

Orr Affidavit

Exhibit 41

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DEPARTMENT OF
WATER RESOURCES

Letter from B.E. Stoutemyer, District Counsel,
U.S. Reclamation Service, to the Chief Counsel,
U.S. Reclamation Service
(Jun. 26, 1919)

Transfer Case

DEPARTMENT OF THE INTERIOR
UNITED STATES GEOLOGICAL SURVEY

WATER RESOURCES BRANCH

Idaho Falls, Idaho,

June 26, 1919.

The Chief Council,
U. S. Reclamation Service,
Washington, D. C.

Dear Sir:

I am inclosing a copy of the answer which we have prepared for the Water Master, Mr. John Empey, in the case of the Snake River Valley Irrigation District vs. John Empey. This suit has been brought by one of the larger canals in the Upper Snake River Valley for the purpose of securing a writ of mandate to compel the Water Master to raise the head gates of this canal and allow the canal to divert the water flowing in Snake River.

The head gates of this canal have been shut down by the Water Master because the normal flow of the river is so low that the priorities of this company cannot be supplied without taking either the prior rights from the natural flow or stored water which is being run through Snake River from Jackson Lake Reservoir.

There are two reports as to what the contention of the plaintiff will be in this case. One report is that the attorneys for plaintiffs state that their position will be that so long as there is water running in Snake River, even though it be stored water, the Water Master must deliver the water to the plaintiff to the extent of his decreed rights under the provision of a certain section of the State law which provides that water shall be furnished to decreed rights before any is furnished to rights that are not decreed.

The other statement in regard to the plaintiff's contention is that the plaintiff will claim that a part of the water which is being delivered from Jackson Lake is not really stored water but spring water or some other kind of natural flow which the plaintiff should be allowed to take.

The facts as we understand them are set out in the inclosed copy of answer. It seems to me preposterous that any Court would hold that a party who has no right to storage water should be allowed to fill his canal with the storage water created and made available by the construction of a reservoir at the expense of other parties to the execution of the parties who constructed the reservoir and created the storage.

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However, it is reported that Judge Cowen, who is to hear this case, has recently decided a case on the Lost River in which he has ordered the Lost River Reservoir Company to turn out of its reservoir water for the use of the old decreed rights.

The water situation on Snake River is extremely critical this year and the river is about 3,000 feet lower at the present time than it was ever known to be before at this time of the year. The result is that many canals which have never been cut out before are now being cut out of water with the probability that there will be much confusion and trouble along the river through the remainder of this season.

It is probable that it is the plan of the plaintiff to try to get some kind of a temporary order pending a final trial of the case which will allow them to open their head gates and take water for a week or two at least. If this should be allowed, it is probable that all the other canals will be tempted to do the same thing and take so much of the stored water that it will become impracticable to run the stored water from Jackson Lake Reservoir through the Idaho Falls District to the Minidoka Project.

Should this occur, it is our plan to close the gates at Jackson Lake and hold back all the stored water as long as possible and deliver stored water for a week or so from Lake Walcott Reservoir and if such a condition should continue on the river, we would thereafter try to run the Jackson Lake water through in large heads for a short period of time to refill the Lake Walcott Reservoir in order to avoid having all the storage lost by the opening of the canal head gates of canals not entitled to storage water. The water supply for the Minidoka Project and the North Side Twin Falls project and other projects dependant on the storage water from Jackson Lake will be very short this year at the best and it would be disastrous if any considerable part of the storage water should be taken by canals not entitled to the same.

Of course, I have no very definite idea as to what the result of the hearing on this case which is to occur before Judge Cowen at Blackfoot tomorrow will be but if the plaintiff should be allowed to open his head gates and take the stored water and this should be followed by similar action on the part of other canals as would be almost certain to occur in that event, besides shutting down the Jackson Lake head gates and stopping the running of stored water through this part of Snake River as long as possible, it would be my idea to make use of the week or so that we are shutting off the Jackson Lake water and use storage out of Lake Walcott, to either apply to the Federal Court or get an injunction to restrain the State Court and the Water Master and the plaintiff, Snake River Valley Irrigation District, from opening or permitting the head

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gates to be opened or the taking of any stored water by canals not entitled to same, or possibly to apply to the Supreme Court of the State for a writ of prohibition directed to the Judge of the State District Court and the Water Master for the purpose of prohibiting the diversion of stored water in canals not entitled to stored water, or perhaps we might try both of these remedies. Perhaps the application to the State Supreme Court for the writ of prohibition might be made in the name of the Twin Falls North Side Land and Water Company and the application in the Federal Court in the name of the United States. In case of an unfavorable decision from Judge Cowen, it would be useless to attempt to appeal as it would take at least two years to get an appeal heard in the Supreme Court and the crops on both the Minidoka Project and the North Side Twin Falls projects will be ruined if the stored water cannot be run through the Snake River without being diverted by unauthorized persons.

I hope that the result before Judge Cowen will be satisfactory and that no further action will be necessary but if we must act to protect the users of the stored water in order to be of any value, such action must be taken immediately and I think would have to be in the form of one or the other of the proceedings which I have suggested. I am writing fully on this subject at the present time so that if it should be necessary to take this matter up later and ask for authority to file suit to enjoin the State Court and the Snake River Valley Irrigation District and others similarly situated from taking stored water, we can ask authority by telegraph to file such suit and this letter, together with the inclosed copy of answer will give you sufficient explanation of the situation.

Very truly yours,

B. E. Montmyer
District Council.

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