

1 STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
2 DIVISION OF WATER RESOURCES

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5 In the Matter of Applications Nos. )  
6 24880, 24881, 24882 and 25036 filed )  
7 by the Elko County Fair and Recre- )  
8 ation Board, and, Applications Nos. )  
9 24885, 24886 and 24887 filed by the )  
10 Pershing County Water Conservation )  
11 District, to Appropriate Waters )  
12 from the Humboldt River. )  
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TRANSCRIPT OF PUBLIC HEARING

APPEARANCES:

- LeROY ARRASCADA, Attorney at Law of Reno, Nevada, counsel for the Pershing County Water Conservation District, one of the Applicants.
- JOHNSON & SLOAN by JAMES W. JOHNSON, JR., Attorney at Law of Reno, Nevada, counsel for the Applicant Elko County Fair and Recreation Board.
- WILSON & WILSON by ORVILLE R. WILSON and STEWART R. WILSON, Attorneys at Law of Elko, Nevada, counsel for the various protestants.
- ROLAND D. WESTERGARD, State Engineer and Hearings Officer, of Carson City, Nevada.

1 BE IT REMEMBERED, that the above-entitled matter  
2 came on regularly to be heard, after due notice and publication,  
3 at 10:00 A.M., Tuesday and Wednesday, May 19 and 20, 1970, in the  
4 court room of the Elko County Court House, Elko, Nevada, before  
5 Roland D. Westergard, Nevada State Engineer. Appearances are as  
6 indicated on Page 1 of this transcript.

7 WHEREUPON the following proceedings were had:

8 MR. WESTERGARD: I am Roland Westergard, State En-  
9 gineer of the State of Nevada, and the hearing in this matter will  
10 now be in session.

11 I am sure all of you know Frank Weinrauch, our  
12 reporter, but I would like to introduce Frank and ask Mr. Starr  
13 Hill, our Surface Water Engineer, to swear the reporter.

14 (The reporter was duly sworn.)

15 The matter of the number of copies of the transcript  
16 and also the matter of paying for the transcript I think should  
17 be disposed of first. The State will require the original tran-  
18 script and one copy. I would suggest, without objection, that  
19 the parties consult with the reporter in the matter of ordering  
20 their own transcripts. As far as payment of costs, we have two  
21 applicants and, for all practical purposes, one protestant. Could  
22 I have a stipulation from the three parties of interest as regards  
23 the payment of costs?

24 MR. WILSON: We would stipulate that the cost of  
25 the transcript be borne, as required by the State Engineer, be  
26 borne one-third, one-third, and one-third by the respective par-  
27 ties.

28 MR. ARRASCADA: No objection.

29 MR. JOHNSON: No objection.

30 MR. WESTERGARD: Let the record show that the

1 the Court, or yourself Mr. Westergard, and I don't see any reason  
2 why we can't proceed with the argument right now and conclude this.  
3 We have 45 minutes, lets wrap it up and get home.

4 MR. ORVILLE WILSON: Whatever you rule Mr. Westergard.

5 MR. WESTERGARD: Frankly I would like some time to  
6 reflect on what transpired today. We will be in recess until  
7 9:30 tomorrow morning for the hearing of arguments at that time.

8 (Recess was called at about 4:20 P.M.)

9 Elko, Nevada

10 Wednesday, May 20, 1970

11 (The hearing was reconvened at about 9:30 A.M. out of  
12 the presence of the reporter and all sides presented  
13 their applicable arguments and authorities. The  
14 reporter was then called in at about 11:48 A.M. and  
15 the following proceedings were had:)

16 MR. WESTERGARD: Are you ready Frank?

17 THE REPORTER: Yes.

18 MR. WESTERGARD: I have discussed with counsel off  
19 the record their interests in filing briefs. It is my understand-  
20 ing that Mr. Wilson has cited pertinent information from the cases  
21 that he gave in support of his arguments this morning, the Mr.  
22 Wilsons I should say. It is also my understanding that counsel,  
23 both counsel for the applicants, are satisfied that they have com-  
24 mented sufficiently on the cases cited by Mr. Wilson this morning  
25 and for that reason the pertinent facts that may be included in  
26 these cases are of record, if not in the transcript of this hear-  
27 ing at least of record in the proceedings this morning.

28 Is that a true statement as far as counsel is con-  
29 cerned?

30 MR. JOHNSON: As far as I am concerned that is a

1 proper statement.

2 MR. ARRASCADA: That is a proper statement.

3 MR. ORVILLE WILSON: Yes.

4 MR. WESTERGARD: Let the record show they have  
5 indicated in the affirmative.

6 I think first we should dispose of the matter of  
7 procedure from this point on.

8 I consider it important to issue decisions on water  
9 right matters at the earliest possible date in fairness to all the  
10 applicants and protestants involved. Perhaps my experience in the  
11 last couple of years has enforced this feeling because I have  
12 found that the longer these things drag the more complicated they  
13 get. So with that in mind I fully intend and will, in the next  
14 few minutes, issue my decision on the applications that are the  
15 subject of this hearing. So there will be no misunderstanding on  
16 the procedures I have also discussed, off the record with counsel  
17 for all parties, the procedures for filing appeals. The statutes  
18 provide that any decision issued by the State Engineer shall be  
19 subject to appeal within 30 days of rendition of his decision. So  
20 may I have the record show, and will the counsel stipulate to the  
21 fact, that any appeals to be filed will be filed within 30 days of  
22 today's date irrespective of the fact that the transcript may not  
23 be available for a couple of weeks. Will you stipulate to this  
24 point?

25 MR. JOHNSON: I will so stipulate.

26 MR. ARRASCADA: Stipulate on behalf of the Pershing  
27 County Water Conservation District.

28 MR. ORVILLE WILSON: So stipulated.

29 MR. WESTERGARD: With that I will proceed to give  
30 what I consider to be a very brief background on the reasoning

1 behind the action that I think the State Engineer has to take in  
2 the matter of these applications.

3 There are four, I think, basic considerations here.  
4 One is the applicability and interpretation of the Humboldt River  
5 Decree.

6 Second is the availability of water in the Humboldt  
7 River Stream System to satisfy any future or additional appropri-  
8 tions that are sought on the stream system.

9 The third is what effect would additional appropri-  
10 tions have on existing water rights.

11 And the fourth, as cited in the statute, is the mat-  
12 ter of public interest. Are appropriations, in fact, in the public  
13 interest.

14 Now the bulk of the testimony taken here has really  
15 gone to two points. One is the applicability of the Decree. Par-  
16 agraphs, or, yes Paragraphs 42 and 44 have been cited repeatedly.

17 The other major point that has been made is the  
18 availability of water. I think really these two are tied in toge-  
19 ther so tightly that you almost have to cover them in one consid-  
20 eration. The Decree is specific, as has been pointed out numerous  
21 times in the last few hours, in that it says in a normal year dur-  
22 ing the irrigation season the stream system is fully appropriated.  
23 It specifically makes no finding in the nonirrigation season.

24 One of the exhibits of record are hydrographs that  
25 were prepared by Mr. Hennen and I don't think the validity or  
26 accuracy of those hydrographs, the interpretation has been ques-  
27 tioned, but I don't think the accuracy has been questioned. These  
28 hydrographs indicate that at Palisade at certain times of the year  
29 there is water over and above what is necessary to satisfy the  
30 decreed rights on the stream system. Those hydrographs also indi-

1 cate that on the tributaries to the Humboldt Stream System below  
2 the dam sites not only do the hydrographs but Mr. Hennen's testi-  
3 mony indicated that at times the flows at those points are consid-  
4 erably in excess of the amounts necessary to satisfy the decreed  
5 rights. And with this background I think we should reflect again  
6 on the applicability of the decree and my charge and my predeces-  
7 sor's charge in that decree.

8 In the case law cited by the protestants the point  
9 that struck me was that each interpretation and each ruling based  
10 on that decree, went to the decree itself. And this I, of course,  
11 am well aware of. And the same reasoning and the same case law  
12 has to be applied to the Humboldt River Decree. However, I don't  
13 think that argument or that case law either, went to the fact that  
14 what do you do with water supplies, and who has the authority on  
15 water supplies over and above that allocated in the decree. There  
16 can be no argument that the Court retains jurisdiction, gives the  
17 State Engineer direction and, in fact, the State Engineer operates  
18 in accordance with the orders of the Court on the water supplies  
19 that are covered in the decree. And this we acknowledge, and this  
20 we would certainly not even propose to change.

21 There have been some suggestions for changes in the  
22 Humboldt River Decree. I would certainly oppose this at any level.  
23 I think this is a valid document that is enforceable and must be  
24 enforced in its present form. I do not interpret it to say that  
25 in any year that is not average there is no water available for  
26 appropriation.

27 Now to move to another point as regards availability  
28 of water. There are, as was pointed out by Mr. Arrascada, limita-  
29 tions on the rights downstream from Palisade. Not only with the  
30 Pershing County District but the irrigable lands below Palisade by

1 definition in the decree. Which would also apply to storage rights  
2 because the statute says the duty of water assigned to an area  
3 shall be that that has been assigned in any adjudication procedure  
4 on the stream system. So the direct diversion duty on all the  
5 lands below Palisade is 3 acre feet per acre. The two applications  
6 for storage of 100,000 acre feet each, which have been issued to  
7 the Pershing County Water Conservation District would be bound by  
8 that provision. And they are also bound by another provision, and  
9 that is that the amount of water to be diverted to storage in any  
10 given year under those rights is limited to 4 acre feet per acre.  
11 As also has been pointed out, the Pershing District must show ben-  
12 efiticial use over a given period of time of the quantities of water  
13 that they can in fact use from these storage facilities.

14 This, I think, gets to the point of comparison of  
15 storage capacities with allocated rights. In other words, the  
16 total amount of water that can be stored under those Rye Patch  
17 applications will total 4 acre feet, 4 times the number of acres  
18 that are actually in irrigation within the Pershing County Water  
19 Conservation District. The testimony here has indicated that now  
20 it is some 31,000 acres. It is true that the District has the  
21 right to increase that within a limited period of time. The point  
22 here is that there is a possibility, and I think that you have to  
23 consider this in consideration of availability of water, because  
24 there is a matter of priority involved on subsequent rights. There  
25 is a possibility that a portion of those rights will revert to the  
26 stream system and I realize the validity of basing additional  
27 rights on this theory could be questioned. But I think it is some-  
28 thing that certainly has to be considered.

29 I was particularly interested in the testimony of  
30 the expert Hugh Lambert yesterday who, I am sure, everyone recog-

1 nizes as a true expert, and the efforts to tie him to a figure  
2 that you could apply to the Palisade Gauge at any time, as an  
3 amount of water to satisfy the needs of the lower water users.  
4 Mr. Lambert was, as always, very truthful and said that this  
5 couldn't be done. I think this is a very pertinent fact in that  
6 not even he was able to, with his background, say that in any  
7 given year you have to have this much water at Palisade, because  
8 of the various factors, including the tributary inflow that Mr.  
9 Wilson alluded to. Because of these factors this was an impossi-  
10 bility.

11 I mentioned Mr. Hennen's testimony on the fact that  
12 in support of his flow charts that there is, at various points on  
13 the stream system, water over and above that necessary on a direct  
14 diversion basis to satisfy rights. He also mentioned a figure in  
15 his testimony that the Corps of Engineers had indicated that the  
16 yield of these proposed reservoirs would total something like  
17 18,000 acre feet. So this is a matter of record as regards the  
18 availability of water.

19 Quite a point has been made of the fact that whether  
20 you consider on an acre foot basis or a direct diversion basis  
21 that the water rights of record exceed the known sources of supply  
22 except, perhaps, in one year over the past 66 years of record.  
23 And this hearing does not and we have not allowed it to get into  
24 the realm of operation. "But if these reservoirs in fact are con-  
25 structed for flood control purposes there will be a practical  
26 result, and that is that the flow below the reservoir sites will  
27 be limited. This is going to require some sort of an operational  
28 agreement. What I am saying is the fact that in spite of the fact  
29 that the direct diversions under the decree, plus the appropriation  
30 under storage rights, total some 10,000 second feet. As a practi-

1 cal matter, through operational agreements, these are going to  
2 have to be limited if, in fact, these reservoirs are going to be  
3 effective in flood control years. I think this has a bearing on  
4 the argument that direct diversionwise the figures total something  
5 in excess of what the stream system has produced."

6 I am at a loss to understand why one more very sig-  
7 nificant point wasn't made. And I am sorry, I think Mr. Wilson  
8 started in this direction yesterday and I am sorry he didn't pursue  
9 it. He began to compare the record of the Humboldt River at  
10 Palisade with the record at Imlay. This would have revealed some  
11 very interesting information. It would have revealed there is a  
12 considerable loss, particularly in periods of high flow. The  
13 effect of upstream storage would be to control the flows in the  
14 river and, in turn, salvage, if I can use that terminology, or at  
15 least develop water supplies by virtue of the very physical limi-  
16 tations of channel capacity that are now being lost. Again I  
17 think this is an important consideration.

18 One other thing that I mentioned in the questioning  
19 of Mr. Hennen yesterday, and Mr. Stewart Wilson mentioned it sev-  
20 eral times this morning. In the compilation of the amounts of  
21 water available on an acre foot basis at Palisade he said 2 or 3  
22 times we will assume that the people above Palisade are getting  
23 100% of their rights, 600 or 300, whatever it is. Whatever the  
24 figure is it is a matter of record. Mr. Hennen testified that on  
25 a so-called good water year above average water year, and it is a  
26 good practice, the practice is the practice of distributing sur-  
27 plus flows equally among the water users in accordance and a per-  
28 centage and ratio with their existing water rights. The pertinent  
29 point here is, in fact, that the water users above Palisade in  
30 those good water years have received more than 100% of their right.

1 This is not reflected, has not been reflected in the flow charts,  
2 or anything else, as to the effect this would have on the total  
3 quantity at Palisade if, in fact, the stream system were regulated  
4 to provide the diversion requirements that the decree does provide.

5 Now we get to the matter of the substance of the  
6 protest. And without going through them one by one I would like  
7 to comment generally on these.

8 There has been considerable argument back and forth  
9 about the authority of the Elko Fair & Recreation Board to file  
10 applications. The Statute, NRS 533.325, provides that, in part,  
11 any person may file an application to appropriate water. The  
12 statute, NRS 533.010 defines a person. And this includes an  
13 association or corporation.

14 It is my view, AND I RULE, that by the authority  
15 granted in it by an act of the Nevada State Legislature to create  
16 these recreation boards, and by virtue of the fact that this was  
17 followed up by Elko County, and a board was created, I rule that  
18 they are, in fact, a legal entity and are entitled to file appli-  
19 cations to appropriate water.

20 There has been quite a point made of the fact that  
21 the applicants do not own property and therefore cannot place  
22 water to beneficial use. There was testimony given yesterday in  
23 fact if these reservoirs are built one of the requirements will be  
24 the acquisition of certain lands and water rights. So at that  
25 time certainly there would be a place and a means of placing water  
26 to beneficial use. And I think that intent, through the previous  
27 studies that have been authorized by the Elko Fair & Recreation  
28 Board, I think that intent has been shown. I am not sure, and I  
29 don't think that this is a requirement in itself because of the  
30 secondary application procedure. I believe that under the law the

1 Elko Fair & Recreation Board does have the right to acquire primary  
2 rights and dispose of the water so appropriated under secondary  
3 permit.

4           There is an inclusion in the applications filed by  
5 the Elko County Fair & Recreation Board, under Paragraph 3, that  
6 says the water is to be used for storage and then there is an  
7 addition in parenthesis (irrigation and domestic use in accordance  
8 with NRS 533.440). I think that this by law is not, it was not  
9 necessary for the Elko Fair & Recreation Board to include this  
10 manner of use, other than storage. I don't think that this renders  
11 the applications ineffective. I AM GOING TO RULE AT THIS TIME that  
12 they are valid applications for the purpose of storage and that  
13 they have not restricted the use under secondary permits to irri-  
14 gation and domestic purposes.

15           I think the matter of, which is included in the pro-  
16 test, that there is no water in the Humboldt River and its tribu-  
17 taries; I have described my feelings on this in my previous com-  
18 ments. There again is a provision in the, or at least an article  
19 in the protest that goes to the decree, which I have previously  
20 described, as to my interpretation of Paragraph 44 of the decree.

21           This constitutional question is an interesting,  
22 fairly new concept, I think, in the consideration of the Humboldt  
23 River water supplies. At the time action was taken on those  
24 applications for direct diversion I am sure, as Mr. Arrascada has  
25 said and as has been implied by others, the action taken was based  
26 on the conditions and the facts that existed at that time. I  
27 think it is also recognized that many of the conditions remain the  
28 same. And I think the facts as pertains to the type of appropria-  
29 tions sought are entirely different. In the first place the  
30 applications that were included as a part of the protest are on a

1 stream system which is not tributary to the stream system or to  
2 the applications under consideration here. These applications  
3 were for direct appropriation diversions during the irrigation  
4 season. So a determination has to be made as to not only the  
5 intent but the capability of placing water to beneficial use.  
6 This on a direct diversion basis, once every few years, as has  
7 been acknowledged by everyone here. In other words, there are a  
8 few years where there is water over and above that necessary to  
9 satisfy all the rights. But, through storage of water supplies,  
10 and for later use, you, in fact, can place water to beneficial use  
11 through this means where in fact by a direct diversion, and I can't  
12 say of course that this was the basis for the State Engineer's  
13 findings at that time, but in reflection I would assume that this  
14 was his decision and this would be my interpretation of the results  
15 of that decision. That in fact the direct diversion in those  
16 small quantities, once every few years, was not considered to be  
17 a beneficial use. But under a storage concept you can hold it  
18 long enough to where you can place water to beneficial use. These  
19 people, as regards the constitutional question, were entitled, of  
20 course, to appeal the decision of the State Engineer in that case.  
21 To my knowledge they did not do it.

22           And this brings us to another very important point  
23 that has been a serious concern to me for a long time. And that  
24 is that this question has not in fact, I don't think, had a good  
25 test at least under Nevada law. Mr. Wilson indicated that the  
26 approval of any applications on the Humboldt would throw the system  
27 open to other appropriations. This has already happened. A water  
28 user below Palisade and above Lovelock has filed for direct appro-  
29 priation on the Humboldt River. And I have been concerned that  
30 if action were taken by the State Engineer, in one regard or the

1 other, and the decision was not appealed, that the people making  
2 the application might be deprived and someone along later in time  
3 may come along and receive the benefit with a later priority of  
4 what I deem to be unused surplus. I shouldn't say unused, let me  
5 correct that, surplus water on the Humboldt River System. Again  
6 in the protest there was reference to the fact that the State  
7 Engineer cannot grant these applications without going to court  
8 and having the decree amended. I have to emphasize again that the  
9 decree covers the vested rights on the stream system and it is a  
10 compilation of the adjudicated rights on the stream system over  
11 which the court does retain authority and control. But the State  
12 Engineer does then, in fact, have authority and control over water  
13 supplies over and above those amounts issued.

14 The last point of all the protests is that the grant-  
15 ing of this application would impair the existing water rights of  
16 the protestants. I think it has been acknowledged by the protes-  
17 tants in these matters that there is no intent to in fact adverse-  
18 ly effect any existing water right. Of course, as has been the  
19 case with the storage applications granted to the Pershing County  
20 Water Conservation District, and subsequent rights issued, they  
21 would have to be issued subject to existing water rights. I think,  
22 and IT IS MY RULING, that this matter then would be covered by the  
23 inclusion in any application granted, the fact that it was in  
24 fact issued subject to existing water rights.

25 Now this has been the basis for some discussions of  
26 the Forest Service claims. Frankly, this is the biggest threat to  
27 the State of Nevada and to the western states in general, this  
28 threat of Federal intervention through the Reservation Doctrine.  
29 It is just a matter of time until the Reservation Doctrine will be  
30 extended, or attempts will be made. Orville Wilson described how

1 it pertains to military reservations and Indian reservations and  
2 Forest reservations. In my opinion it is just a matter of time  
3 until this will be pursued on public lands and others. That, of  
4 course, is not necessarily the subject of this hearing. But in  
5 any event I think that if they, the Forest Service, or any other  
6 Federal agency were inclined and they have indicated that they are  
7 through one of the exhibits that Mr. Wilson presented, and if they  
8 do proceed with these inventories I feel that they would then  
9 impose through this Federal administration, a limitation on the  
10 administration of the decree through me and through our own court  
11 having jurisdiction, a regulation based strictly on diversion  
12 allocations in the decree and will on any duty allocation that may  
13 enter into it.

14 Now we come to the point of public interest. I think  
15 it is difficult to argue that as long as existing rights that have  
16 been acquired in accordance with law and that are being administered  
17 in accordance with law are satisfied, that the development and  
18 appropriation and use of water supplies in an arid region, or any  
19 region, is certainly in the public interest. And we have a rather  
20 unique, I think it is a little unique, situation at hand here.  
21 The dams that are proposed to be built, are to be built primarily  
22 as acknowledged by the Corps of Engineers, primarily for flood  
23 control purposes. There will be some conservation benefits if they  
24 are built, if not through the development of additional water  
25 supplies certainly through the practice of enabling water users to  
26 accumulate water and distribute water in larger heads than they  
27 can now. But the point is that financing of these structures  
28 would be based on flood control benefits. And I think the record  
29 as reported, as reflected in Mr. Hennen's flow sheets, and in spite  
30 of the fact that these totals I think are somewhat misleading as I

1 have tried to describe, if in fact there is water over and above  
2 those quantities, it can be stored in those reservoirs really at  
3 very little cost to the people developing them. And again, to get  
4 back to the public interest thing. The amount of water available  
5 for storage in this instance is not nearly as critical as it might  
6 be if a project were going to be built and financed strictly for  
7 conservation development. I think it is important and I want the  
8 record to show that the applicants have been warned that although  
9 it is my finding that there is surplus water available at given  
10 times in the Humboldt River Stream System it is sporadic and that  
11 any expenditure of money to develop this water has to be done  
12 with that understanding.

13 I think that the procedure that has been followed to  
14 acquire primary rights with the possibility of then acquiring  
15 secondary permits, is a valid procedure in this instance because  
16 it would provide the Elko Fair and Recreation Board, and other  
17 interested people, the opportunity to negotiate for use of these  
18 water supplies to be developed in the interests of this particular  
19 area. Granting any rights under these applications would bear an  
20 inherent serious obligation to the applicants. The law provides  
21 that there must be due diligence in the process of developing and  
22 perfecting a water right.

23 With this background, IT IS MY ORDER, that the pro-  
24 tests to Applications 24880, 24881, 24882, and 25036, filed by the  
25 Elko County Fair & Recreation Board, are overruled and permits  
26 will be issued thereunder.

27 We then come to a discussion of the applications  
28 there were filed some several hours later in time. I was surprised  
29 also that there was not some testimony given on this point. I am  
30 aware of the fact that the reference in the statutes go to estab-

1 lishing a date of priority as of the date of filing. We were  
2 faced with a practical problem here of distinguishing between the  
3 priorities on these applications. IT IS THEREFORE MY RULING that  
4 the fact that the Elko County Fair & Recreation Board filed prior  
5 in time, if only by hours, they in fact do have priority, and that  
6 to issue permits to the Pershing County Water Conservation District  
7 for the same dams and the same facilities included under these  
8 applications would, in fact, be adverse to the water rights that I  
9 have just indicated are to be granted to the Elko County Fair &  
10 Recreation Board. And I therefore deny Applications 24885, 24886  
11 and 24887 filed by the Pershing County Water Conservation District.

12 There is the matter of some secondary applications  
13 that have been improperly, probably, the subject of this hearing.  
14 But we, or I, continued to allow discussions of these in hopes  
15 that these discussions might bear some light on the decision to be  
16 made on these applications. It is not proper because they are not  
17 the subject of this hearing for ruling on at this time. I do again  
18 point out the fact that in any secondary applications one of the  
19 prerequisites is an agreement between the primary water right  
20 holder and the secondary water right holder. With that I declare  
21 the hearing at recess.

22 MR. ORVILLE WILSON: Just a moment. I think we are  
23 entitled to a ruling as to the amount of surplus water that you  
24 have allotted here.

25 MR. WESTERGARD: I have indicated that the permits to  
26 the Elko County Fair & Recreation Board would be granted. In allow-  
27 ing those permits I issue them for the quantities for which they  
28 are applied with the understanding that the amount to be perfected  
29 will be dependent on the amount to be placed under secondary use  
30 under beneficial use.

1 MR. ORVILLE WILSON: Are you making a finding that  
2 there is that amount of surplus water, are you so ruling? I take  
3 it that is your obligation to declare the amount of unappropriated  
4 water, and that is what we want as we go forward.

5 MR. WESTERGARD: I am ruling that the Elko County  
6 Fair & Recreation Board has filed to place this amount of water  
7 to beneficial use. I am ruling that they have indicated, to my  
8 satisfaction, an intent to do so. And I am ruling that based on  
9 the information available at this time if, in fact, they do pro-  
10 ceed to place this water to beneficial use-----.

11 MR. ORVILLE WILSON: Yes?

12 MR. WESTERGARD: Then they will be entitled to that  
13 amount of water.

14 MR. ORVILLE WILSON: Are you ruling that there is  
15 260,000 acre feet of surplus water in the river?

16 MR. WESTERGARD: Mr. Wilson, I am not ruling as to  
17 how much surplus water there is available. I am ruling to the  
18 fact that there is unappropriated water in the Humboldt River Stream  
19 System.

20 MR. ORVILLE WILSON: Could we have a specific order  
21 on that? That it is clearly understood that you are making no  
22 ruling as to the amount of unappropriated water in the river?

23 MR. WESTERGARD: My ruling is there is, in fact,  
24 water available for appropriation. I am not determining how much.  
25 But this will be determined when the water is placed to beneficial  
26 use under the applications.

27 With that I thank you very much.

28 (The hearing was closed at about 12:20 P.M. on Wednesday,  
29 May 20, 1970.)  
30

1 REPORTER'S CERTIFICATE

2 I, Frank Weinrauch, the official reporter of the  
3 Fourth Judicial District of the State of Nevada, in and for the  
4 County of Elko, DO HEREBY CERTIFY:

5 That the foregoing document, consisting of pages  
6 numbered 1 through and including 125, is a full, true, and correct  
7 transcript of the testimony adduced pertaining to Water Applica-  
8 tions 24880, 24881, 24882, and 25036 filed by the Elko County Fair  
9 & Recreation Board, and Applications 24885, 24886 and 24887 filed  
10 by the Pershing County Water Conservation District, to the best  
11 of my knowledge, skill, and ability.

12 DATED and SIGNED at Elko, Nevada, this 7th day of  
13 June, 1970.

14  
15  
16 /S/ Frank Weinrauch

17  
18 I N D E X

19 Direct Cross Redirect Recross

20 PROTESTANTS' WITNESSES

21	George W. Hennen	9	34		
22	Charles E. Harper	36	39		
23	Myron Goldsworthy	40	48		
24	Charles E. Harper	58			
25	Hubert C. Lambert	67	74	82	
26	Protestants' Rest	85			

27 ELKO APPLICANT'S WITNESSES

28	George W. Hennen	85	93		
29			97		
			102		

30 DECISION 1010 1011 IS 1012 25 110-124

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