

HEARING BEFORE THE
WATER RIGHTS BOARD OF THE
STATE OF CALIFORNIA.

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In the Matter of)
Application 5170)
SERRA PACIFIC POWER COMPANY,)
Applicant)
Applications 45672, 45673,)
U. S. BUREAU OF RECLAMATION)
Applicant)
and Permit 5287 (Application 6534),)
WASHOE COUNTY WATER CONVERSATION)
DISTRICT,)
Permittee)

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HELD IN
KAISER BUILDING,
21st and N Streets
Sacramento, California

November 19, 1957

WILLIAM M. CASTLE
CERTIFIED SHORTHAND REPORTER

EXHIBIT
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CERTIFIED SHORTHAND REPORTER

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APPEARANCES

FOR THE STATE WATER RIGHTS BOARD:

Henry Holsinger, Chairman

Kenneth Woodward

Luther H. Gulick

ALSO PRESENT:

William H. Orrick, for Sierra Pacific Power Compa

John E. Robinson, for Washoe County Water Conserv
tion District

Thomas O. Parker, for U. S. Bureau of Reclamation

Adolphus Moscovitz, for California-Nevada Interst
Compact Commission, State of

California Compact Commission

Stanley Kronick, for California Department of Wat
Resources

Lucian Vandegrift, for Department of Fish and Gar

James W. Johnson, Jr., for Nevada Interstate Comp
Commission

1 TUESDAY, NOVEMBER 19, 1957, 10:00 A.M.

2 ---oOo---

3
4 CHAIRMAN HOLSINGER: The hearing will come to order
5 This is the time and place that has been set for hearing
6 before the State Water Rights Board of the State of California
7 in accordance with the provisions of Division 2, Part 2, of
8 the Water Code.

9 My name is Henry Holsinger, and I am Chairman of
10 State Water Rights Board. I am sitting alone this morning,
11 for the time being at any rate. The other two Board members
12 are unavoidably absent. One of them might join us later.

13 Assisting in the hearing are Kenneth Woodward,
14 Supervising Hydraulic Engineer, seated at the table, and Al
15 Seward Andrews, Associate Hydraulic Engineer, both representing
16 the Engineering Staff, and Mr. Luther H. Gulick, Senior
17 Attorney representing the Legal Section.

18 The matters to be considered at this hearing are
19 Application 5170 of Sierra Pacific Power Company, seeking a
20 permit to appropriate 500 cubic feet per second from Truckee
21 and Little Truckee Rivers, and Applications 15672 and 15673
22 of the United States Bureau of Reclamation, seeking permits to
23 appropriate a total of 700 cubic feet per second by direct
24 diversion and 252,000 acre-feet per annum by storage from
25 Little Truckee River.

26 Although all protests against the applications have

1 been adjusted, it is believed that in view of the magnitude
2 of the projects a hearing is advisable.

3 Consideration will also be given to a request for
4 an extension of time to complete construction work and use
5 water under Permit 5287. This permit was issued to Washoe
6 County Water Conservation District pursuant to Application
7 6534 and allows an appropriation of 19,150 acre-feet per an
8 by storage from Little Truckee River.

9 It is proposed to consolidate these three applica
10 tions and permit for hearing under a common record. This v
11 enable the Board to consider testimony of witnesses in con-
12 nection with one application in its relation to other appli
13 tions without needless repetition.

14 If there are any objections to this proposal they
15 should be advanced before the conclusion of the hearing to

16 Notice of this hearing was issued by the State
17 Water Rights Board on October 28, 1957, and copies thereof
18 were mailed to all interested parties of record. I assume
19 have all received copies of that notice. As stated in tha
20 notice, it is not intended to take testimony today in con-
21 nection with the matters at issue. This first day of hear
22 will be devoted primarily to the discussion of possible
23 stipulations concerning issues involved, with the objective
24 of reducing duration of the hearing. Objections, if any
25 there be, will also be heard to proceeding hearing the app
26 cation at this time.

1 Consideration will also be given to arrangements
2 exchange among the parties of copies of proposed exhibits a
3 written statements of professional qualifications of wit-
4 nesses prior to the next hearing date. The Board will spec
5 an expiration date for this exchange today. Also, a date a
6 location for a hearing on the merits will be fixed.

7 The Staff has prepared a report on the applicatic
8 and permit under consideration, and copies are available fo
9 distribution today. If you have not already received a cop
10 of the report, they are available at the table today. Is t
11 right?

12 MR. WOODWARD: That is right. They have been dis
13 tributed.

14 CHAIRMAN HOLSINGER: That report sets forth the
15 pertinent features of the projects proposed, and a list of
16 documents to be offered into evidence by reference by the
17 Staff of the Board. Set forth on Page 15 of that report ar
18 items of additional information on which the Board desires
19 record evidence. Although the hearing will not be limited
20 these items, the Board believes that the record will not be
21 complete unless they are adequately covered. It is the
22 primary responsibility of applicants and permittees to sup
23 this information.

24 The Water Code provides that in hearings before
25 State Water Rights Board technical rules of evidence need
26 apply. The Board desires to obtain all the relevant

1 information in a most direct and expeditious manner, to the
2 end that time and expense may be kept to a minimum and that
3 the final decision may be the best possible in the light of
4 the facts and the public interest and accord with applicabl
5 law.

6 Accordingly, this hearing will be conducted as in
7 formally as possible in order to secure for the record the
8 facts in the most direct manner. I am speaking primarily c
9 the hearing which will follow at a later date for the purpo
10 of taking testimony. The objective will be to afford all
11 interested parties a full and impartial hearing according t
12 due process of law to all concerned, and observing the Amer
13 tradition of fair play.

14 Those proposing to make appearances at this heari
15 will now give their names and addresses to the Reporter, an
16 also announce the parties whom they represent. Proceed wit
17 that matter now.

18 MR. ORRICK: William H. Orrick, Jr., of Orrick,
19 Dahlquist, Harrington & Sutcliff, 405 Montgomery Street, Sa
20 Francisco 4, for the Sierra Pacific Power Company.

21 MR. ROBINSON: John E. Robinson, 15 East First
22 Street, Reno, Nevada. I am appearing as attorney for the
23 Washoe County Water Conservation District.

24 MR. PARKER: Thomas O. Parker, attorney appearing
25 on behalf of the Bureau of Reclamation, Region 4, 410 New-
26 house Building, Salt Lake City, Utah.

1 MR. MOSCOVITZ: Adolphus Moscovitz, appearing for
2 Edmund G. Brown, Attorney General State of California, ap-
3 pearing here today on behalf of the California-Nevada Inter
4 state Compact Commission, the State of California Compact
5 Commission, which has information or will have information
6 which we feel will be of interest to the Board.

7 MR. KRONICK: Stanley Kronick, Associate Attorney
8 California Department of Water Resources, appearing on beha
9 of the Department of Water Resources, Post Office Box 1079,
10 1120 N. Street, Sacramento.

11 MR. VANDEGRIFT: Lucian Vandegrift, Deputy Attorn
12 General, appearing on behalf of Edmund G. Brown, Attorney
13 General of the State of California, who is in turn appearin
14 on behalf of the Department of Fish and Game. We are pro-
15 testants to the applications here involved.

16 CHAIRMAN HOLSINGER: Any other appearances?

17 The only costs in connection with this hearing ar
18 those of the Hearing Reporter, consisting of his per diem
19 allowed by law and the cost of preparing the original tran-
20 script which the Board's rules require to be filed of recor
21 in the proceedings. The charge is divided equally among th
22 parties making appearances. The cost of the transcript is
23 divided among the parties appearing according to the space
24 that each occupies in the record, with such space that the
25 State Water Rights Board or its Staff occupies being equal
26 divided among the parties.

1 In other words, each party pays for the space in
2 the transcript occupied by the examination of its own wit-
3 nesses and cross-examination of opponents' witnesses, and
4 for such other space each party may occupy. Under this
5 method of apportioning the costs, each party may hold its
6 share of the costs to a minimum by confining the evidence
7 presented strictly to the material issues and as briefly as
8 possible.

9 Copies of the transcript may be obtained from the
10 Reporter at a cost considerably less than that of the origi-
11 transcript. If you desire a copy, you should make arrange-
12 ments directly with the Reporter in order that he may know
13 proper number of copies to prepare. The Reporter, of cours
14 cannot determine the cost of the transcript in advance, but
15 the Board does require, prior to proceeding with the hearin
16 that the parties make arrangements with the Reporter as to
17 payment by each of his share of the cost.

18 A short recess will now be taken in order to enab
19 the parties to confer with the Reporter relative to these
20 matters.

21 (Recess).

22 CHAIRMAN HOLSINGER: The hearing is again in sess
23 I think at this stage it would be proper to hear objections
24 if there are any, that this present hearing and the entire
25 hearing is premature at this time; if there are any.

26 No such objections? Very well. I now solicit yo

1 views as to consolidation for hearing of all matters before
2 the Board under a common record without the necessity of
3 repetition of all matters previously testified to. You un-
4 stand now what is involved there.

5 The Board has found that by this practice we acc-
6 plish a very substantial saving in expense and time. I th-
7 it is highly desirable that we do that, but in order to do
8 I desire the stipulation of all parties here present at the
9 hearing to that procedure.

10 Does anybody have any objection?

11 MR. PARKER: We have no objection, sir, if it is
12 understood that the decision of this Board is not to be ma-
13 piecemeal on each application, without holding them all up
14 act on them jointly. I assume that is correct, sir?

15 CHAIRMAN HOLSINGER: Well, we propose to deal with
16 each application itself, one at a time, of course.

17 MR. PARKER: That is what I mean, and the decisio-
18 on one wouldn't be held up; in case there is a delay on one
19 a decision on the other.

20 CHAIRMAN HOLSINGER: No, we intend to decide the
21 all at once.

22 MR. ORRICK: Mr. Chairman, I have just received
23 copy of this report, called "Staff Report on Applications 5
24 and so forth, and in thumbing through -- I haven't had a c
25 to study it because I have only had it about 10 minutes --
26 in thumbing through it, I notice that it is recommended th

1 the hearing proceed on Application 5170 in the form that it
2 stands upon the records of the Board.

3 Now, on behalf of the Sierra Pacific Power Compan
4 we have no objection whatsoever to consolidating the hearin
5 on our application with the other applications here numbere
6 but we do reserve the right to present to your Board our
7 petition to amend the application and to present evidence w
8 respect to the application in the amended form.

9 CHAIRMAN HOLSINGER: You mean the permit?

10 MR. ORRICK: No, sir. We don't have a permit, bu
11 we have an application.

12 CHAIRMAN HOLSINGER: Oh, yes.

13 MR. ORRICK: And the application does not correct
14 show the point of diversion, and we wish to amend the appli
15 tion to show the point of diversion as being at Stampede Dam
16 And I simply want to reserve my rights. I don't want anyor
17 I want it understood that when we stipulate to consolidatir
18 the hearing we do not stipulate to a hearing on the applica
19 tion in its present form. Our stipulation would run to an
20 amended application, showing the point of diversion at the
21 Stampede Dam.

22 CHAIRMAN HOLSINGER: How long have you known that
23 that amendment should be made?

24 MR. ORRICK: We haven't known, Mr. Chairman, tha
25 the Washoe Project, of which the Stampede Dam is a part, w
26 in truth and in fact become a reality. We don't know it,

1 right up to this very point. And I think it might be helpf
2 to the Board to state that, as soon as a conservancy distri
3 is formed under the authorizing legislation to operate the
4 dam, it is the intention of the applicant, Sierra Pacific
5 Power Company, to transfer its permit to that conservancy
6 district. But I don't think that any point could be made o
7 the lack of diligence. But what I am trying to establish,
8 the point I am trying to establish, is that we are anxious
9 expedite the hearing and the proceedings before this Board,
10 so that the government can get the permit to divert water a
11 Stampede.

12 CHAIRMAN HOLSINGER: Well, I take it then that yc
13 are not prepared to file any such amendment at this time.

14 MR. ORRICK: As of right at the moment, we are nc
15 but we can do so and will do so just as soon after this hea
16 ing as we can. I think we could do it before the end of th
17 week.

18 CHAIRMAN HOLSINGER: Oh, there is no objection to
19 that, for the very good reason that, as I stated previously
20 the purpose of this hearing today is merely to dispose of
21 preliminaries. So I can see no objection to that, provided
22 you file that expeditiously.

23 MR. ORRICK: Yes, sir, we shall.

24 CHAIRMAN HOLSINGER: Very well.

25 MR. ROBINSON: Mr. Chairman, the Washoe County
26 Water Conservation District is in the same position with

1 reference to its permit, and the remarks that Mr. Orrick ha
2 made would apply in the same manner, and we also intend to
3 file an amended application. We would like to reserve the
4 same rights.

5 CHAIRMAN HOLSINGER: Well now, that is a little
6 different matter. You will note that on Pages 3 and 4 of t
7 Staff Report that subject is discussed, and it concludes, '
8 reason advanced by the District for an extension"-- at th
9 top of Page 4 --"is that it proposes to transfer the storag
10 right under Permit 5287, (Application 6534), to the Stampede
11 Reservoir if and when the Stampede project is complete." I
12 would take it that that meaning there is what you mean by t

13 MR. WOODWARD: I wonder if I might clarify this
14 whole matter, Mr. Chairman. This application 5170 of Sierr
15 Pacific Power Company is, of course, not an approved applic
16 tion. Its point of diversion, as I understand, would fall
17 within the Boca Reservoir, as currently described. Now, we
18 have been aware that the power company has thought about th
19 possibility of moving upstream to the Stampede project.
20 However, there has been no petition filed for that change,
21 we have nothing before us in that connection. The applica
22 has been pending for many years, and we feel that it is tim
23 that we rule on at least the merits of the application as
24 currently stands before us.

25 Now, regarding Permit 5287 of the Washoe County
26 Water Conservation District, as I understand it, the only

1 issue before us is a petition for an extension of time. As
2 we understand there is some thought about moving upstream at
3 some future date, but no petition has been filed, and that
4 is a matter which is not before us at this hearing. As far as
5 Permit 5287 is concerned, the only issue before us is a re-
6 quest for an extension of time for completion of constructi
7 of facilities for use of the water.

8 CHAIRMAN HOLSINGER: That is what I was going to
9 call attention to, but what I was particularly concerned with
10 was that which follows. First, I want to know what you mean
11 by "if and when the Stampede Project is complete." Do you
12 mean when it is constructed?

13 MR. WOODWARD: That is my understanding, yes.

14 CHAIRMAN HOLSINGER: "To date no such request for
15 change in point of diversion has been received by the State
16 Water Rights Board, it appearing to the Staff of the Board
17 that the District may have failed to complete the project
18 contemplated by such permit with due diligence, it is believed
19 that the District should present evidence to show cause
20 wherefore further extension of time should not be denied and
21 license should not be issued confirming such right, if any,
22 as has been consummated by actual use pursuant to said permit.
23 And in the notice of the hearing, it doesn't say anything
24 about that subject. As a matter of fact, it doesn't -- the
25 notice doesn't -- mention the matter of that permit. So I
26 was just wondering whether to proceed to hearing this

1 extension is not in accordance with the practice of the Board
2 which is usually a return requesting a showing of good cause
3 why the permit should not be revoked or license issued for
4 amount of the beneficial use which had been made. Isn't that
5 correct?

6 MR. WOODWARD: We have, or we normally do handle
7 that separately. We do handle items such as that separately.
8 However, in this instance we felt that this particular permit
9 is very much involved in the applications by the Bureau and
10 also the pending application of the Sierra Pacific Power
11 Company, and it would facilitate matters to include all of
12 the items jointly in this hearing.

13 Now, we do not set forth in the body of the notice
14 the fact that this issue is before us. However, in the hearing
15 we do refer to the permit.

16 CHAIRMAN HOLSINGER: I notice that. Well, I think
17 the only reasonable way to handle it would be, and the order
18 will be, that that matter will not be heard at this hearing
19 today. But you have an application on file for that change.

20 MR. ROBINSON: No, we don't, Mr. Chairman.

21 CHAIRMAN HOLSINGER: Well, you better get it on file
22 as soon as you can after this hearing, and then at the date
23 when the matters are heard on the merits we will take that
24 point up first, get that out of the way, and then proceed.
25 We will hear them all together. Is that satisfactory?

26 MR. ROBINSON: Yes, that is satisfactory.

1 CHAIRMAN HOLSINGER: All right. Suppose you do t
2 MR. ROBINSON: Yes.
3 CHAIRMAN HOLSINGER: Now, it is clearly understoo
4 then that there should be a petition, should there not, for
5 the change in the point of diversion of Application -- what
6 is the number?
7 MR. WOODWARD: 5170.
8 CHAIRMAN HOLSINGER: 5170. And also, I think, th
9 should be, or you have already made an application for ex-
10 tension of time on the permit?
11 MR. ROBINSON: Yes, Mr. Chairman.
12 CHAIRMAN HOLSINGER: And you also desire a change
13 there, too, do you not?
14 MR. ROBINSON: Yes.
15 CHAIRMAN HOLSINGER: There should be an applicati
16 for that.
17 MR. ROBINSON: Yes.
18 CHAIRMAN HOLSINGER: Those two. And then we will
19 hear those preliminaries, the applications for changes, and
20 the request for extension of time, and the petition for the
21 change under the permit, and we will hear those as the first
22 order of business when we resume the hearings for the taking
23 of testimony. Is that satisfactory?
24 MR. ROBINSON: Satisfactory.
25 MR. ORRICK: Satisfactory.
26 CHAIRMAN HOLSINGER: Very well. Now, I request

1 party appearing to make their best estimate of the time
2 each will require for the presenting of direct testimony.
3 Please do that in the same order in which you entered your
4 appearance.

5 MR. ORRICK: Sierra Pacific Power Company, half a
6 day.

7 MR. ROBINSON: Washoe County Water Conservation
8 District, half a day.

9 CHAIRMAN HOLSINGER: Half a day each; is that it?

10 MR. ROBINSON: Yes, Mr. Chairman.

11 CHAIRMAN HOLSINGER: All right. Proceed, gentlemen.

12 MR. PARKER: The Bureau of Reclamation will not t
13 over half a day.

14 CHAIRMAN HOLSINGER: Very well. Another half day
15 Probably an optimistic estimate. That has been our experie
16 Anybody else?

17 MR. MOSCOVITZ: Mr. Chairman, may I ask whether y
18 half a day is two hours or three hours? When you say half
19 day, is that two hours of hearing?

20 CHAIRMAN HOLSINGER: Oh, roughly.

21 MR. MOSCOVITZ: Roughly two hours?

22 CHAIRMAN HOLSINGER: Two hours.

23 MR. MOSCOVITZ: I would say any information that
24 California-Nevada Interstate Compact Commission of the Sta
25 of California may want to present independently would not
26 more than half a day, and probably would take about an hou

1 CHAIRMAN HOLSINGER: All right; about an hour?

2 Next.

3 MR. KRONICK: Participation by the Department in
4 future proceedings here will depend to a considerable extent
5 on whether the joint California-Nevada Interstate Compact
6 Commission agrees as to the proposed permit terms and conditions.
7 I would say that, in the event they do not, perhaps about half
8 a day would be sufficient.

9 CHAIRMAN HOLSINGER: All right. Next.

10 MR. VANDEGRIFT: The Department of Fish and Game
11 in a similar position. The amount of time we will have to
12 consume will depend, first of all, upon the changes in the
13 applications of the Sierra Pacific Power Company and the
14 Washoe County Water Conservation District, and also upon the
15 results the Compact Commission will reach. But I think in
16 event will it take more than half a day.

17 CHAIRMAN HOLSINGER: All right. We will put you
18 for half a day. Next.

19 MR. WOODWARD: That is all of the appearances.

20 CHAIRMAN HOLSINGER: Is that all the appearances?
21 Well, that makes us two and a half days, plus one hour. Of
22 course, that doesn't take into account cross-examination.
23 I can't make any estimate for that. It looks like probably
24 we wouldn't be able to complete it in one week. How about it?
25 What do you think about it? It might last for 10 days.

26 MR. ORRICK: I should think we could do it in a

1 Mr. Chairman.

2 CHAIRMAN HOLSINGER: Well, I don't believe it is
3 possible to get it in between now and the first; is that r

4 MR. GULICK: The first of the year?

5 MR. WOODWARD: You mean the first of the year?

6 CHAIRMAN HOLSINGER: The first of the year.

7 MR. WOODWARD: I doubt it very much, Mr. Chairmar
8 It might be well to ask Mr. Moscovitz how much time he thir
9 the Compact Commission is going to require to frame the prc
10 posed terms and conditions. That might materially shorten
11 hearing, and we should consider that, to that extent.

12 MR. MOSCOVITZ: Well, Mr. Chairman, the Committee
13 of the Nevada Commission and California Commission are plan
14 to meet this coming Thursday for the first time. It is har
15 to predict how long it will take to exhaust the exchanges a
16 attempt to come to an agreement. I don't think that we can
17 predict with confidence that we will be ready before the fi
18 of the year, certainly, and we might be realistic to expect
19 that it would probably take us into January to arrive at
20 agreement, or find that we cannot reach agreement between t
21 two States Compact Commissions. However, it is not the des
22 of either of the two State Commissions to delay the hearing
23 unduly, so as to prejudice the possibility of a decision or
24 these applications by May or June of next year. Apparently
25 it is important to the Bureau of Reclamation to have a deci
26 on their applications for the purposes of securing appropri

1 for the project. Therefore, we think that if you scheduled
2 your hearing on the merits for the latter part of January,
3 would not unduly press the Commissions, and I think it prob
4 would give ample time to complete the hearing and come out
5 with your decision.

6 CHAIRMAN HOLSINGER: All of January is fully occup
7 with the San Joaquin. While I have been absent here was th
8 taken off calendar?

9 MR. WOODWARD: No, that is scheduled. We have set
10 aside the entire month of January for the San Joaquin heari

11 CHAIRMAN HOLSINGER: The last three weeks in Janu
12 I am pretty sure that is correct. Yes. Yes, we convene th
13 6th of January.

14 MR. WOODWARD: Right.

15 CHAIRMAN HOLSINGER: At 2:00 p.m., and continue
16 throughout the rest of the month, and possibly for a portio
17 of the month of February. Nothing is definitely set aside
18 February, though. How would it be to reconvene on this mat
19 say, the first Monday in February? That would be the 17th.
20 Do you think that would be ample time?

21 MR. MOSCOVITZ: I think, as far as the Compact
22 Commissions are concerned, that would be ample time.

23 CHAIRMAN HOLSINGER: Does anybody else have any i
24 on it?

25 MR. WOODWARD: What date was that?

26 MR. ORRICK: February 17th.

1 MR. PARKER: What date was it?
2 CHAIRMAN HOLSINGER: The 17th of February.
3 MR. WOODWARD: Is that the third Monday?
4 CHAIRMAN HOLSINGER: That is the third Monday.
5 MR. WOODWARD: The third Monday.
6 MR. PARKER: Mr. Chairman, I wonder if it would be
7 possible to set an earlier date for the Compact Commission
8 furnish its recommendations, so that there would be sufficient
9 time intervening between that and the hearing for the Bureau
10 to make any necessary studies to see the effect upon the
11 Project?
12 CHAIRMAN HOLSINGER: Yes. Yes, that is not a bad
13 idea. How about it? Could you give us some specific date
14 you are satisfied that you could have that out, that information?
15
16 MR. MOSCOVITZ: I would like to find out if the
17 Attorney for the Bureau could tell us about how much time you
18 think you would need between receipt of the recommendation
19 the hearing?
20 MR. PARKER: Well, if they could furnish it possible
21 on or before the 15th of January, would that be too late?
22 MR. HUNT: Two weeks we need.
23 MR. PARKER: That would be the 30th. Sometimes the
24 wheels of government run slow.
25 CHAIRMAN HOLSINGER: Sometimes they get sand in the
26 gears.

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MR. HUNT: 30 days would be plenty.

MR. MOSCOVITZ: Well, I have no specific instructions as to just how much time the Commissions think they need. However, I think it is within reason for us to find out for sure whether we can reach an agreement or not by the middle of January. That would give us practically nearly two months. I will bring that -- if that is the schedule that you desire, Mr. Chairman -- I will bring that information back to the Commissions and we will adjust our own work accordingly.

MR. PARKER: Would it be proper for the Board, Mr. Chairman, to make an order to that effect, that by the 15th of January they should be filed, or there would be an assumption that there would be no conditions that the Commission wish to place?

CHAIRMAN HOLSINGER: I think that is reasonable.

MR. MOSCOVITZ: I would, of course, reserve the privilege, Mr. Chairman, of requesting an extension if that proved to be necessary, although we would certainly do our utmost to meet the deadline. But I cannot at this time commit the Commissions, made up of seven members each from two States, who are themselves busy people, to guarantee meeting such a deadline. But we would certainly do our utmost, and I would hope to meet it.

MR. PARKER: If the Board made it an order, they would. That is the point I was getting at; they would do it.

MR. MOSCOVITZ: Yes, and of course, I wouldn't wa

1 to foreclose the possibility that we couldn't, and therefor
2 request an additional period of time. I notice Mr. Hunt su
3 gested two weeks might be enough for your people to conside
4 so we might have a little leeway between the middle of Janu
5 and the first of February, if that were necessary.

6 Mr. Chairman, I might make this other observation
7 In the event that there is no agreement reached between the
8 two Commissions as to what recommendations to make, it may
9 that either Commission -- and I can't speak for the Nevada
10 Commission, but for the California Commission -- it may be
11 California Commission may wish to present its own separate
12 recommendations. Now, in that event, do I gather that we
13 would also be requested to submit those to the Bureau of
14 Reclamation on that date?

15 CHAIRMAN HOLSINGER: On or before the 15th; is th
16 it?

17 MR. PARKER: We would like to have them for the s
18 purpose.

19 CHAIRMAN HOLSINGER: Well, I don't like to issue
20 order that might be embarrassing to anybody, but at the san
21 time you have got to be orderly about these matters, and if
22 we are going to make a firm date to resume testimony or to
23 initiate the taking of testimony on the 17th day of Februar
24 it would seem only reasonable that the 15th of January --
25 say on or before the 20th -- would that give you enough ti
26 to study it?

1 MR. PARKER: I believe that would be sufficient t:

2 CHAIRMAN HOLSINGER: Well, then, let's make it on
3 or before the 20th of January, that the information from Mr
4 Moscovitz with respect to the terms and conditions in the
5 permits to be issued, should be at hand, and in Mr. Parker's
6 hands by the 20th of January; on or before the 20th of Janu
7 Is that satisfactory?

8 MR. MOSCOVITZ: I think we can make that by then.
9 We ought to be able to tell.

10 MR. VANDEGRIFT: Mr. Chairman, do we understand t
11 the other participants will also receive copies of proposed
12 conditions at that time?

13 CHAIRMAN HOLSINGER: Oh, yes.

14 MR. MOSCOVITZ: We will send copies to everyone,
15 including the Board, of course.

16 MR. JOHNSON: My name is James W. Johnson, Jr., a
17 I am the legal counsel for the Nevada membership of the Nev
18 Interstate Compact Commission. I had not intended to enter
19 an appearance on behalf of them because I had assumed perha
20 that agreement would be reached between the joint Commissio
21 However, at this time for the record I should like to reser
22 in the event no agreement is reached, the right of the Neva
23 membership to appear before your Commission or your Board a
24 present testimony as to its views.

25 CHAIRMAN HOLSINGER: Well, I think you should ma:
26 them in so as not to cause any delay in the hearing.

1 MR. JOHNSON: Well, I believe, as Mr. Moscovitz
2 stated -- and we are each counsel from the individual States
3 that we will be able to have some definite view for you, one
4 way or the other, by the 15th of January. But for the pro-
5 tection of the record, in the event that there was no agree-
6 or not agreement that could be reached, if the California
7 membership of the Interstate Compact Commission desires to
8 appear individually, I feel that perhaps the Nevada members
9 should have the same privilege.

10 CHAIRMAN HOLSINGER: That is right.

11 MR. JOHNSON: So I wanted to protect the record
12 along those lines.

13 CHAIRMAN HOLSINGER: That is very good, and it will
14 be so ordered. But the date is the 20th, not the 15th.

15 MR. JOHNSON: The 20th? Fine.

16 CHAIRMAN HOLSINGER: Very well. Now, we have got
17 that straightened out; or have we?

18 MR. MOSCOVITZ: It is clear to me, Mr. Chairman.

19 CHAIRMAN HOLSINGER: Now, it will also be understood
20 then, gentlemen, that the entire week beginning with the 17th
21 of February is definitely set aside for the hearing in this
22 case. Can the Staff tell me definitely whether anything is
23 set for the following week?

24 MR. WOODWARD: We have nothing set for that week.

25 CHAIRMAN HOLSINGER: Well, we will try and reserve
26 a couple of days of that week, so that, on the off chance

1 don't complete in the week of the 17th, you might have a
2 couple of days in the following week. However, it all depends
3 It might be possible that, before you got around to exercising
4 any such right, those dates might be taken. That will have
5 to be definitely understood. We might not be able to hold
6 that reservation for you. Do you understand me? We will do
7 it if we can.

8 MR. WOODWARD: I wonder, Mr. Chairman, if you might
9 specify the location and the time?

10 CHAIRMAN HOLSINGER: That will be taken up in due
11 course, yes.

12 Now, next, we have specified our hearing dates. I
13 now give consideration to an expiration time for the exchange
14 of exhibits and qualifications of expert witnesses. Do you
15 all thoroughly understand the practice of the Board in that
16 regard?

17 MR. ORRICK: I don't understand it, Mr. Chairman.

18 CHAIRMAN HOLSINGER: Well, I will make this explanation
19 then for the record. We found, very early in these
20 hearings before the Board, that frequently we encountered
21 requests for continuances on the part of parties receiving,
22 at that time, exhibits, or as the hearing proceeded, receiving
23 exhibits that were quite voluminous; and they would then --
24 the Board would be met with a request for a continuance for
25 the sole purpose of studying that exhibit. And, therefore,
26 we formulated a policy that, when parties were quite certain

1 that the information in the form of an exhibit would be re-
2 on, that it was obligatory upon that party, at a date to be
3 specified in advance of the taking of testimony, to exchange
4 exhibits, one with the other, that they were certain that it
5 would, or that it was quite likely that they would rely upon
6 that they exchange those exhibits one with the other and
7 sufficiently in advance of the taking of the testimony to
8 permit study of them.

9 Now, there are times, of course, where an exhibit
10 is of such a nature that it requires much more time than
11 normally. That has to be carefully guarded against, too.
12 at the same time, that they also exchange a list or names of
13 expert witnesses that are contemplated to be utilized at the
14 hearing, with a detailed statement of their qualifications

15 It just doesn't make sense to spring those matters
16 either one of them, in the middle of a hearing, and quite
17 frequently resulting in weeks or even months of delay in
18 putting on the hearing.

19 So by this means we found that we eliminated with
20 one stroke an enormous amount of delay and disruption of the
21 convenience of the Board and the other parties. We find it
22 very, very valuable expedient, and we do require that it be
23 done in all cases.

24 Now, understand me that it goes, of course, with
25 saying that you can't do that in all cases, because sometimes
26 you have to formulate your exhibit during the progress of

1 hearing and it is not possible -- sometimes it is not
2 possible -- to give any notice of its filing. We recognize
3 that, and we don't hold you to it in a case where it is
4 manifestly unjust. But where you know that you definitely
5 contemplate reliance upon a particular exhibit, it is just
6 unreasonable that you would hold that information from the
7 other side.

8 We wish, much against the wishes of some attorney
9 I will say, to eliminate the element of surprise. Not that
10 are so concerned with the effect on your adversary -- not a
11 all; that isn't it. It is because we want to eliminate the
12 delay and consequent expense. We want to hold the cost of
13 these hearings to a minimum. Unfortunately, they are bound
14 to cost a substantial amount of money, and we want to hold
15 that to a minimum.

16 Also, the time of your gentlemen is valuable. We
17 want to conserve that, too. That is the purpose.

18 All right, now?

19 MR. ORRICK: Yes.

20 CHAIRMAN HOLSINGER: Is it understood?

21 MR. ROBINSON: Yes.

22 CHAIRMAN HOLSINGER: Now, what do you suggest as
23 date in advance of the 20th of February for these exchanges
24 You want to allow sufficient time for study, and yet you do
25 want too much time to elapse. If you don't have any object
26 or any suggestions, the Chairman will handle the matter him

1 MR. VANDEGRIFT: Mr. Chairman, I would suggest --

2 CHAIRMAN HOLSINGER: I will give you the opportu
3 to arrange it yourselves.

4 MR. VANDEGRIFT: I would suggest a date subsequen
5 to the report from the Compact Commission, because their re
6 may have some effect on exhibits that we might want to prep
7 I would suggest a date around February 1st.

8 MR. KRONICK: I would suggest about the same date
9 Mr. Chairman, because a lot of what we will have to prepare
10 will be dependent on whether or not the joint Commission
11 arrives at an agreement, and we would like a little time af
12 that to get our exhibits out.

13 CHAIRMAN HOLSINGER: Sure you would. How about t
14 rest of you?

15 MR. ORRICK: February 1st is fine for us.

16 CHAIRMAN HOLSINGER: Satisfactory?

17 MR. ROBINSON: Satisfactory, yes.

18 CHAIRMAN HOLSINGER: How about you on my right ov
19 there?

20 MR. PARKER: I would suggest the 3rd of February,
21 it being a Monday.

22 CHAIRMAN HOLSINGER: The 3rd, you say?

23 MR. PARKER: The 3rd of February is a Monday.

24 CHAIRMAN HOLSINGER: No objection? Very well. I
25 will be the order; February the 3rd for exchange of exhibit
26 and qualifications of expert witnesses.

1 MR. PARKER: Mr. Chairman, may I inquire as to
2 whether it is necessary to inform the participants here of
3 objections to the qualifications of witnesses prior to the
4 hearing?

5 CHAIRMAN HOLSINGER: Well, that matter, I think,
6 should be -- if you do have objections, they should be just
7 promptly as you can. Let the adverse parties be notified a
8 also the Board.

9 MR. PARKER: Prior to the hearing?

10 CHAIRMAN HOLSINGER: That is right, and let us know
11 what the objections are, too, so the Board can be prepared
12 rule promptly when we reconvene.

13 MR. JOHNSON: Mr. Chairman, I don't want to seem
14 overly technical, but much is being said about the possible
15 report or recommendations of the joint Compact Commissions.
16 I assume that the joint Compact Commissions will be entered
17 as one organization; I mean the operation of the joint Com-
18 mission to present its views to this Board. I don't believe
19 they have entered an appearance as a joint Commission. They
20 have been entered individually as each State, but I believe
21 that at this time the record should show that it is their in-
22 tention, if possible, to come in as one joint Commission.

23 CHAIRMAN HOLSINGER: Oh, yes, that was clearly
24 understood. And then, in the event that there is no such
25 recommendation, then the opportunity will be afforded to the
26 separate State organizations to make their own representat-

1 MR. JOHNSON: Thank you, sir.

2 CHAIRMAN HOLSINGER: Yes, that is understood.

3 MR. MOSCOVITZ: That is understood on our part.

4 CHAIRMAN HOLSINGER: All right. Now, we have the
5 matter of the location. We fixed the date for the resumpti
6 of the hearings, but we haven't said anything about the loc
7 tion. What are the desires of the parties in that regard?
8 The same thing goes for that. If the parties have no sugge
9 tions, the Chairman will rule on the matter himself.

10 MR. ORRICK: On behalf of the Sierra Pacific Powe
11 Company, Mr. Chairman, we will have no objection to having
12 hearing right here.

13 MR. MOSCOVITZ: I was going to make the same sug-
14 gestion. I think Sacramento is probably as easy a plac^e to
15 get to, that is within the area or close to the area, as an
16 other place you can think about.

17 CHAIRMAN HOLSINGER: Well, that meets with the co
18 venience of the Chairman, because it is easier to come from
19 where I live to the hearing room than it is to go to Reno o
20 somewhere else, or some foreign country.

21 MR. MOSCOVITZ: Is there any problem about the po
22 of the State Water Rights Board to hold hearings out of the
23 boundaries of the State?

24 CHAIRMAN HOLSINGER: All right. That will be it
25 10:00 o'clock on the 17th day of February. It will be rig
26 here, then.

1 Now, is there anything else that anybody has to
2 offer within the order?

3 MR. ORRICK: Mr. Chairman, during the course of t
4 hearing I have had an opportunity to page through this Staf
5 Report, which I just saw this morning, and I note, with
6 respect to the Sierra Pacific Power Company, the point in t
7 on due diligence. I don't believe that the full understand
8 of the rights of the Nevada people and the Washoe Project
9 were understood by the Staff, and I was really quite puzzle
10 to see that that would be an issue.

11 Now, we can go back over the 30 years at our pre-
12 sentation here and show the development of this project and
13 others in that area, but it seems to me, with the hearing c
14 the merits, that that would take up a considerable amount c
15 the Board's time, and that since there is no protest to the
16 application of the Sierra Pacific Power Company, I am just
17 wondering what purpose would be served in the interests of
18 determining what is the most economical and beneficial use
19 of this water that can be made, by taking up your time and
20 the time of these numerous interested parties by going over
21 the hisotry of the Truckee River water rights for a number
22 years, which I would consider essential as a background if
23 this point is pressed.

24 CHAIRMAN HOLSINGER: Well, I don't see how that c
25 be avoided, for the simple reason that one of the reasons f
26 the formation of this Board was dissatisfaction with the

1 laxity with which the law was administered previously. And
2 the result has been that these matters have accumulated over
3 a long period of years, some of them pending for as long as
4 40 years. And the point of the fact is this: Here is a point
5 in that connection that is not well understood publicly, and
6 that is this, that this Board is a Board of limited powers,
7 and it doesn't make any difference whether this ruling is in
8 favor of an application or adverse, either way. That matter
9 is open to attack by parties who believe they are injured by
10 the action of the Board, and the fact that the Board rules
11 your favor doesn't mean you are safe. You are not. You have
12 got to rely on your record of diligence.

13 So if, by overlooking a long-continued failure of
14 diligence, the Board were to proceed to hear your application
15 as though it were in good standing, it would be leading you
16 into a trap, and we don't want to be in that position. We
17 want to apply the law as we find it, and as it applies to the
18 facts.

19 So very early in the history of the Board, it adopted
20 a resolution providing for not a revolutionary tightening of
21 the rules of diligence, but a progressive tightening; so, as
22 soon as possible and as soon as the public might be well
23 apprised of what the design was and what the proposal was,
24 that we would bring its rulings up to a proper level, and
25 the requirements of diligence would be enforced, as our commission
26 advises us should be done.

1 This situation we have before us is a good illus-
2 tration of just that thing. I don't know what the record t
3 shows; I haven't examined it. All I know is what I read at
4 it in this report here. But according to that, there is ar
5 indication there that there is a record that should be exam
6 ined, and before the hearing on the merits our legal staff
7 will make a legal review and inform us what the record does
8 show and whether it is good or bad, and then when that is
9 presented, if it is adverse to your interests, you will hav
10 an opportunity to overcome that showing, if you think you c

11 MR. ORRICK: I am sure that, in the light of all
12 the circumstances which have transpired with respect to the
13 development of that river over the last 30 or 40 years, we
14 would be able to show that, far from there being a lack of
15 diligence, a lack of due diligence, it is almost premature
16 this point to even raise it, since the Washoe project, to
17 which we are looking to tie in and tie in these two great
18 rivers -- the Carson and the Truckee, still has not been
19 completed or the funds appropriated. But we are perfectly
20 willing to do it, and I just wanted to get your feeling on
21 and we will be prepared to do that at the next hearing.

22 CHAIRMAN HOLSINGER: Those matters will be taken
23 All those preliminary matters will be taken up as the first
24 order of business when we reconvene.

25 MR. VANDEGRIFT: Mr. Chairman, in view of Mr.
26 Orrick's comments that there are no protests to his client

1 I want the record to show that, with the change of location
2 anticipated by the Washoe County and the Sierra Pacific by
3 those two applicants, the Department of Fish and Game does
4 intend to appear as a protestant, and we solicit at this time
5 conferences with those two applicants to attempt to work out
6 all differences. I think they could probably be satisfied
7 and materially shorten the hearing.

8 MR. ORRICK: We would be delighted to meet with the
9 Department of Fish and Game.

10 CHAIRMAN HOLSINGER: The Board very strongly supports
11 any possible move that you might make to get together to
12 resolve the issues before us. We appreciate that very much
13 that you will do that.

14 MR. ORRICK: Mr. Chairman, may I ask one more
15 question? You referred to a statement that would be made to
16 you by your counsel before the hearing. Now, could we get
17 that, so we could meet that?

18 CHAIRMAN HOLSINGER: At the hearing. That will be
19 presented at the hearing.

20 MR. PARKER: Mr. Chairman, I am not too familiar
21 with your method of proceeding in these matters, and I would
22 like to inquire whether cross-examination is afforded to all
23 parties who have made an appearance, or just those who have
24 filed protests?

25 CHAIRMAN HOLSINGER: Oh, our practice is that any
26 body who is willing to pay his share of the cost of the

1 transcript is at perfect liberty to participate and to make
2 such representations as he may please, irrespective of whether
3 he is a formal party to the record or not. It has been our
4 practice for a long time.

5 Anything else, gentlemen?

6 MR. WOODWARD: Mr. Chairman, I don't believe you
7 mentioned the number of exhibits which the Board should obtain
8 from the parties.

9 CHAIRMAN HOLSINGER: Yes, yes. The Board desires
10 if at all possible, to receive five copies of each exhibit
11 and the qualifications of witnesses. That is so we have
12 enough copies so there is one for each members of the Board
13 and also for the Staff. Of course, there are times when that
14 is very bothersome, and if it is in any particular case, you
15 are at liberty to request the Chairman to be relieved from
16 furnishing that many copies.

17 Anything else, gentlemen? If you have nothing
18 further to offer, we will stand adjourned, gentlemen.

19 (The meeting was adjourned at 11:10 o'clock a.m.)

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1 In the Matter of Application 5170,
2 SIERRA PACIFIC POWER COMPANY,
3 _____
4 Applications 15672, 15673,
5 U. S. BUREAU OF RECLAMATION,
6 _____
7 and Permit 5287 (Application 6534),
8 WASHOE COUNTY WATER CONSERVATION
9 DISTRICT.

CERTIFICATE
OF
REPORTER

10 ---oOo---

11
12 I, WILLIAM M. CASTLE, Certified Shorthand Reporter
13 hereby certify that the foregoing is a full, true, and cor-
14 transcript of the proceedings had in the above-entitled
15 matters taken on the 19th day of November, 1957, before the
16 State Water Rights Board; that I reported the same in stenc-
17 type and thereafter transcribed the same into typewriting as
18 appears by the foregoing transcript.

19
20 Dated at San Francisco, California, on November
21 27, 1957.

22
23 William M. Castle
24 Certified Shorthand Reporter
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