

STATE OF NEVADA
DIVISION OF WATER RESOURCES
STATE ENGINEER

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In the Matter of Applications:

24944, 24951, 25014, 25015,
25016, 25017, 25018 and 25236.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Held before

ROLAND D. WESTERGARD,
State Engineer.

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Held in

District Courtroom
Lyon County Courthouse
Yerington, Nevada

*

Tuesday, July 28, 1970

10:10 o'clock, a. m.

Reported by: Harold Krabbenhoft, CSR.

1 inquiry was posed as to whether there was a desire to file
2 briefs, and there was no affirmative indication.

3 I would like a few minutes to contemplate this. I
4 won't promise you in ten or fifteen minutes a decision will be
5 ready, but I am of the firm belief the sooner these matters are
6 completed the better off the parties are, and if you will bear
7 with me, with my staff, Jim Perkins and Starr Hill, who are
8 present, give us fifteen minutes, and we'll be in recess for
9 that period of time.

10 (The hearing was thereupon recessed from 3:07 o'clock,
11 p.m., until 3:30 o'clock, p.m.)

12 MR. WESTERGARD: We will be back in session. We have
13 reached the time that everybody but me has been looking forward
14 to.

15 As I indicated just prior to the recess, I feel there
16 is a lot of merit in ruling on these matters at the earliest
17 possible time in the interest not only of the people directly
18 involved, but I think it is in the interests of the area and the
19 state to do it.

20 As was indicated earlier, considerable time and
21 thought has gone into this matter of appropriation of waters of
22 the Walker River stream system. An informal hearing was held
23 some time ago which revealed some very interesting information.
24 This was supplemented by some valid arguments on both sides
25 today, and I would be reluctant to go away from here thinking
26 that anyone thought that this subject has been treated lightly.

1 because it certainly hasn't.

2 I think that it would be appropriate, probably, to
3 rule in reverse order, taking the last application in priority
4 first, and that is the application of the Walker River Develop-
5 ment Company, Number 25236. I certainly concur with many of the
6 arguments raised by the applicants regarding the delays that
7 have existed in the construction of Hoye Canyon Dam. Perhaps
8 some of the testimony given may have been somewhat misleading
9 in that the Walker River Irrigation District does in fact own
10 and has held for some time a valid water right to store water
11 at Hoye Canyon Dam site. I think some of the arguments today
12 would have been more appropriately addressed to this situation
13 if in fact that permit did not exist. This is a valid water
14 right. It will remain valid until such time as it is either
15 perfected or cancelled for failure to act on the application.
16 I think a discussion and additional discussion regarding the
17 delays and the litigation are also in order. I think the views
18 should be apparent on this. As I indicated, as well as I'm sure
19 many of the rest of you are frustrated by the fact that develop-
20 ments have been held up due to the disagreements with the State
21 of California, I am certain that any entity or corporation or
22 any private individual that sought to develop waters of the
23 Walker River would be faced with the same situation that the
24 Walker River Irrigation District is. I don't view this necessa-
25 rily as an infringement against the Walker River Irrigation
26 District's right to proceed, but rather as an infringement

1 against the State of Nevada's right to proceed to develop their
 2 own water resources in the manner that they see fit. In any
 3 event, we are faced with this obstacle that we hope will be
 4 clarified by approval of the Interstate Compact. As I said,
 5 anyone proposing development or attempting development would be
 6 faced with this same matter.

7 I appreciated the comments by the applicants as
 8 regards the possibility of amending their application, and I
 9 would see no problem in amending the quantities of water to be
 10 stored. However, the application was made for a point of diversion
 11 ion at a specific point and must be considered on the merits of
 12 the description of the physical works in the application. This
 13 coincides with the point of diversion and proposed site of
 14 development by the Walker River Irrigation District under a
 15 prior right. It is my ruling that to grant another application
 16 at that specific site would adversely affect the prior rights
 17 of the Walker River Irrigation District.

18 I appreciated the suggestion that perhaps a postponement
 19 of action would be in order. Again I think that we would
 20 then be guilty of some of the things we criticize today, delay
 21 in decisions, and therefore, with some regret, I deny your
 22 request for a postponing consideration of the application, and
 23 do in fact deny application 25236 on the grounds it would
 24 adversely affect the prior rights of the Walker River Irrigation
 25 District.

26 Still in reverse order, almost in reverse order, I

1 would like to take the application of the Walker River Irriga-
2 tion District on the East Walker and Main Walker Rivers. Mr.
3 Rowntree in his testimony this morning, as pointed out by Mr.
4 Laxalt, indicated there was an old, pending application on the
5 East Walker River to appropriate waters by the Walker River
6 Irrigation District. This in fact, as it indicates, remarks in
7 the application would indicate that the proposal on the intent
8 was to store waters under that prior application. What this
9 essentially means is that the decree sets forth direct diversion
10 rights on the Walker River, on the East Walker and Main River.
11 There are some prior rights and applications to store addition-
12 al water on the East Walker River, but there are in fact no
13 intervening rights for direct diversion of the East Walker
14 River for those supplies over and above the decree. I there-
15 fore overrule the protest of the Walker River Development
16 Company to Application 25018 and grant it to the Walker River
17 Irrigation District, subject, of course, to all existing rights
18 on the stream system.

19 The next application to be considered -- I'm sorry
20 if I said 25018. That should have been 25017. Next we come to
21 25018 by the Walker River Irrigation District to appropriate
22 waters out of West Walker River. Again, as reported by Mr.
23 Rowntree and Mr. Laxalt this morning, there has been since
24 1919 an application pending to appropriate waters of the West
25 Walker River, direct diversion, in the amount of 3,000 second
26 feet. Subsequent rights in the form of the Hoyo Canyon and the

1 storage application have been issued, with a later priority
2 than this 1919 right. Also in accordance with the testimony of
3 Mr. Rowntree this morning, in answer to questions not only by
4 Mr. Lazalt but by myself, he indicated there was no intent of
5 the District for duplication, and in our view this 25018 would
6 be in effect a duplication of the prior filing of the Walker
7 River Irrigation District, so in accordance with the testimony,
8 I hereby deny Application 25018 by the Walker River Irrigation
9 District to appropriate waters of the West Walker River.

10 There is a matter of application, somewhat out of
11 order now, 25014, which was filed by Fred M. Fulstone, Jr.,
12 to appropriate waters of Desert Creek, which is, of course, a
13 tributary to the Walker River Stream System. It was not
14 pointed out in the testimony, it was alluded to in a letter by
15 Mr. Arbuthnot, but in June of 1956 a similar application,
16 number 16970, was filed by Fred M. Fulstone, Jr., to appropri-
17 ate flood and surplus waters of Desert Creek. Investigations
18 were held by the then State Engineer, and this prior applica-
19 tion was denied on the grounds that the protest to the granting
20 of Application No. 16970 are sustained and the application is
21 denied on the grounds that its granting would impair the value
22 of existing rights and be detrimental to the public welfare.
23 With this prior denial and considering all of the circumstances,
24 it is my ruling that the more recent application for Fred M.
25 Fulstone, Jr., on Desert Creek, namely 25014, be denied on the
26 similar grounds as to the denial of the previous State Engineer.

1 This then leaves Applications 24944 by the Simpson-
2 Colony Reclamation Canal, Application 24951 by the Saroni Canal
3 Water Users, and Application 25015 by F. M. Fulstone Corporation
4 and Application 25016 by Glenn and Vivian E. Fulstone, all to
5 appropriate waters of the West Walker River.

6 These applications are somewhat of a different nature,
7 I think, than any of the others, in that they have been filed
8 by private ditch companies and individuals to appropriate waters
9 which are also subject to certain administration by the Board
10 of Water Commissioners and the Walker River Irrigation District,
11 and I say that by virtue of the announcement that the previous
12 application in the amount of 3,000 second feet, the old one
13 pending for some years, will be granted to the Walker River
14 Irrigation District.

15 I think that some of the comments made by both Mr.
16 Johnson and Mr. Laxalt are relevant. Frankly, this is a very
17 difficult decision on my part. I feel that the balance to be
18 weighed here is, first, a consideration of the prior rights now
19 held by the Walker River Irrigation District and also the
20 complication that is pointed out by the District representatives
21 that would exist in administration and management of the water
22 supplies if in fact these applications were granted. We have
23 reviewed the records and find that a prior right by the Walker
24 River Irrigation District does cover the same land as these
25 applications filed by these four entities I just described, so
26 in effect, the Walker River Irrigation District does have a

1 right, will have a right for 3,000 cfs. to serve this area. I
2 therefore deny the four applications, 24944, 24951, 25015 and
3 25016, on the grounds that approval of these applications would
4 have an adverse effect on the prior right to be issued to the
5 District, and also on the grounds that approval of this applica-
6 tion would create not only administrative problems, but also
7 management problems which could be, and I think would be,
8 inherently physical, legal and financial in this nature.

9 This concludes my ruling on the eight applications
10 under consideration today. I appreciate the attention and
11 devoted effort that was made by all concerned, and thank you
12 very much. I specifically want to thank the Court Reporter,
13 Mr. Krabbenhoft, and with that, we are adjourned.

14 (The hearing was thereupon concluded and closed at
15 3:45 o'clock, p. m.)
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REPORTER'S CERTIFICATE

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This is to certify that I, HAROLD KRABBENHOFT, CSR, a Certified Shorthand Reporter of the State of Nevada, was present at the time and place the foregoing proceedings were had and taken, at Yerington, Nevada, on Tuesday, July 28, 1970; that I did report the same fully and truly in Stenograph writing to the best of my ability; that thereafter I caused my said Stenograph writing to be transcribed into longhand typewriting, and the foregoing pages, beginning at the top of page 1, to and including line 15 on page 118 hereof, constitute a full, true, correct and complete transcription of said Stenograph writing aforesaid.

Dated this _____ day of August, 1970.

/s/ HAROLD KRABBENHOFT CSR
Certified Shorthand Reporter,
State of Nevada.