21 above.

22 DATED: Sacramento, California, October 15, A. D. 1938.

23
24 
25 _____
26 Shorthand Reporter.
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