

dence and view the property, but he is not bound by the determination made by the Commissioners.

He may, on the same record, without additional evidence, arrive at a different result than the commissioners, wholly apart from technical error in the record.

Mr. SNYDER. According to your testimony, it is only a small percentage of the cases that they take additional evidence.

Mr. MARQUIS. Yes.

Mr. SNYDER. Maybe I am all wet, but I thought that de novo meant beginning all over again, starting at the beginning, hearing all the evidence over again.

Mr. MARQUIS. I do not think so.

Mr. SNYDER. I guess you and I disagree about what de novo is then.

Mr. MARQUIS. Here, the TVA Act says "the court shall pass 'de novo' on the record" and that is what the courts have been doing since 1933. They review "the proceedings" from the beginning. That, it seems to me, is the crux of the matter.

Mr. JONES. Thank you, Mr. Wagner and Mr. Marquis and Mr. Pedersen.

At this point in the record we will insert the testimony of the Honorable Howard H. Baker, Jr., a U.S. Senator from Tennessee. (The prepared statement of Senator Baker follows:)

STATEMENT BY SENATOR HOWARD H. BAKER, JR., OF TENNESSEE, TO THE SUBCOMMITTEE ON FLOOD CONTROL OF THE COMMITTEE ON PUBLIC WORKS OF THE HOUSE OF REPRESENTATIVES

Mr. Chairman, I am grateful for being given the opportunity to submit this statement for the record of your subcommittee's hearings on this matter in which I have such a deep interest. I believe very strongly in what this legislation seeks to do, and I respectfully urge the Chairman and other members of the subcommittee to act favorably upon it at the earliest reasonable time.

Congressman Brock has worked diligently for several years on this matter and had legislation pending in the House of Representatives before I was elected to the Congress. It is only because of slightly differing circumstances that the Senate happens to have acted first on the various proposals that have been put forward.

I am confident that Congressman Brock and other witnesses will carefully develop the background of this legislation and the great need for it that is felt among affected citizens in the Tennessee Valley area. I will limit my remarks here, Mr. Chairman, to how it is that Senate Bill 1637 takes the form in which it now appears before the subcommittee.

As the Chairman and members know, the provisions of the TVA Act of 1933 governing land acquisition and condemnation proceedings (16 U.S.C. 831x) provide for a three-man Commission appointed by the Federal District Judge for that district in which the property to be acquired lies. At no time during the proceedings is either party given the option of demanding a trial by jury of the issue of just compensation. Such an option is provided in all other Federal land condemnation cases, with the exception of the District of Columbia, which operates within its own peculiar system. A jury trial is not guaranteed by Rule 71A of the Federal Rules; but the language of the Rule clearly provides that a trial by jury shall be granted upon demand unless and I quote, "the Court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of just compensation shall be determined by a Commission of three men appointed by it."

Congressman Brock and I felt that we had three alternative approaches to making the change in the procedure that we felt was needed. The first was to guarantee an absolute right to a trial by jury and eliminate the Commission system altogether. S. 1637 and H.R. 4846 were originally drafted to accomplish this. Our second alternative was the repeal of most of section 831x of Title 16, thereby bringing TVA under the Rule that governs but one of all other Federal condemnation cases. The third alternative, as we saw them, was the retention