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DEPARTMENT OF
WATER RESOURCES

Orr Affidavit

Exhibit 43

Letter from W.G. Swendsen, Idaho State
Reclamation Commissioner, to
Governor C.C. Moore
(Jul. 9, 1923)

State of Idaho
DEPARTMENT OF RECLAMATION
Boise

July 9, 1923

Re: American Falls Project.

Honorable C. C. Moore,
Governor of Idaho,
B u i l d i n g.

Dear Sir:

Pursuant to your request I went to Washington, D. C. for the purpose of looking after the State's interest and the interest of its citizens who are participating in the construction of the proposed American Falls reservoir, and it is my pleasure to offer the following report.

In order that you may have a full understanding of the reservoir enterprise as it now stands and is conceived, it seems necessary to make a brief reference to the various steps that have been taken in connection with the project, from its inception to the present time. A large part of the matter referred to in the following is doubtless already known to you, and I therefore apologize for references to the project historic matter in this communication.

The shortage of water experienced in the Snake River valley in 1919 and the subsequent crop loss from drouth during that year acted to stimulate interest in and created a demand for additional storage on the Snake River. Prior to that time the matter of building the American Falls reservoir for the purpose of regulating the flow of Snake River in the interest of irrigation had received much serious consideration and considerable data had been collected by private interests and submitted to the State for its consideration. Because of the many complications entering into the development of the project, such as the moving of the town of

American Falls, the main line of the Oregon Short Line Railroad, acquisition of Indian lands, etc., together with the condition of the State's reclamation credit, the project was not consummated as a private enterprise.

The United States Reclamation Service, largely in the interest of a further development and extension of its Minidoka project, began negotiations with various districts and canal companies in the Snake River valley who desire and need additional water, according to the writer's information, early in 1919, with the result that a definite plan of procedure was matured, in which the Federal government would construct a reservoir, conditioned upon their being able to secure subscriptions for sufficient water which, added to the quantity necessary for the reclamation of the Minidoka Extension project, would make the construction of the reservoir feasible. You will understand that the feasibility of the project depends upon constructing a reservoir with a capacity at least approximating 700,000 to 800,000 acre feet. It is my understanding that upon this basis the plan was presented to Congress for the purpose of securing funds to meet the government's prorata share of the cost, and upon such presentation various appropriations have been made.

In the mean time, contracts were negotiated between the Federal government and the private canal companies and districts in the Snake River valley, providing for the purchase by such companies and districts, of storage rights in the proposed reservoir. Under the provisions of these original purchase contracts the purchaser obligated himself to pay various sums of money to the Federal government at such time or times as the same may be needed for construction, in addition to making a small payment of ten cents per acre foot at the time of entering into the contract. Immediately following the execution of these contracts a financial depression hit Idaho and particularly its agricultural interests, which made it impossible for these purchasers to comply with the provisions of their contracts.

Prior to the time of my departure for Washington (about May 28, 1923) the Federal government had expended about \$500,000 on the enterprise and virtually no funds had been contributed by the private interests.

The construction of the reservoir will ultimately interfere with the power rights and property of the Idaho Power Company at American Falls and at other down river points on the Snake River. For example, Shoshone Falls, Lower Salmon Falls

and Swan Falls. An agreement with this company covering the question of such interference was, therefore, necessary. Negotiations were opened with the Power Company some two or three years ago, with the result that after considerable study and deliberation, involving many conferences in which the writer participated, as the representative of the State of Idaho, an agreement was finally reached, signed and executed by the Power Company, which in substance, provided for the acquisition of all the rights necessary in connection with the construction of a reservoir to a capacity of about 1,500,000 to 1,600,000 acre feet capacity.

Under the provisions of this contract the Power Company released control and ownership of a considerable area of land which it had heretofore acquired through various means, situated above American Falls reservoir dam, and inside of the proposed reservoir, the said land having been acquired by the power company for use in connection with their forebay pondage or storage, together with ownership and control of its water rights, permits, etc., and two old power plants at American Falls known as the Island and West Side plants.

As a consideration for these rights, the power company is to receive \$1,000,000 in cash, payable in four equal installments. One upon the approval of the contract by the Secretary of the Interior, the second in one year, at which time title to the power plants mentioned in the foregoing was to pass, and the other payments to be made within three and four years respectively from the date of the execution of such contract. In addition to this cash consideration, the power company is to have a right to 45,000 acre feet of water and reservoir capacity for their use at American Falls and elsewhere on the lower reaches of the Snake River exclusively for power purposes and to be drawn off as they desire, also a right to the use of 100 second feet of water beginning April 1st of each year, increasing uniformly to 2500 second feet on May 1st and continuing at that amount to September 15th inclusive, then decreasing uniformly to 100 second feet on October 31st. This last mentioned right or water, while available to the power company for power purposes during the foregoing period each year at American Falls, is not lost to irrigation, but under the provisions of the contract as executed, is available for diversion to the Minidoka project or the Twin Falls projects for irrigation uses, in satisfaction of rights which have already accrued. In addition to the foregoing consideration, the power company obtained a secondary right to the use of 255,000 acre feet capacity of the American Falls reservoir under certain restricted conditions,

which will not interfere with the use of the reservoir for irrigation purposes, and a capacity greater than the million and a half acre feet is created.

Briefly, it may be stated that the contract between the power company and the government provides for the regulation of Snake River in the interest of irrigation, adequate to the needs of a million and a half acre feet, reservoir capacity.

If and when the reservoir is constructed beyond this capacity, it will be necessary, if the reservoir is to be filled each year, to acquire additional power rights. It is my belief that the contract as consummated is satisfactory, adequately protects the interests of the State, and is fair and equitable.

All of the titles to property acquired under the provisions of the said power contract go to the United States Government.

One of the necessary and important steps in providing for the building of this reservoir was the execution and approval of the power contract by the Secretary of the Interior. This contract was presented to him in the fall of 1921 and the writer, acting upon the request of Governor Davis, went to Washington, D. C. in January, 1922 for the purpose of urging an approval of this contract. The then Secretary of the Interior, upon a consideration of the matter, declined to approve the contract for the reason that private companies and districts who had subscribed for water in the American Falls reservoir had not fulfilled the conditions of the contract in relation to the payment of monetary demands, and it may be stated that in my belief, the Secretary was quite justified in taking this position, since upon the approval of the said contract the government would have been required to pay over \$250,000 and to obligate itself to pay the additional sums in cash, hereinbefore referred to, when the same became due. This the government was probably not justified in doing until it was definitely assured that the subscribing companies would fulfill the terms of their purchase contracts and pay the sums required thereunder. We were advised by the Secretary of the Interior that he would use his efforts to secure an extension of time within which to approve the said power contract, conditioned upon subscribing companies organizing an irrigation district embodying their lands and other lands that might desire additional water, issuing district bonds and thus providing a means of financing private subscribers.

Acting upon this assurance, steps were immediately taken to organize what is known as the American Falls Reservoir Irrigation District, embracing approximately 480,000 acres of land under the various canal systems in the Snake River valley.

Appropriate steps were taken to organize this district

and the matter was pushed as rapidly as possible until the organization was finally created and the bonds voted.

Through the efforts of the Secretary of the Interior and the State, extensions of time were secured from the power company within which the Secretary of the Interior may approve the power contract.

The foregoing contains a brief outline of the various steps taken and the conditions obtaining on June 1, 1923.

In order to close up the transaction, secure the approval of the power contract by the Secretary of the Interior and make available Federal funds that had been appropriated for the project, it first became necessary to negotiate and execute a contract between the Reclamation Service and the American Falls Reservoir District. This contract was finally agreed upon and executed by both parties on the 15th day of June, 1923.

Under its provisions the district will acquire 280,000 acre feet of water from the American Falls reservoir, with an option to secure an additional 20,000 acre feet for the use and benefit of unentered and unsold Carey Act lands and school lands situated under the North Side Twin Falls canal systems. As a consideration for such water, the district agreed to pay the actual prorata cost of the reservoir construction, including rights of way and other items entering into the completed project, the said money to be paid upon demand from the United States, at such times and in such amounts as may be necessary to meet the district's prorata share of the construction costs, and that a payment of ten cents per acre foot shall be made upon the signing of the said contract or when it becomes effective, and that a further sum of \$2.00 per acre foot shall be payable within ninety days after the signing of said contract.

The contract further provides that the district shall pay a penalty of ten per cent on any sums that are not paid when due.

The exact cost of the reservoir is not known but from data now available and assuming that a reservoir of one and a half million acre feet will be constructed, it is quite certain that the cost will not exceed \$6.00 per acre foot.

After this contract was negotiated and agreed upon and ready for delivery, the question of purchasing the Indian lands situated in the reservoir, was taken up with the Interior Department and after considerable discussion and deliberations it was finally held by the Solicitor for the said Department, that the Secretary

did not have authority to purchase these lands, but that an act of Congress ratifying the appraised price and granting such authority to the Secretary, would be necessary. This contention was a surprise to the officers of the district and to the writer, it having been generally understood that such act of Congress was unnecessary. The Solicitor, in explaining his position, pointed out that the Secretary, under existing statutes, had authority to purchase rights-of-way including Indian lands, provided the owner was willing to sell. Ex-Senator Fred T. Dubois appeared at the Interior Department as a representative of the Indians and indicated that they were not willing to sell at the appraised price, hence the holding of the Solicitor. It was pointed out, however, that other means of obtaining these lands might be employed, the Solicitor holding that the consent of the Indians to the sale might be had in an agreement with two-thirds of the male adult Indians on the reservation, or that the same may be acquired by condemnation. You will understand that most of the lands in this status are tribal lands, that is, they have not been allotted to individual Indians, hence, the transfer is a deal between the tribe and not with individuals, or is a deal between the United States Government by and with the consent of Congress.

About a year and a half ago the Secretary of the Interior appointed a Commission to cruise the Indian lands and to appraise them. This Commission consisted of Mr. Dietz, the then irrigation engineer for the United States Indian Irrigation Service in this territory, Capt. Hair, a representative of the United States General Land Office, and Mr. Banks, an engineer in the employ of the United States Reclamation Service. This commission conducted a very careful and exhaustive investigation and rendered a very complete report and appraisal. I have carefully examined the report and am generally familiar with the Indian lands, and it is my belief that the appraised price is more than fair to the Indians, it having been made before the present deflation in Idaho land values. This opinion is, I am sure, concurred in by practically all of the interested persons who are familiar with the situation. I entertain no doubt but what these lands will be acquired at a price not exceeding the appraised amount, and that possession will be had sufficiently soon to prevent any delay in the development or use of the enterprise.

In order to protect owners of land in the American Falls district, the contract as drawn and executed, was delivered and accepted and approved by the parties under the following conditions: That in the event the Secretary of the Interior or

other proper officer of the United States fail, either by securing necessary legis-

lation, condemnation or otherwise, to obtain the Indian lands essential to a con-

struction of the reservoir, then and in that event all of the obligations resting

upon the said district under the contract are held for naught and regarded as fully

discharged, and no demands are to be made upon the district under the said contract

until the said Indian lands are secured and the district so notified and that no

demands for payments under the said contract shall be made and no penalties for

delinquencies shall attach until after the said lands are obtained, the district

being notified and given a reasonable time thereafter within which to sell its bonds,

two other contracts have been negotiated and signed providing for the

purchase of American Falls water, and because of the newspaper interview given out-

by the Honorable Mr. Crampton of the appropriations committee of the House of Rep-

resentatives, who recently visited Idaho, in which it was indicated that the con-

ditions under which the American Falls reservoir contract is delivered, I consider

are more favorable than the terms under which other subscribers are obtaining the

same benefit, and are not in harmony with the representations made to Congress when

the appropriations for this enterprise were made, it seems desirable to compare the

terms and conditions of the contracts between the government, American Falls district

and between the government and other subscribers,--hence the following:

The American Falls reservoir district contract provides for the purchase

of water from American Falls reservoir and in the event American Falls reservoir is

not built and it can not be built and utilized unless the Indian lands are obtained,

then the said district obtains nothing. As a protection to the land owners in the

district, the delivery of the contract under the restrictions recited in the foregoing,

seems absolutely necessary.

The other subscribers, for example, Milner Low Lift Irrigation district

and New Sweden Irrigation district, which have already put up their money, have contracted

to purchase water in Jackson Lake, which water is now available and being used by them

and in the event the American Falls reservoir is not built, they will actually acquire a

water supply at an agreed price of \$10.00 per acre foot. In the event the American

Falls reservoir is built then the price these companies are to pay for their water

will be adjusted to equal the per acre foot price of American Falls water. These

subscribers, therefore, are perfectly secure and are perfectly protected and justified

in foregoing discounts. It is my further understanding that sufficient property has

in turning their money over to the Federal government in advance of the government's acquiring the said Indian lands.

It is my understanding that the Snake River Valley irrigation district has also executed a contract, or is expecting to execute a contract providing for the purchase of storage water, and it is my information that while the money under this contract has not actually been paid, the same will be paid in the near future when the said district sells its bonds, and that its contract contemplates the purchase of Jackson Lake water under the same terms and conditions as the contract between the two districts last above mentioned. The same ten per cent penalty for delinquent payments attaches to all of these contracts, including the American Falls Reservoir district contract.

With respect to the allegation that the representations made to Congress when American Falls reservoir appropriations were made were not fulfilled by the terms and conditions of the American Falls reservoir contract as delivered, I offer the following explanation.

The Federal government had, prior to the signing of the said contract with the American Falls reservoir district, expended in round numbers, \$500,000 on the project and had available in appropriations for use prior to June 30, 1923, and additional sum approximating \$1,200,000. The \$500,000 previously expended had, with the exception of the comparatively small amount spent for engineering and investigations, gone to purchase rights of way, consisting principally of real property in the town of American Falls. In order to obtain the unexpended balance of the appropriation, it was necessary to encumber the same before June 30th. This was accomplished by the Secretary's approving the power contract and making the payments provided therein, together with the approving of purchase contracts of a considerable amount of additional property in the town of American Falls. In signing the power contract an agreement was reached whereby the power company would accept not only the first payment but additional payments when the Government saw fit to make them, and would discount the advance payments in an amount equaling 6% on the sum of said advanced payments, to be calculated over the period between the time of such payments and the time when they were actually due. It is my recent information that the Government has taken advantage of this tender and has actually paid the first three instalments due under the contract, with a total aggregate amount of \$750,000 less the foregoing discounts. It is my further understanding that sufficient property has

been acquired at American Falls or that purchase contracts have been executed in a sufficient amount to utilize the unexpended balance of the appropriation.

Thus, all of the money the Government has thus far invested and under ordinary circumstances all it will invest before the American Falls reservoir district money is put up, with the exception of the comparatively small amount for engineering and other executive costs, has gone to purchase real property, including power rights and real property at American Falls. The title to this property, including all of the power rights acquired, passes to the United States government and in the event Indian lands are not secured and the reservoir is not built, the government still has its investment protected, it being assumed that the government has bought wisely and that the property it has acquired with these respective sums is worth what it cost.

The writer was advised by the manager of the American Falls reservoir district and its board of directors, that they were perfectly willing to make their money available, even in advance of the acquisition of the said Indian lands, provided they were permitted to come in with the government on an equal basis and participate prorata with it in the ownership of the property acquired.

In addition to the foregoing, it was recognized that the government had invested and will continue to invest, under the project as it is now planned and outlined and under the contracts that are approved, certain sums of money prior to the making of any payments or furnishing of any cash by the American Falls reservoir district. A provision was therefore incorporated in the contract between the said district and the government, under which the government or other subscribers for water in American Falls who pay their money in advance of the payments by the said district, may receive interest on any sums advanced, at the rate of 6% per annum up to the time the money from the said district is actually put up.

An analysis of the foregoing readily leads to the conclusion that the contracts as executed are absolutely fair and equitable, and that all of the parties are afforded proper protection, and it is my belief that Mr. Crampton, upon giving out the interview he did, possessed only erroneous and misleading information, and was not acquainted with the actual facts.

and was actually misrepresenting the proposed project in Idaho, the proceeds of which go to make up a substantial interest fund on the said loan and to meet its provision cost of the project.

In addition to the foregoing, contracts for the purchase of American Falls water, a contract was also executed between the Empire Irrigation District and the government providing for 110,000 acre feet of American Falls water. This contract is upon the same basis and under the same terms and conditions as the American Falls reservoir contract. The Empire district comprises a total of about 90,000 acres of land situated in Bannock and Caribou counties, about 50,000 acres of which are desirable and irrigable and to which water will be dedicated, the said area being a part of or one unit of what is known as the Greater Fort Hall project. The American Falls water acquired by this district is to be exchanged for water in Jackson Lake, the said Jackson Lake water is to be exchanged for water in the Blackfoot Marsh reservoir, thus making Blackfoot Marsh reservoir water available to the lands in the said Empire district. You will understand that because of the topographic conditions, lands in the Empire district are not susceptible of irrigation from the Snake River, while on the other hand the lands to which Blackfoot Marsh reservoir water is now being dedicated, being lands in the Fort Hall project, may readily be watered from Snake River. In order that the Empire district may carry out its plan, it also negotiated and executed a contract with the United States Indian Service providing for the said exchange of water. The consummation of this transaction between the government and the Empire district does not interfere with or prevent in any way the ultimate development of other units in the Greater Fort Hall project, but on the contrary, the plan adopted by the said district is in harmony with the general plan of development of the Greater Fort Hall project and merely constitutes a unit of it.

The following summary is offered for your convenience. First, American Falls reservoir is definitely assured, the Federal government already having expended approximately \$1,700,000 on the enterprise, and has appropriated, according to my information, \$400,000 additional, which is available during the present fiscal year. Under the present plan the government will obtain 520,000 acre feet of water in the reservoir for use on its Minidoka Extension project of 120,000 acres.

Second, the American Falls Reservoir District has subscribed and contracted for 280,000 acre feet of water with an option on an additional 20,000 acre feet, and has actually authorized the issuance of \$2,700,000 in bonds, the proceeds of which go to make up a five-year interest fund on the said issue and to meet its prorata cost of the reservoir construction.

Third, the Empire district has subscribed for 110,000 acre feet in the reservoir and authorized bonds in the sum of \$2,500,000, the proceeds of which are to be used for building a canal and irrigation system and for the payment of their prorata share of the cost of the reservoir. The New Sweden irrigation district has actually purchased Jackson Lake water under a contract which, if the American Falls reservoir is built, ties them into the enterprise to the extent of 25,000 acre feet. Their bonds have been sold and the money is up and they are already obtaining the benefits of Jackson Lake water.

Fourth, the Milner Low Lift Irrigation district has actually acquired Jackson Lake water under a contract and conditions similar to that of the New Sweden district and they are at the present time using Jackson Lake water. The Snake River Valley Irrigation district has authorized its bonds and I am advised, has executed a contract for the purchase of Jackson Lake water under the same conditions and terms as the New Sweden Irrigation District.

It seems, therefore, certain that what I regard the greatest single development Idaho has ever known is actually assured and under way. Great credit is due the public spirited men and organizations who have been active in bringing these negotiations to a successful end.

In the foregoing, I have endeavored to briefly set out the status of the American Falls project and the contracts relating thereto. Copies of these contracts are on file in my office and open to public inspection. If you desire additional data, or if the foregoing outline is not perfectly clear, I shall be glad to supplement the same, either verbally or in writing, upon your request.

Respectfully,


Commissioner of Reclamation

WGS:P