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February 10, 1930

Mr. E. B. Darlington, Supt.
Minidoka Project,
U. S. Bureau of Reclamation,
Burley, Idaho.

Dear Mr. Darlington:

I note that a net draft of practically 110,000 acre-feet has been made upon the American Falls Reservoir during the month of January. In view of present prospects for a below normal run-off this seems to be rather heavy winter usage. Please advise as to your plans for operation of this reservoir during the next few months.

I also wish that you could arrange for Mr. Anderson to make staff readings at least twice a week at both the American Falls and Neeley gaging stations during the periods when it is impracticable to operate the recording gages. We have had no record whatsoever for these stations since the early part of January, when he reported in rather an indefinite manner that everything was frozen up. A record of the changes in gate openings at the American Falls dam supplemented by staff readings every three or four days at each station would be very helpful in determining discharge and should not place an undue burden upon Mr. Anderson.

Your early attention to this matter will be very much appreciated.

Sincerely yours,

H. Clyde Baldwin
Deputy.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

GEORGE N. CARTER, COMMISSIONER
G. CLYDE BALDWIN, DEPUTY

WATER DISTRICT NO. 36

IDAHO FALLS, IDAHO

H. C. BALDRIDGE, GOVERNOR

February 11, 1930

Mr. Geo. N. Carter,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Carter:

Enclosed, herewith, please find Summons which was served on me yesterday by the Deputy Sheriff of Bonneville County.

As I understand it, this action is brought in an effort to clear up the uncertainties arising from the wording of the Rexburg Milling Company's decree which is listed in the 1910 Snake River decree as follows:

> Rexburg Milling Company, 3000 inches, October 1, 1889, Teton River (Woodmansee-Johnston), for power purposes only, and subject to rights of users for agricultural purposes of water through same ditch.

You probably remember that this matter has come up before due to the fact that we have refused to recognize specific irrigation rights as being established under this decree.

As I see it, the State has no particular interest at stake and if any particular opposition or contest develops, it will probably come through intervention by some other canal company or group of water users who may feel that their rights are in danger.

I presume you will submit this to the Attorney General and arrange with him to file whatever answer may be necessary, and I wish to request that you advise me promptly concerning the action taken.

Sincerely yours,

G. Clyde Baldwin

Deputy.

Encl.

February 12, 1930

Re: Water District 36 Miscellaneous

HONORABLE W. D. GILLIS
Attorney General
The Capitol

Dear Sir:

I am transmitting herewith Summons and Complaint in an action brought under Section 7036, Compiled Statutes, wherein G. Clyde Baldwin, Watermaster of Water District No. 36, is made defendant. Mr. Baldwin advises that the Summons was served on him February 10 by the Deputy Sheriff of Bonneville county.

The State, or one of its watermasters, obviously, is not the real party of interest, but is made defendant to obviate the necessity of opening the existing decree.

It is assumed that you will file an appropriate answer. Kindly notify this office, or Mr. Baldwin, at Idaho Falls, and furnish copy of such answer. Also, will you please return the Complaint for our files when it has served your purpose.

Yours very truly,

Commissioner of Reclamation.

GNC/eq
CC: G. Clyde Baldwin
Idaho Falls
Idaho

(COPY)

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Moran,Wyo,March 19,30.

Mr.E.B.Darlington,
Project Supt,
Burley,Idaho.

Dear Mr.Darlington:

Have completed snow survey on the Jackson Lake water shed. Due to mild weather the snow is well settled and although the depth is not greatly increased since last survey the water content shows an increase of 3.5".

The following data was obtained on trip March 13th to 18th.

Station	Snow depth	Water Content
Moran	27"	8.5"
Moran Canyon	48"	15.0"
Arizona Station	42"	12.5"
Huckle-berry Divide	47"	14.0"
Snake River Station	47"	15.0"
Coulter Creek	54"	16.0"
Lewis Lake Divide	87"	32.0"
Aster Creek	68"	22.0"
Glade Creek	54"	16.0"

Mean depth--------53"
Mean water content-----17"

Sincerely yours,
(signed) Joseph Markham
Res,Supt.

Survey 13 to 18 March

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Burley, Idaho,
March 26, 1930.

Bureau of Reclamation, Denver, Colorado,
Minidoka Irrigation District, Rupert, Idaho,
North Side Canal Co., Jerome, Idaho;
Aberdeen-Springfield Canal Co., Aberdeen, Idaho;
G. Clyde Baldwin, Idaho Falls, Idaho;
Jos. Markham, Moran, Wyoming;
University of Idaho, Moscow, Idaho;
Twin Falls Canal Co., Twin Falls, Idaho;
W. M. McConnell, Milner, Idaho;
Idaho Power Company, Boise, Idaho;
Mr. S. H. McAlister, Idaho Power Co., American Falls, Idaho;
Myron Swendsen, Ass't. Com'r. Reclamation, (State), Boise, Idaho.

Gentlemen:

Attached is report of a snow survey of the Jackson Lake watershed made during the period from March 15th to 16th.

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

(COPY) UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Moran, Wyo, April 16, 30.

" Mr. E. B. Darlington,
Project Supt.
Burley, Ida.

Dear Mr. Darlington:

Have completed snow-survey on the Jackson Lake water shed. Since last survey the ground has thawed and is saturated with water from the fast melting snow. The ground is covered with an average of 4" of slush. The snow is not drifted and is granulated and contains an unusually large amount of water. With warm weather I predict an exceptionally early run-off. All conditions are about 20 days ahead of last year.

The following data was taken April 12th to 15th.

Station	Snow depth	Water content
Moran	None	
Moran Canyon	24"	10.5"
Arizona Station	20	8.0
Huckle-berry divide	26	10.0
Snake River Station	18	9.0
Coulter Creek	28	11.0
Lewis Lake divide	52	24.0
Aster Creek	48	22.5
Glade Creek	24	10.0

Mean depth (8stations)----30"
Mean water content-------13"

Sincerely yours,
Joseph Markham
Res, Supt."

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Burley, Idaho,
April 23, 1930.

Bureau of Reclamation, Denver, Colorado;
Minidoka Irrigation District, Rupert, Idaho;
North Side Canal Co., Jerome, Idaho;
Aberdeen-Springfield Canal Co., Aberdeen, Idaho;
Mr. Lynn Crandall, Idaho Falls, Idaho;
Mr. Jos. Markham, Moran, Wyoming;
University of Idaho, Moscow, Idaho;
Twin Falls Canal Co., Twin Falls, Idaho;
Mr. W. M. McConnell, Milner, Idaho;
Idaho Power Company, Boise, Idaho;
Mr. S. H. McAlister, Idaho Power Co., American Falls, Idaho;
Myron Swendsen, Ass't. Com'r. Reclamation, (State), Boise, Idaho.

Gentlemen:

Attached is report of a snow survey of the Jackson Lake watershed made during the period from April 12th to 19th, 1930.

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

GPO

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

603 Postoffice Building
Portland, Oregon
May 16, 1930

Mr. Geo. W. Carter,
State Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Carter:

Please find enclosed copy of letter of today to Mr. Baldwin, and copies of the enclosures, explaining recent developments in the case of Twin Falls Canal Company v. Carter et al.

Very truly yours,

B. E. Stoutemyer
District Counsel

encls

BES:EAG

603 Postoffice Building
Portland, Oregon
May 16, 1930

Mr. G. Clyde Baldwin,

Idaho Falls, Idaho.

Dear Mr. Baldwin:

Supplementing our last report with regard to the case of Twin Falls Canal Company v. Geo. W. Carter, et al, in which you are named as one of the defendants, we are enclosing copy of Judge Sutphen's letter of May 14, notifying us that he has signed the order removing this case into the federal court again. I am also enclosing for your information copies of our original brief and reply brief on the question of removal, before Judge Sutphen, which will give you a history of recent developments in connection with the case and the principal authorities involved.

By second amended complaint, the plaintiff in effect dismissed the case as to Hubert Work and named the present secretary, Ray Lyman Wilbur, as party defendant. For the reasons set out in the enclosed briefs, it is our understanding that this action has now abated as to the state officers and that Secretary Wilbur is now in effect the sole party defendant.

The action is now pending in the federal court. The recent decisions of the supreme court of Idaho in Boise-Kuna Irr. Dist. v. Hartson, 285 Pac. 456, and Stoner v. Carter, 285 Pac. 470, referred to in the enclosed briefs, will have a material bearing upon further proceedings in the case.

Will you kindly turn over the enclosed papers to Mr. Lynn Crandall after reading, as he will probably be interested in the matter although he is not a party to the suit.

Very truly yours,

encls.

B. E. Stoutemyer
District Counsel

cc - Mr. Carter

(Copy)

Doran H. Sutphen
Judge Fourth Judicial District
Resident Chambers
Gooding, Idaho.

May 14th, 1930.

Bothwell & Chapman, Esqs.,
Twin Falls, Idaho.
S. T. Lowe, Esq.,
Burley, Idaho.
H. E. Ray, Esq.,
Boise, Idaho.
B. E. Stoutemyer, Esq.,
Portland, Oregon.

Gentlemen:-

In re:- Twin Falls Canal Co. vs. Carter, et al.

You are hereby advised that the petition of the defendant, Ray Lyman Wilbur, for an order transferring this cause to the United States District Court for the Southern Division of the District of Idaho is granted and the court is this day signing the proper order for removal of the same and forwarding such order to the Clerk at Shoshone for filing.

Very truly yours,

(Sgd) D. H. SUTPHEN

D.H.S./MC

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF LINCOLN

TWIN FALLS CANAL COMPANY, a corporation, Plaintiff, vs. GEORGE W. CARTER, Commissioner of Reclamation; G. CLYDE BALDWIN, Deputy Commissioner of Reclamation of the State of Idaho, and G. Clyde Baldwin, Watermaster of District No. 36, Defendants, RAY LYMAN WILBUR, Secretary of Interior of the United States of America, Additional Party Defendant, NORTH SIDE CANAL COMPANY, LIMITED, a corporation, Intervener.	BRIEF IN SUPPORT OF PETITION FOR REMOVAL

STATEMENT

The action was originally against Carter and Baldwin and charged them with failure to deliver certain waters of Snake River to the Plaintiff which claimed their use. Hubert Work as Secretary of the Interior was made a party defendant by Order of Court; He appeared and, with his co-defendants, removed the action to the Federal Court, from which it was remanded. The plaintiff then filed what purports to be "an amendment to the complaint", which not only charges the defendants Carter and Baldwin with

a failure to deliver the waters mentioned, to the plaintiff, but also of a wrongful delivery thereof to the lands of the Minidoka Project. Hubert Work resigned as Secretary of the Interior in July, 1928; the plaintiff filed an amendment to its original complaint in July, 1929, making Hubert Work as Secretary of the Interior of the United States a party defendant; The Court sustained the defendants' demurrer to plaintiff's complaint as amended upon the grounds that said complaint failed to state a cause of action against Hubert Work as Secretary of the Interior; On March 22, 1930, the plaintiff served a further amended complaint upon Ray Lyman Wilbur as Secretary of the Interior of the United States and who, within the time allowed by law for answer, has appeared specially for the purpose of petitioning the removal of the action to the Federal Court.

BRIEF AND ARGUMENT

The allegations of the verified petition for removal and affidavits in connection therewith are taken as true unless they are met by counter affidavits.

Loop v. Winters' Estate, 115 Fed. 362
Camp v. Field, 189 Fed. 235
Simson v. Railway Co., 155 Fed. 471
Atlanta, K&N Ry. v. So. Ry. Co., 155 Fed. 122
Hughes Fed. Prac. (2nd ed.) par. 152, page 200
Filer v. Levy, 17 Fed. 609
Lacroix v. Lyons, 37 Fed. 403

The amended complaint is a new cause of action against Ray Lyman Wilbur which he is entitled to remove.

Friedlen v. Boatmen's Bank, 55 L. ed. 557
Missouri Pac. R.Co. v. Fitzgerald,
160 U.S.556; 40 L. ed. 536;

Powers v. Chesapeake & O. R. Co.,
169 U.S. 92, 42 L. ed. 673.
Becker v. N.E. & S. Co.,
204 U.S. 177, 51 L. ed. 433.
Ben v. Midwest Ref. Co.,
30 Fed. (2) 410.
Bowmen's Bank v. Fritzlen,
135 Fed. 650.

The amendment of the complaint and its service upon Ray Lyman Wilbur, a new party defendant, is not a substitution of parties -

(1) Because there is no right of substitution at Common Law.

(2) There is no right of substitution under State statute -
Boise-Kuna Irr. Dist. v. Hartson
(Idaho) 265 Pac. 456 (advance sheets)
United States v. Boutwell,
17 Wall. 604, 21 L. ed. 721.
Hill Benchy v. Lamkin,
1 Ida. 50.
Irwin v. Wright, 258 U.S. 219.
66 L. ed. 573.

(3) Even though the court were governed by Federal practice, plaintiff has not brought itself within the Federal statute authorizing a substitution of parties -
Act of Congress of Feb. 8, 1899
(30 Stat., 822)
Act of Congress of Feb.13, 1925
(43 Stat., 941).

Secretary Work resigned more than two years before the last amended complaint was filed herein naming Secretary Wilbur as a party defendant. The federal statutes above referred to, which grant the right of substitution in certain cases, make the right subject to the following conditions:

"Sec. 11 (a) That where, during the pendency of an action, suit or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved."

" (c) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have."

On presentation of a petition for removal, the State Court has the power to examine the removal papers in order to determine their sufficiency. If the Court entertain a doubt as to their sufficiency, the Court should take no further action other than ordering the case removed until the Federal Court has passed upon a motion to remand.

Foster's Federal Practice,
3042 et seq.
Removal Cases, 100 U.S. 457, 474;
25 L.ed. 593
Gregory v. Hartley, 113 U.S. 742;
28 L.ed. 1150.
Stone v. South Carolina, 117 U.S. 430;
29 L. ed. 962.
Tennessee v. U & P Bank, 152 U.S. 454;
38 L. ed. 511.

If the petition and bond are sufficient the State Court is divested of jurisdiction over the case and it has no power to try questions of fact arising upon the petition, but must accept the facts therein alleged as true.

Foster's Federal Practice,
Vol. 3, page 2042.
Bur. C.R.& N.Ry. Co. v. Dunn,
122 U.S.513; 30 L. ed. 1155.
K.C.Ft. S.& M.R.Co. v. Daughery,
138 U.S.298; 34 L. ed. 963.

When a sufficient bond and petition are filed and presented, all subsequent action by the State Court is void.

Kern v. Huidekoper, 103 U. S. 485;
26 L. ed. 554.
National S. S. Co. v. Tugman,
106 U. S. 118; 27 L. ed. 87.

The petition for removal and supporting affidavits together with the exhibits attached to the petition must be taken as true since the federal court to which removal is petitioned is the arbiter of all questions of fact set up in the petition and affidavits, whether met by counter affidavits or showing or not. If the rule were otherwise a State Court could thus defeat the right of removal of any case.

The rule of the U. S. Supreme Court upon this question is concisely stated in the syllabus to the opinion in Burlington, Cedar Rapids & Northern Ry. Co. v. Dunn, supra, thus:

> "The theory on which it (the right of removal) rests is that the record closes so far as the question of removal is concerned, when the petition for removal is filed and the necessary security furnished. It presents then to the State Court the pure question of law whether,

admitting the facts stated in the petition for removal to be true, it appears on the face of the record that the petitioner is entitled to a removal of the suit."
(80 L. ed. 1189)

The petition clearly sets out the changed conditions since the former removal in -

1. The amendment of the plaintiff's complaint showing for the first time that the waters claimed by plaintiff are being furnished to a federal reclamation project.

2. The amendment of the complaint making the petitioner Ray Lyman Wilbur a party to the suit for the first time;

3. The action of the plaintiff in stipulating for entry of the Foster Decree as a federal court decree in the case of Woodville Canal Company v. Clark & Edwards Canal & Irrigating Company, et al, and the actual entry of that decree as stipulated;

4. The default of the plaintiff to an action brought by the United States against the plaintiff in the federal court to make the Foster Decree a federal court decree.

5. The abatement of the action against C. Clyde Baldwin, Watermaster under whose authority the acts complained of on the part of plaintiff were performed and done, which clearly discloses that the entire controversy in this action is between the plaintiff who claims certain waters coming into Snake River, and the United States whose project constructed and operated under Federal Statute has been sent to have the use of said waters as claimed.

Upon these admitted facts, it is felt that the Court can entertain no doubt that a determination of a pure question of law leads to the inevitable removal; however, if the court entertains the slightest doubt upon the law question it ought to be reserved for decision of the federal court upon the plaintiff's motion to remand.

The action of the federal court in having formerly remanded this cause to the jurisdiction of the State Court is not res adjudicata. Regardless of the change of parties there has been an entire change of the cause of action as heretofore pointed out. However, as to the petitioner Ray Lyman Wilbur, his status here is the same as though the action were commenced with the filing of the amended complaint and its purported service upon him.

In the case of Pritzlaw v. Boatmen's Bank, a decision of the Supreme Court of the United States reported in 68 L. ed. page 581, a junior mortgagee residing in Kansas, brought an action against the mortgagor residing in Kansas and a senior mortgagee residing in Missouri, for the foreclosure of the junior mortgage and for the purpose of declaring the senior mortgage void and subsequent and inferior to the lien of the junior mortgagee. Boatmen's Bank, the senior mortgagee, petitioned for a removal and the action was removed to the U. S. District Court which retained jurisdiction until subsequently when a new presiding judge of the Circuit Court reconsidered the motion to remand and granted the motion upon the theory that the former action over-ruling the motion did not invest the Federal Court with jurisdiction, and that the question of jurisdiction might be raised at any time. The action was remanded. In the State Court the bank answered and sought to establish the priority of its mortgage lien and by answer, both the junior mortgagee and the mortgagor attacked the mortgage of the bank, when

the bank again petitioned for removal. In that case the court said:

> "But it is not open to controversy that if, after an order to remand has been made, it results from the subsequent pleading or conduct of the parties to the cause, that the cause is removable, on the development of such situation a second application to remove may be made, and the right to do so because of the changed aspect is not controlled by the previous order remanding the cause. Powers v. Chesapeake & O.R.Co. 169 U.S.92, 42 L. ed. 673, 18 Sup. Ct. Rep. 264. See also Becker v. National Enameling & Stamping Co. 204 U. S. 177, 51 L. ed. 433, 27 Sup. Ct. Rep. 184, 9 A. & E. Ann Cas. 787. It follows, therefore that the contention that the necessary effect of the judgment below was to refuse to give effect to the previous remanding order is without foundation. It is said, however, that as the power to entertain a subsequent motion to remove depended upon a change in the condition of the record, that the result of the judgment below was to deny all effect to the prior order remanding the cause, as there had been no such change in the record as to justify the granting of the second order to remove. To sustain this proposition it is insisted that substantially the only changes that resulted from the pleadings filed after the remanding of the cause was that brought about by the filing of the answer of Fritzlen, and the defenses set up in that answer against the mortgage held by the bank, which, it is argued, in the nature of things could not operate to affect the removability of the suit between Weldon and Fritzlen. But the premise upon which the proposition rests is without foundation in fact. As we have seen the petition of Weldon impleading Fritzlen and the bank, while it assailed the bank's mortgage in express terms, alleged that that mortgage, if it existed was junior in rank to the mortgage of Weldon. And the serious consequences which that averment had upon the order to remand the cause is indicated in the opinion of Philpott, J., sustaining the motion to remand. The necessary effect of the answer of the bank, filed after the remanding, and of the answer by Fritzlen, as well as of the answer filed by Weldon, expressly joining Fritzlen in his attack upon the mortgage of the bank, was to make clear the untruth of the averment of the junior character of the mortgage held by the bank, and to establish, therefore, the fact that the bank was not an indispensable or necessary party to the suit of Weldon for the foreclosure of the mortgage against Fritzlen."
>
> (50 L. ed. 687)

See also - Missouri Pacific R.Co. v. Fitzgerald,
160 U.S.556, 40 L.ed. 536.
Powers v. Chesapeake & O.R.Co.,
169 U. S. 92; 42 L. ed. 673.
Becker v. Mut. Enameling & R.Co.,
204 U.S.177, 51 L. ed. 422.
Bon v. Midwest Refining Co.,
20 Fed.(2) 410.
Bowmen's Bank v. Fritzlen,
105 Fed. 650.

The case of Bon v. Midwest Refining Company, supra, had under consideration the question of whether or not a petition for removal made the first time after an amended complaint was filed and served, was timely and would vest the Federal court with jurisdiction. Removal was held properly exercised within the time allowed to plead to the amended complaint which set up a new cause of action. In that case no petition for removal was filed to the original complaint. It was there held:

> "The matter of allowing amendments by a state court under liberal statutory provisions can of course not be accepted in the federal courts as decisive of the point as to whether a new or different cause of action might be or has been set up. Very frequently courts have permitted amendments which virtually substituted new causes of action simply for the purpose of saving expense in starting over to litigants, thereby permitting the cause to proceed the same as though a new cause of action had been instituted and process issued thereon. But in these instances it is usually done when no substantial rights of the defendants are involved or have intervened."
> (20 Fed., 2nd ed., p. 411)

The opinion of the court in this case proceeded to quote from the opinion of the Supreme Court of the United States in the case of Powers v. Chesapeake & Ohio Ry. Co., supra, as follows:

> "The existence of diverse citizenship, or other equivalent condition of jurisdiction, is fundamental; the want of it will be taken notice of by the court of its own motion, and

cannot be waived by either party. Mansfield, etc., Railway v. Swan, 111 U. S. 379 (4 S.Ct. 510, 28 L. ed. 462). But the time of filing a petition for removal is not essential to the jurisdiction; the provision on that subject is, in the words of Mr. Justice Bradley, 'but modal and formal,' and a failure to comply with it may be the subject of waiver or estoppel.'
(42 L. ed. 878)

The court in its opinion in the case of Doe v. Midwest Refining Company, supra, then goes on to quote from the decision of a number of courts all of which are to the effect that where there is an amendment to the complaint which makes a substantial change in the status of the suit from that set out in the original complaint, the time of filing the amended complaint governs as to the time within which a petition for removal may be successfully urged.

In this connection attention is called to the extreme liberality indulged toward the plaintiff in the matter of amendments. The original pleading was a complaint. The court ordered the complaint amended to bring in an indispensable party defendant, and the plaintiff filed what is termed in "amendment to the complaint" which does not in itself set forth a cause of action. In passing upon the demurrer urged to the complaint as thus amended, the court may have considered that the amendment to the complaint of the plaintiff should be read in conjunction with the original complaint as constituting the entire pleading which forms the basis for the plaintiff's cause of action.

It may be argued that there is no changed cause of action since the former removal because the amendment of the complaint making Ray Lyman Wilbur a party defendant is not the bringing in a new party to the action, but is a substitution of Ray Lyman Wilbur for Hubert Work. However, this argument is impoverished for lack of an essential premise, namely, the right of substitution of successors in office. This right does not exist by Common Law. The State Legislature has not supplied it and the Federal statutes, though granting it, condition its use as shall be hereinafter pointed out.

In a case decided by the Idaho State Supreme Court as late as December 30, 1929, the authorities bearing upon the question are well selected and collected. In Boise-Kuna Irrigation District v. Hartson (285 Pac. 456) (advance sheets), upon proceedings for a writ of mandamus against a District Judge, the Supreme Court pointed out the failure of legislation upon the subject of substitution of successors in office from the time of the earliest case of that court to the present time. In the opinion, it was stated:

> "This court, in the case of Hill Beachy v. Lankin, 1 Idaho 50, at page 52, an action brought against the defendant as territorial auditor to compel him to perform an official act, and who had been succeeded in office by H. B. Lane, said:
>
> 'Mr. Lane, even if he were the successor in office of Mr. Lankin, would not be a proper party to this record. The proceeding was against Lankin for neglect of duty and, being a personal default, would by no means involve his successor. Lankin was proceeded against for a personal failure to perform a duty charged as required by law. Mr. Lane, who has been guilty of no such neglect of duty could not be made responsible for the faults, however grievous, of his predecessor.'
>
> We have no statute authorizing the substitution of the successor in office in an action against his predecessor. The only Idaho case we have been able to find holds with the rule announced by the Supreme Court of the United States and of the state courts

cited, and which appeals to us as being the only sound and logical doctrine to follow, in the absence of an enabling statute. Therefore no substitution in either proceeding should be allowed, and the motion in each case should be denied."
(265 Pac. 459)

With reference to the right of substitution of successors in office under Federal statute, the Court said:

"The Supreme Court of the United States, prior to an Act of Congress passed February 8, 1899 (30 Stat. 822, c. 121, Comp. St. sec. 1594, 28 USCA 780, note), under which successors of United States officers who have been sued may be substituted for them upon a proper showing, have repeatedly held such an action to be against the individual, and personal, and that substitution should not be allowed. Irwin v. Wright, 258 U.S. 219, 42 S. Ct. 293, 295, 66 L. ed. 573; Pullman Co. v. Croom, 231 U. S. 571, 34 S. Ct. 182, 58 L. ed. 375; U. S. ex rel Bernadin v. Butterworth, 169 U. S. 600, 18 S. Ct. 441, 42 L. ed. 873; U. S. ex rel Lewis v. Boutwell, 17 Wall. 604, 607, 21 L. ed. 721, 722; New Mexico ex rel Caledonian Coal Co. v. Baker, 196 U. S. 432, 25 S. Ct. 375, 49 L. ed. 540.

In the case of United States ex rel Lewis v. Boutwell, supra, the leading case, and the one most frequently cited in support of the doctrine, Justice Strong, delivering the opinion of the court, said:

'The office of a writ of mandamus is to compel the performance of a duty resting upon the party to whom the writ is sent. That duty may have originated in one way or in another. It may, as alleged in the present case, have arisen from the acceptance of an office which has imposed the duty upon its incumbent. But no matter out of what facts or relations the duty has grown, what the law regards and what it seeks to enforce by a writ of mandamus, is the personal obligation of the individual to whom it addresses the writ. If he be an officer, and the duty be an official one, still the writ is aimed exclusively against him as a person, and he only can be punished for disobedience. The writ does not reach the office. It cannot be directed to it. It is, therefore, * * * a personal action, and it rests upon the averred and assumed fact that the defendant has neglected or refused to perform a personal duty."
(265 Pac. 457)

The Federal Statute cited by the Idaho Supreme Court in the last quotation has been amended to read as given in the quotation on page 4 of this brief.

The right thus granted by the federal law must be taken advantage of within six months after the death, removal or resignation of the officer defendant, and is subject to the further condition that either the succeeding officer expressly consent to his substitution, or have reasonable notice of the intention to substitute him and an opportunity to be heard in respect thereto.

The plaintiff did not comply with the court's order making Hubert Work a party defendant until a year after he had resigned, and if his application for service of summons upon Ray Lyman Wilbur outside the State of Idaho may be construed as an application for substitution of him as Hubert Work's successor, it follows the latter's resignation by almost two years and is too late.

The cause of action by the amended complaint is a new cause of action against a new and independent party, and the former removal and remand of an action against Hubert Work can have no more effect upon his rights to have the action brought against him removed to, and tried in, a Federal court than though the cause were originally commenced and prosecuted against the Secretary of the Navy.

The verification of the petition for removal in this case was not affixed to the petition. However there was made by the affidavit of the United States District Attorney a verification of the petition, which verification properly identifies the petition and was filed and served upon the plaintiff prior to the hearing on the petition. This procedure not only conforms to State

procedure, but to the provisions of the Federal Judicial Code as well.

Berry v. Mobile & O.R. Co., 228 Fed. 395
Zumbrunn v. Seawartz, 17 Fed (2d) 609
S. B. Wallaster, Inc., v. Chevrolet Motor Co., 3 Fed. (2d) 469.

Amendments to verifications to petition for removal are permitted in the court to which the action is removed after the submission of a motion to remand under the authority of the above designated cases and cases therein cited.

In the case at bar, there has been no appearance of Ray Lyman Wilbur except for the special purpose of removing the action. He has never been served with valid process, and is not therefore limited in time in which to petition for a removal of the case or in which to make any amendments which may be deemed necessary to his petition or its verification.

The following cases hold that an action of this kind against a public officer is a personal action:

Irwin v. Wright, 258 U.S. 219; 42 S. Ct. 293; 66 L. ed. 573
Pullman Co. v. Croom, 231 U.S. 571; 24 S. Ct. 182; 58 L. ed. 375
United States ex rel Bernadin v. Butterworth, 169 U.S. 600; 18 S. Ct. 441; 42 L. ed. 873
United States ex rel Lewis v. Boutwell, 17 Wall 604, 607; 21 L. ed. 721
Boise-Kuna Irr. Dist. v. Hartson (Idaho), 285 Pac. 457.

In the case last cited, the supreme court of Idaho cited and followed the decisions of the supreme court of the United States, saying:

> "The Supreme Court of the United States prior to an Act of Congress passed Feb. 4, 1899 (30 Stat., 822, c. 121, Comp. St. 1594), under which successors of United States officers who have been sued may be substituted for them upon proper showing, have repeatedly held such action to be against the individual and personal."
> Boise-Kuna Irr. Dist. v. Hartson, supra

The case of Boise-Kuna Irr. Dist. v. Hartson was an application for a writ of mandamus and the case at bar is an application for a mandatory injunction. The relief sought is the same in effect whether sought by writ of mandamus or by mandatory injunction. In the determination of the question whether the action is a personal action or an action in rem, there is no distinction between an application for a writ of mandamus and an application for a mandatory injunction.

Warner Val. Stock Co. v. Smith,
165 U.S. 28, 41 L. ed. 621.

It will be noticed that in the mandamus case of Boise-Kuna v. Hartson, supra, the supreme court of this state cited in support of its decision as many injunction cases (such as Irwin v. Wright) as it did mandamus cases, and apparently considered the injunction cases equally applicable and this question has been directly decided in Warner Val. Stock Co. v. Smith, supra, in which the supreme court of the United States said:

> "The prayer of the bill was 'that the said Hoke Smith, Secretary of the Interior, and Silas W. Lamoreux, Commissioner of the General Land Office, their subordinates and agents, may be restrained and enjoined from assuming to exercise further jurisdiction with respect to the disposition of lands described in Oregon swamp land lists No. 30 and No. 31, and from further trespassing upon your orator's right of quiet possession thereof; and that said defendant Hoke Smith may be commanded and enjoined to prepare for issuance unto your orator, in accordance with law, patents for said lands, and to the end that your orator's title to said lands may be quieted and freed from cloud; and that such other and further relief may be administered unto your orator as the peculiar necessities and circumstances of the case may require and merit.' * * *
>
> "The main object of the present bill was to compel the defendant Hoke Smith, as Secretary

of the Interior, to prepare patents to be issued to plaintiff for the lands in question. The mandatory injunction prayed for was in effect equivalent to a writ of mandamus to him. The reasons for holding a suit, which has this object, to have abated, as to him, by his resignation, are as applicable to this bill in equity, as to a petition for a writ of mandamus at common law. Consequently, as against the defendant Hoke Smith, this suit must be held to have abated by his resignation of the office of Secretary of the Interior."

Warner Valley Stock Co. v. Smith,
165 U. S. 28, 41 L. ed. 622, 623.

This being a personal action for injunction, it necessarily follows that there is no jurisdiction to serve process outside of the State of Idaho and that the attempted service upon Secretary Wilbur in Washington, D. C., is void.

Pennoyer v. Neff, 5 Otto 714-748;
24 L. ed. 565.

In the last cited case, a portion of the syllabus reads as follows:

"Process from the tribunals of one State cannot run into another State and summon parties there domiciled to leave its territory and respond to proceedings against them; and publication of process or notice within the State in which the tribunal sits cannot create any greater obligation upon the non-resident to appear."
(24 L. ed. 566)

H H RAY

H H STRUTHERS

Attorneys for the Petitioner
Ray Lyman Wilbur appearing specially
for the purpose of the petition for
removal.

Residing at Boise, Idaho, and
Portland, Oregon, respectively.

(Copy)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LINCOLN

TWIN FALLS CANAL COMPANY, a corporation,

Plaintiff,

vs

GEORGE W. CARTER, Commissioner of Reclamation; G. CLYDE BALDWIN, Deputy Commissioner of Reclamation of the State of Idaho, and G. CLYDE BALDWIN, Watermaster of District No. 36;

Defendants,

RAY LYMAN WILBUR, Secretary of Interior of the United States of America,

Additional Party Defendant,

NORTH SIDE CANAL COMPANY, LIMITED, a corporation,

Intervener.

REPLY BRIEF IN SUPPORT OF PETITION FOR REMOVAL

Plaintiff's brief on petition for removal in the above case apparently concedes the first point made in our original brief, namely -

> The allegations of the verified petition for removal and affidavits in connection therewith are taken as true unless they are met by counter affidavits.
>
> Loop v. Winters' Estate, 115 Fed. 362
> Camp v. Field, 189 Fed. 285
> Dishon v. Railway Co., 133 Fed. 471
> Atlanta, K&N Ry v. So.Ry.Co., 153 Fed. 122
> Hughes Fed. Prac. (2d ed) par. 132, p. 380
> Filer v. Levy, 17 Fed. 609
> Lacroix v. Lyons, 27 Fed. 403.

At least, the plaintiff offers no argument or authority to the contrary on this question.

While apparently conceding that all of the allegations of the verified petition for removal are to be taken as true, and offering no counter-affidavit or counter-showing of any kind, the plaintiff apparently rests his entire argument on the erroneous assumption that the record, including the verified petition for removal, shows no change in the situation of the parties and is the same situation presented when the order to remand was made.

None of the authorities cited by plaintiff conflict in any way with the rule laid down by the Supreme Court

of the United States in Fritzlen v. Boatmen's Bank, 212 U.S. 364, 53 L. ed. 551, which is the leading case on this question and the decision of the court of last resort. In that case, the Supreme Court of the United States stated the rule as follows:

> "But it is not open to controversy that if, after an order to remand has been made, it results from the subsequent pleadings or conduct of the parties to the cause, that the cause is removable, on the development of such situation a second application to remove may be made, and the right to do so because of the changed aspect is not controlled by the previous order remanding the cause."
>
> 53 L. ed. 557.

None of the cases cited by the plaintiff go farther than to hold that a second removal by the same party or parties who made the first removal will not be permitted where there has been no change in the situation of the parties involved in the case since the case was remanded to the state court, and all of plaintiff's authorities are entirely consistent with the rule above quoted from the language of the Supreme Court of the United States in Fritzlen v. Boatmen's Bank, supra.

In none of the cases cited by plaintiff was the petition for removal made by a new party who was not before the court when the first petition for removal was made and passed upon by the federal court, and all of the authorities cited by plaintiff concede the rule that where a new party has been made a party defendant and for the first time is brought before the court, he is not deprived of his right of removal by anything which may have happened before he became a party to the suit. Neither do any of the authorities cited by the plaintiff question the rule that where there has been a material change in the situation since the first removal, the remand upon the first removal is no bar to a second removal where the conditions have changed in such manner as to show that the petitioner is entitled to such removal.

Plaintiff's position in this argument, namely, that there has been no material change since the order to remand was made in this case, reduces the question for consideration by the court to very narrow limits.

Apparently the only question now remaining for the decision of the court is - Assuming all of the allegations of the petition for removal to be true, has there been any material change in the cause or the relations of the parties thereto since the order to remand was made? It occurs to us that the court will have no difficulty in answering this question in the affirmative, and, in view of the rule that the truth of the allegations of the petition for removal is conceded where no counter-showing is made and that all the allegations of the petition must be taken as true, the court cannot reach any other conclusion except the one that there has been not only one but many material changes in the situation of the parties as well as in the pleadings.

The attention of the court is directed particularly to paragraphs 6, 9½, 19, 20, 23, 24, 25, 26, 27 and 28 of the petition for removal, each of which paragraphs plainly shows a material change. We will refer briefly to a few of the important changes which are shown in the petition for removal and not questioned by any counter-showing.

Paragraph 9½ of the petition for removal, taken in connection with the decision of the Supreme Court of this state in the case of Boise-Kuna Irrigation District v. Hartson, 285 Pac. 457, and the cases there cited, shows that prior to the time that the attempted service was made upon the new party, Ray Lyman Wilbur, the action had abated as to the state officers Carter and Baldwin, so that the new defendant Ray Lyman Wilbur is now the sole defendant remaining in this case and the only defendant against whom the action is being prosecuted.

The removal of the state watermaster as a party defendant in this action, through the abatement of the action against him, removes the last vestige of the claim that this is an action against a state officer to compel him to perform his duties of distributing water under a decree of the state court and is therefore ancillary to the adjudication decree in the state court.

It is not clear why George W. Carter was made a defendant in the original action, but the court will take judicial knowledge of the fact that the law vests the duty and authority to distribute water in Water District No. 36 in the watermaster and not in the state commissioner of reclamation. That the action has abated as to the only state officer who has any authority to distribute water under the statute will not be questioned and, this being true, the action has also abated as to the defendant George W. Carter. Where an action is brought against two public officers, one of whom is vested under the statute with the duty and authority to perform certain acts involved in the suit and the other is only incidentally connected therewith and has no authority under the statute to perform the acts demanded, and where the action has abated as to the officer who has the authority under the statute, it has abated as to both of the said defendants and can no longer be maintained against either of them.

Warner Valley Stock Company v. Smith,
165 U.S. 28, 41 L. ed. 621.

The syllabus in the above case is as follows:

"A suit against the Secretary of the Interior seeking a mandatory injunction abates by his resignation of the office.

"A suit against the Secretary of the Interior and Commissioner of the General Land Office, which aims to control the action of the Secretary and asks merely incidental relief against the Commissioner, cannot be maintained against the latter after the Secretary's resignation.

"The successor in office cannot be substituted

as defendant for a Secretary of the Interior who resigns his office while a suit is pending against him for a mandatory injunction against exercising further jurisdiction over certain lands and to compel him to issue a patent therefor."

We therefore have, in the allegations of paragraph 9½ of the petition for removal, a statement of facts showing one highly important change in this case, in that prior to the time that the service was attempted upon the new defendant (and only defendant now remaining in the case) the action had abated as to the state officers against whom it was originally brought and the last vestige of the argument that the case is an action against a state officer to compel him to perform his duties as watermaster in distributing water decreed by a state court has disappeared from the case with the abatement of the action as to the watermaster.

This material change also removes all question as to the separable nature of the action, if any such question ever existed, for it appears that, the action having abated as to the state officers, the Secretary of the Interior is the only defendant remaining in the action. He is a new party who was never before the court prior to the filing of this petition for removal and as to him the second amended complaint is an entirely new action.

Another very important change in the situation now presented is the one set out in paragraphs 20, 23, 24 and 25 of the petition for removal, from which it appears that at the time the original complaint was filed in this action, there was a final decree in the state court adjudicating the waters of Snake River as to certain parties or claimants thereto but that by reason of the action taken by the parties, including the attorney for the plaintiff, in the stipulation for a federal court decree in the action referred to as the Woodville case, there is no longer any final water adjudication decree in the state court, the so called Foster decree having, in the manner set out in said paragraphs of said petition, become merged in the final decree of the federal court in the Woodville case, which decree is the only final decree now in effect adjudicating the water rights from Snake River. So that, if there is any merit in the contention that this action is ancillary to the action decreeing priorities from Snake River, the action is now ancillary to a final decree in the federal court and not to any final decree now existing in the state court, there being no longer any final water adjudication decree in the state court and all Snake River water rights now being administered, determined and controlled by the provisions of said Woodville decree of the federal court.

It follows that if this action is ancillary to any decree, it is ancillary to the decree of the federal court, and therefore the federal court not only has jurisdiction but, if this is in fact an ancillary case, the federal court is the only court which has and can have jurisdiction thereof.

Will anyone now say that the allegations of paragraphs 20, 23, 24 and 25 do not show a material change in the situation of the parties and one vitally affecting the question whether this action is or is not ancillary to a decree in the state court?

Paragraphs 6, 27 and 28 of the petition for removal show that your petitioner was for the first time made a party by the second amended complaint which was attempted to be served upon him on the 22nd day of March, 1930, and that only since that time has your petitioner had an opportunity to file his petition or to take any other action in this case looking to the protection of his rights and the rights of the United States. It thus appears that as to the removing defendant, this is an entirely new action in which he has never before been a party and in which he has had no opportunity to protect his rights or the rights that he represents.

In no case has it ever been held that a new party defendant, who is brought in for the first time by an amended complaint, is or can be deprived of his right of removal by reason of anything which has occurred before he became a party to the suit. If a new defendant could thus be deprived of his right of removal under the federal statute, a non-resident defendant could always be deprived of his right of removal by first bringing the action against nominal defendants resident in the state and later bringing in the real party at interest, a non-resident defendant, and then claiming that his motion to remove comes too late because of something which has occurred before he was made a part and before he had any opportunity to protect his rights. The law does not permit the statutory right of removal to be thus taken away from any party who has had no opportunity to exercise his right.

Another important change which has occurred in this action is the one set out in paragraph 26 of the petition, from which it appears that by plaintiff's amendment of the complaint in this action, the plaintiff for the first time showed that the action is brought not merely for the purpose of requiring the nominal defendants to deliver water to plaintiff's project, but for the purpose of requiring the said officers to take the water demanded by the plaintiff from the water users of the government reclamation project and thus interfere with rights under the federal reclamation laws, which it is shown by the amended complaint are now being enjoyed by the said federal project and presumably have been delivered to that project for more than 15 years, ever since the said Foster decree was rendered.

These new allegations introduced into the complaint by amendment are highly important in connection with one of the two grounds of removal, namely, that this action involves a question arising under the laws of the United States. We have called the attention of the court to the very recent decision of the Supreme Court of the state in the case of Boise-Kuna Irrigation District v. Hartson, supra, in which the Supreme Court held that under the law of this state and under the decisions of the Supreme Court

of the United States, as well as under the decisions of the Supreme Court of this state, an action against a state officer in this state abates upon the termination of his term of office and that no substitution can be permitted. Another very recent decision by the Supreme Court of this state, which also appears in the advance sheets of the Pacific Reporter, and which is directly in point in the case at bar is the decision in Stoner v. Carter, 285 Pac. 470. This case illustrates how important is the change made in the amended complaint by the allegations referred to in paragraph 26 of our petition for removal.

In the case of Stoner v. Carter, supra, the Supreme Court of this state decided that an action of this kind against a state commissioner of reclamation and state watermaster should be dismissed when it appears that "a real legal controversy is involved which, if adjudged herein, would necessarily affect water rights of persons not parties to this proceeding."

The record in this case, and particularly that part of the so called Foster decree (attached as an exhibit to the amended complaint herein) which limits plaintiff's right to a right out of natural flow of Snake River "as such natural flow would be if unaffected by the diversions or acts of the parties or any of them" taken in connection with the failure of the amended complaint to allege that the water claimed by the plaintiff in this action is a part of the said natural flow as such natural flow would be if unaffected by the diversions or acts of the parties or any of them, the undisputed affidavits of G. Clyde Baldwin and E. B. Darlington showing that the said 300 to 500 second-feet in issue in this case is in fact the drainage and return flow water of the Minidoka project, and the allegations of the amended complaint which show that the water in question is being delivered to and used upon the said Minidoka project under the direction of the officers who under the terms of the said Foster decree were vested with authority to decide what water is natural flow and what is not natural flow, and the fact that there is no allegation in the amended complaint that there has ever been any change in the manner, method or place of use of said water during the more than 15 years that have elapsed since the said Foster decree was entered and that the said undisputed affidavit affirmatively discloses that the said water supply has been diverted to and used upon the said Minidoka project continuously each year for more than 15 years prior to the filing of this action, clearly discloses a valid legal controversy as to whether the said Minidoka project or the project of the plaintiff herein has the better right to the use of the said water supply in issue in this case, and the facts alleged by the amended complaint showing for the first time that this water is being and has been delivered to the Minidoka project, constitute a highly important part of this showing and is a material change in the pleadings of the greatest importance -- of such importance in fact that under the recent decision of the Supreme Court in the case of Stoner v. Carter, supra, this new situation, thus revealed for the first time by amendment, must entirely defeat the action unless it can be shown that the owner or owners of the water rights in con-

nection with the Minidoka project are parties to this action, in view of the fact that the relief sought would affect the water rights of persons not parties to this proceeding.

Will anybody say that this is not a material change in the pleadings?

No pleader is ever justified in amending his pleadings for the purpose of making an immaterial change, and if this change is not material, why did plaintiff make the change? Was it not because without such allegation there would be no showing that the Secretary of the Interior had any connection with the case whatever and, there being no party before the court representing the water rights of the Minidoka project in any way, the action would necessarily fail under the rule laid down in the case of Stoner v. Carter?

In a proceeding of this kind in the state court on motion for order removing the case to the federal court, the rule is that if there is a debatable question involved, the state judge should sign the order of removal and allow the federal court to pass upon the question upon motion to remand. Any issue as to any of the facts alleged in the petition for removal can be heard only in the federal court, and the only case in which the state judge is justified in refusing to sign the order of removal is a case in which it plainly and unquestionably appears as a matter of law, assuming the truth of all the facts alleged in the petition for removal, that the petitioner has no right to remove the action. The reason for this rule is very clearly and concisely explained by the Supreme Court of the State of Colorado in the case of Union Pacific Railway Company v. Sleeth, 246 Pac. 1021, in which the court said:

> "While state courts as a general rule have the right to decide for themselves whether a petition is sufficient, their decision, however, is not final, but is subject to review in a proper case by the Supreme Court of the United States, which may correct the error, if error there be in their ruling, and the federal trial court may by certiorari order up the record and pass upon the right of removal. Since then the petitioning party has the right to enter suit in the federal court, notwithstanding the state court's refusal to stop proceedings, if both courts can try issues of fact which may be made on the petition for removal to permit both to pass upon uncontroverted facts would result in confusion. The Supreme Court of the United States, therefore, in Burlington, etc., Ry. Co. v. Dunn, 122 U.S. 513, 7 S.Ct. 1262, 30 L.Ed. 1159, and other cases, holds that issues of fact arising on petition for removal are to be determined by the federal court alone, and the state court, for the purpose of determining for itself whether it will surrender jurisdiction, must accept as true the allegations of fact in such petition. It makes no difference to what kind of act the disputed question of fact relates - whether the petition was filed in time, as to diversity of citizenship, or whether a separable controversy exists, or as to joiner. Chicago, Rock Island & Pacific Railway Co. v.

Dowell, 229 U.S. 102, 33 S.Ct. 584, 57 L.Ed. 1090; Wilson v. Republic Iron & Steel Co., supra. We avail ourselves of this opportunity to say that it is not only the safer and better practice, but it is in the interests of both parties, and avoids unnecessary expense and cost to them, for state trial courts, when a petition by a nonresident defendant for removal is filed, and is good on its face, and the bond is furnished and approved, to stop further proceedings therein and grant removal to the appropriate federal court. The trial court erred in denying the petition for removal. As the petition, when granted, removes the entire case to the federal court, the judgment of the district court as against the railroad company must be, and it is hereby, reversed, and the cause is remanded, with instructions to the district court to set aside its final judgment for plaintiff against the railroad company, and enter an order or judgment granting the petition for removal."
246 Pac. 1023.

It appears to us that plaintiff's brief in no way disputes the authorities which are cited in our original brief herein and that none of the authorities cited by plaintiff in any way conflict with the rule under which we claim to be entitled to an order of removal on our petition herein. The authorities on the various questions involved have been quite fully cited in our original brief, to which we again refer without repetition.

H E RAY

B E STOUTEMYER

Attorneys for the defendant
Ray Lyman Wilbur appearing
specially for the purpose of
petitioning for a removal.

Normal flow rights having a priority date of June 1, 1890 or earlier were valid throughout the entire season.

Total diversions by Water District No. 36 canals during the five months ending September 30, 1929 amounted to a little more than 6,000,000 acre-feet or more than 3½ times the capacity of the American Falls Reservoir. If a tank having a base area of one square mile were constructed its sides would have to extend vertically a distance of about 9,400 feet in order to make it large enough to hold this amount of water.

According to the data contained in the Fifth Biennial Report of the Department of Reclamation (State of Idaho) approximately 900,000 acres of land within the boundaries of District No. 36 are actually irrigated, hence the 1929 head-gate duty averaged about 6 2/3 acre-feet per acre. Just what portion of this quantity is actually applied to the land is not definitely known because of uncertainties concerning the amount of canal losses, operation waste, etc. but it is readily apparent that the Snake River Valley is favored above many more intensively developed irrigated sections in its water supply.

(COPY)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Moran, Wyo, December 22, 30.

Mr. S. B. Darlington,
Project Supt,
Burley, Ida.

Dear Mr. Darlington:

Have completed snow survey on the Jackson Lake water shed. Conditions are a little below last year both in snow depth and water content, and far below average for this time of year. Present indications point to a very light snow year.

The ground is not forze and is only about 50% saturated. Total precipitation since Sept. 1st, 6.25" comparing with 6.98" last year and 7.00" normal (Moran station). The precipitation on the upper water shed however is only about 70% of normal. Due to absence of wind the snow depths are very uniform.

The following Data was obtained on trip Dec. 14th to 20th.

Station	Snow Depth	Water Content
Moran	12.0"	2.5"
Moran Canyon	20	4.0
Arizona Station	17	3.5
Huckle-berry divide	17	3.5
Snake River Station	16	3.5
Four Mile Post	21	5.0
Lewis Lake Divide	21	5.0
Aster Creek	21	5.0
Colter & Snake	18	4.0
Glade Creek Meadows	20	4.5
Grassy Lake Divide	27	5.5

Mean depth -----19"
Mean water content -----4.2"

Sincerely yours,
Joseph Markham
Res. Supt.

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Burley, Idaho,
December 30, 1930.

Bureau of Reclamation, Denver, Colorado;
Minidoka Irrigation District, Rupert, Idaho;
North Side Canal Co., Jerome, Idaho;
Aberdeen-Springfield Canal Co., Aberdeen, Idaho;
Mr. Lynn Crandall, Idaho Falls, Idaho;
Mr. Joe. Markham, Moran, Wyoming;
University of Idaho, Moscow, Idaho;
Twin Falls Canal Co., Twin Falls, Idaho;
Mr. V. E. McConnell, Milner, Idaho;
Idaho Power Company, Boise, Idaho;
Mr. S. H. McAlister, Idaho Power Co., American Falls, Idaho;
Byron Swendsen, Asst. Com'r. Reclamation, Boise, Idaho.

Gentlemen:

Herewith is copy of a report on snow conditions on the Jackson Lake water-shed received from Joseph Markham, reservoir superintendent.

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

GPO