

Hearing Narrows Dispute To A Difference In Interpreting Terms of the Dam Contract

Controversial ground on which the Upper Lake storage dispute has been waged was rapidly narrowed as the Chamber of Commerce investigation proceeded yesterday, and by the close of the day apparently there was little difference of opinion left.

As far as the casual observer could tell the dispute narrowed down to a question of interpretation of the meaning of the dam contract.

Insists It's Ambiguous

J. H. Carnahan for the American Legion insisted that the wording of the 1917 contract, under which the California-Oregon Power company is authorized by the United States to build the Link river dam, is ambiguous. So much so, he said, that construction of the dam under the contract would give the power company a strangle hold on the Upper Lake and control of all its waters above the amount needed to irrigate the 50,000 acres now under water in the Klamath project.

It would permit the company to raise and lower the lake level, on the one hand damaging land owners and the public by inundation of vast areas of private and public land on the shores of the lake, on the other interfering with navigation and lumbering when the fluctuation was to the low level.

Under the contract, he said, the company might take all but the water for 50,000 acres, run it down the river to Keno, and generate power at its plant there, rush it on to turn the turbines at the Copco plant, and finally release it in California for the benefit, perhaps, of California land, but beyond all possibility of benefit to the Klamath basin agriculturists.

To overcome these defects, which he said were not imaginative dangers, but real, he proposed the modification of sections four, seven and ten of the contract, and submitted modifications he had drafted to Paul McKee, general manager of the power company testifying in their behalf.

Tells Company's Stand

Without reservation Mr. McKee in the name of the company accepted the modifications of two sections. The third, which relates to diking the marshes of the Upper Lake, he refused on the ground that in the present contract the company was bound to prevent damage to lands on the Upper Lake by reason of fluctuating levels, and bound to compensate owners for damage done. The company had assumed heavy burdens in this regard already, he said, in fact, and gone the limit, and didn't propose to go further.

Mr. McKee declared that if the government would make an immediate appropriation to build the dam and reimburse the company for money already spent, the company would gladly step aside, cancel its contract and let the government do the work.

The company expected no vested right under the contract, he said, expected to receive no water except the surplus remaining after all irrigation wants were supplied. And the company interpreted the contract as it stands to mean that every acre in the Klamath project, be it 250,000 or more, was entitled to water before the company could receive any.

"Not only would we be willing to relinquish the contract if the government would build the dam at once and recompense us for our outlay on the work to date, but we would be greatly pleased at the relief from this heavy burden," said the company's representative.

He also said that if the company had it to do again they would not enter into a similar contract, that many of its provisions were disadvantageous to them, but it had been executed, and they would carry it through.

All Conflicts Settled

All conflicts with lumber interests on the Upper Lake have been settled, or settlement is pending, said Mr. McKee. The only concern which is not entirely agreed to building the dam is the Pelican Bay company, and negotiations here have reached a stage where it appears without a doubt they will be satisfactorily concluded.

Marsh land owners, he said, had all been satisfied, and he knew of no contemplated injunction suits to stop the dam building by his company.

He said that as he understood the contract it merely made the power

company an agent of the government in building the dam, and gave it no vested rights whatever.

Would Kill 7-Mill Rate

Should the contract be cancelled, he said, he understood the seven-mill pumping rate provision would be abrogated with the balance of the contract, and it would then rest with the state public service commission to fix the rate.

Would Prevent Damage Suits

"Under the contract we'd have to take care of all concerns and individuals damaged by overflow, or otherwise in the reservoiring operation," said Mr. McKee. "We intend to do the work so that the damage will be prevented."

He stated that the temporary dam in Link river had been under control of the reclamation service since its installation, and that he anticipated the same situation of control if the permanent dam was constructed by the company.

Mr. McKee, referring to a provision that would permit the company, with consent of the United States under certain conditions to lower the lake level below the 4137 feet above sea level minimum, declared that he thought this clause was meant to cover extraordinary conditions, and did not think the level would ever have to be reduced below 4137 feet. But control of the situation rested, in event the situation arose, in the hands of the reclamation service.

The company is now furnishing 1252 horsepower at the seven-mill rate, he said. The possible demand under the rate, when all units come in, will be around 6,000 horsepower. This rate was a losing proposition, he declared, and if the officers of the power company had known as much when they made it as they do now it would not exist.

Must Dike Indian Land

Under the recently executed leases with Indians for 8,000 acres of marsh land on the Upper lake, he said, the company is required to dike and develop it for agriculture as rapidly as possible.

Bradbury Testifies

R. E. Bradbury, director of the Klamath irrigation district, took the stand as a witness for the American Legion. His testimony was all in favor of the government building the dam. He said he thought it poor public policy for public enterprises to be developed by private interests.

As a member of the board which in 1916 recommended the form of the contract over which the dispute is staged, Mr. Bradbury spoke with authority. He said that he did not agree with all provisions of the report but had waived his right to submit a minority report on the understanding that the members of the board were to see a copy of the contract, based on the report, before it was adopted. He had never been furnished a copy, consequently had never had a chance to object to provisions that he thought detrimental.

For one thing, he said, there was no intention in making the report to fix the levels of the lake. He said 4143.3, the maximum, is not a normal level. It only holds during the flood season. When water recedes marsh land owners get hay and forage crops on lands overflowed in freshet time. If the dam kept the water standing on the land during the greater part of the summer season they would be deprived of these crops, unless the land was diked.

Another Defect Seen

One defect of the contract, he said, was the placing of the burden of proof of damage on the marsh land owner. It other words he would have to sue a powerful corporation and prove his damage before he could be recompensed.

Dam Not Needed Now

Mr. Bradbury said he believed that the only present need for the dam was to serve the power company. The present irrigable area could be served without a dam. He said the Copco power plant is planning to use more water than will be required for all Klamath project irrigation.

Is It Good Trade?

Chairman Brewer wanted to know if it were a question of overflowing 10,000 acres of land on the Upper Lake to provide summer storage for 50,000 acres below, why it was not a good exchange. Mr. Bradbury said he did not consider it a good trade because it was not necessary. The upper lands could be diked and utilized and there need be no loss at all.

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LOCAL POLICE ON TRAIL OF MYSTIC TRUNK

Guided by information given to the police department by a man whose name was not disclosed, Chief of Police Wilson this morning drove out toward Pelican City and picked up a suspicious looking trunk that had been cached in the brush. When the trunk was opened at the police station it was found to contain a quantity of banana leaves and lying snugly beneath the leaves were two five-gallon kegs of "dago red," a beverage quite popular among Greeks, Italians, and others. The kegs formerly contained witch hazel, suggesting the importing of a flavor quite foreign to that desired by the manufacturers.

Chief Wilson managed to get his nose near enough to the contents to determine their nature, and he states that it is a light wine, containing four or five per cent alcohol, sufficient to place it in the prohibition class.

The chief has placed the case in the hands of the prosecuting attorney.

WAGNER STANDS BY HOME FANS

"Bobbie" Wagner will meet Red Campbell at Chilgoquin in a ten round bout Thanksgiving night, despite an offer from Seattle for a match next Tuesday. In view of the fact that Seattle is Wagner's home town and his folks live there he is making some sacrifice in turning down the chance to get home for the holidays. Especially when he had planned on several bouts at Seattle until a squabble arose between promoters there and he thought the opportunity for a match before New Year's was gone and signed up for the Chilgoquin bout. But being pledged to fight at Chilgoquin he saw only one course to pursue and wired the Seattle manager who offered him the bout telling him the circumstances and offering to come at a date later than November 25.

"The local fans stood by me when I was sick and needed friends and I wouldn't disappoint them," said Wagner, displaying the Seattle telegram to a newspaper man. "They expect to see me fight at Chilgoquin November 25 and I'm going to keep the date if I'm alive and able to crawl." Both Wagner and Campbell are training consistently at the Klamath athletic club. They will give a public workout Sunday afternoon at the club between 2 and 3 o'clock.

Considerable interest is shown locally in the Chilgoquin exhibition and its expected a number of local fans will be at the ring-side.

There will be a six round bout between Kid Brown and Young Brady, and a couple of speedy preliminaries. A big dance will follow the conclusion of the boxing.

December Wheat Takes Big Drop

CHICAGO, Nov. 21.—December wheat alone points down as low as \$1.66 1/4 today, compared with \$2.75 a bushel when trading in futures was resumed on July 15. One authority said the recent farmers' strike had been followed by a retaliatory strike by wheat consumers, and traced the market break to this cause.

Trestle Repaired; Schedule Resumed

PORTLAND, Nov. 20.—The trestle washed out at Kennett, Calif., two days ago, has been repaired, and Southern Pacific trains are practically back upon normal schedule.

M. A. Callagan of the Southern Pacific station here, said this morning that the delay of about six hours in the arrival of the train from Wood last night was caused by the washout at Kennett, but that the train this evening should arrive on time.

BULLETIN

NEW HAVEN, Nov. 20.—Harvard defeated Yale today, 9 to 0, scoring three field goals.

CHANGES ASKED BY LEGION AND POWER COMPANY'S REPLY

Below is an excerpt from the testimony of Paul B. McKee, vice-president and general manager of the California-Oregon Power company, under examination of J. H. Carnahan, representative of the American Legion in the Link river dam inquiry. This excerpt contains the crux of the situation as it remains after the hearing. The dispute is resolved into a difference over interpretation of the contract's language. The extract from the testimony shows the changes that the Legion considers essential for the protection of the public and the attitude of the company regarding them:

Q.—I would like to submit to you a modification of paragraph 4 of the contract of February 24, 1917, modified to read as follows:

"The approach channels to the reclamation service canals shall be deepened by the company at its own expense to the satisfaction of the secretary of the interior so far as necessary to insure a flow of not less than 1200 cubic feet per second during June, July and August, and 1000 cubic feet per second at all other times into the Klamath project main canal, and not less than 1020 cubic feet per second into the Keno canal, with water of the lake at an elevation of 4137'—"

That is the way it originally stood. Here is the amendment.

"Provided, however, that the mention of the amounts of water specified in paragraph 4 of this contract shall not be taken or deemed to limit the amount of water to which the United States is entitled, or which it may use or need by reason of the water locations of the water of Upper Klamath lake or Klamath river or the tributaries of either, any water locations heretofore made upon the waters of said lake or its tributaries by the company notwithstanding."

A.—Do I understand from that that you want to provide that these physical features are not to interfere with the government appropriation?

Q.—Yes.

A.—Certainly yes. There is nothing to that. I don't think that is objected to in the first place. I don't think it would strengthen it or in any way help it, but if necessary and the proper parties see fit to suggest it, it is all right.

Q.—And would your company likewise consent to amending paragraph 7 so as to read as follows:

"The company assumes any and all liability for damage to the property or rights of any person or corporation or the property or rights of the United States or the state of Oregon due to the operation of said dam by said company, or to the regulation and control of the levels of said lake by said company, and hereby undertakes to hold the United States harmless from any and all liability for damage due to such regulation and control, and to dike and protect the lands of the United States bordering on said lake?"

A.—Absolutely not. I might say to the committee that the burdens under this contract are already heavy enough, and we cannot stand any more.

(Note—Paragraph 7 stands at present: The company assumes any and all liability for damages to the property or rights of any person or corporation, or the property or rights of the state of Oregon, or of the Indians, due to the operation of said dam by said company, or to the regulation and control of the levels of said lake by said company.

and hereby undertakes to hold the United States harmless from any and all liability for damage due to such regulation and control.)

Q.—Would you consent to the amendment of paragraph 19 to read as follows:

"Nothing in this agreement shall curtail or be in any wise construed as curtailing the rights of the United States to the waters of Upper Klamath lake and its tributaries or the lands under or along the margin of the lake. It is further understood and agreed by and between the parties to this agreement that none of the waters of said lake or its tributaries, or of Klamath river, shall be used for power purposes whenever the same may be needed, desired or required by the United States, or any irrigation or drainage district, persons or associations for the irrigation of lands in the Lower Klamath lake area, the Tule lake area, the Upper Klamath lake area, or the lands upon the Klamath Indian reservation, including the Big Marsh area upon said reservation?"

A.—Before answering that question, I want to make myself absolutely clear, so there cannot be any misunderstanding. I stated in my testimony before noon hour that the very language that you have read is my understanding of what that contract means.

Q.—Why not put it in there?

A.—Further than that we are willing at such time as a properly constituted official of the United States government or anybody else decides that it is necessary to amend this contract to make that point clear, we are willing to do it, but we are not willing to change this contract because any individual anywhere has a particular notion about it based on a misunderstanding.

(Note—Paragraph 19 stands at present: Nothing in this agreement shall curtail or be in any wise construed as curtailing the present rights of the United States to the waters of Upper Klamath lake and its tributaries or of the lands under or along the margin of the lake.)

CONGRESSMAN KILLED IN AUTOMOBILE CRASH

(By Associated Press) LOS ANGELES, Nov. 20.—While returning from a celebration of his election as republican congressman, Charles F. Vandewater of Long Beach and his secretary, Miss Janssen Leuben, were killed in an automobile wreck early today. Mrs. Vandewater suffered a fractured skull.

Alleged Murderer Apprehended Again

(By Associated Press) BROKEN BOW, Neb., Nov. 20.—Deets Chester, alleged murderer of Florence Barton, King City society girl, who escaped from authorities Monday night by jumping through a closed train window, shattering the glass, was picked up today about six miles from Oconto, as he was walking along a county road.

HERALD OFFICE NOW ON EIGHTH ST., NEAR MAIN

The Herald office has been moved from Fourth street to the new quarters on Eighth street between Main and Pine. All departments are now in the new place. The phone number has not been changed—it is still 88.

ASKS SUPPORT OF RED CROSS CAMPAIGN TO THE FINISH

Fellow Citizens of Klamath County—In spite of adverse weather conditions commendable progress has been made thus far in the Fourth Red Cross Roll Call. However, it has become apparent that if our full home service program, a plan for work in our own county and among our own people, is to be carried out as it should, increased funds will have to be raised so that every local need may be met in a fitting manner during the coming year.

May I not request that those who have not already contributed to send

their money to any one of the banks in Klamath Falls, or to the Red Cross headquarters at the Chamber of Commerce? And to you who may have already answered to the Roll Call, may the committee not depend upon you to support in a still more substantial manner the beneficent purposes of the Red Cross in this county?

During the few remaining days of the Roll Call, let us all respond generously, thus keeping up the high record Klamath county won in the past. Sincerely yours, FRED A. BAKER, Chairman

FIRST CAR OF GRAIN SHIPPED FROM DAIRY

The first carload of grain ever shipped over the Strahorn railroad was sent out from Dairy on Thursday by Francis S. Bowne, John Faught, Simon Rogua and H. M. Daniels, and was consigned to Martin Bros. of this city. Yesterday Mr. Bowne stated that another car of wheat, and two cars of rye and oats, would be shipped over the same route within a short time, the list of shippers this time to include several more farmers in addition to the four who made the first shipment. The date of this shipment will depend somewhat upon the weather and the resultant condition of the roads, as hauling to the cars at present would be extremely strenuous work.

Damage by rain in his district, said Mr. Bowne, has been comparatively light, 200 acres of rye and oats in the shock and some hay undoubtedly covering the amount of damaged crops. This will not be a total loss.

Ties for further construction on the Strahorn railroad have arrived at Dairy, and Mr. Bowne believes more work in that line will begin soon.

WORK STARTED BUICK GARAGE

Construction started today on the latest addition to this city's growing number of garages—the new home of the Buick car which Louis Hoagland is selling in this territory.

The garage will be located at Seventh street and Klamath avenue, on the property now occupied by the Meissner blacksmith shop. The building will be erected by J. O. Beardsley, owner of the lot. W. D. Miller has the contract for construction.

The structure will be of brick with a full plate glass front. Its area is 40x100, fronting on Klamath avenue. The front 50 feet of the entire width, 40 feet, will be used as a sales room with the entrance from Klamath. The rear 50 feet will be the service department, with the entrance from the Seventh street side.

Mr. Hoagland has signed a contract with the Buick company assuring him a complete line of Buick parts, and the new garage will be exclusively devoted to selling, handling and repairing this popular make of automobile.

Concentration upon the one type of car will give the public an advantage which they do not otherwise get—the attention of a specialist. From the time that he purchases his car the Buick owner will be assured of good advice and fair treatment. If he gets in trouble he has the service of a Buick specialist at his command and in the full line of parts carried he is always assured of speedy repairs, no matter what misfortune may overtake him.

Mr. Hoagland expects his new quarters to be ready for occupancy by the first of the year if the weather is favorable. In the meantime he is handling the Buick agency at the old stand, his temporary quarters in the White Pelican garage.

Ewauna Will Not Close Down Today

It was currently reported about town this morning that the Ewauna box factory would close down this evening, but inquiry from the factory this morning proved that the report was not true. It is possible, said C. F. Daggett, that the factory may close down temporarily, but nothing definite in that regard has been decided upon.

Further inquiry elicited the information that a general shut-down of box factories, mills and lumber yards was not imminent, as rumored, although a short time would probably bring more definite news.

Prices on Hogs and Grain Are Smashed

CHICAGO, Nov. 20.—Grain prices have been smashed and have gone downward all along the line. Prices on hogs and provisions are following. Corn led, notwithstanding the fact that it was lower than it has been at any time since 1915, the price dropping from \$1.83 to less than 70 cents a bushel in less than five months.