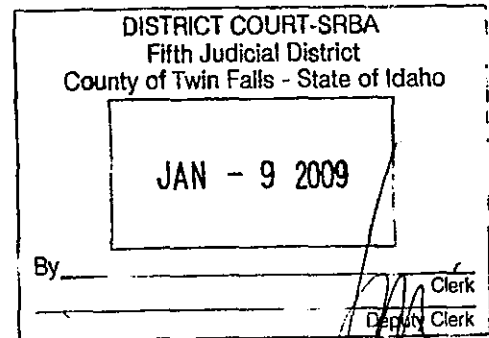


JAMES J. DUBOIS,
Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
(303) 844-1375



Counsel for the United States of America

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 01-10564
	)	
	)	
Case 39576	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE:
	)	LATE NOTICE OF CLAIM

MOTION TO FILE LATE NOTICES OF CLAIM

Claimant United States of America (Fish and Wildlife Service), by and through its undersigned attorneys, and pursuant to SRBA Administrative Order 1 Rules of Procedure, and Idaho Rules of Civil Procedure 55(c), respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefore, states:

1. The United States originally filed claim no. 01-10376 for the Minidoka National Wildlife Refuge under both federal reserved water right and state law bases. Only the federal reserved water right was reported out by the Idaho Department of Water Resources, and the federal reserved water right claim is being prosecuted by the United States. The United States and the State of Idaho are engaged in negotiation for a potential settlement of the federal reserved water right claim based upon the filing of a late notice of claim, and recognition of a state-based

"use" water right for the water use at issue under reserved water right claim no. 01-10376. Processing of the state-based claim is a requisite step in this process.

2. The claim subject to this Motion is based upon the historical use of water from the Snake River for the administrative site at the Minidoka National Wildlife Refuge, and by the Bureau of Reclamation, which managed the land prior to management by the Fish and Wildlife Service. The Claimant United States of America now submits this Motion to File a Late Notice of Claim (SF-4) based upon the existing historical uses.

3. Rule 55(c) sets forth the standards for setting aside a default judgment, and provides:

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

4. Rule 60(b) provides, in pertinent part:

On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . [T]he motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

Thus the "good cause" provided for in Rule 55(c) must be analyzed and defined in reference to Rule 60(b).

5. Briefly stated, the Idaho Supreme Court has stated that:

Two requirements must be met to set aside a default judgment. Under rule 60(b)(1), a party may ask for relief from a default judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect. In addition, the moving party must plead facts which, if established, would constitute a meritorious defense to the entry of default. [citations omitted]

Clear Springs Trout Co. v. Anthony, 123 Idaho 141, 143, 845 P.2d 559, 561 (1992).

6. In the instant case, the procedures established by the State and this Court to only address one legal theory at a time for claims which can be advanced under two alternative theories should be deemed to constitute mistake or excusable neglect as to the prosecution of the state law based constitutional water rights claims. In the framework of the SRBA, the actions of the United States in pursuing these claims sequentially demonstrates conduct of a type expected from a

reasonably prudent person under the circumstances. See, Baldwin v. Baldwin, 114 Idaho 525, 527, 757 P.2d 1244, 1246 (Idaho App. 1988). The court must view this matter in light of the facts of this case. See generally, Baldwin, supra; Avondale on Hayden, Inc. v. Hall, 104 Idaho 321, 658 P.2d 992 (Idaho App. 1983). The claim made in this Late Claim demonstrate facts which, if established, constitute a meritorious claim for the water right. A copy of the claim is attached hereto as Exhibit 1, and incorporated herein by reference.

7. The United States has therefore established the right to file the Late Claim which accompanies this Motion.

8. The filing of this Late Notice of Claim will not prejudice other parties to this litigation, as the claims accurately reflect the historic use and operation of these water rights. This motion and the Notices of Claim filed herewith are timely.

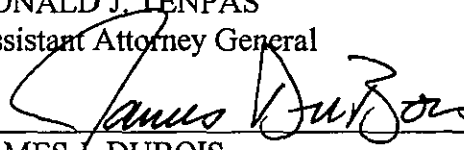
9. Counsel for the United States of America (Department of Defense) in this matter are designated below, and have read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

James J. DuBois,
Attorney, General Litigation Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
(303) 844-1375

WHEREFORE, for good cause shown, the United States of America (Fish and Wildlife Service) respectfully requests this Court to enter an Order granting leave to file the Notice of Claim attached hereto, and incorporated by reference herein.

Respectfully submitted this 8th day of January, 2009.

RONALD J. TENPAS
Assistant Attorney General

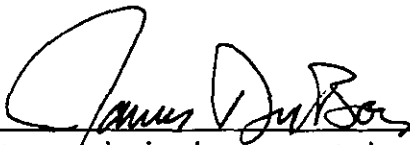

JAMES J. DUBOIS
Trial Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
(303) 844-1375

VERIFICATION

State of Colorado)
County of Denver)

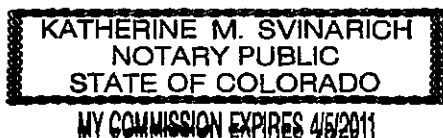
James J. DuBois, being first duly sworn, upon oath, deposes and says:

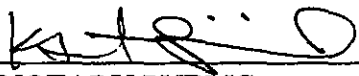
That I am the attorney for the party/claimant filing this motion for amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Attorney signing in representative
capacity

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this 16th of September, 2005, a Notary Public in and for the City and County of Denver, State of Colorado.





NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires: 4/5/2011

CERTIFICATE OF MAILING

I certify that on January 8th, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of person or attorney mailing the form

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

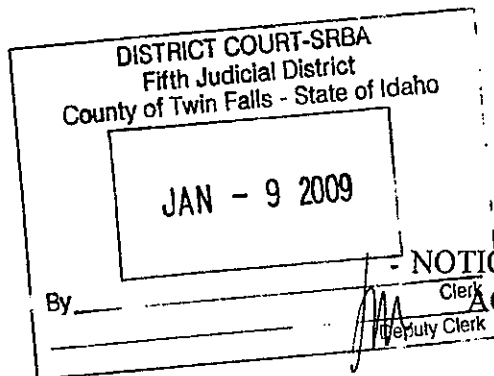
CIVIL CASE NUMBER: 39576

Ident. Number: 01-10564

Date Received: _____

Receipt No.: _____

Received By: _____



NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: **United States of America** Phone **(503) 231-2098**
(Fish and Wildlife Service)
Address: USDI FISH AND WILDLIFE SERVICE
DIVISION OF ENGINEERING
911 N E 11TH AVE
PORTLAND, OR 97232-4181
(503) 231-6145
2. Date of Priority: December 31, 1940
3. Source: Snake River Trib. to: Snake River
4. Point of Diversion:
Township 9S Range 25E Section 1, B.M. Lot 9
County of Minidoka
Additional Points of Diversion _____
5. Description of diverting works: **2 HP pump, pipe to sprinkler system and fire hoses.**
6. Water is claimed for the following purposes:

Purpose	From	To	C.F.S. (or)	A.F.A.
Irrigation	Ap. 1	Oct. 31	0.074	
Fire Suppression	Jan. 1	Dec. 31	0.074	

United States of America
Fish and Wildlife Service

7. Total Quantity Claimed is:

0.074 C.F.S.

8. Total consumptive use claimed is 3.0 acre-feet per annum for irrigation and as needed for fire suppression.

9. Non-irrigation uses Fire suppression.

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
9S	25E	1		9	I	1

Total Number of Acres Irrigated 1.0

11. Place of use, county(ies): Minidoka

12. Do you own the property listed above as place of use? **Yes.**

13. Other Water Rights Used: **N/A**

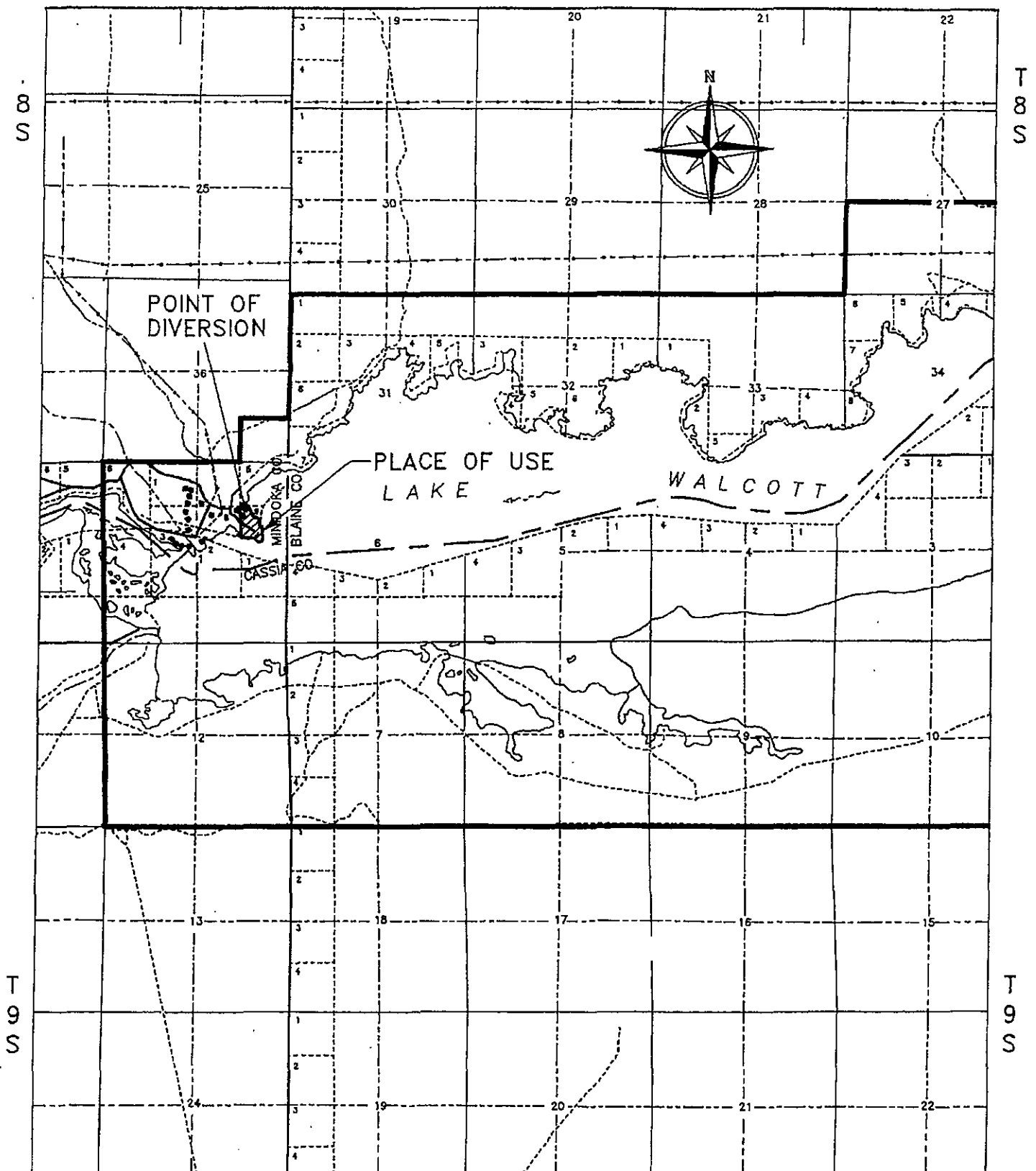
14. **Remarks: The stated diversion rate is the capacity of the pump. This water right is appurtenant to the described place of use.**

15. Basis of Claim (Check one) Beneficial Use X Posted Notice _____
License _____ Permit _____ Decree _____

If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____

R25E

R26E



FED. RESERVED WATER RIGHT CLAIM FOR LAKE WALCOTT

SCALE 0 1/2 1 2 MILES

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ANNUAL PROJECT HISTORY

REPORT OF
CONSTRUCTION
AND
OPERATION AND MAINTENANCE
FOR
MINIDOKA PROJECT, ILLINOIS

VOL. 54

CALENDAR YEAR 1940

Dam and Headworks. Two new bearing caps and two new pinions were installed in the South Side canal headgate lifts and the gate stems were cleaned and given two coats of coal tar. The north and south entrances to the dam and spillway were fenced off, gates installed with locks, and no admittance signs posted above the gates to prevent visitors from crossing the dam. Repairs were made to the ice boom and about 150 new flashboards were placed in the spillway section of the dam.

Camp Cottages and Grounds. Two new cottages were built to be used as a field office and a dormitory during construction of the seventh unit. Most of the labor was supplied by construction forces, but a large part of the excavation and all of the electric wiring was performed by operation and maintenance forces. Building material was also supplied by the O&M department.

A new, 2 second-foot, vertical, centrifugal pump was installed east of the OGC camp to supply irrigation water to the camp and to the recreation areas. An extension of two feet was built on each side of the camp garage to make room for the longer, new model cars. The upper rooms in the mess house were palisaded and repairs were made to other houses where necessary.

The bay used as a swimming pool was cleaned out and excavated, and a foundation for a bathhouse was constructed by OGC forces. This work was performed while the lake was at elevation 4236.

Substations. All substations were operated the entire year, except the Miller substation, which was operated for 20 minutes on May 30 to carry part of the load on the east and south sides of the project.



Historic American Buildings Survey

W A L C O T T P A R K

HABS No. ID-103; Minidoka County, Idaho

submitted to:
U.S. Bureau of Reclamation
Pacific Northwest Regional Office
150 North Curtis Road
Boise, ID 83706

produced by:
FRASERdesign
P.O. Box 6025
Loveland, CO 80537

and:
Hess Roise and Company
100 North First Street
Minneapolis, MN 55401

March 1998

the slope at approximately ten-foot intervals. They then tied strings to the batter boards and ran them horizontally across the face of the embankment, thereby establishing a guide for both the angle of the slope and the depth of the riprap. After these preparations, they dry-laid the lava rock in random courses on the embankment, placing the first course in a toe trench at the foot of the incline so as to provide a stable base for the rest of the wall. The size of the stone varied from about one to two feet in diameter. The enrollees finished the work by hand-filling the joints between the riprap with loose gravel.¹¹

The CCC also built a stone retaining wall for a parking area at the north end of the Old Park. In the late 1970s, however, this feature was partially demolished by the Young Adult Conservation Corps (YACCC), a federally funded youth-training program established by Congress in 1977 along the lines of the CCC. From 1978 to 1980, YACC enrollees completed a number of minor improvement projects at Walcott Park, including the construction of an open-air picnic shelter in the Old Park's north parking area in 1978.¹²

The YACC picnic shelter rests on a concrete slab, measuring about 60 feet east-west by 20 feet north-south. The shelter itself is roughly 20 feet square, with a wood-shingle-clad, hipped roof supported on wood posts, four to a side. Within the shelter is a massive, rectangular-plan, rubble, lava-rock fireplace with barbecue grates on the north and south sides. Rising from the fireplace is a broad, rectangular chimney that pieces the ridge of the roof.

On the south and east, the picnic shelter overlooks a rubble, lava-rock retaining wall, approximately 150 feet in length and three feet in height.¹³ The wall has a slight batter, reminiscent of stonework built by the CCC for parking areas in the vicinity of the New Park. The individual stones, however, are laid in relatively recent mortar, suggesting that the CCC's original retaining walls at the site were extensively reworked during the picnic shelter's construction.

NEW PARK

Between 1938 and 1941, the CCC expanded the recreational area at Walcott Park by filling and leveling land for new picnic areas located along the shore to the north and south of a small peninsula, which was being developed during this same period as a headquarters compound for the Minidoka National Wildlife Refuge.¹⁴ To provide vehicular access to the "New Park," as it was called,

¹¹See HABS Photos ID-103-27 and 28.

¹²See HABS Photos ID-103-27 and 28.

¹³See HABS Photos ID-103-32 through 36 for views of the New Park area.

The lane has double-battered walls, which are about two feet thick at the roadway level and one-foot-thick at the parapet.* According to a photograph of the wall under construction, the CCC masons achieved a uniform slope on both sides of the wall by using free-standing, A-frame batter boards.^b The parapet course consists of well-worked, oblong, lava-rock blocks, approximately ten inches by four inches by four inches.^c The blocks are mortared in place in pairs, longitudinally, side-by-side, with the outer edges tilted slightly upward in a "V". Below the parapet, the walls are mortared, randomly laid stone, with individual pieces measuring about six to nine inches in diameter in the plane of the wall. Mortar joints are one to two inches wide. With its double batter and ornamental parapet, the stone-walled lane represents Walcott Park's most elegant expression of the CCC rustic aesthetic.

Compared to the Old Park, the New Park is lightly wooded: a few solitary, mature cottonwoods shade the picnic lawns, while a variety of younger deciduous growth fringes the shoreline. The area's verdure, however, is in sharp contrast with the sagebrush desert that encroaches from the north and northwest. From 1940 to 1942, the CCC constructed an irrigation system for the New Park that drew water from a lakeshore pump installed in a cove just to the north of the Wildlife Refuge Headquarters.^d The pump boosted water into a stone-walled ditch, located about 300 feet east, on the west side of the lakeshore drive. Running northwesterly for approximately 250 feet, the ditch gravity fed an unlined lateral looping northeast to irrigate the new lakeshore picnic areas.^e

Although obscured by brush, the stone-walled irrigation ditch still survives. It is approximately 2½ feet deep, with vertical, rubble, lava-rock walls. Although the stonework was originally dry laid, patches of the wall have been mortared to increase stability. The bottom of the ditch is earthen and measures about 2½ feet in width. In addition to watering the New Park, the CCC irrigation system also served portions of the Old Park. Water was diverted southward to this area by means of an underground concrete pipe connected to a concrete turnout at the head, or south end, of the stone-walled irrigation ditch.^f

*See HABS Photos ID-103-22 through 25.

^bSee HABS Photo No. ID-103-117.

^cSee HABS Photo ID-103-29.

^dSee HABS Photo ID-103-43.

^eSee HABS Photo ID-103-44.

^fSee HABS Photo ID-103-45.

either been developed by private individuals or state and municipal agencies. Some had no public facilities at all, but were receiving public use nevertheless. Walcott Park was one of the few sites developed by Reclamation itself.¹¹⁴

Despite Reclamation's willingness to promote its "pleasure resorts" from time to time, the agency did not consider recreation to be one of its responsibilities. As defined by the Reclamation Act of 1902, Reclamation saw itself as a single-purpose agency: its mission was to provide water for irrigation. Recreational development, although widely demanded, was outside its jurisdiction. That Walcott Park existed at all was strictly fortuitous—the result of geographic circumstance and local good will. Originally the park had been developed as a small garden for the government housing camp at the dam. The decision to maintain it and enlarge it for public use was made independently by Minidoka Project officials, and did not reflect an official Reclamation policy to develop recreational resources.

This situation was to change dramatically in the 1930s. In the last half of the decade, New Deal legislation suddenly provided Reclamation with the manpower and funding to develop recreational facilities. Walcott Park, in need of expansion since the 1920s, became a target for improvement. Even more significantly, Reclamation re-examined its list of priorities by the end of the decade. Responding to public demand, New Deal philosophies, and an emerging doctrine of "mixed use," the agency eventually added recreational development to its list of responsibilities.

5

1935-1942: WALCOTT PARK AND THE CIVILIAN CONSERVATION CORPS

More than any other period, the years from 1935 to 1942 had a profound affect on the appearance of Walcott Park. Other than a few random improvements, the park had remained relatively unchanged since the 1910s. With the advent of the New Deal, however, the park underwent a major and systematic transformation within only a few years. The agent of this metamorphosis was the Civilian Conservation Corps (CCC).

The CCC was in the vanguard of New Deal relief programs established by President Franklin Delano Roosevelt. Created on March 31, 1933, and reorganized in 1937, the CCC was responsible for employing men between the ages of 17 and 23. The youths were to perform conservation work, often on federal land, serving for six-month "enrollment periods." Each state was allowed to enroll one youth for every 400 residents. After 1937 the total number of enrollees was limited to 315,000 and service restricted to two years.¹¹⁵

This turnover was typical of most CCC camps, and BR-27 generally received a new contingent of men, as well as a new commanding officer, at least once a year. BR-27 continued to draw enrollees from the Fifth Corps area, as well as the Second Corps area, which included New York and New Jersey. A small number of local men, usually no more than ten at a time, also served at BR-27 during each enrollment period.¹⁰²

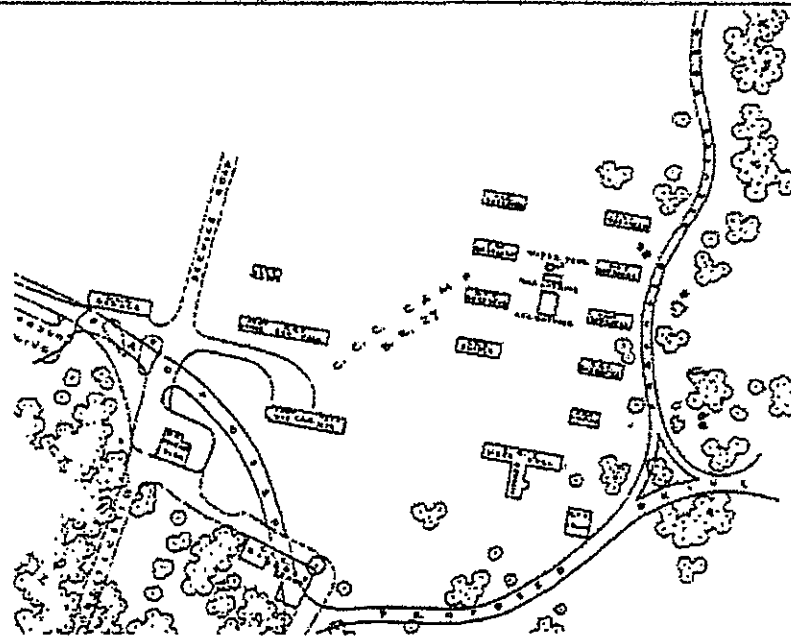


Figure 14. Site plan of C.C.C. Camp, excerpted from drawing by Bureau of Reclamation, February 1938.

Although the commanding officer was responsible for the care of the men and the maintenance of the camp, he had little authority over the work performed by the enrollees. On the Minidoka Project, as on other Reclamation irrigation projects, the reigning Project Manager drew up the CCC work plan as part of his general duties, and a camp superintendent and foremen, assigned by the CCC, supervised the men at work. At BR-27, Louis Petzoldt served as camp superintendent from 1936 until the camp closed in 1941, assuring a continuity of authority despite the routine turnover of camp commanders.

Darlington, the Minidoka Project Manager, submitted his first work program for BR-27 in March 1935, outlining 15 projects ranging from the "improvement of the sewer system for public recreational grounds at Minidoka Dam" to "hauling rock and riprapping lateral banks in Burley Irrigation District." Riprapping and other canal improvements eventually proved to be the CCC's main task on

the Minidoka Project.* According to written estimates, the enrollees of the two camps performed over 400,000 man-days of labor, at least 62 percent of which was spent working on the canals. Park improvements were also a high priority. From the opening of BR-27 to the time the last camp closed on the Minidoka Project, the CCC devoted over 100,000 man-days, or 25 percent of its total time, to landscaping and making other improvements in Walcott Park.¹²³

The remainder of the CCC's time on the Minidoka Project was spent on various small projects (e.g., excavating an access road to the lower level of the powerhouse). The CCC also undertook a modest work program for the U.S. Biological Survey, an agency within the Department of Agriculture. With Reclamation's approval, the Biological Survey used CCC labor to improve the Minidoka Wildlife Refuge. This work included fencing parts of the refuge, creating feeding and nesting areas for migratory birds, and building a headquarters for refuge personnel. Located adjacent to Walcott Park, this headquarters became, for all practical purposes, part of the park landscape.

CCC enrollment dropped after 1937, as the nation's economic outlook began to improve. Sensing the program was no longer needed, Congress reduced the CCC's budget after 1938 and began discussing disbanding the agency. Due to budget reductions and enrollment shortages, Reclamation closed Camp Minidoka in July 1941. BR-56, located in Paul, remained in operation until May 1942, closing only a few months before the end of the CCC program. The Minidoka Project Manager chose to close BR-27 before the camp at Paul specifically because of its proximity to the Reclamation housing camp and Walcott Park, although these facilities had originally been key reasons for opening the camp in that location. As the Project Manager explained, the CCC's improvements to the park no longer made the site suitable for an enrollee camp:

Discharge from [BR-27's] sewage system empties into the lake at several points where recreationists at the park desire to swim... The enrollees interfere with the pleasure and privacy of residents and recreationists at that place and ignore the restrictions regarding firearms in the game refuge and on the dam. The presence of the buildings and activities of the camp are a hindrance to the park development.¹²⁴

Reclamation and the Army demolished most of the BR-27 buildings soon after the camp's closure. The Army originally wanted to preserve the structures, but during World War II Reclamation was concerned that they represented a security risk to the power plant by providing potential cover for saboteurs.¹²⁵ The CCC's work in Walcott Park was among its most significant accomplishments on the Minidoka Project. The following sections will examine this undertaking in greater detail, beginning with Reclamation's plans to improve the park.

*See HABS Photos ID-103-103 through 106 for views of CCC canal construction.