



D. W. DAVIS, GOVERNOR

STATE OF IDAHO  
DEPARTMENT OF RECLAMATION  
W. G. SWENDSEN, COMMISSIONER  
BOISE

BUREAU OF WATER RESOURCES  
WATER APPROPRIATIONS  
CAREY ACT DEVELOPMENT

Idaho Falls, Idaho.

January 6, 1923.

Mr. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:-

I am inclosing herewith a copy of the final order handed down recently by the court in the Independent Irrigation Company case. The wording of this order seems to be somewhat peculiar, and without having a copy of the original judgment in my possession it is possible that some misinterpretation might result. As I understand it now, this judgment or supplementary decree which was handed down in October is set aside, and to the extent at least of the jurisdiction of those in charge of water distribution, the Independent Irrigation Company has no decreed right of any kind at present.

I believe you have a copy of the original judgment or supplementary decree, and I would be glad to have you review this later order in connection with the original and advise me as to whether or not my interpretation is a correct one. If you could furnish me with a copy of the judgment or supplementary decree entered on October 9, 1922, it would aid in completing our files on this case.

*1-16-23  
copy of decree and  
amendment has been forwarded  
with the statement that any  
opinion would be forthcoming later.  
Barter*

Sincerely yours,

*G. Clyde Baldwin*  
Special Deputy.

SCANNED  
NOV 01 2011



O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

Jan. 31, 1923.

Hon. W.G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.  
Dear Mr. Swendsen:

In re: Independent Irrigation Company.

Referring to our conversation of yesterday, with reference to the status of the above matter, I have to inform you as follows:

A Decree was duly signed by Judge Gwinn, decreeing certain water rights to the Independent Irrigation Company, a copy of which was mailed to you in due course, and is now in your office.

Shortly after this Decree was entered, Mr. Otto E. McCutcheon, acting as the alleged attorney of watermaster John Empey, filed a motion to set the Decree aside, on the ground that the Court had no jurisdiction. The matter was discussed with the Judge at considerable length, and over a period of nearly two weeks, and shortly before Judge Gwinn retired from office, he decided to set the Decree aside, as to Mr. Empey and yourself, but not as to the other defendant in the action. The other defendant was the Long Island Irrigation Company.

As the matter now stands, the Independent Irrigation Company has a decree which recites its water right, and which is binding as to the defendant Long Island Irrigation Company, but not binding as to the Commissioner of Reclamation and the watermaster John Empey.

It is my understanding that these supplementary decrees are purely for the purpose of obtaining a record, and that they are never binding on parties who have not been made parties to the suit, and can be opened up and set aside upon proper showing by aggrieved parties at any time.

In discussing the matter with brother attorneys in this locality, in an off-hand manner, it is the general opinion that the Decree, as it now stands, is all sufficient, and should be recognized by your office, in the distribution of water, in the absence of any direct attack by parties who might claim to be injured, setting the decree aside.

O. A. JOHANNESEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

I shall very much appreciate your going into this matter carefully, and advising me if your office, in the administration of water distribution, will recognize the Decree as it now stands, and permit the Independent Irrigation Company to freely use the water Decreed, as it has been used by the Company for the past thirty or thirty-five years. If there is any reason why the Company should be refused the water, we will, of course, have to take other action in the matter, but I sincerely hope that this will not be necessary.

Thanking you for an early expression of your views on the matter, and what we may expect as the attitude of your office, and the watermaster relative to this Decree, I am, with kindest personal wishes,

Sincerely yours,

*Oscar A. Johannesen*

RECEIVED  
FEB -2 1923  
DEPARTMENT OF RECLAMATION

CEMENT CURE BOND



Jan. 31, 1923.

Hon. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:

In Re: Independent Irrigation Company.

Referring to our conversation of yesterday, with reference to the status of the above matter, I have to inform you as follows:

A Decree was duly signed by Judge Gwinn, decreeing certain water rights to the Independent Irrigation Company, a copy of which was mailed to you in due course, and is now in your office.

Shortly after this Decree was entered, Mr. Otto E. McCutcheon, acting as the alleged attorney of watermaster John Empey, filed a motion to set the Decree aside, on the ground that the Court had no jurisdiction. The matter was discussed with the Judge at considerable length, and over a period of nearly two weeks, and shortly before Judge Gwinn retired from office, he decided to set the Decree aside, as to Mr. Empey and yourself, but not as to the other defendant in the action. The other defendant was the Long Island Irrigation Company.

As the matter now stands, the Independent Irrigation Company has a decree which recites its water right, and which is binding as to the defendant Long Island Irrigation Company, but not binding as to the Commissioner of Reclamation and the watermaster John Empey.

It is my understanding that these supplementary decrees are purely for the purpose of obtaining a record, and that they are never binding on parties who have not been made parties to the suit, and can be opened up and set aside upon proper showing by aggrieved parties at any time.

In discussing the matter with brother attorneys in this locality, in an off-hand manner, it is the general opinion that the Decree, as it now stands, is all sufficient, and should be recognized by your office, in the distribution of water, in the absence of any direct attack by parties who might claim to be injured, setting the decree aside.

I shall very much appreciate your going into this matter carefully, and advising me if your office, in the administration of water distribution, will recognize the Decree as it now stands, and permit the Independent Irrigation Company to freely use the water Decreed, as it has been used by the Company for the past thirty or thirty-five years. If there is any reason why the Company should be refused the water, we will, of course, have to take other action in the matter, but I sincerely hope that this will not be necessary.

Thanking you for an early expression of your views on the matter, and what we may expect as the attitude of your office, and the watermaster relative to this Decree, I am with kindest personal wishes,

Sincerely yours,

(Signed) Oscar A. Johannesen

February 2  
1923.

In re: Ind. Irrig. Co. et al Pltf.  
VS. L.I.S. I Co. W.G. Swendsen,  
Comms. of Rec. and John Empey,  
Water Master Dist. No. 36 Defts.

Mr. Oscar Johannsen,  
Attorney,  
Idaho Falls, Idaho.

Dear Sir:

Herewith I am enclosing a carbon copy of letter I am this day transmitting to Mr. Baldwin, relating to the recent order of the Court, in the above entitled action. I take it the enclosed copy of letter is self-explanatory.

Will you be good enough to give it your attention and let me have your views accordingly.

Very truly yours,

Commissioner of Reclamation.

Enc. 1.  
WGS MS.

*Drew & order  
forwarded to att Gen*

February 2  
1923.

In re: Water District No. 36.

Mr. G. Clyde Baldwin,  
Idaho Falls, Idaho.

Dear Sir:

I have your communication of January 6th, enclosing copy of Order of Honorable Judge Gwinn in the case of the Independent Irrigation Co. Ltd., et al., vs Long Island Irrigation Co., myself as Commissioner of Reclamation and John Empey, Watermaster.

I have reviewed this matter, and as I interpret the same, the former action or judgment heretofore rendered in this case is set aside as to myself and the Watermaster, but is permitted to stand in its original form, insofar as it effects the other defendant, Long Island Irrigation Co. I confess that I am unable to determine what the duty of an administrative officer might be in distributing water under the present conditions of this decision. I am asking the attorney of the plaintiff company for his views, with respect to the matter and upon receipt of the same will likewise ask attorney for defendant company a similar question, upon receipt of same, I will transmit the whole matter to the Attorney General for his opinion. My only reason for this procedure is that in advance of the beginning of the irrigation season, the office may be advised as to what course it should pursue in relation to this matter.

Yours very truly,

Commissioner of Reclamation

W.G.S. MS.



D. W. DAVIS, GOVERNOR

STATE OF IDAHO  
DEPARTMENT OF RECLAMATION

W. G. SWENDSEN, COMMISSIONER

BOISE  
February 3  
1923.

BUREAU OF WATER RESOURCES  
WATER APPROPRIATIONS  
CAREY ACT DEVELOPMENT

*Water Memo*

In re: Water District No. 36  
Ind. Irr Co. Ltd., et al Pltf  
Vs. L. Island Irr Co. W.G.Swendsen,  
at al, Defts.

Honorable A.H. Conner  
ATTORNEY GENERAL,  
State House,  
Boise, Idaho.

Dear Sir:

I am enclosing copy of Order, Findings of Fact, and Conclusions of Law, in the above stated action, together with a copy of letter which I have just received from Attorney for plaintiff, Mr. Oscar A. Johannesen, of Idaho Falls, all of which I take it is self-explanatory.

In order that this office may have information, as to its duty, with respect to this Decree during the coming irrigation season, will you be good enough to review the matter, and let me have your opinion as to whether or not we should instruct the Watermaster to deliver the water to plaintiff company, during the coming year.

I am generally familiar with this action, and the procedure that has been had thereunder, and if, upon consideration of it, you desire some detailed information, I shall be glad to furnish the same upon request.

Yours very truly,

*W.G. Swendsen*  
COMMISSIONER OF RECLAMATION.

Enc.

WGS. MS.

February 3  
1923.

In re: Water District No. 36  
Ind. Irr Co. Ltd., et al Pltf  
Vs. L. Island Irr Co. W.G.Swendsen,  
at al, Defts.

Honorable A.H. Conner  
ATTORNEY GENERAL,  
State House,  
Boise, Idaho.

Dear Sir:

I am enclosing copy of Order, Findings of Fact, and Conclusions of Law, in the above stated action, together with a copy of letter which I have just received from Attorney for plaintiff, Mr. Oscar A. Johannesen, of Idaho Falls, all of which I take it is self-explanatory.

In order that this office may have information, as to its duty, with respect to this Decree during the coming irrigation season, will you be good enough to review the matter, and let me have your opinion as to whether or not we should instruct the Watermaster to deliver the water to plaintiff company, during the coming year.

I am generally familiar with this action, and the procedure that has been had thereunder, and if, upon consideration of it, you desire some detailed information, I shall be glad to furnish the same upon request.

Yours very truly,

COMMISSIONER OF RECLAMATION.

WGS. MS.

February 3  
1923.

In re: Water District No. 36.  
Ind. Irr. Co. Lt. et al., Pltf.  
VS L. IS. Irr. Co. W.G. Swendsen  
et al Defts.

Mr. O. A. Johannsen,  
Attorney at law,  
Idaho Falls, Idaho.

Dear Sir:

I have your communication of the 31st, relating to the above stated action, the same having reached the office since I wrote you yesterday, regarding the same.

I am, this day, transmitting a copy of your communication, together with a copy of the Order, etc., to the Attorney General, asking his opinion with respect to the duty of this office, in distributing water to this company during the coming year. Upon receipt of reply from him I will communicate with you.

It is not unlikely that he may ask for a more extensive statement of facts or brief from you, relating to the matter and may also ask attorney for Defendant Company to submit a similar statement of facts or brief, before rendering his decision, thus facilitating his consideration of the matter, in which event, I think we can well proceed according to the provisions of my communication of yesterday. If I receive a final reply to my letter to him to-day, however, I shall regard the matter settled, so far as this office is concerned.

Yours very truly,

Commissioner of Reclamation.

WGS. MS

February 6, 1923.

Re: Independent Irrigation Company, Ltd.,  
et al, Plaintiffs, vs. Long Island Irrigation  
Company, et al, Defendants.

O. A. Johannesen,  
Idaho Falls,  
Idaho

Dear Mr. Johannesen:

Reference is again had to the above stated question and particularly to my correspondence relating to the same of recent date, from which you will observe that I asked you to present such analysis and brief of this situation as you desired, and that upon receipt of the same I would ask a similar statement from the Attorney for the Defendant company, whereupon the whole matter would be transmitted to the Attorney General's office for his opinion.

The Attorney General has this matter under consideration and would much appreciate having your views, particularly on the following point:

Upon what theory was the decree annulled and set aside as to the Watermaster and the Commissioner of Reclamation?

Very truly yours,

Commissioner of Reclamation

WGS:P

March 1, 1923.

Independnt Irrigation Co., Ltd.,  
vs. Long Island Irrigation Co.,

Mr. O. A. Johannesen,  
Idaho Falls, Idaho.

Dear Mr. Johannesen:

Reference is again had to the matter of interpreting the decree which was handed down in the above stated action. When you were last in the office we considered this matter with Mr. Wing, and it was my understanding that you were to forward another brief or document covering your views on the matter, to me, upon receipt of which I was to transmit the whole matter to Mr. Wing for his consideration.

Thus far I have not received such outline from you, and I am wondering if my impression was incorrect. If not, give the matter attention at your convenience and let me have such information as you desire, transmitted to the Attorney General.

Very truly yours,

Commissioner of Reclamation

WGS:P

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

March 2, 1923.

36

Hon. W.G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:

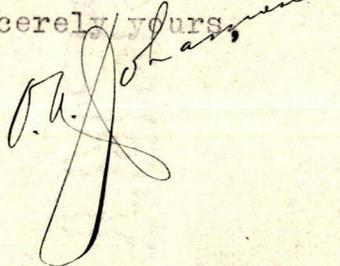
In re: Independent Irrigation Co., vs.  
Long Island Irrigation Co.

I regret exceedingly that Court matters have kept me so busy since my return from Boise, that it has been impossible to make a brief in the above matter.

I will try and have the same prepared by Monday or Tuesday of the coming week and forward to you.

With kindest personal wishes, I am,

Sincerely yours,



RECEIVED  
MAR 5 1923  
DEPARTMENT OF RECLAMATION

RECEIVED



RECEIVED

DEPARTMENT OF RECLAMATION



D. W. DAVIS, GOVERNOR

**STATE OF IDAHO**  
**DEPARTMENT OF RECLAMATION**

W. G. SWENDSEN, COMMISSIONER  
BOISE

BUREAU OF WATER RESOURCES  
WATER APPROPRIATIONS  
CARE AND DEVELOPMENT

Idaho Falls, Idaho.

March 22, 1923.

Mr. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:-

On January 6 I forwarded to you a copy of Judge Gwinn's peculiar decision in the case of the Independent Irrigation Company vs. Long Island Canal Co. et al, and requested an official interpretation of the meaning of this decision as same applied to water distribution.

I desire to mention this case in the text of the 1922 water distribution report on which I am now working, and if possible would like to secure the Attorney General's interpretation at an early date on this account. I trust therefore that you will do everything possible to speed him up on this matter.

Sincerely yours,

*G. Clyde Baldwin*  
Special Deputy.

Special Letter

Washington

Washington, D. C., March 23, 1923.

Dear Sir: I have the honor to acknowledge the receipt of your letter of the 21st inst.

in relation to the proposed amendment to the Act of August 1, 1914, relating to the

protection of the rights of the United States in the invention of the airplane.

The Department is currently reviewing the proposed amendment and will advise you of the results of its consideration.

Very respectfully,  
Secretary of the Department of Reclamation

Enclosed for you are two copies of the proposed amendment to the Act of August 1, 1914, relating to the protection of the rights of the United States in the invention of the airplane.

Very truly yours,  
Secretary of the Department of Reclamation

Very truly yours,  
Secretary of the Department of Reclamation

Very truly yours,  
Secretary of the Department of Reclamation

Very truly yours,  
Secretary of the Department of Reclamation

Very truly yours,  
Secretary of the Department of Reclamation

Very truly yours,  
Secretary of the Department of Reclamation

Very truly yours,  
Secretary of the Department of Reclamation

Very truly yours,  
Secretary of the Department of Reclamation

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MAR 23 1923  
DEPARTMENT OF RECLAMATION

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C. C. MOORE, GOVERNOR

STATE OF IDAHO  
DEPARTMENT OF RECLAMATION  
W. G. SWENDSEN, COMMISSIONER  
BOISE

BUREAU OF WATER RESOURCES  
WATER APPROPRIATIONS  
CAREY ACT DEVELOPMENT

Idaho Falls, Idaho.

May 8, 1923.

Mr. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:-

I am forwarding herewith copy of Findings of Fact, Conclusions of Law, and Decree handed down by Judge Baum on August 10, 1922, in the case of F. L. Koon, plaintiff, vs. John Empey, O. H. Olive, C. H. DeCamp and the Harrison Canal Co., defendants. This case was appealed by the plaintiffs within the statutory time limit, but has not as yet been heard by the Supreme Court. The question naturally arises, at the beginning of the irrigation season, as to whether this water should be delivered in accordance with the rights of Koon or in accordance with the rights of Olive, et al.

I discussed the matter with both Mr. Johannesen, the attorney for the plaintiff, and with Mr. Holden, the attorney for the defendants. The former stated that the decision of the lower court must govern until such time as it might be changed by the Supreme Court. Mr. Holden held, on the contrary, that the fact that the case had been appealed had the effect of a stay of execution of the judgment of the lower court. In view of this difference of opinion I asked Mr. Otto McCutcheon to review the papers in the case and give me his opinion. This he did, and he agrees with Mr. Holden. In view of our conversation during my recent visit to Boise, however, I am forwarding copy of Judge Baum's decision, together with this brief review of the situation in order that you may take the matter up with the Attorney General and secure an opinion from him as to how the water should be delivered during the coming irrigation season.

I should also state that notice of the appeal of this case was served on me as Water Master by registered mail under date of April 26, 1923, by J. M. Stevens and Harry Holden, attorneys for the defendants.

Mrs. Cure only made one copy of Judge Baum's decision and on this account I should like to have this copy returned to me after it has been reviewed by the Attorney General, if you have no need of it for your files.

I should also like to remind you of the necessity of securing an opinion or interpretation from the Attorney General of the decision handed down in the case of the Independent Irrigation Company (see my letters of January 6 and March 22.) Most of these matters should be settled in the very near future, since we are now at the beginning of the 1923 irrigation season.

Sincerely yours,

*H. Clyde Baldwin*  
Water Master.

INC.

RECEIVED  
MAY 10 1923  
DEPARTMENT OF RECLAMATION

May 10, 1923.

In re: District No. 36

F. L. Koon,  
Plaintiff

-vs-

John Hapey, et al,  
Defendants.

Hon. A. H. Connor,  
Attorney General,  
State of Idaho,  
B u i l d i n g.

Dear Sir:

The above entitled action involves the right to use certain waters of the Snake River in Water District No. 36. In order that I may give the watermaster proper advice with respect to delivery of water in controversy it seems necessary for me to ask you for an opinion.

The case in question involves the right to the use of, or the ownership of a limited quantity of water from the Snake River for irrigation purposes. The District Court has rendered its decision and decree, a copy of which is herewith enclosed for your information. The decree itself is clear and if binding under existing conditions will serve as a proper guide for the watermaster in delivering the water in question. The only question I have concerning the matter is whether or not this decree is binding and should be followed by the water master until after the Supreme Court, before whom the case is now pending on appeal, has rendered its decision. In other words, shall an administrative officer follow the decree of the lower court during the pendency of this case before the Supreme Court, or shall he distribute the water as it has heretofore been distributed?

I am enclosing herewith a letter from Mr. Baldwin together with copy of Findings of Fact and Conclusions of Law and Decree handed down by the lower court. After these have served your purpose would you kindly return them for my files.

Yours truly,

WGS/AK  
Encs.

Commissioner of Reclamation.

May 14, 1933.

Re: District 36  
Bell and Larson Ditch.

Mr. O. A. Johansen,  
Idaho Falls, Idaho

Dear Sir:

Receipt is acknowledged of the order of the District Court appointing Mr. Jay McCarthy watermaster on the Bell and Larson Ditch.

As I recall this case last year, the prosecuting attorney of your county insisted that this office also issue its regular certificate of appointment. I could not see any especial reason for so doing, but complied with his request in order to avoid any future disagreement.

Possibly you have a different prosecuting attorney this year and he does not desire this certificate of appointment, which in any event I feel sure has no value. However, should this appear desirable, we will issue the certificate, as was done last year.

We are mailing Mr. McCarthy the necessary record books.

Very truly yours,

Assistant Commissioner  
of Reclamation.

GND:P

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

May 16, 1923.

Hon. W.G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:

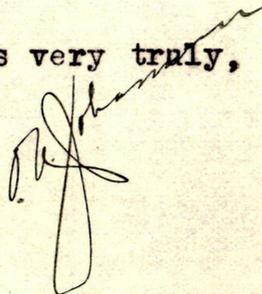
In re: Bell & Larsen Ditch watermaster appointment.

I thank you very much for yours of May 14th, with reference to the appointment of Mr. Jay McCarthy as watermaster on the Bell and Larsen Ditch.

I believe it would be advisable to make out a regular certificate of appointment, so that the same can be filed with the County Clerk, as the Prosecuting Attorney may deem such a certificate necessary. He seems to have ideas of his own with reference to matters of this kind.

Thanking you for your kindness in the matter, I am,

Yours very truly,



RECEIVED  
MAY 18 1923  
DEPARTMENT OF RECLAMATION

TO THE DIRECTOR

Dear Sir: I have the honor to acknowledge the receipt of your letter of the 14th inst. in relation to the matter of the proposed reclamation project in the State of California. It is noted that you have been asked to certify to the necessity of the project and to the fact that the same is in the public interest. It is also noted that you have been asked to certify to the fact that the same is in the public interest.

I have the honor to acknowledge the receipt of your letter of the 14th inst. in relation to the matter of the proposed reclamation project in the State of California. It is noted that you have been asked to certify to the necessity of the project and to the fact that the same is in the public interest. It is also noted that you have been asked to certify to the fact that the same is in the public interest.

I have the honor to acknowledge the receipt of your letter of the 14th inst. in relation to the matter of the proposed reclamation project in the State of California. It is noted that you have been asked to certify to the necessity of the project and to the fact that the same is in the public interest. It is also noted that you have been asked to certify to the fact that the same is in the public interest.

I have the honor to acknowledge the receipt of your letter of the 14th inst. in relation to the matter of the proposed reclamation project in the State of California. It is noted that you have been asked to certify to the necessity of the project and to the fact that the same is in the public interest. It is also noted that you have been asked to certify to the fact that the same is in the public interest.

Very respectfully,  
[Signature]

May 18, 1923

Re: District 36  
Bell and Larson Ditch

Mr. Jay McCarthy,  
Roberts, Idaho

Dear Mr. McCarthy:

In the past it has been customary for this office to issue a regular certificate of appointment to the watermaster on the Bell and Larson ditch. Therefore, in conformity to this practice we are enclosing you certificate of appointment. I believe that it is customary to file your certificate for record with the county clerk of your county.

Under separate cover we are mailing you 12 record books for your use.

Very truly yours,  
W. G. SWENDBEN  
Commissioner of Reclamation  
By

Assistant

GNC:P

A. H. CONNER  
ATTORNEY GENERAL

HERBERT WING  
JAMES L. BOONE  
S. E. BLAINE  
ASSISTANTS

STATE OF IDAHO  
OFFICE OF ATTORNEY GENERAL  
BOISE

May 21, 1923.

Honorable Warren G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

In re: District No. 36,  
F. L. Koon, Plaintiff, vs.  
John Empey, et al, Defendants.

Dear Sir:

In your of the 10th inst. in the above, you say among other things with reference to the decree enclosed by you:

"The only question I have concerning the matter is whether or not this decree is binding and should be followed by the watermaster until after the Supreme Court, before whom the case is now pending on appeal, has rendered its decision. In other words, shall an administrative officer follow the decree of the lower court during the pendency of this case before the Supreme Court, or shall he distribute the water as it has heretofore been distributed?"

Replying to your question I have to say that in my opinion the decree in question constitutes an injunctive judgment against the watermaster as well as against the principal defendants. While I do not question the jurisdiction of the court to yet issue an order suspending the action of such injunctive judgment, the taking of the appeal by the defendants in my opinion does not operate to suspend the judgment during the appeal time. Accordingly, the watermaster should distribute the water in accordance with the terms of the decree unless the lower court should see fit by proper order to suspend the operation of the decree until the appeal is determined in the Supreme Court. I return herewith, as requested, letter from Mr. Baldwin, dated May 8, together with Findings of Fact, Conclusions of Law and Decree.

Hon. W.G.Swendsen

-2-

May 21, 1923.

*W.S.S.*  
Calling your attention to the last paragraph of Mr. Baldwin's letter, do you desire opinions upon the matters therein mentioned? If so, kindly hand us the papers touching same.

Yours respectfully,

*Herbert Wing*  
Assistant Attorney General.

HW/s

RECEIVED  
MAY 22 1923  
DEPARTMENT OF RECLAMATION

WESTERN BOND

WESTERN BOND

May 22, 1923.

Re: District No. 36.

Mr. G. Clyde Baldwin,  
Idaho Falls, Idaho

Dear Sir:

We are just in receipt of an opinion from  
the Attorney General in the case of F. L. Koon,  
Plaintiffs, vs. John Empey, et al., Defendants, copy  
of which is enclosed.

Very truly yours,

Assistant Commissioner  
of Reclamation

GNC:P



C. C. MOORE, GOVERNOR

**STATE OF IDAHO**  
**DEPARTMENT OF RECLAMATION**  
W. G. SWENDSEN, COMMISSIONER  
BOISE

BUREAU OF WATER RESOURCES  
WATER APPROPRIATIONS  
CAREY ACT DEVELOPMENT

*File # 36*

Idaho Falls, Idaho.

May 23, 1923.

Mr. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:-

I wish to acknowledge the receipt of opinion handed down by Assistant Attorney General Wing, which was forwarded with Mr. Carter's letter of May 22.

Unless restrained or directed otherwise by some later court order I will follow this opinion by distributing the water in accordance with the decree of the lower court, even though an appeal has been made.

Sincerely yours,

*Glyde Baldwin*

Special Deputy.

May 24, 1923.

Re: District 36.  
Independent Irrigation Company, Ltd.  
vs. Long Island Irrigation Co.

Hon. A. H. Conner,  
Attorney General,  
Building.

Attention Mr. Wing.

Dear Sir:

Further reference is had to your communication of May 21st and also to the communication of Mr. Baldwin of May 8th relating to the case of the Independent Irrigation Company vs. the Long Island Irrigation Company, W. G. Swendsen, Commissioner of Reclamation of the State of Idaho, and John Empey, Watermaster, Water District No. 36, State of Idaho.

This is the action which we discussed with Mr. Johannsen in my office sometime ago.

As I recall the facts in this case, the Court dismissed the action as to the watermaster and myself but rendered a decision which purported to be binding upon the other two parties to the action. You will recall in our former discussion of the matter that it was rather our opinion that since the statute under which this action was brought contemplated making the watermaster and Commissioner of Reclamation defendants and since the Court dismissed the case as to these parties, rather a complicated situation arose which makes the effect of the decision questionable.

I am enclosing files in the case and at your convenience I would appreciate your consideration of the same, to the end that I may have advice which will enable me to give the watermaster proper instructions as to his duty in the matter.

Very truly yours,

WGS: P

Commissioner of Reclamation

May 24, 1923.

Re: F. L. Koon, Plaintiff, vs.  
John Empey, et al, Defendants.  
District No. 36.

Hon. A. H. Conner,  
Attorney General,  
B u i l d i n g.

Attention Mr. Wing.

Dear Sir:

Reference is made to your communication of  
the 21st. Please accept my thanks for your opinion  
in relation to the above mentioned case.

Very truly yours,

Commissioner of Reclamation

WGS:P

March 26, 1923.

District No. 36.

*Ind. Irr. Co. etc.*

Mr. G. Clyde Baldwin,  
Idaho Falls, Idaho

Dear Mr. Baldwin:

Replying to yours of the 22nd you are advised that upon referring the decision in the case of the Independent Irrigation Company, Ltd. vs. the Long Island Irrigation Company, to the Attorney General's office for an opinion, I was requested to present the matter to Mr. Johannesen, attorney for the plaintiff, and obtain his brief or outline of the decision, and it is my memory that subsequently the matter was to be submitted to Mr. McCutcheon for his views. Mr. Johannesen has been requested to present his brief and notwithstanding the fact that such request was made some weeks ago, nothing has been received.

I shall be in Idaho Falls this week and will take the matter up with you further.

Very truly yours,

Commissioner of Reclamation.

WGS:P



C. C. MOORE, GOVERNOR

STATE OF IDAHO  
DEPARTMENT OF RECLAMATION  
W. G. SWENDSEN, COMMISSIONER  
BOISE

BUREAU OF WATER RESOURCES  
WATER APPROPRIATIONS  
CAREY ACT DEVELOPMENT

Idaho Falls, Idaho.  
June 7, 1923.

Mr. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:-

As yet I have received no interpretation of Judge Gwinn's final decision in the case of the Independent Irrigation Company, Limited, vs. Long Island Irrigation Company, W. G. Swendsen, Commissioner of Reclamation and John Empey, Watermaster.

If you will refer to my letters of January 6 and March 22, 1923, and to your replies of February 2 and March 26, you will be reminded that this interpretation has been delayed in the hope of securing some sort of a brief from the attorneys in the case, Particularly Mr. Johannesen, the attorney for the plaintiff. I see him every few days, and about once each month since the early part of February I have inquired whether or not he has submitted the brief or outline which you had requested, and he told me in each case that he has been so busy he has not gotten around to it. It would appear to me that plenty of time has been afforded, and if we wait any longer for him there will undoubtedly be no official interpretation or opinion available when the time comes to begin regulation. The point with which I am most concerned at present is what water rights, if any, have the Independent Irrigation Company under the supplementary decree granted last October, as same was later modified in the decision handed down by Judge Gwinn in December, 1922, which must be recognized by me as Watermaster or as Deputy Commissioner of Reclamation.

The river is apparently in a somewhat precarious condition, being at a lower stage at present than during any year subsequent to 1919. Cool weather in general has prevailed, however, so that it is impossible just now to predict how soon regulation may be required. It may be only a matter of days and again it might be deferred until about July 1. In any event, I am very anxious to secure an official interpretation in this matter immediately, and am wondering if you will not urge same upon the Attorney General's office without waiting further for Mr. Johannesen's brief.

Sincerely yours,

G. Clyde Baldwin  
Special Deputy.

*Opinion mailed  
6-18-23 from Atty Genl  
Office. Carter*

A. H. CONNER  
ATTORNEY GENERAL  
HERBERT WING  
JAMES L. BOONE  
S. E. BLAINE  
ASSISTANTS

STATE OF IDAHO  
OFFICE OF ATTORNEY GENERAL  
BOISE

June 7, 1923.

Honorable W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Re: Independent Irrigation Co.  
vs.  
Long Island Irrigation Co.

Dear Sir:

In the above matter, as you will recall, the attorney for the plaintiff was given opportunity to present a brief to this office outlining his position relative to the decree of Judge Gwinn, dated October 9, 1922, and the order of Judge Gwinn, dated December 16, 1922.

Thus far the brief has not been forthcoming, and it now becomes necessary to determine what shall be done with reference to delivery of water for this year.

Having in mind this decree, together with the decree entered in the Sixth Judicial District of the State of Idaho, in and for Fremont County, on the 16th day of December, 1910, in the cause entitled Rexburg Irrigation District, et al, vs. Irrigation Canal Company, et al, in view of the fact that Judge Gwinn's order of December 16, 1922, specifically voids the judgment of October 9, 1922, as to the Commissioner of Reclamation and John Empy, Water Master of Water District No. 36, it is apparent that the waters should be distributed in accordance with the decree of 1910, above referred to, until such time as further action is taken in the premises.

Very truly yours,

*Herbert Wing*  
Assistant Attorney General.

HW/s

*h. d. send to G. B. by  
Atty Genl - this date  
Carter*

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

July 4, 1923.

Hon. W.G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:

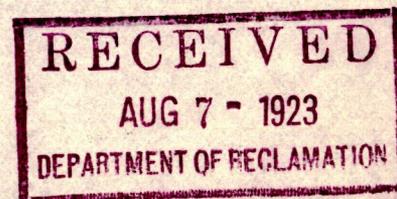
In re: Independent Irrigation Company vs.  
G. Clyde Baldwin, et al.

Referring to our telephone conversation  
of yesterday afternoon, I inclose you herewith  
copy of the complaint, Order in Injunction and  
Writ of Injunction issued in connection with the  
above-named case.

I am sorry that this was omitted from our  
former letter.

Yours very truly,

*Oscar A. Johannesen*



CLASS OF SERVICE	
Telegram	
Day Letter	
Night Message	
Night Letter	X
If no class of service is designated the message will be transmitted as a full-rate telegram.	

# COPY OF WESTERN UNION TELEGRAM

*Jan 2 - 10 - 1923*

July 10, 1923.

Oscar A. Johannesen  
Sutter Hotel  
San Francisco California

I AM THIS DAY ~~XXXX~~ WIRING BALDWIN ASKING HIM TO SECURE INTERPRETATION DECREES  
INDEPENDENT CASE FROM JUDGE THAT DISTRICT AND TO GOVERN HIS ACTIONS ACCORDINGLY  
WITH THE SUGGESTION THAT BEFORE ANY WATER IS TURNED OFF HE PERSONALLY GET IN TOUCH  
WITH DIRECTORS INDEPENDENT COMPANY IN EFFORT TO SECURE SOLUTION BY TEMPORARY TRANSFER  
OR OTHERWISE IN THE EVENT COURTS INTERPRETION IS UNFAVORABLE TO SAID COMPANY

W. G. Swendsen  
Commissioner of Reclamation

Chg. Dept. Reclamation  
State House.

CLASS OF SERVICE	
Telegram	
Letter	
Night Message	
Night Letter	
If no class of service is designated the message will be transmitted as a full-rate telegram.	

# COPY OF WESTERN UNION TELEGRAM

July 10, 1923

G. Clyde Baldwin  
Special Deputy Commissioner of Reclamation  
Postoffice Building,  
Idaho Falls, Idaho.

SINCE TALKING TO YOU ON PHONE HAVE DISCUSSED INDEPENDENT MATTER WITH ATTORNEY  
GENERAL'S OFFICE STOP BEFORE TAKING ACTION CALL ON JUDGE EDGINGTON ASK HIS  
INTERPRETATION OF DECREE AND ACT ACCORDING TO HIS INSTRUCTIONS STOP DECREE  
AMBIGUOUS AND IT SEEMS CLEARLY THE DUTY OF THE COURT TO INTERPRET THE SAME

W. G. Swendsen  
Commissioner of Reclamation

Chg. Dept. Reclamation  
State House

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON.

INDEPENDENT IRRIGATION COMPANY,  
Limited, a corporation, J. E.  
Schofield, O. W. Green, B. R. Shippen,  
E. H. Staker, George Berritt, C. S. Owens,  
Gus Youngstrom, George Polson, William  
Cherry, J. C. Andrews, H. E. Olaveson,  
J. W. Hart, J. F. Andrews, C. A. Hansen,  
J. W. Bone, William S. Berritt, L. E.  
Livermore, George Cherry, G. M. Green,  
Alma Neilson, O. C. Raymond, Joe Hadley,  
R. D. Green, and A. S. Anderson

PLAINTIFFS;

-VS-

G. Clyde Baldwin, Watermaster of Water  
District No. 36, as such watermaster, and  
W. G. Swendsen, Commissioner of Reclama-  
tion of the State of Idaho, as such  
commissioner,

DEFENDANTS.

WRIT OF INJUNCTION.

THE PEOPLE OF THE STATE OF IDAHO, to G. Clyde Baldwin, Watermaster  
of District #36, and W. G. Swendsen, Commissioner of Reclamation  
of the State of Idaho, send Greeting:

The above-named plaintiffs having filed their complaint in the above entitled  
Court against the said defendants, requiring them to refrain from certain acts in  
said complaint and herein-after more particularly mentioned; and the said complaint  
having been duly considered by the Court, and it having satisfactorily appearing to  
the Court that said action is a proper case for an Injunction, and that sufficient  
grounds exist therefor, and the necessary and proper undertaking having been given,  
and the Court having made an order enjoining the said defendants:

Until the further order of the Court, you, and each of you, your, and each of  
your servants, counsellors, attorneys, solicitors and agents, and all others acting  
in aid or assistance of you, or either of you, do absolutely desist and refrain  
from interfering with two thousand mixer's inches of water arising in and flowing  
through what is known as Scott Slough, situated in Jefferson County, State of Idaho,  
and which said water arises in said Scott Slough at points above what is known as  
the headgate thereon of the Independent Irrigation Company, and which said water  
is more particularly described in plaintiffs' complaint on file herein and to w  
which reference is hereby made, and from otherwise interfering with the aforesaid  
water or preventing the said plaintiffs from diverting the said described water  
from the said Scott Slough into the irrigation system maintained by the plaintiffs,  
or from otherwise, or in any manner preventing the said plaintiffs, each and all of  
them, from using the said water in the irrigation of their respective lands.

WITNES, The Honorable George W. Edgington, Judge of the Ninth Judicial District of the State of Idaho, and the seal of said Court.

This 29th day of July, 1923.

(Signed) J. R. Sayer  
Clerk of the District Court in and for Jefferson  
County.

By C. L. Jones, Deputy Clerk.

O. A. Johannesen, Attorney for Plaintiffs.

Same as first page

~~DEFENDANTS~~  
PLAINTIFFS

\*VS\*

SUMMONS.

Same as first page

DEFENDANTS

THE STATE OF IDAHO SENDS GREETINGS TO G. Clyde Baldwin, Watermaster of Water District No. 36, as such watermaster, and W. G. Swensen, Commissioner of Reclamation of the State of Idaho, as such commissioner, the above-named defendants.

You are hereby notified that a complaint has been filed against you in the District Court of the Ninth Judicial District of the State of Idaho, in and for the County of Jefferson, by the above-named plaintiffs, and you are hereby directed to appear and answer the said complaint within twenty days of the service of this summons, if served within said Judicial District and within forty days if served elsewhere.

AND YOU ARE FURTHER NOTIFIED, That unless you so appear and answer said complaint within the time herein specified, the plaintiffs will take judgment against you as prayed in said complaint.

WITNESS, My hand and the seal of said District Court, this 28th day of July, 1925.

(Signed) J. R. Bayer,  
Clerk.

G. A. Johannesen  
Attorney for plaintiffs.

Same as first page

**PLAINTIFFS**

-78-

**COMPLAINT**

Same as first page

**DEFENDANTS**

The plaintiffs complain of the defendants, and for cause of action allege as follows, to-wit:

I.

That the plaintiff Independent Irrigation Company, Limited, in, said at all times hereinafter mentioned has been, a cooperation organized and existing under and by virtue of the Laws of the State of Idaho: that said plaintiff corporation is organized from and among certain water users who are using water for the irrigation of certain lands situated in Jefferson County, State of Idaho, by means of and through the canal system owned by the said Independent Irrigation Company, Limited; that the other plaintiffs are stockholders of the said Independent Irrigation Company, Limited, and are land owners and water users whose lands lie under the irrigation canal system, and which lands are irrigated with water herein-after described through and by means of the aforesaid canal system owned by the said Independent Irrigation Company, Limited.

II.

That the defendant G. Clyde Baldwin is the duly elected and qualified watermaster of water district #36, within which district the lands and irrigation system of the plaintiffs are situated, and as such officer has to do with the measurement and distribution of water within the aforesaid district; that the defendant W. G. Swendsen is the Commissioner of Reclamation of the State of Idaho, and as such officer is in charge of the control and distribution of the waters of said state.

III.

That what is generally known as the Scott Slough, is a natural water channel, running in a more or less easterly and westerly direction, through Township five (5) North, and Ranges 37, 38 and 39, East Boise Meridian, in Jefferson County, State of Idaho; that the said Scott Slough is supplied with water from various natural sources, but more particularly from live springs which extend along the channel of said Slough; that the plaintiff Independent Irrigation Company, Limited, is the owner of a certain irrigated canal and water distribution system which has its point of intake on the aforesaid Scott Slough, on the westerly bank thereof, and at a point which is near the center of Section 36, Township 5 North, Range 38 East Boise Meridian; that the said irrigation canal and distribution system so owned and operated by the said plaintiff company, extends in a westerly direction from the said point of intake on the said Slough,

for a distance of approximately five miles; that by means of a main canal, lateral ditches and main channels used as laterals, the said plaintiff company supplies water for the irrigation of approximately 1970 acres of land owned, farmed and irrigated by the other plaintiffs to this action.

#### IV.

That the stockholders of the said plaintiff company, as hereinbefore stated, comprise the other plaintiffs to this action, and that each of the said last named plaintiffs are the owners of land and the users of water thereon for irrigation purposes, which lie under and which water is distributed from the said irrigation canal and distribution system maintained by the said plaintiff company; that the said stockholders are named as follows, and own and operate farming lands lying under such system, and irrigated therefrom, of the acreage respectively herein-after set opposite their names, to-wit:

J. E. Schofield	100 acres	J. F. Andrews	40 acres
O. E. Green	160 "	C. A. Hanson	40 "
B. B. Shippen	150 "	J. W. Bone	40 "
H. M. Staker	120 "	Wm. S. Berrett	160 "
Geo. Berrett	40 "	R. K. Livemore	40 "
C. S. Owens	160 "	Geo. Cherry	40 "
Gus Youngstrom	160 "	G. H. Green	60 "
Geo. Polson	80 "	Alma Neilson	30 "
Wm. Cherry	120 "	G. C. Raymond	80 "
J. G. Andrews	40 "	Joe Hadley	80 "
H. E. Olavson	40 "	N. E. Green	40 "
J. W. Hart	40 "	A. B. Anderson	30 "

#### V.

That the lands irrigated from the canal and distribution system of the plaintiff corporation, and which are owned by the said stockholders and water users, herein-before named, are situated in Sections 19, 20, 21, 23, 29 and 30, in Township 5 North, Range 36, East Boise Meridian, and in Section 25, Township 5 North, Range 37, East Boise Meridian, all being in Jefferson County, State of Idaho.

#### VI.

That the source of the water supply used by the plaintiffs are natural springs, heading and rising in the Scott Slough, and also other natural sources, all of which supply flow into the said Slough at various points in said Slough, and above the point of intake of the said plaintiff company's canal thereon; that the waters so heading and flowing into the said slough from the sources aforesaid and passing through the said slough to the headgate maintained thereon by the said plaintiff company; its varies during the irrigation season from about 30 to 60 second-feet during the earlier part of the season, down to 20 second-feet during the latter part of the irrigation season; that all of said waters herein-before described, have been diverted into the plaintiff company's main canal and distribution system annually, for many years, and has been applied to beneficial use upon the lands of the plaintiffs which lie under and are irrigated by means of the said irrigation canal and distribution system maintained by the plaintiff company, and herein-before described; that such distribution has been carried on under the supervision of the said plaintiff company.

## VII.

That the said plaintiffs have appropriated and diverted and used upon their lands all of the aforesaid waters originating from natural sources in the said Scott Slough, from and above the point of intake of the plaintiff company's canal from a date prior to June 1st, 1884, and they have continuously, every year, from and after the first day of June, 1884, appropriated, diverted and used upon the said lands, all of the waters so flowing through the said Scott Slough, and which enter it above the point of intake of the plaintiffs' canal thereon, and that they have openly, notoriously and publicly claimed to be the appropriators, users and owners of all of said described waters, and have made such claims as against the rights and claims of all and every person or persons, whomsoever, in fact, as against the claims of all the world; that the claim, appropriation, diversion and use of the said described waters by the said plaintiffs, have been without opposition or adverse claim on the part of any other person or persons, association or associations, corporation or corporations, whomsoever.

## VIII.

That the lands owned by the plaintiffs, and which are the lands irrigated through and by means of the said canal and distribution system maintained by the plaintiff company, and which are the lands upon which the aforesaid waters herein-before described have been continuously used, as aforesaid, are of a peculiarly porous character, and have a very gravelly and porous sub-soil, and which makes necessary a large amount of water in the proper irrigation thereof; that said lands require not less than one second-foot per each 25 acres of land, or in other words, not less than two minor's inches of water per each acre of land, so irrigated; that because of the location of the aforesaid lands, with reference to the channels of Snake River, and because of the natural drainage from said lands into the Snake River, any and all excess amounts of water used in the irrigation of the said lands, owned by the said plaintiffs and lying under the said canal and distribution system of the said plaintiff company, flows naturally into the Snake River, and becomes a source of supply for other appropriators on said river.

## HEAR IX.

That sometime on or about the 9th day of July, 1923, the defendant G. Clyde Baldwin, as watermaster of water district #36 of the State of Idaho, served formal notice upon the plaintiffs that he, the said-named G. Clyde Baldwin, Watermaster, would immediately take steps to prevent the plaintiffs from using the water herein-before described, and to this end would immediately open the diversion gates maintained by the plaintiffs in the so-called Scott Slough; the reasons alleged by the aforesaid water master for his threatened action being explained by him as being due to a belief on his part that the plaintiffs had no right to the waters herein-before described; that the threatened interference on the part of the said G. Clyde Baldwin, Watermaster, with the water supply of the said plaintiffs was without right, either in law or in equity, and for no valid reason or reasons whatsoever; that had the said G. Clyde Baldwin, watermaster, carried into immediate effect his threat to prevent the said plaintiffs from using the water herein-before described and claimed by them, a very serious and irreparable damage would have been caused the plaintiffs and each of them, and the said plaintiffs, each and all of them, would have suffered a large financial loss, the said plaintiffs being each and all farmers, and having growing crops upon their lands, and all of which crops require irrigation, which irrigation has been made possible, for more than thirty years last past by means of the water supply described in this complaint; that the defendant, G. Clyde Baldwin does now threaten, and has informed the plaintiff that he the said-named G. Clyde Baldwin, will shut off the

the plaintiff water supply and will refuse to permit the plaintiffs to continue to divert water from the source herein-before described, and which said water, and which said source of supply has been in use by the plaintiffs for more than thirty years last past. That the defendant, G. Clyde Baldwin, as watermaster of District No. 36, is under the jurisdiction and subject to direction of and by the the defendant W. G. Swendsen, Commissioner of Reclamation; that the defendant G. Clyde Baldwin has filed but a nominal official bond, and that the said bond is inadequate to cover any damage which the plaintiffs will suffer, and the defendant, G. Clyde Baldwin, personally is not sufficiently financially responsible to respond in adequate damages to the plaintiffs, should the plaintiffs be deprived of the use of their water, and be damaged thereby. The plaintiffs further represent to the Court, that they have no plan nor speedy remedy at law, and that the plaintiffs can only be protected in their rights, as well as be protected against loss and damage, by the Court exercising its powers and enjoining the said-named defendants from interfering with the headgates maintained by plaintiffs in the aforesaid Scott Slough, and by the Court preventing the said-named defendants from shutting off, or otherwise interfering with the water supply claimed by the plaintiffs, which said water supply has been in continuous use by the plaintiffs for more than thirty years last past; that only by the Court restraining and enjoining the defendants from such interference with the water supply claimed by the plaintiffs can the plaintiffs be protected against a very large financial loss.

WHEREFORE, the plaintiffs pray that the Court issue an order enjoining the said-named defendants G. Clyde Baldwin, watermaster of District 36, and W. G. Swendsen, Commissioner of Reclamation of the State of Idaho, from shutting off the water supply of the said plaintiffs, and from denying them the right to use the water used by them, and herein-before described, and claimed by them as their property, and said plaintiffs further pray that they may have such further other or different relief in the premises as may seem just and proper.

(Signed) O. A. Johannessen  
Attorney for Plaintiffs.

STATE OF IDAHO  
COUNTY OF BONNEVILLE SS

\_\_\_\_\_ } being first duly sworn, says: that he is one of the plaintiffs in the above entitled cause, and makes this verification for and on behalf of himself and each and all of the said-named plaintiffs; that he has read the above and foregoing complaint, and knows the contents thereof and verily believes the same to be true.

O.A. Johannessen

Subscribed and sworn to before me this 27th day of July, 1923.

Notary Public.

Same as first page

PLAINTIFFS

Same as first page

DEFENDANTS



The plaintiffs in the above entitled cause, having commenced an action in the above entitled Court against the above-named defendants, and having prayed for an injunction against the said defendants, requiring them to refrain from certain acts in said complaint, and herein-after more particularly mentioned, and on reading the said complaint in said action duly verified by the oath of one of the plaintiffs as well as after examining hearing the testimony produced on behalf of the plaintiffs, and it satisfactorily appearing to the Court therefrom that it is a proper case for an injunction, and that sufficient grounds exist therefor, and an undertaking having been given approved and as required by the Court in the sum of \$500.00.

IT IS THEREFORE ORDERED, That until further order of this Court, you, the said G. Clyde Baldwin, watermaster of said Water District #36, and you, the said W. G. Swedson, Commissioner of Reclamation of the State of Idaho, and all of them, and each of your servants, counsellors, attorneys, solicitors and agents, and all others acting in aid or assistance of you, and each and every of you, do absolutely desist and refrain from interfering with the two thousand miner's inches of water arising in and flowing through what is known as Scott Slough situated in Jefferson County, State of Idaho, and which said water arises in the said Scott Slough at points above what is known as the headgate thereon, of the Independent Irrigation Company, and which said water is more particularly described in plaintiffs' complaint on file herein, and to which reference is hereby made, and from otherwise interfering with the aforesaid water, or preventing the said plaintiffs from diverting the said described water from the said Scott Slough into the irrigation system maintained by the plaintiffs, or from otherwise, or in any manner preventing the said plaintiffs, each and all of them, from using the said water in the irrigation of their respective lands.

Dated this 26th day of July, 1923.

Geo. W. Edgington

Judge, 9th Judicial District.

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

July 31, 1923.

Hon. W.G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:

In connection with the Independent Irrigation Company matter, in thinking it over, I have concluded that the simplest solution of the difficulty is to have the local District Judge enjoin Mr. Baldwin and yourself from interfering with the headgates of said Canal Company.

I have accordingly filed a complaint and Judge Edgington has made an order enjoining interference with two thousand inches of water claimed by these people.

I am very much in hopes that this will settle the matter, and that no contest on this proposition will be carried on. There is no doubt as to the right of these people to the use of this water, and I see no good reason why a little technical situation should be taken advantage of by any of the water users, when they know the facts in the case.

I have prepared an Acceptance of Service, and I shall very much appreciate it if you will sign the same and return it to me.

Thanking you for this, and with personal wishes I am,

Sincerely yours,

*Oscar A. Johannesen*





C. C. MOORE, GOVERNOR

STATE OF IDAHO  
DEPARTMENT OF RECLAMATION

W. G. SWENDSEN, COMMISSIONER

~~BOISE~~

BUREAU OF WATER RESOURCES  
WATER APPROPRIATIONS  
CAREY ACT DEVELOPMENT

Idaho Falls, Idaho.

August 3, 1923.

Mr. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Dear Mr. Swendsen:-

Late on the afternoon of July 30 I acknowledged service of papers of which the inclosed are copies, by Mr. Oscar Johannesen of this city. I assume that similar papers were served on you and that you will doubtless refer the matter to the Attorney General. If he desires me to make any appearance in this case or take any action whatsoever concerning it, please advise at an early date.

A meeting of the water users' Committee of Nine of Water District No. 36 was held here yesterday morning, and at that time I stated the facts in regard to this Independent Irrigation Company situation as best I could to the committee, explained to them that the matter would probably be referred to the Attorney General as counsel for State officials, but that in view of past experience it was doubtful whether he would consider the State to have a sufficient interest at stake to warrant more than a formal appearance in the case. This explanation to this Committee of Nine, I believe, representing as it does practically every water user interest within the district, should be sufficient to fulfill my duty, unless in your opinion or that of the Attorney General some additional action should be taken by me. The committee discussed the matter at some length, but took no action other than to request me to furnish a copy of these papers to each of the three upper valley water users' associations and to each of the three principal lower valley interests. This I am doing by today's mail.

Sincerely yours,

*G. Clyde Baldwin*  
Watermaster.

Inclosure.



August 8, 1923

In Re: Independent Irrigation Company, et al.  
Plaintiffs  
Vs.  
G. Clyde Baldwin, et al, Water Master  
District No. 36. Defendant.

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT  
IN AND FOR THE STATE OF IDAHO.

Hon. A. H. Connor,  
Attorney General.  
State House,  
Boise, Idaho.

Dear Sir:

Herewith I am enclosing complaint, copy of summons and writ of injunction in the above entitled action, the same having been mailed to this office by Attorney for the Plaintiff Company, O. A. Johannesen, who requests that the service be acknowledged. Accordingly, I am this day acknowledging service in writing.

I have reviewed the enclosed and it is my belief that the state has no interest whatever in the matter. The real parties in interest are other water users from Snake River.

I am sure, through their Attorney, Mr. Otto McCutcheon, that they are advised concerning this procedure and will undoubtedly take such action in their own behalf as they deem appropriate and proper.

You are hereby instructed and requested to take such action as you may deem proper in this case for and on behalf of myself and Mr. Baldwin.

It would probably be well for you to advise Mr. Johannesen and Otto McCutcheon at Idaho Falls of any action you may take.

Very truly yours,

Commissioner of Reclamation

August 9, 1923.

In Re: Independent Irrigation Company, et al  
Plaintiffs.

Vs.

G. Clyde Baldwin, Water Master, et al  
Defendants.

Water District No. 36.

---

Mr. O. A. Johannesen,  
Attorney at Law,  
Idaho Falls, Idaho

Dear Mr. Johannesen:

Herewith I am enclosing executed  
Acceptance of Service of the above entitled  
action, of July 31.

With kind personal regards, I am

Very truly yours,

Commissioner of Reclamation.

WCS-H

August 8. 1923

In Re: Water District No. 36,  
Independent Irrigation Co., et al. Plaintiffs  
Vs.  
G. Clyde Baldwin, et al. Defendant.

G. Clyde Baldwin,  
District Commissioner of Reclamation,  
Post Office Bldg.,  
Idaho Falls, Idaho.

Dear Mr. Baldwin:

I have your communication of the 3 inst.,  
indicating that you were served with summons, etc.  
in the above entitled action.

I have recently received a similar summons  
and copy of complaint, also a copy of a writ of  
injunction, certified by the Clerk of the District  
Court, from which I observe that we are enjoined  
from interfering with the flow of water in the  
Independent Canal, up to two thousand miner's inches of  
water arising in and flowing through what is known as  
Scott's Slough.

I am transmitting a copy of the complaint,  
summons and writ of injunction to the Attorney General,  
indicating to him that insofar as I know, the State  
has no real interest in this action and I am asking  
him to take such action as he deems proper for and  
on my behalf and also on behalf of yourself.

I have indicated to him that the water users  
in District No. 36 are perhaps the real interested  
parties and that because of his service for the Pro-  
tective Association, Mr. McCutcheon is probably the  
person who would look after the interests of the water  
users in this action and accordingly, I have requested  
the Attorney General to advise Mr. McCutcheon on any action  
he may take in this matter.

Because of the foregoing conditions it is my  
belief that unless the Attorney General concludes to take  
some action, we should do nothing further in the matter.

I am pleased to note that you called it to  
the attention of the Committee of Nine.

W.G.S.-H

Very truly yours,

A. H. CONNER  
ATTORNEY GENERAL  
HERBERT WING  
JAMES L. BOONE  
S. E. BLAINE  
ASSISTANTS

STATE OF IDAHO  
OFFICE OF ATTORNEY GENERAL  
BOISE

August 17, 1923.

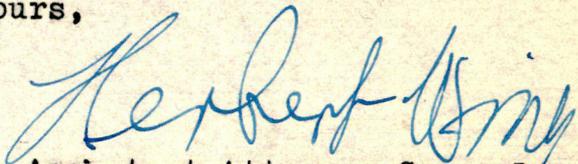
Mr. W. G. Swendsen,  
Commissioner of Reclamation,  
Boise, Idaho.

Re Independent Irr. Co., v.  
G. Clyde Baldwin, et al.

Dear Sir:--

Replying to yours of the 8th enclosing complaint in the above, we have today entered formal appearance for you and for Mr. Baldwin although, as you say, the State actually has no interest in the matter as a party litigant.

Very truly yours,

  
Assistant Attorney General.

HW/f

RECEIVED  
AUG 18 1923  
DEPARTMENT OF RECLAMATION

LETTER FROM THE

TO THE DIRECTOR  
FROM THE CHIEF OF BUREAU OF RECLAMATION  
WASHINGTON, D. C.

DEAR SIR:--

YOUR LETTER OF AUGUST 15, 1923,  
RE THE MATTER OF THE

RECLAMATION SERVICE  
IS HEREBY ACKNOWLEDGED  
AND WILL BE HANDLED  
AS A MATTER OF COURTESY

BOISE

OFFICE OF ATTORNEY GENERAL  
STATE OF IDAHO

W. H. COOK

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON.

INDEPENDENT IRRIGATION COMPANY,  
Limited, a corporation, J. E.  
Schofield, O.W.Green, B.R.Ship-  
pen, E.M.Staker, George Barrett,  
O.S.Owens, Gus Youngstrom, George  
Polson, William Cherry, J.C.Andrews,  
H.E. Claveson, J.W.Hart, J.F.Andrews,  
C.A.Hansen, J.W.Bone, William S. Ber-  
rett, L.K.Livermore, George Cherry,  
G.M.Green, Alma Neilsen, O.C.Raymond,  
Joe Hadley, R.D.Green, and A.S. Ander-  
son,

Plaintiffs,

-v-

G. GLYDE BALDWIN, Watermaster of Water  
District #36, as such watermaster, and  
W. G. SWENDSEN, Commissioner of Reclam-  
ation of the state of Idaho, as such  
commissioner,

Defendants.

A P P E A R A N C E

TO THE CLERK OF THE ABOVE ENTITLED COURT; INDEPENDENT  
IRRIGATION COMPANY, LIMITED, A CORPORATION, J.E.SCHOFIELD, O.W.  
GREEN, B.R.SHIPPEN, E.M.STAKER, GEORGE BERRETT, O.S.OWENS, GUS  
YOUNGSTROM, GEORGE POLSON, WILLIAM CHERRY, J.C.ANDREWS, H.E.  
CLAVESON, J.W.HART, J.F.ANDREWS, C.A.HANSEN, J.W.BONE, WILLIAM  
S. BERRETT, L.K. LIVERMORE, GEORGE CHERRY, G.M.GREEN, ALMA  
NEILSEN, O.C.RAYMOND, JOE HADLEY, R.D.GREEN AND A.S.ANDERSON,  
PLAINTIFFS, AND TO O. A. JOHANNESSEN, THEIR ATTORNEYS:

You and each of you will hereby take notice that  
the above named defendants, and each of them, hereby appear  
in said action by the undersigned, their attorneys.

Dated August 17, 1923.

A. E. Sommer,  
Attorney General, State of Idaho.

Herbert Wing,  
Assistant Attorney General,

Attorneys for Defendants,  
Residing at Boise, Idaho.

August 20, 1923

Re: District No. 36,  
Bell and Larson Ditch.

Mr. Jay McCarthy,  
Roberts, Idaho

Dear Sir:

Receipt is acknowledged of your watermaster daily record books together with letter.

If you wish your watermaster charges to be certified to the board of county commissioners for payment, it will be necessary to summarize your daily records and apportion the costs on the regular watermaster report blanks. If you expect to collect your pay from the water users direct, it will probably not be necessary to prepare your report. Please advise us, and if the report is to be prepared, we will return your books together with the necessary blanks.

With reference to the Bell and Larson ditch and a means of compelling all water users in this ditch to pay their proportionate share of maintenance and upkeep, I believe the best form of organization would be a corporation, which would issue stock in proportion to the rights owned, elect a board of directors and a manager, to be empowered to do all things necessary to make the cost of operation of the ditch assessable against each and every water user therein.

Unless some such organization exists I know of no means whereby assessments can be collected from those who persist in being negligent in their payments or the working out of maintenance assessments.

Very truly yours,

Director of Water Resources.

GNC:P

August 27, 1923

Re: District 36.  
Bell and Larson Ditch.

Mr. Jay McCarthy,  
Roberts, Idaho

Dear Sir:

As requested, we are returning your watermaster daily record books, together with blanks for preparation of your annual report.

You should prepare this report in duplicate, forward both copies to this office for approval. When such approval is had one copy will be certified to the board of county commissioners of your county for payment.

Very truly yours,

Director of Water Resources.

GHC:P

Roberts Idaho

Aug 16, 1923

Department of Reclamation -  
Boise, Idaho.

Dear Sirs -

Am forwarding  
Water masters daily record  
of water used in Bell &  
Larson Ditch for 91 days  
and I find that said  
ditch will only carry  
2825 inches of water.  
and the full amount  
is 3825 inches

Only part of the water  
users are willing to put  
work on said ditch.  
Some will give right way

but others will not.

In order that said  
ditch be made to carry  
full amount of water  
and each user do their  
portion would you please  
advise me what to do.  
Information has been  
requested by them.

Majority of users have  
gained their right by  
users right.

Yours Respectfully.  
Water master.

Jay McCarthy.  
Roberts

RECEIVED

AUG 18 1923

DEPARTMENT OF RECLAMATION

to collect payment.

yours truly.

Jay M<sup>c</sup>Carthy  
Roberts Dda.

Box 213.

Watermaster of Bell + Larson Ditch.



Roberts Data  
Aug. 26, 1923

Dept. of Reclamation.

Boise, Idaho.

Gen. V. Carter.

Dear Sir: —

Will you  
please return my books  
with necessary blanks  
for my report. as I  
find I will have  
to have them in order

September 6, 1923.

Re: District 36.  
Independent Irr. Co.

vs.

G. Clyde Baldwin, Watermaster  
W. G. Swendsen, Commissioner of Reclamation.

Mr. J. R. Bothwell,  
Twin Falls,  
Idaho.

Dear Sir:

Herewith I am enclosing copy of appearance that was filed in the above entitled case by the Attorney General's office for and on behalf of myself and Mr. Baldwin as defendants. This information is being forwarded you in the thought that your clients are perhaps some of the real parties in interest, and in the further thought that you may desire, by intervention or otherwise, to take some action in this matter.

You may be interested to know that service in this case was had upon me and acknowledged August 8th at Boise. Under those conditions it is my understanding that forty days is allowed within which to answer. If you desire to intervene in the matter it is my understanding that you could do so at any time within forty days after August 8th.

The appearance filed by the legal department of the State was presented after a careful consideration of the matter by the undersigned, who advised the Attorney General's office that the State was not the real defendant and had no real right to protect.

It is my understanding that Judge Walters of your city is interested in this case on behalf of his clients, North Side Canal Company. I have not an extra copy of the appearance. Will you be good enough to let him see the enclosed.

Very truly yours,

Commissioner of Reclamation.

September 6, 1923.

Re: District 36.  
Independent Irr. Co.

vs.

G. Clyde Baldwin, Watermaster  
W. G. Swendsen, Commissioner of Reclamation.

Mr. Otto E. McCutcheon,  
Idaho Falls, Idaho

Dear Sir:

Herewith I am enclosing copy of appearance that was filed in the above entitled case by the Attorney General's office for and on behalf of myself and Mr. Baldwin as defendants. This information is being forwarded you in the thought that your clients are perhaps some of the real parties in interest, and in the further thought that you may desire, by intervention or otherwise, to take some action in this matter.

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The appearance filed by the legal department of the State was presented after a careful consideration of the matter by the undersigned, who advised the Attorney General's office that the State was not the real defendant and had no real right to protect.

Very truly yours,

Commissioner of Reclamation

WGS:P