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July 15, 2005

RECEIVED  
JUL 18 2005  
Department of Water Resources  
Eastern Region

Mike Holliday  
IDWR Regional Office  
900 N. Skyline Drive, Suite A  
Idaho Falls, Idaho 83402

RE: Minidoka Irrigation District - Railroad Right of Way

Dear Mike:

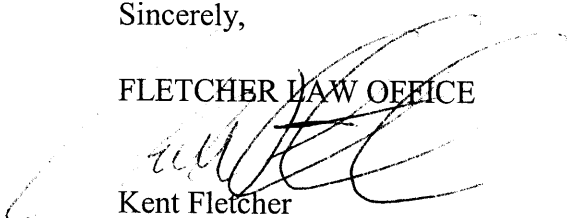
Enclosed are documents furnished to us by the Bureau of Reclamation dating back to the early 1900s dealing with the railroad right of way claims. As the documents indicate, some of the railroads located within the Minidoka Irrigation District were built before the project was established and therefore no water rights were appurtenant. However, other railroads - including the railway line in question running west toward the City of Paul - were acquired from project settlers and construction charges were paid on this right of way. The water right that resulted has never been transferred from this right of way, as we discussed in your office.

The Bureau of Reclamation has maps dated within the same time frames showing the acreage in each farm unit that is at issue. We can obtain copies of those maps for you if you think that would be helpful. However, I believe that paragraph 3 of the August 10, 1915 letter and the fourth paragraph of the February 21, 1918 letter clearly indicate that these lands were part of the original project and construction charges were paid for these lands.

If we can supply you with any addition information, please let me know.

Sincerely,

FLETCHER LAW OFFICE



Kent Fletcher

KF/brd

Enclosures

pc: Minidoka Irrigation District w/enclosures

Report, Idaho, August 10, 1915.

From Project Manager,

To Director & Chief Engineer (Through Chief of Construction)

Subject: Irrigable areas - Deductions for R.R. right-of-way,  
Minidoka Project, Idaho.

1. I am in receipt of your wire of August 9 reading  
as follows:

"Department considering regulation for survey irrigable  
land and desires explanation of paragraph fourteen regarding  
reasons for different arrangements concerning two railroads."

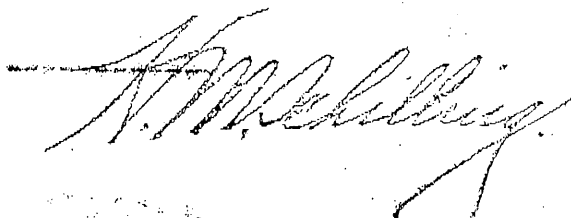
2. The Minidoka & Southwestern Railroad (Ewin Falls  
branch) of the Oregon Short Line) was built about 1905 and had  
acquired their right-of-way before the Minidoka Project was  
constructed. The same unit plats all showed, therefore, that  
this right-of-way had been deducted and no construction or  
operation and maintenance charges ever accrued against this  
right-of-way.

3. All the other railroads, viz: North Side Branch  
and Oakley Branch of the O. S. L.; also the Salt Lake & Idaho  
R.R., have been constructed since the project was settled, and  
the rights-of-way were purchased from the settlers. The set-  
tlers were informed, whenever they made inquiry, that the con-  
struction and operation and maintenance charges on the land they  
sold for railroad right-of-way would have to be paid. In  
practically all cases the railroad company paid them a fair  
price; sufficient to cover the construction charge. The

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Board of Directors of the Minidoka Irrigation District, the Board of Directors of the South Side Minidoka Water Users' Association, and the settlers affected do not object to the payment of the construction charge, as they understand that the Government must recover ~~part of~~ the cost of the project based on the irrigable acreage, and the irrigable acreage included these rights-of-way. What the officers of the organizations and settlers do object to is to be assessed for the operation and maintenance charges after they sold this land to the railroad and therefore have no use for the water on it, or can secure no production from it. As the operation and maintenance is an annual charge they would be obliged to pay this charge year after year. As stated above, they will pay the construction charge, for in time (20 years under the Extension Act) this charge will be paid up and stop, but the operation and maintenance charge would continue indefinitely. Therefore they wish to have two areas shown; one, including rights-of-way, for the construction charge and, another, excluding the railroad rights-of-way, for the operation and maintenance charge.

4. A more equitable way would be to make the railroads pay the charges, but I suppose their lawyers were clever enough in securing the deeds to throw the charges on the settler. I am of course, not able to pass on the legal aspect of the deeds, etc. The land, while irrigable before use as railroad right-of-way, becomes non-irrigable after the construction of the railroad.



C O P Y

DEPARTMENT OF THE INTERIOR  
WASHINGTON

September 13, 1915.

D-39199

The Director of the  
Reclamation Service.

Dear Mr. Director:

I am in receipt of your acting chief counsel's letter of July 15, 1915, submitting for consideration two forms of stipulation to be submitted to the Salt Lake and Idaho Railway Company whose application for a right of way embracing in part lands within the Minidoka Irrigation Project under act of March 3, 1875 (18 Stat., 482), is now pending before the Commissioner of the General Land Office, Bailey - 08274.

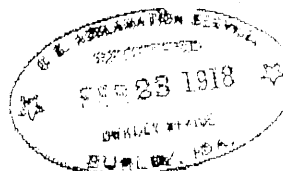
From the record in the General Land Office it appears that the railway company has constructed its right of way, the grading being completed so that it is now ready to lay the ties and rails. All of the lands within the irrigation project crossed by the right of way have been entered under the homestead laws and the railway company has purchased from each entryman the right of way as far as it affects each particular tract. The entrymen, it would appear, have conveyed to the railway company under Section 2288, Revised Statutes.

From the above it would appear that the railway company has already secured a right of way under the decision of the Supreme Court in Minidoka R.R.Co. v. United States (235 U.S., 211). However, there would appear to be no objection to approving the railway company's application in further assurance of its title.

One form of stipulation submitted is the general form approved by the Department January 31, 1913, and the other is a special form prepared by your district counsel. The special form differs principally from the general form in that it does not require the railway company to pay for the irrigable area embraced within its right of way. However, in view of the fact that the railway company has already secured its right of way from the homestead entrymen to whom it has paid the value of the lands affected, I deem it proper that in this case the form as submitted by the district counsel should be accepted and the same is hereby approved.

Very truly yours,

(Signed) Bo Sweeney.

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RES-PH.

Boise, Idaho, February 21, 1918.

Mr. J. B. Evans,  
Tax Agent, Oregon Short Line R.R. Co.,  
Salt Lake City, Utah.

Dear Sir:-

Replying to your letter of February 19, 1918, concerning the payment by the Railroad Company of charges in connection with water rights on the North Side Branch crossing the Minidoka Irrigation District:

I wish to beg your pardon for my delay in answering your previous letter on this subject.

So far as the construction charges, which have to be paid to the Government on account of this land, are concerned, we have no authority to release the Company from such liability, and so far as I can see there is no legal or equitable reason why the charges should not be paid on this acreage at the same rate as the other lands of the project.

This branch of railroad was built sometime after the irrigation project was constructed and in constructing the irrigation project the Government provided sufficient capacity and sufficient water supply to irrigate the land which has since been occupied by the Railroad Company, as well as all other lands under the irrigation system, and if the Company did not pay on its acreage, the result would either be that the Government would have to lose a part of the construction cost through no fault of its own, or an additional charge would have to be levied on the other landowners. The cost of sufficient irrigation capacity for this land and sufficient water to irrigate it having already been incurred, and the land having been entered subject to this lien, I do not believe that any one, even the Secretary of the Interior, has authority to release the land until the charge has been paid.

As to the annual assessments for operation and maintenance of the canal system, I would say that the Minidoka Irrigation District now has charge of the operation of this canal system, and the settlers themselves, through their district organization, are handling their own operation so the method of distributing the annual operation and maintenance charge will rest to a large extent with the

officers of the District.

It is my understanding that the District has full legal authority to assess the railroad right of way for the operation and maintenance charge, the same as other lands, both as to the Twin Falls branch and the North Side branch. In this connection please refer to the case of Oregon Short Line Railroad Co. v. Pioneer Irrigation District, 108 Pac. 904. But what policy the District may adopt as to the assessment of the Railroad Company for operation and maintenance charges, I do not know.

I understand that it is the policy of some districts to levy such assessments against the Railroad Company annually as in the case of Pioneer Irrigation District, but that other districts, such as the Hanna & Meridian Irrigation District, have not done so.

Very truly yours,

E. E. STUTSMAN.

District Counsel.

CC-Chief Counsel.

D.S. in charge, Denver.

Minidoka Irr. Dist., Rupert, Idaho.

P.M., Burley, Idaho.

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LAWRENCE H. DUFFIN, CHARTERED  
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Attorney for Petitioner

7713 91

E. Batmaker

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

IN THE MATTER OF THE PETITION )  
of the BOARD of DIRECTORS of )  
the MINIDOKA IRRIGATION DISTRICT, )  
organized and existing under the )  
laws of the State of Idaho, )

-vs-

All persons having interest in )  
or claim against the Minidoka )  
Irrigation District and the )  
unknown owners, heirs, devisees, )  
claimants or otherwise of )  
such persons. )

Case No. 7713

JUDGMENT

The petition of the Board of Directors of the Minidoka Irrigation District requesting this Court to determine the validity of the proceedings heretofore conducted by the Minidoka Irrigation District with respect to the special election held on December 11, 1979, for the purpose of determining whether or not the Board of Directors of the Minidoka Irrigation District should be authorized to enter into Sale and Transfer Agreements for the sale of a portion of the primary water rights of said District to the members thereof using supplementary water, all of which more fully appears in the plaintiffs' petition and exhibits filed herein and to which reference is hereby made, came on regularly for hearing on the 19th day of February, 1980. The petitioner appeared by its secretary, Nelda Spevak, and its attorney, Lawrence H. Duffin; the defendants failed to appear, either in person or by counsel.

Thereupon it appeared to the Court that the defendants had been duly and regularly served with summons by publication thereof in the manner directed and required by law, and that the summons, complaint and order, and all other papers upon which such order was made were duly filed in the office of the Clerk of the District Court, in and for the County of Minidoka, State of Idaho, and that the statutory time for pleading to or answering said complaint has expired and that all of the defendants have failed to plead to or answer said complaint, and the default of said defendants has been entered. Witnesses on behalf of the petitioner were sworn and examined and the petitioner rested.