

3752
4489
5665-Milner Dam

ABSTRACT OF PERMIT AND LICENSE RIGHTS ON SNAKE RIVER-LORENZO AND MILNER DAM

August, 1927

Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. Issued Amount	License Issued Amount	Priority	Point of Diversion	Remarks
66	D.W. Ross for Secretary of Interior	5,600	3-26-03	5,600	1,726	3-26-03	Head of Minidoka Rapids	
622	Wesley Gibson	1.3	5-7-04	1.3	1.3	5-7-04	Sec. 20, T. 5 N. R. 38 E.	
683	James J. Sorensen	206	6-18-04	118.65			Sec. 21, T. 8 S. R. 30 E.	115 s.f. for Power 3.65 s.f. irri.
445	Utah Power & Light Co.	1,500	1-29-04	1,500	1,500	1-29-05	Sec. 25, T. 2 N. R. 37 E.	For Power
1603	Twin Falls/L. & W. Co.	2,250	10-7-05	2,250			Sec. 28, T. 10 S. R. 21 E.	Ben. Use Proof due 10-14-16
2517	Wm. A. Bradbury	2	9-24-06	2	0.8	9-24-06	Sec. 2, T. 3 N. R. 37 E.	
1593	Chas. D. Smith	1.5	9-30-06	1.5	1.12	9-30-06	Sec. 38, T. 4 N. R. 37 E.	
3304	City of Idaho Falls	3000	12-3-07	3,000	600	12-3-07	Sec. 18, T. 2 N. R. 37 E.	For Power
1767	Martin Canal Co.	30	11-12-05	30	17.54	12-12-05	Sec. 35, T. 4 N. R. 37 E.	
3752	J.F.N.S.L. & W. Co.	890	6-16-08	2000	3.47	8-12-08		
3752	T.F.N.S.L. & W. Co.	890	6-16-08	626	7.88	7-17-15		
4168	Idaho Power Company	6000	9-3-08	6,000	6,1400	9-3-08	Sec. 30, T. 7 S. R. 31 E.	For Power
✓ 4489	Twin Falls N.S.L. & W. Co.	500	1-2-09	500			Milner Dam	
4416	Julian W. Andrews	20	2-20-09	20	15.6	2-20-09	Sec. 6, T. 4 N. R. 38 E.	
5799	U.S. of America-U.S.R.S.	2500	12-14-09	2,500	2,500	12-28-09	Minidoka Dam	
7164	W. A. Bradbury	6.0	3-3-11	6	4.56	3-3-11	Sec. 2, T. 3 N. R. 37 E.	
4126	W. H. Sanders-U.S.R.S.	3000	6-6-08	3,000	888	6-16-11	Sec. 1, T. 9 S. R. 25 E.	For Power

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Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. Issued Amount	License Issued Amount	Priority	Point of Diversion	Remarks
9825	Anna Wilson	.8	11-20-13	.8	.8	11-20-13	Sec. 13, T.3N.,R.37E	
9514	John Shull	6.6	6-31-15	6.6	3.5	6-31-15	Sec. 2, T.3N.,R.37E	
11600	Utah Power & Light Co.	200	9-7-15	200	100	9-7-15	Sec. 34, T.2N.,R.37E.	For Power
11888	Twin Falls Canal Co.	600	12-22-15	600	600	12-22-15	Milner Dam	
12759	Milner Low Lift. Irri.Dist.	300	11-14-16	300			Sec. 29, T.10S.R.21E.	Ben. Use. Proof due 1-20-19
12881	C. T. Edwards	1	3-16-17	1.0			Sec. 25, T.2N.,R.37E.	Ben. Use. Proof due 4-2-19
13674	Edwin & Mary Alice Dammann	10	7-20-18	10			Sec. 19, T.10S.R.22E.	Ben. Use. Proof due 7-26-28
14067	Idaho Power Company	4600	3-8-19	4600	4600	3-8-19	Sec. 30, T.7 S.R.31E.	
14021	H. W. Coppock	6	5-8-19	6			Sec. 15, T.4 N.R.37E.	Ben. Use Proof due 11-12-19
14408	Capital Hill Ditch Co.	20	11-15-19	20			Sec. 35, T.4 N.R.37E.	Ben. Use Proof Due 12-15-27
R-191	J. W. Hays	3500	12-22-19	3500			Sec. 34, T.5 N.R.37E.	Ben. Use Proof due 12-31-28
14483	Market Lake Res. Co.	314	12-22-19	314	50	12-22-19	Sec. 35, T.5 N.R.37E.	
14761	Presto Bench Irrig. Dist.	180	3-12-20				Sec. 31, T.1 N.R.37E.	Indefinite ext. of time-proof of comp. of works
15001	North Side Canal Co.	1500	8-6-20	Proof of Comp. of Works due 11-8-27 <i>Extended</i>			Sec. 29, T.10S.R.21E.	
14881	Idaho Power Company	1000	8-9-20	1000	1000	8-9-20	Sec. 31, T.9 S.R.18E.	For Power
15060	Martaugh Irrig. Dist.	600	11-20-20	Proof of Comp. of Works due 5-16-28			Sec. 29, T.10S.R.21E.	
15063	Farm Credit Corporation	12	1-4-21	12	Ben. Use. Proof due 2-28-30		Sec. 15, T.4 N.R.37E.	

Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. Issued Amount	License issued Amount	Priority	Point of Diversion	Remarks
15076	Bruce G. Montgomery	2	2-11-21	3	Ben.Use.Proof due 2-28-26		Sec. 9, T. 5 N. R. 38 E.	
R-273	Idaho Power Company	300,000A.F.	3-17-21	Proof of Comp. of Works due 6-21-31			Sec.30, T. 7 S. R.31 E.	For Power
15201	Idaho Power Company	1,200	3-17-21	Proof of Comp. of Works due 6-21-31			Sec.30, T. 7 S. R.31 E.	For Power
R-269	U. S. R. S.	3,000,000A.F.	3-30-21	Proof of Comp. of Works due 3-18-31			Sec.30, T. 7 S. R. 31E.	
15134	U. S. R. S.	8,000	3-30-21	Proof of Comp. of Works due 3-18-31			Sec.30, T. 7 S. R.31 E.	
15237	U. S. R. S.	9,000	4-21-21	Proof of Comp. of Works due 7-29-31			Sec.30, T. 7 S. R.31 E.	For Power
15765	R. E. Shepherd	2,500	1-9-23	Proof of Comp. of Works due 2-82-28			Sec.13, T.10 S. R.20 E.	For Power
16178	James B. Hays	3,000	9-15-24	Proof of comp. of Works due 9-5-30			Sec. 4, T. 9 S. E. 15E.	
16190	Utah Power & Light Co.	1,500	11-14-24	Proof of Comp. of Works due 1-30-30			Sec.15, T. 1 N. R.37 E.	For Power
16634	Idaho Power Company	6,000	10-15-26	Proof of Comp. of Works due 1-18-32			Sec.30, T. 7 S. R.31 E.	For Power
16635	Idaho Power Company	2,000	10-15-26	Proof pending-due 6-18-27			Sec.30, T. 7 S. R.31 E.	For Power

TRIBUTARIES TO SNAKE RIVER BETWEEN LORENZO AND AMERICAN FALLS - WILLOW CREEK

6636	Rebecca A. Williams	4.0	5-8-09	4.0	4.0	8-9-09	Sec. 8, T. 2 S. R.45 E.	
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TRIBUTARIES TO SNAKE RIVER BETWEEN LORENZO AND AMERICAN FALLS - BLACKFOOT RIVER

2428	Craig Watts	1.6	12-1-06	1.6	Ben.Use Proof due 12-1-10		Sec.27, T. 4 S. R.39 E.	
2530	Kate Hutchinson	1.6	1-23-07	1.6	.37	1-23-07	Near mouth of Deadman Creek	
3014	Josephine McDaniel	2.2	8-2-07	3.2	.41	8-2-07	Near mouth of Deadman Creek	
3117	U. S. Indian Service	280	9-5-07	280	Ben.Use Proof due 9-14-22		(Several points	
6910	Jas. W. Ezell	.8	11-12-10	.8	.5	11-12-10		
					.3	1-19-23	Sec. 8, T. 3 S. R. 35 E.	
6875	Craig Watts	3.2	11-21-10	3.2	3.2	11-21-10	Sec.27, T. 4 S. R. 39 E.	

Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. Issued Amount	License issued Amount	Priority	Point of Diversion	Remarks
11198	John J. Stocking	1.2	4-28-15	3.2	.45	8-16-15	Sec. 8, T. 7 S. R. 44 E.	
14762	Presto Bench Irrig. Dist.	180	5-12-20				Sec. 11, T. 3 S. R. 38 E.	Indefinite ext. of time-proof of comp. of works
14897	Empire Canal Co.	320	5-17-20	Proof of Comp. of Works due 9-16-27			Several points	
R-242	Empire Canal Co.	60,000 A.F.	5-31-20	Proof of Comp. of Works due 9-16-27			Sec. 13, T. 7 S. R. 42 E.	
14924	Empire Canal Co.	240	5-31-20	Proof of Comp. of Works due 9-16-27			Sec. 13, T. 7 S. R. 42 E.	
15871	Empire Irrig. Dist.	500	3-25-23	Proof of Comp. of Works due 10-23-28			Sec. 19, T. 4 S. R. 39 E.	

SOUTH FORK OF SNAKE RIVER AND TRIBUTARIES

South Fork of Snake River

1654	John E. Beekman	2.8	9-15-05	2.0	1.7	9-15-05	Sec. 2222, T. 1 N.R. 43 E.	Sec. 12
2718	Simon Lowder	3.2	3-21-07	3.2	1.3	3-21-07	Sec. 12, T. 1 N.R. 43 E.	
14181	Wm. T. Morgan	1.0	7-28-19	1.0	0.3	7-28-19	Sec. 3, T. 4 N.R. 39 E.	
15423	Wayne L. Cheney	1.2	2-2-22	1.2	Ben. Use Proof 3-1-23		Sec. 7, T. 4 N.R. 40 E.	
15634	Thomas Goe	.4	9-7-22	.4	Ben. Use Proof 8-6-27		Sec. 12, T. 3 N.R. 31 E.	
16695	Industrial Co. of Idaho	3000	3-3-27	Proof of Comp. of Works due 6-6-29			Sec. 13, T. 3 N.R. 41 E.	
	W. A. Van Engelen	3000	7-25-27				Sec. 8, T. 3 N.R. 41 E.	Appl. #23645

Elk Creek

128	Edgar H. Still	3.2	7-2-03	3.2	Ben. Use Proof 8-15-07		One Mile from mouth	
3221	Fannie Wheat	3.0	9-11-07	3.0	1.28	9-11-07	Sec. 23, T. 1 S.R. 45 E.	
3615	S. A. Nickerson	1.6	4-24-08	1.6	.4	4-24-08	Sec. 13, T. 11 S.R. 46 E.	
13177	Orville Royson	3.2	11-21-17	3.0	1.1	6-18-17	Sec. 23, T. 1 N.R. 45 E.	
16377	Emery Nickerson	1.0	9-5-25	1.0	.1	6-12-26	Sec. 23, T. 1 N.R. 45 E.	

PINE CREEK

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Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. Issued Amount	License issued Amount	Priority	Point of Diversion	Remarks
2127	A. W. Harrop	6.4	3-31-06	6.4	2.94	5-31-06	One-half mile above mouth	
6854	Walter R. Rybee	1.44	11-17-10	1.44	.4	11-17-10	Sec. 14, T.3 N.R.41 E.	
9150	A. Flemming	2.6	2-3-13	2.5	.6	3-3-13	Sec. 5, T. 2 N.R.44 E.	

INDIAN CREEK

408	John & Mary A. Henry	9.6	10-24-03	.9	8.112	10-24-03	Sec. 17, T. 2 S.R.46 E.	
884	Julius H. Hansen	6.6	9-23-04	6.6	6.6	9-23-04	Sec. 18, T. 2 S.R.46 E.	
15129	Richard T. Smith	.5	8-14-17	.5	.5	8-4-17	Sec. 16, T. 2 S.R.46 E.	
13582	Geo. W. Marks	1.6	5-31-18	.6	Ben.Use due 6-24-21		Sec. 18, T. 2 S.R.46 E.	
13836	Joseph H. Smith	2.0	12-11-18	2.	Ben.Use due 6-21-23		Sec. 11, T. 1 N.R.41 E.	

Palisade Creek

2040	Jennett A. Caldwell	1.6	4-20-06	1.6	1.6	4-20-06	Sec. 25, T. 1 N.R.44 E.	
3290	Celia Jacobson	2.4	12-2-07	2.4	.7	12-2-07	Sec. 25, T. 1 N.R.44 E.	
3790	Thomas Weeks	3.2	5-15-08	3.2	3.2	5-15-08	Sec. 25, T. 1 N.R.44 E.	
10130	Earl V. & B. H. Ford	1.3	4-17-14	1.3	.8	10-23-14	Sec. 26, T. 1 N.R.44 E.	
R-411	Julian H. DeGoster, et al	2000 A.F. 225 S.F.	7-2-27	Proof of Comp. of Works 7-20-32			No tie	For Power

RAINY CREEK

12947	Wm. A. Landerbaugh	.5	5-7-17	.5	.5	5-7-17	Sec. 34, T. 2 N.R.44 E.	
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ABSTRACT OF PERMITS ON NORTH FORK OF SNAKE RIVER AND TRIBUTARIES

North Fork of Snake River

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Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. Issued Amount	License issued Amount	Priority	Point of Diversion	Remarks
935	Louise Cartier	28.9	10-3-04	28.9	25.7	10-3-04	Sec.30, T.6N., R.39 E.	
1724	Cecil F. Hopf	1.5	12-11-05	1.5	.6	12-11-05	Sec.29, T.15N., R.45 E.	
9144	Lyman A. Taylor	3.2	1-15-13	3.2	3.2	1-15-13		
9242	Hels N. Holm	1000	1-16-13	1000	1000	1-16-13	Sec.28, T.9N., R.42 E.	For Power
10009	E. Silverstone	700	12-20-13	700	700	12-20-13	Sec. 1, T.7N., R.40 E.	
11921	H. N. Holm	500	11-1-15	500	500	11-1-15	Sec.28, T.9N., R.42 E.	
11677	Frank A. Reid	1000	11-1-15				Sec.33, T.8N., R.41 E.	Proof of Comp.Works-Indef. extended
14671	Fred P. Heitman	2	6-7-19	2	Ben.UseProof 7-5-21		Sec. 7, T.14N.R.43 E.	
R-260	R. W. Katerndahl	500,000A.F.	10-22-20	Proof of Comp. of Works due 1-28-28			Sec.14, T.11N.R.42 E.	
15058	R. W. Katerndahl	2000	10-22-20	Proof of Comp. of Works due 1-28-28			Sec.14, T.11N.R.42 E.	
15044	Ghas. C. Wilson	2.4	12-28-20	2.4	Ben. Use Proof 7-8-23		Sec.15, T. 4N.R.37 E.	
16006	Frank A. Ried	1000	3-7-24	1000	1000	3-7-24	Sec.28, T. 9N.R.42 E.	For Power

Henrys's Lake

R-75	North Fork Res. Co.	95,000A.F.	5-15-17	79,350	(See Permit 13122)		Sec. 27, T.15N.R.43 E.	
13122	North Fork Res. Co.	1,000	5-15-17	Proof of Comp. of Works pending				

Henrys Lake Outlet Creek

9671	Wm. Kooch	6.	9-15-13	6.	1.5	9-15-13	Sec.35, T.15N.R.43 E.	
11688	Fannie E. Kooch	1.6	9-30-15	1.6	1.1	9-30-15	Sec. 1, T.14N.R.32 E.	
12034	John F. Sack	3.2	3-16-16	3.2	2.2	5-14-16	Sec.35, T.15N.R.43 E.	
14629	John F. Sack	3.2	3-26-20	3.2	Ben. Use Proof due 3-3-23		Sec.36, T.15N.R.43 E.	

Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. Issued Amount	License issued Amount	Priority	Point of Diversion	Remarks
6312	Thos. J. Materson	6.4	6-27-10	6.4	1.9	11-11-11	Sec. 24, T. 15N., R. 42 E.	
<u>Rock Creek (Tributary Henrys Lake)</u>								
6572	Roy Robais	3.2	8-29-10	3.2	.9	8-29-10	Sec. 24, T. 15N., R. 42 E.	
13959	Fannie A. Nixon	2.	4-4-19	2.	2.	4-4-19	Sec. 25, T. 15N., R. 42 E.	
R-378	F. A. Nixon	200 A. F.	9-21-25	Proof of Comp. of Works 9-30-30			Sec. 25, T. 15N., R. 42 E.	For Power
<u>Targhee Creek</u>								
2350	Jos. Shewwood	5.	10-21-06	5.	5.	10-24-06	Sec. 36, T. 16N., R. 43 E.	
2688	L. M. Earl	2.4	4-16-07	2.4	1.6	4-16-07	Sec. 2, T. 15N., R. 43 E.	
<u>Sheridan Creek</u>								
1609	Easter A. Road	3.2	9-28-05	3.2	3.2	9-28-05	Sec. 13, T. 15N., R. 40 E.	
1726	Agnes Elliott	4.8	11-6-05	4.8	4.8	11-6-05	Sec. 13, T. 15N., R. 40 E.	
2032	John A. Swanstrum	6.4	5-23-06	6.4	2.8	5-23-06	Sec. 24, T. 15N., R. 40 E.	
7723	Jas. G. Bishop	3.2	9-2-11	3.2	3.0	9-2-11	Sec. 34, T. 15N., R. 41 E.	
8990	F. J. Hagenbarth	80	9-24-12	80	75.2	9-24-12	Sec. 12, T. 15N., R. 40 E.	
12090	Henry Ritchy	4.4	4-19-16	4.4	Ben. Use Proof due 11-6-16		Sec. 6, T. 15N., R. 42 E.	
<u>Warm River</u>								
6915	Geo. A. Hibbard, et al	9.6	11-14-10	3.0	1.0	12-3-11	Sec. 3, T. 9 N., R. 43 E.	
11428	Wm. R. Hooper	3.16	4-28-15	3.16	1.5	4-28-15	Sec. 10, T. 12 N., R. 44 E.	
<u>Fall River</u>								
614	O. H. Cusick	3.2	6-3-04	3.2	Ben. Use Proof due 6-7-10		Sec. 22, T. 8 N., R. 42 E.	
921	G. W. Orton	6.0	11-3-04	6.0	4.12	11-3-04	Sec. 36, T. 9 N., R. 44 E.	

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Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. issued Amount	License issued Amount	Priority	Point of Diversion	Remarks
126	Enterprise Canal Co.	160	6-12-03	160	140.2	6-12-03	Sec. 22, T. 8 N., R. 42 E.	
14328	Fremont Madison Res. Co.	1000	12-30-19				Marysville Canal	Indef. Ext. of time for comp. of works
<u>Commant Creek</u>								
948	Carrie A. Serron	1.4	11-18-04	1.4	.2	11-18-04	Sec. 15, T. 8 N., R. 43 E.	
4357	Commant Cr. Canal Co.	25	2-15-09	25	25	2-15-09	Sec. 28, T. 8 N., R. 44 E.	
5803	Commant Cr. Canal Co.	25	2-25-10	25	25	2-25-10	Sec. 28, T. 8 N., R. 44 E.	
<u>Spring Creek</u>								
2038	Otto Hargens	.5	5-31-06	.5	.5	5-31-06	Sec. 15, T. 9 N., R. 44 E.	
15832	L. A. Graves	2.4	7-14-23	Proof of Comp. of Works due 7-17-28			Sec. 24, T. 9 N., R. 42 E.	
6915	Geo. A. Hibbard, et al	9.6	11-14-10	3.0	Ben. Use Proof due 12-10-14		Sec. 3, T. 9 N., R. 43 E.	
<u>Teton River</u>								
241	John S. Beasley	3.2	10-5-03	3.2	Ben. Use Proof due 11-7-04		Sec. 36, T. 5 N., R. 45 E.	
1832	Frank Fairbanks	1.5	1-8-08	1.5	Ben. Use Proof due 11-24-06		Sec. 25, T. 5 N., R. 45 E.	
2629	Mary R. Fairbanks, et al	32	1-7-07	25.6	22	1-17-07	Sec. 17, T. 5 N., R. 46 E.	
2657	F. P. Fairbanks	1.6	3-14-07	1.6	.24	3-14-07	Sec. 25, T. 5 N., R. 45 E.	
3452	John M. Davidson, et al	8.5	2-26-08	8.5	6.88	2-26-08	Sec. 8, T. 5 N., R. 46 E.	
4965	Peaceful Valley Imp. Co.	20	7-9-09	20	20	7-9-09	Sec. 20, T. 7 N., R. 42 E.	
5266	Cornielson M. Fairbanks	.8	10-4-09	.8	.4	10-4-09	Sec. 30, T. 5 N., R. 46 E.	
1491	Peaceful Valley Imp. Co.	500	7-20-05	400	Ben. Use Proof due 8-12-13		Sec. 20, T. 7 N., R. 42 E.	For Power
16612	H. F. Samuels	400	10-15-26	Proof of Comp. of Works due 12-7-51			Sec. 3, T. 6 N., R. 44 E.	
R-399	H. F. Samuels	100,000 A.F.	10-15-26	"	"	"	12-7-51	Sec. 3, T. 6 N., R. 44 E.

Permit No.	Appropriator	Amount Sec. Ft.	Filed	Cert. issued Amount	License issued Amount	Priority	Point of Diversion	Remarks
B-400	H. F. Samuels	200,000 A. F.	12-3-26	Proof of Compl. of Works due 12-7-31			Sec. 15, T. 6 N., R. 44 E.	
16645	J. N. Jeppsen	300	1-2-27	" " "	" " "	2-4-32	Sec. 29, T. 7 N., R. 40 E.	
<u>North Fork of Teton River</u>								
4015	G. C. Ward	32.6	9-3-08	32.6	Ben. Use Proof due 9-26-10		Sec. 6, T. 6 N., R. 40 E.	
<u>South Fork of Teton River</u>								
1824	John F. See	10	1-11-06	10	Ben. Use Proof due 2-24-10		Sec. 22, T. 6 N., R. 39 E.	
<u>Pine Creek (Tributary of Teton River)</u>								
7257	Joseph Kms, et al	4.5	3-27-11	4.5	3.6	3-27-11	Sec. 29, T. 4 N., R. 44 E.	
<u>CANYON CREEK (Tributary of Teton River)</u>								
13076	John E. Pincock	100	6-6-17	100	100	6-6-17	Sec. 1, T. 5 N., R. 42 E.	For Power
<u>Moody Creek (Tributary to Teton River)</u>								
91	Jas. H. Webster	6	5-24-03	6	Ben. Use Proof due 7-14-09		Sec. 1, T. 5 N., R. 41 E.	
10841	O. S. L. R. R. Co.	.15	9-16-14	.15	.15	9-16-14	Sec. 20, T. 6 N., R. 41 E.	

Tributary to

Source

Snake River

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Water District

County

Subdivision

Section

Twp.

Range

APPL. NO.	PERMIT NO.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COM- PLETED	PROOF OF COMP. MADE	CERT. ISSUED AMOUNT	PROOF OF B. U. DUE	PROOF OF B. U. MADE	PRIORITY		DIVERSION				
												AMOUNT	SUBDIV	SEC.	TWP.	RGE.		
	66	D.W.Ross for Sect. of Int.	5,600	3-26-03					5600			3-26-03	1726	Head of Minidoka Rapids				
	622	Wesley Gibson	1.3	5-7-04					1.3			5-7-04	1.3	NE NW	20	5 N	38E	
	683	James J. Sorensen	206	6-18-04	Proof of	Completion of Works			118.65						21	8 S	30 E	
Power	445	Utah Power & Light Co.(Assignee)			made for	115 (Power)	3.65 irri.					1-29-05						
	445	Idaho Power & Trans. Co.	1,500	1-29-04					1500			1500		Lot 4	25	2 N	37 E	
	1603	Twin Falls L. & W. Co.	2,250	10-7-05					2250	10-14-16					28	10S	21E	
	2317	Wm. A. Bradbury	2	9-24-06					2			9-24-06	.8	NE NE	2	3 N	37E	
	1593	Chas. D. Smith	1.5	9-30-05					1.5			9-30-06	1.12	NW NW	36	4N	37E	
Power	3304	Idaho Falls City										12-3-07						
	3304	Thomas W. Lee,assigned to/	3000	12-3-07					3000			600			18	2N	37E	
	1767	Martin Canal Co.	30	11-12-05					30			12-12-05	17.54	NENE	35	4N	37E	
												8-12-08						
												3.47						
												7-17-15						
												7.88						
Power	4168	Idaho Power Company, (Assignee)										9-3-08						
	4168	American Falls Power Co.	6000	9-3-08					6000			1400		SW SE	30	7S	31E	
	4489	Twin Falls N.S.L. & W. Co.	500	1-2-09					500									
	4416	Julian W. Andrews	20	2-20-09					20			2-20-09	15.6	SW NE	6	4 N	38E	
	5799	U.S. of America-U.S.R.S.	2500	12-14-09					2500			12-28-09	2500	Minidoka Dam				
Power	4126	W. H. Sanders-U. S. R. S.	3000	8-6-08	Time for Proof of Comp. Works indefinitely extended				3000	(Bond Released)		6-16-11	888	Lot 3	1	9 S	25-1	
	9205	A. Z. WATSON	4000	12-20-12											21	8S	30E	
	9825	Anna Wilson	.8	11-20-13					.8			11-20-13	.8		13	3N	37E	
	9514	John Shull	6.6						6.6			6-31-15	3.5		2	3N	37E	
Power	11600	Utah Power & Light Co.	200	9-7-15					200			9-7-15	100		34	2N	37E	
	11888	Twin Falls Canal Co.(Assignee)										12-22-15						
		Geo. H. Harlan	600	12-22-15					600			600		Milner Dam				
	7164	W. A. Bradbury	6.0	3-3-11					6			3-3-11	4.56	NE NW	2	3N	37E	

Priority

APPL. NO.	PERMIT NO.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COM- PLETED	PROOF OF COMP. MADE	CERT. ISSUED AMOUNT	PROOF OF B. U. DUE	PROOF OF B. U. MADE	TWO-THIRDS AMOUNT	DIVERSION			
													SUBDIV	SEC.	TWP.	RGE.
	12759	Milner Low Lift Irrigation District	300	11-14-16					300	1-20-19				29	10S	21E
	12881	C. T. Edwards	1	3-16-17					1.0	4-2-19			NENE	25	2 N	37E
	13674	Edwin and Mary Alice Damman	10	7-20-18					10	7-26-28			SENE	19	10S	22E
	14067	Idaho Power Company	4600	3-8-19					4600			3-8-19 4600		30	7 S	31E
	14021	H. W. Coppock	6	5-8-19					6	11-12-19			Lot 6	15	4 N	37E
	14408	Capital Hill Ditch Co.	20	11-15-19					20	12-15-27			NE NE	35	4 N	37E
	R-191	J. W. Hays	3500	12-22-19					3500	12-31-28			NWSE	34	5 N	37E
	14483	Market Lake Res. Co. <i>assigns</i> J. W. Hays transferred to	314	12-22-19					314			12-22-19 50		35	5 N	37E
	14761	Presto Bench Irrig. Dist.	180	3-12-20	Indefinite extension of time for complying with terms granted								NW	31	1 N	37 E
	15001	North Side Canal Co. <i>assigns</i> R. E. Shepherd trans. to	1500	8-6-20			11-8-27			11-8-33			SE NE	29	10 S	21E
Power	14881	Idaho Power Company	1000	8-9-20					1000			8-9-20 1000	Lot 9	31	9 S	18E
	15060	Murtaugh Irrig. Dist. <i>assigns</i> James W. Porter trans. to	600	11-28-20			5-16-28			5-16-34			SE SE	29	10S	21E
	15063	Farm Credit Corporation <i>assigns</i> J. P. Edwards trans. to	12	1-4-21					12	2-28-30			NW SE	15	4 N	37 E
	15076	Bruce C. Montgomery	2	2-11-21					3	2-28-26			SW SW	9	5 N	38E
Power	R-273	Idaho Power Company	300,000 Acre Ft.	3-17-21			6-21-31			6-21-37				30	7 S	31E
Power	15201	Idaho Power Company	1200	3-21-21			6-21-31			6-21-37				30	7 S	31E
	R-269	U. S. R. S.	3,000,000 Acre Ft.	3-30-21			3-18-31			3-18-37			SWSE	30	7 S	31E
	15134	U. S. R. S.	8,000	3-30-21			3-18-31			3-18-37			SW SE	30	7 S	31E
Power	15237	U. S. R. S.	9,000	4-21-21			7-29-31						SWSE	30	7 S	31E
Power	15765	R. E. Shepherd	2500	1-9-23			2-28-28						NW NE	13	10S	20E
	16178	James B. Hays	3000	9-15-24			9-6-30						Lot 10	4	9 S	15E
Power	16190	Utah Power & Light Co.	1500	11-14-24			1-30-30						NW	15	1 N	37E

Water District _____ County _____

Source _____ Page 3

Subdivision_____Section_____Twp._____Range_____

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APPL. NO.	PERMIT NO.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COMPLETED	PROOF OF COMP. MADE	CERT. ISSUED AMOUNT	PROOF OF B. U. DUE	PROOF OF B. U. MADE	1-12-1905 AMOUNT	DIVERSION			
													SUBDIV	SEC.	TWP.	RGE.
		<u>INDIAN CREEK</u>														
	408	John & Mary A. Henry	9.6	10-24-03					9.			10-24-03 8.112	NE NW	17	2S	46E
	884	Julius H. Hansen	6.6	9-23-04					6.6			9-23-04 6.6	NW SE	18	2S	46E
	13129	Richard T. Smith	.5	8-14-17					.5			8-4-17 .5	NE NE	16	2S	46E
	13582	Geo. W. Marks	1.6	5-31-18					.6	6-24-21			NE SE	18	2S	46E
	13836	Joseph H. Smith	2.	12-11-18					2.	12-21-23			NW SW	11	1N	41E
		<u>PALISADE CREEK</u>														
	2040	Jennett A. Caldwell	1.6	4-20-06					1.6			4-20-06 1.6	SE SW	25	1N	44E
	3290	Celia Jacobson	2.4	12-2-07					2.4			12-2-07 .7	SW SW	25	1N	44E
	3790	Thomas Weeks	3.2	5-15-08					3.2			5-15-08 3.2	NE SW	25	1N	44E
	10130	Earl V. & B. H. Ford	1.3	4-17-14					1.3			10-23-14 .8	SW	26	1N	44E
Power	R-411	Julian M. DeCoster, et al	2000A.F. 225 S.F.	7-2-27			7-20-32			7-20-38			No tie			
		<u>RAINEY CREEK</u>														
	12947	Wm. A. Landerbaugh	.5	5-7-17					.5			5-7-17 .5	SW NW	34	2N	44E
		<u>WILLOW CREEK</u>														
	6636	Rebecca A. Williams	4.0	5-8-09					4.0			8-9-09 4.0	SW SW	8	2S	45E
		<u>BLACKFOOT RIVER</u>														
Page 3	2428	Craig Watts	1.6	12-1-06					1.6	12-1-10			SE SE	27	4S	39E
	2530	Kate Hutchinson	1.6	1-23-07					1.6			1-23-07 .37	Near mouth of Deadman Creek			
	3014	Josephine McDaniel	2.2	8-2-07					3.2			8-2-07 .41	"	"	"	"
	3117	U. S. Indian Service	280	9-3-07					280	9-14-22			Several points			

APPL. No.	PERMIT No.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COM- PLETED	PROOF OF COMP. MADE	CERT. ISSUED AMOUNT	PROOF OF B. U. DUE	PROOF OF B. U. MADE	Priority	DIVERSION				
												Ext. Issued	AMOUNT	SUBDIV	SEC.	TWP.	RGE.
		(Blackfoot River continued)															
	6910	Jas. W. Ezell	.8	11-12-10					.8		.5 -	11-12-10					
											.3 -	1-19-23	SW SW	8	3S	35E	
	6875	Craig Watts	3.2	11-21-10					3.2			11-21-10					
												3.2	SE	27	4S	39E	
	11198	John J. Stocking	1.2	4-28-15					3.2			8-16-15					
												.45	NE SE	8	7S	44E	
	14762	Presto Bench Irrig. Dist.	180	5-12-20			Ext. Indef.							SW SE	11	3S	38E
	14897	Empire Canal Co.	320	5-17-20			9-16-27							Several points			
	R-242	Empire Canal Co.	60,000 (A.F.)	5-31-20			9-16-27							SW NW	13	7S	42E
	14924	Empire Canal Co.	240	5-31-20			9-16-27							"	"	"	"
	15871	Empire Irrig. Dist.	500	3-25-23			10-23-28							SE SE	19	4S	39E
							</										

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Source _____ Page _____

Subdivision _____ Section _____ Twp. _____ Range _____

APPL. NO.	PERMIT NO.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COM- PLETED	PROOF OF COMP. MADE	CERT. ISSUED	PROOF OF B. U. DUE	PROOF OF B. U. MADE	Priority	DIVERSION			
									AMOUNT			LIC. ISSUED	AMOUNT	SUBDIV	SEC.	TWP.
		NORTH FORK OF SNAKE RIVER														
	935	Louise Cartier	28.9	10-3-04					28.9			10-3-04		30	6N	39E
	1724	Cecil F. Hopf	1.5	12-11-05					1.5			25.7				
	9144	Lyman A. Taylor	3.2	1-15-13					3.2			12-11-05		29	13N	43E
Power	9242	Nels N. Holm	1000	1-16-13					1000			.6		28	9N	42E
	10009	E. Silverstone	700	12-20-13					700			1-15-13				
	11921	N. N. Holm	500	11-1-15					500			3.2				
	11877	Frank A. Reid	1000	11-1-15			Extended indef.			Extended indef.				33	8N	41E
	14071	Fred P. Heitman	2	6-7-19					2	7-5-21				7	14N	43E
	R-260	R. W. Katerndahl	500,000 A. F.	10-22-20			1-28-28			1-28-34				14	11N	42E
	15058	R. W. Katerndahl	2000	10-22-20			1-28-28			1-28-34				14	11N	42E
	15044	Chas. C. Wilson	2.4	12-28-20					2.4	7-8-23				15	4N	37E
Power	16006	Frank A. Ried(Grantee)	1000	3-7-24					1000			3-7-24		28	9N	42E
												1000				
		HENRYS LAKE														
	R-75	North Fork Reservoir Co.	95,000 A. F.	5-15-17					79350	(See Permit 13122				27	15N	43E
	13122	North Fork Reservoir Co.	1,000	5-15-17			Proof of Com. of Works	Pending								
		HENRYS LAKE OUTLET CREEK														
	9671	Wm. Kooch	6.	9-15-13					6.			9-15-13		35	15N	43E
	11688	Fannie B. Kooch	1.6	9-30-15					1.6			1.5		1	14N	43E
	12034	John F. Sack	3.2	3-16-16					3.2			9-30-15				
	14629	John F. Sack	3.2	3-26-20					3.2	3-3-23		1.1		35	15N	43E
												5-14-16				
												2.2				
														36	15N	43E

Priority

APPL. NO.	PERMIT NO.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COM- PLETED	PROOF OF COMP. MADE	CERT. ISSUED AMOUNT	PROOF OF B. U. DUE	PROOF OF B. U. MADE	LIC. ISSUED AMOUNT	DIVERSION			
													SUBDIV	SEC.	TWP.	RGE.
		HOPE AND ROCK CREEKS														
	6312	Thos. J. Materson	6.4	6-27-10					6.4			11-11-11 1.9		24	15N	42E
		ROCK CREEK (Tributary Henrys Lake)														
	6572	Roy Robuis	3.2	8-29-10					3.2			8-29-10 .9		24	15N	42E
	13959	Fannie A. Nixon	2.	4-4-19					2.			4-4-19 2		25	15N	42E
Power	R-378	F. A. Nixon	200 A. F.	9-21-25			9-30-30							25	15N	42E
		TARGHEE CREEK (Tributary Henrys Lake)														
	2350	Jos. Sherwood	5.	10-21-06					5.			10-24-06 5.		36	16N	43E
	2688	L. M. Earl	2.4	4-16-07					2.4			4-16-07 1.6		2	15N	43E
		SHERIDAN CREEK														
	1609	Easther A. Road	3.2	9-28-05					3.2			9-28-05 3.2		13	13N	40E
	1726	Agnes Elliott	4.8	11-6-05					4.8			11-6-05 4.8		13	"	"
	2032	John A. Swanstrum	6.4	5-23-06					6.4			5-23-06 2.8		24	"	"
	7723	Jas. G. Bishop	3.2	9-2-11					3.2			9-2-11 3.		34	13N	41E
	8990	F. J. Hagenbarth	80	9-24-12					80			9-24-12 75.2		12	13N	40E
	12090	Henry Ritchy	4.4	4-19-16					4.4	11-6-16				6	12N	42E
		WARM RIVER														
	6915	Geo. A. Hibbard, et al	9.6	11-14-10					3			12-3-11 1		3	9N	43E
	11428	Wm. B. Hopper	3.16	4-28-15					3.16			4-28-15 1.5		10	12N	44E
		FALL RIVER														
	614	O. H. Cusick	3.2	6-3-04					3.2	6-7-10				22	8N	42E
	921	C. W. Orton	6.	11-3-04					6.			11-3-04 4.12		36	9N	44E

Source _____ Page _____

Subdivision _____ Section _____ Twp. _____ Range _____

the issues

APPL. NO.	PERMIT NO.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COM- PLETED	PROOF OF COMP. MADE	CERT. ISSUED AMOUNT	PROOF OF B. U. DUE	PROOF OF B. U. MADE	Priority	DIVERSION			
												AMOUNT	SUBDIV	SEC.	TWP.	RGE.
		<u>FALL RIVER (continued)</u>														
	126	Enterprise Canal Co.	160	6-12-03					160			6-12-03 140.2		22	8N	42E
	14328	Fremont Madison Res. Co.	1000	12-30-19			Extended indefinitely						Marysville Canal			
		<u>CONNANT CREEK</u>														
	948	Carrie A. Sermon	1.4	11-18-04					1.4			11-18-04 .2		15	8N	43E
	4357	Connant Creek Canal Co.	25	2-15-09					25			2-15-09 25		28	8N	44E
	5803	Connant Creek Canal Co.	25	2-25-10					25			2-25-10 25		28	8N	44E
		<u>SPRING CREEK</u>														
	2038	Otto Hargens	.5	5-31-06					.5			5-31-06 .5		15	9N	44E
	15832	L. A. Graves	2.4	7-14-23			7-17-28							24	9N	42E
	6915	Geo. A. Hibbard, et al	9.6	11-14-10					3	12-10-14				3	9N	43E
		<u>TETON RIVER</u>														
	241	John S. Beasley	3.2	10-5-03					3.2	11-7-04				36	5N	45E
	1832	Frank Fairbanks	1.5	1-8-08					1.5	11-24-06				25	5N	45E
	2629	Mary R. Fairbanks, et al	32.	1-17-07					25.6			1-17-07 22		17	5N	46E
	2657	F. P. Fairbanks	1.6	3-14-07					1.6			3-14-07 .24		25	5N	45E
	3452	John M. Davidson, et al	8.5	2-26-08					8.5			2-26-08 6.88		8	5N	46E
	4965	Peaceful Valley Imp. Co.	20	7-9-09					20			7-9-09 20		20	7N	42E
	5266	Cornielson M. Fairbanks	.8	10-4-09					.8			10-4-09 .4		30	5N	46E
Power	1491	Peaceful Valley Imp. Co.	500	7-20-05					400	8-12-13				20	7N	42E
	16612	H.F. Samuels	400	10-15-26			12-7-31							3	6N	44E
	R-399	H. F. Samuels	100,000 A.F.	10-15-26			12-7-31							3	6N	44E

APPL. No.	PERMIT No.	APPROPRIATOR	AMOUNT SEC. OR ACRE FT.	FILED	WORK START OR BOND DUE BOND FILED	ONE-FIFTH WORK TO BE DONE	WORK TO BE COM- PLETED	PROOF OF COMP. MADE	CERT. ISSUED AMOUNT	PROOF OF B. U. DUE	PROOF OF B. U. MADE	Priority	DIVERSION				
												1st-1909	AMOUNT	SUBDIV	SEC.	TWP.	RGE
	TETON RIVER (Continued)																
	R-400	H. F. Samuels	200,000 A.F.	12-3-26			12-7-31								15	6N	44E
	16645	J. N. Jeppsen	300	1-2-27			2-4-32								29	7N	40E
	NORTH FORK OF TETON RIVER																
	4015	C. G. Ward	32.8	9-3-08					32.8	9-26-10					6	6N	40E
	SOUTH FORK OF TETON RIVER																
	1824	John F. See	10	1-11-06					10	2-24-10					22	6N	39E
	PINE CREEK (Tributary of Teton River)																
	7257	Joseph Kunz, et al	4.5	3-27-11					4.5			3-27-11 3.6			29	4N	44E
	CANYON CREEK (Tributary of Teton River)																
Power	13076	John E. Pincock	100	6-6-17					100			6-6-17 100			1	5N	42E
	MOODY CREEK (Tributary to Teton River)																
	91	Jas. H. Webster	6	5-24-03					6	7-14-09					1	5N	41E
	10841	O. S. L. R. R. Co.	.15	9-16-14					.15			9-16-14 .15			20	6N	41E

*In the District Court of the Eleventh Judicial District
of the State of Idaho, in and for Twin Falls County.*

TWIN FALLS CANAL COMPANY,

a corporation,

PLAINTIFF

vs.

SUMMONS

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
District No. 36,

Defendants

THE STATE OF IDAHO sends greetings to... 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,
the above named defendants.

You are hereby notified that a complaint has been filed against you in the District Court of the
Eleventh Judicial District of the State of Idaho, in and for Twin Falls County by the above named
plaintiff, and you are hereby directed to appear and answer said complaint within twenty days of the
service of this summons if served within said Judicial District, and within forty days if served else-
where; and you are further notified that unless you so appear and answer said complaint within the
time herein specified, the plaintiff will take judgment against you as prayed, in said complaint.

Witness my hand and the seal of the said District Court, this

28th day of April 1927

(SEAL)

(Signed) Harry C. Parsons
Clerk.

Deputy.

JAMES R. BOTHWELL Attorney for Plaintiff.

Residing at Twin Falls, Idaho.

SCANNED
NOV 01 2011

No.....

In the District Court
of the Eleventh Judicial District of the
State of Idaho, in and for
Twin Falls County

Plaintiff.

vs.

Defendant.

S U M M O N S

Filed, 192...

Clerk:

By

Deputy:

Attorney for.....

Whereas the said and the seal of the said District Court, this
time herein specified, the plaintiff will take judgment against you as prayed in said complaint
and you are hereby notified that unless you so appear and answer said complaint within the
service of this summons if served within said judicial District and within forty days in writing of the
plaintiff and you are hereby directed to appear and answer said complaint within forty days of the
Eleventh Judicial District of the State of Idaho, in and for Twin Falls County, by the above named
You are hereby notified that a complaint has been filed against you in the District Court of the
Eleventh Judicial District of the State of Idaho, in and for Twin Falls County, by the above named

Clerk:

Deputy:

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

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.

C O M P L A I N T

Plaintiff complains and alleges:

-I-

That the plaintiff now is and at all the times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the state of Idaho with its principal place of business at Twin Falls, Twin Falls County, State of Idaho, wherein it is engaged in the business of owning, maintaining and operating a system of dams, reservoirs, diversion works, canals, laterals and ditches on the Snake River in the state of Idaho, for the irrigation of lands of its shareholders situated in the county of Twin Falls, in said state, more commonly known as the Twin Falls South Side tract, and that it was organized as and now is a Carey Act Operating Company.

-II-

That at all times herein mentioned the defendant, George W. Carter was and now is the duly appointed, qualified and acting Commissioner of Reclamation of the state of Idaho pursuant to the laws of the state of Idaho.

-III-

That at all times herein mentioned the defendant, G. Clyde Baldwin, was, and now is, the duly appointed, qualified and acting Deputy Commissioner of Reclamation of the State of Idaho pursuant to the laws of the state of Idaho, and as such has general jurisdiction over the distribution of the waters of Snake River in said District No. 36, and particularly the waters of Snake River in said District pursuant to the laws of the state of Idaho.

-IV-

That at all times herein mentioned the defendant, G. Clyde Baldwin, was, and now is, the duly elected, qualified and acting Watermaster of Water District No. 36 of the state of Idaho, and as such has charge of the distribution of the waters of Snake River pursuant to the decrees adjudicating the rights of water users in said district and from said stream.

-V-

That an action was instituted in the District Court of the Fourth (now Eleventh) Judicial District of the State of Idaho, in and for the County of Twin Falls, by the plaintiff herein, entitled, "Twin Falls Canal Company, a corporation, plaintiff, vs. Charles N. Foster, et al., defendants," to adjudicate the priorities of the waters of Snake River as to all water users between American Falls, Idaho, on Snake River, and Milner Dam on Snake River, including the lands served from said Milner Dam; that said cause came on for trial and decrees were entered in said action and judgment duly given and made, copies of said decrees are hereunto annexed, marked Exhibits "A" and "B" and made a part of this complaint; that no appeal was taken from said decrees and the same have become and now are final and binding upon all parties and their successors in interest to said action.

-VI-

That the adjudication of the rights of the parties in said cause, as hereinabove referred to, included storage rights in Jackson Lake Reservoir for certain of the lands between American Falls, Idaho, and Milner Dam, and the lands served by diversions at Milner Dam, namely: storage rights for lands under the Minidoka Reclamation Project, the North Side Canal Company's Project and the Twin Falls Canal Company's Project, as more fully appears by the decrees hereunto annexed, marked Exhibits "A" and "B" and made a part of this complaint.

-VII-

That by the terms and provisions of said decrees the plaintiff herein, Twin Falls Canal Company, was awarded the use of three thousand (3000) second feet of the waters of the natural flow Snake River, with priority dated October 11, 1900, to be diverted at Milner Dam on the South Side of Snake River through the Twin Falls South Side canal, for use upon the lands lying in Twin Falls County, as described in said decrees.

-VIII-

That pursuant to the provisions of said decrees, and since the date of the recordation thereof, it has been, and now is, the duty of the defendants to deliver to plaintiff at Milner Dam, three thousand (3000) second feet of the waters of natural flow of Snake River during the irrigation season of each and every year.

-IX-

That the defendants have failed, refused and neglected to comply with the terms and provisions of said decrees in the delivery of the waters of Snake River to this plaintiff in the following particulars, to-wit: that from a measuring station located at Neeley, in Snake River below American Falls, to Milner Dam, a distance of approximately sixty (60) miles, said defendants have failed, refused and neglected to credit or deliver to the plaintiff herein as natural or direct flow, the increment or inflow to Snake River in said section of the stream; that between said Neeley Station and Milner Dam there has been and will continue to be for the irrigation season of 1927, and subsequent years, a natural increment or inflow to Snake River of approximately from three hundred (300) to five hundred (500) second feet continuous flow during each irrigation season.

-X-

That defendants threaten to and will during the irrigation season of 1927, and subsequent years, unless restrained and enjoined by an order of this court, fail and refuse to deliver to plaintiff herein the increment or inflow to Snake River between said Neeley Station and Milner Dam, which is, and will become a part of the natural flow and public waters of Snake River appropriated by plaintiff herein and the right to the use thereof established by the decrees hereinabove referred to.

-XI-

That by reason of the conduct and acts of the defendants in failing to deliver to the plaintiff the increment or inflow of water between Neeley Station and Milner Dam, plaintiff has, and will, continue to sustain irreparable injury and damage.

-XII-

That plaintiff has no plain, speedy or adequate remedy at law.

WHEREFORE, Plaintiff prays that the defendants be enjoined and restrained from delivering the waters of Snake River contrary to the provisions of the decrees herein referred to, and particularly from refusing to credit and divert to the plaintiff herein the increment or inflow to Snake River between Neeley and Milner Dam as a part of plaintiff's decreed right under the decrees herein described, and for such other and further relief as to the court may seem just and equitable, and for costs of suit.

James R. Bothwell

Attorney for Plaintiff,
Residing at Twin Falls, Idaho.

EXHIBIT "A"

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

TWIN FALLS CANAL COMPANY,

Plaintiff,

-vs-

CHARLES W. FOSTER, ET AL.,

Defendants.

DECREE

This cause having come on to be heard this 13th day of June, 1913, upon the amended complaint of the plaintiff, the Twin Falls Canal Company; the answer and cross-complaint of the Twin Falls North Side Land & Water Company, a Delaware corporation, and the North Side Canal Company, an Idaho corporation; the answer and cross-complaint, Asabel S. Abbott, Josie M. Acuff, and others, claiming rights in the Snake River by reason of the Minidoka Reclamation project of the United States (as filed by C.H. Lingenfelter and S.L. Tipton and B.E. Stoutemyer, attorneys), including the Secretary of the Interior of the United States and P.M. Fogg, Engineer employed by the United States, in charge of the Minidoka dam on the Snake River; the answer and cross-complaint of John Rohling, A. Kennedy, and others (as filed by J.C. Rogers, Attorney), also claiming rights by reason of said Minidoka Reclamation project; the answer and cross-complaint of J.H. Day, Clarence E. Williams, and others (filed by C.O. Longley, Attorney) the answer and cross-complaint in intervention of Charles W. Arthur and the answer of Oscar F. Anderson; Cavanah, Blake and MacLane and A. M. Bowen, appearing as counsel for the plaintiffs, S. H. Hays appearing as counsel for the defendants, The Twin Falls North Side Land & Water Company, and the North Side Canal Company, C. H. Lingenfelter and B.E. Stoutemyer appearing as counsel for the Secretary of Interior and for P. M. Fogg, and other defendants represented by them, J. C. Rogers appearing for the defendants represented by him, C. O. Longley appearing as counsel for the defendants represented by him, John E. Williams appearing for the defendants, C.W. Arthur; and all other defendants herein having been regularly served with Summons and not answering or appearing their default was heretofore regularly entered. Witnesses were sworn and examined and cross-examined and certain documentary evidence was introduced in support of the pleadings herein, from which it appears that the plaintiffs and defendants are entitled to the relief and judgments herein awarded, and certain parties having made and filed their written stipulation consenting and agreeing to the Decree and Judgment as herein made and awarded; Findings of Fact and Conclusions of Law and other written decision of this Court having been waived by the parties; and the Court being fully advised, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I

That each and every one of the tracts of land described in the amended complaint, answers, and cross-complaints in this action as belonging to the several parties or tributary to the canals of certain parties, plaintiff, and defendant herein, are arid in character and require the artificial application of water to render them valuable for agricultural purposes.

II

That the quantity of water required for the successful irrigation and cultivation of said lands, measured at the intake of the respective ditches in second feet shall be the amount of water hereinafter awarded to the several parties.

III

That the quantity of water to which each of the parties to this action is entitled under this decree shall be measured at the point or points of diversion thereof on the Snake River.

IV

That each and every one of the parties hereto, their servants, attorneys, employees, privies, and successors in interest, are hereby enjoined and restrained from any and all interference with or diversion of use of the waters of said Snake River, except as provided in this Decree wherever such interferences diversion, or use would in any manner interfere with the quantity of water awarded by this Decree to any of the other parties to this action.

It is further ORDERED, ADJUDGED and DECREED, that none of the parties hereto or their successors in interest shall have a right to the use of the waters of the Snake River beyond the amount that may be required from time to time for their necessary beneficial use, and that water shall not be wasted under any of said systems; and whenever the beneficial use has ceased such party or parties shall cease to divert and have no right to divert the said waters.

V

It is further ORDERED, ADJUDGED, AND DECREED that the amended complaint, answers, and cross-complaints and all pleadings filed in this cause, be and the same are hereby amended to conform to the terms of this judgment.

VI

It is further ORDERED, ADJUDGED, AND DECREED that the parties to this action, or their predecessors in interest, whose rights are adjudicated by this action, did respectively appropriate and divert from the Snake River the quantities of water hereinafter stated, on the dates as hereinafter respectively stated, such water being estimated and measured in second feet, - and did respectively appropriate such quantities of water for a beneficial use; and that ever since said date of the several appropriations such water has been by said parties and their grantors, the pre-

decessors in interest so diverted and used.

VII

That the following named parties, parties to this action, are entitled to the use of the waters of said Snake River upon the lands herein mentioned and described in the following amounts and from the following dates; to-wit:

WATER RIGHT NO. 1.

That the defendants, CHARLES W. ARTHUR, be and he is hereby awarded the use of the waters of Snake River, diverted from a point on the South Side of the said Snake River at a point near the quarter corner between Sections 2 and 4, Township 9 S., Range 15, E.B.M., through what is commonly known as the Arthur Ditch, for use upon said lands lying in the Sections 5 and 6 and 8 in Twp. 9 S., Range 15 E., and Sec. 1, Twp. 9 E., Range 14, E.B.M., in the following amount, from the following date; 2 second feet from the 1st day of November, 1889; hereby designated as Right No. 1.

WATER RIGHT NO. 2

That the plaintiff, TWIN FALLS CANAL COMPANY, be and it is hereby awarded the use of said waters of the natural flow of said Snake River diverted at the Milner Dam on the South Side of the Snake River, through what is commonly known as the Twin Falls South Side Canal, for use upon the lands lying in Twin Falls County, Idaho, South of the Snake River and East of Little Salmon River, to-wit: Sections 27, 28, 29, 30, 31, 32, 33, 34, in Township Ten (10) South, Range Twenty (21) East of Boise, Meridian; Sections 31, 34, 35, 36, 25, in Township Ten (1) South, Range Twenty (20) East of Boise Meridian; Sections 2, 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, in Township Eleven (11) South, Range Twenty (20) East of Boise Meridian; Sections, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, in Township Ten (10) South, Range Nineteen (19) East of Boise Meridian, Sections 1, 12, 13, in Township Eleven (11) South, Range Nineteen (19) East of Boise Meridian; Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, in Township Ten (10) South, Range Eighteen (18) East of Boise Meridian; Sections Nos. One (1) to Thirty-three (33) inclusive in Township Eleven (11) South, Range Eighteen (18) East of Boise Meridian; Sections Nos. Twenty-nine (29) to Thirty-six (36) inclusive, in Township Nine (9) South, Range Seventeen (17) East of Boise Meridian; all of said Township, in Township Ten (10) South, Range Seventeen (17) East of Boise Meridian; Sections, Nos. One (1) to Fifteen (15) inclusive and Section Twenty-four (24) in Township Eleven (11) South, Range Seventeen (17) East of Boise Meridian; Sections, Sixteen (16) to Thirty-six (36) inclusive in Township Nine (9) South, Range Sixteen (16) East of Boise Meridian; Sections, Nos. One (1) to Thirty-Six (36) inclusive in Township Ten (10) South, Range Sixteen (16) East of Boise Meridian; Sections 1, 2, 12 in Township Eleven (11) South, Range Sixteen (16) East of Boise Meridian; Sections, Nos. Five (5) to Thirty-six (36) inclusive in Township Nine (9) South, Range Fifteen (15) East of Boise Meridian; Sections Nos. One (1) to Thirty Six (36) inclusive in Township Ten (10) South, Range Fifteen (15) East of Boise Meridian; Sections 5, 6, 7, in Township Eleven (11) South, Range Fifteen (15) East of Boise Meridian; Sections Twenty-eight (28) to Thirty-three (33) inclusive, in Township Eight (8) South, Range Fourteen

(14) East of Boise Meridian; Sections, Four (4) to Thirty-six (36) inclusive, and Section One (1) in Township Nine (9) South, Range Fourteen (14) East of Boise Meridian; Sections Nos. One (1) to Thirty-six (36) inclusive, in Township Ten (10) South, Range Fourteen (14) East of Boise Meridian; Sections, One (1) to Twelve (12) inclusive and Seventeen (17) to Twenty (20) inclusive, in Township Eleven (11) South, Range Fourteen (14) East of Boise Meridian; Sections, 1, 12, 13, 14, 23, 24, 25, 36, in Township Nine (9) South, Range thirteen (13) East of Boise Meridian; Sections, 1, 2, 10, 11, 12, 13, 14, 15, 16, 22, 23, 21, 24, 25, 26, 27, 28, 33, 34, 35, 36, in Township Ten (10) South, Range Thirteen (13) East of Boise Meridian; Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 24, in Township Eleven (11) South, Range Thirteen (13) East of Boise Meridian, all of Township Nine (9) South, Range 13, East of Boise Meridian; and all other lands lying North of the Main and Highline canals of the plaintiff's canal system, South of said Snake River and East of said Little Salmon River; in the following amount from the following date; 3000 second feet from October 11, 1900, and hereby designated as Right No. 2A.

That the defendants, the TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, LIMITED, be and are hereby awarded the use of said waters of the natural flow of said Snake River diverted from a point on said Snake River at the Milner Dam on the North Side of the Snake River, through what is commonly known as the North Side Twin Falls canal, for use upon lands lying on the North Side of Snake River and between said river and the following described lines; Commencing at a point where the West line of Section Three (3), Township Ten (10) South, Range Eighteen (18) East, B. M.; running thence North to the Northwest corner of Section Twenty-seven (27) in said township; thence East to the North East corner, Section Twenty-five (25), Township Nine (9) South, Range Twenty (20) E.B.M.; thence South to the Southeast corner of Section Thirty-six (36) in said township and range; thence East to the northeast corner of Section Four (4), Township Ten (10) South, Range Twenty-one (21) East, B.M.; thence South along section lines to the North bank of Snake River, including within the above area all the lands included within List Six, being a Carey Act Segregation List filed in the United States Land Office at Hailey, Idaho, and comprising the lands commonly known as the First Segregation under the canal system of the Twin Falls North Side Land and Water Company; in the following amount from the following date; 400 second feet from October 11, 1900, and hereby designated as Right No. 2B.

RIGHT NO. 3

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES and his successors in office, is hereby awarded the use of the water of the natural flow of the Snake River diverted at Minidoka Dam for use upon the lands lying in the Minidoka Project under the canals of the Minidoka Project in Minidoka and Cassia Counties, Idaho, in the following amount from the following date: 1726 second feet from March 26, 1903, hereby designated as Right No. 3.

RIGHT NO. 4

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of Snake River diverted

at Milner Dam on the North side of Snake River for use on lands lying under the canal of the North Side Canal Company, in the following amount from the following date: 2250 second feet from October 7, 1905, and hereby designated as Right No. 4, said right being evidenced by the permit of the State Engineer of the State of Idaho, No. 1603, and being the right taken out by the Twin Falls Land & Water Company, and thereafter conveyed to the Twin Falls North Side Land & Water Company for the use and benefit of the above named North Side Canal Company, said right including also a storage right for the storage of water of the Snake River as shown by said permit.

RIGHT NO. 5

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY, and the NORTH SIDE CANAL COMPANY are hereby awarded the use of the waters of the natural flow of said Snake River diverted at Milner Dam on the North Side of the Snake River, for use on the lands lying under the canal of said company on the North Side Twin Falls project in the following amount from June 16, 1908; 890 second feet, or so much thereof as together with the rights herein above awarded to the North Side Canal Company shall make a total of 3000 second feet, the capacity of the canal, hereby designated as Right No. 5, same being evidenced by the State Engineer's Water Permit No. 3752, which right has been duly transferred to the Twin Falls North Side Land & Water Company for the use and benefit of the defendant, the North Side Canal Company.

RIGHT NO. 6

That the defendants, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River, diverted at the Minidoka Dam for use on the lands lying under the canals of the Minidoka Project in Minidoka and Cassia Counties, Idaho, in the following amount from August 6, 1908; 1000 second feet, hereby designated as Right No. 6.

RIGHT NO. 7

That the defendants, THE TWIN FALLS NORTH SIDE LAND and Water Company and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of Snake River, to be diverted at the Milner Dam on the North Side of Snake River, for the use on the lands lying under the canal system of said company in the following amount from June 2, 1909; 500 second feet, or so much thereof as together with the prior rights herein above awarded to the North Side Canal Company will make a total of 3000 second feet, the capacity of the canal system of said company, hereby designated as Right No. 7, same being evidenced by the Permit of the State Engineer of Idaho, No. 4489, which was taken up for the use and benefit of the North Side Canal Company.

RIGHT NO. 8

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES and his successors in office, is hereby awarded the use of the waters of the natural flow of Marsh Creek, a tributary of Snake River, in Cassia County, on the lands lying under the canals of the Minidoka Project in Cassia County, Idaho, in the

following amount from the following date: 150 second feet from April 10, 1909, hereby designated as Right No. 8.

RIGHT NO. 9

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River at Minidoka Dam for power, light manufacturing, and pumping purposes in the following amount and from the following date: 2500 second feet from June 15, 1909, and 200 second feet from July 1, 1912, said water to be returned to Snake River below the Minidoka Dam after being used for said power purposes, and hereby designated as Right No. 9.

RIGHT NO. 10

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River for the purpose of filling Lake Walcott Reservoir above Minidoka Dam, said water to be thereafter drawn out and used for irrigation and domestic purposes in the following amount from the following date: 2500 second feet from December 14, 1909, hereby designated as Right No. 10.

RIGHT NO. 11

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of Snake River at Milner Dam, for use on the lands under the canal system of said company, in the following amount and from June 29, 1910; 3000 second feet, or so much thereof as together with the prior rights heretofore above awarded to the North Side Canal Company shall make a total amount awarded to said company of 3000 second feet, the capacity of the canal system of said company, hereby designated as Right No. 11, said right being evidenced by Amended Permit No. 6717 of the State Engineer of the State of Idaho.

STORED WATER

It is further ORDERED, ADJUDGED and DECREED that the stored water of the Snake River now or hereafter stored in Lake Walcott Reservoir and Jackson Lake Reservoir, as at present constructed, is hereby awarded to the SECRETARY OF THE INTERIOR OF THE UNITED STATES and his successors in office, operation under the National Reclamation Act, subject to such contract as he may hereafter make for the delivery thereof; and unless otherwise provided by contract, shall be delivered to the Minidoka Project and canal system.

It is further ORDERED, ADJUDGED and DECREED that the stored waters from the proposed enlargement of Jackson Lake Reservoir shall when available be distributed as provided in the contract between the United States, the Kuhn Irrigation & Canal Company, and the Twin Falls Canal Company for the enlargement of said reservoir.

The rights decreed to the Twin Falls North Side Land & Water Company and the North Side Canal Company, Limited, except as herein otherwise provided, are for use upon lands lying North of Snake River and between said river, the first segregation and the following described lines: Commencing on the North line of the lands included in the first segregation at the Southeast corner of Section Twenty (20) Township Nine (9) South, Range Twenty (20) East, B.M., thence North to the Northeast corner of said section; thence West to the Southwest corner of Section Thirteen (13), Township Nine (9) South, Range Nineteen (19) E.B.M., thence North to the Northeast corner of Section eleven (11), in said Township; thence West to the Southwest corner of Section Three (3) in said Township; thence North to the Northeast corner of Section Thirty-three (33), Township Eight (8) South, Range Nineteen (19) E.B.M., thence West to the Southwest corner of Section Thirty (30) in said township; thence North to the Northwest corner of Section Thirty (30) in said township; thence West to the Southwest corner of Section Twenty-three (23) Township Eight (8) South, Range Eighteen (18) E.B.M.; thence North to the Northeast corner of Section Three (3), Township Seven, South of Range Eighteen (18) E.B.M., thence West to the Northwest corner of Section Three (3) Township Seven (7) South, Range Sixteen (16) E.B.M.; thence North to the Northeast corner of Section Thirty-two (32), Township Six (6) South, of Range Sixteen (16) E.B.M.; thence West to the Northwest corner of Section Thirty-one (31) in said township; thence north to the Northeast corner of Section Twenty-four (24) Township Six (6) South, Range Fifteen (15) E.B.M.; thence West to the Southwest corner of Section Fifteen (15), Township Six (6) South, Range Fourteen (14) E.B.M.; thence West to the Malad River; thence North along the Malad River and Big Wood River to its inter-section with the South line of Section Twenty-two (22) Township Five (5) South, Range Fourteen (14) E.B.M.; thence West to the South west corner of Section Twenty-three (23), Township Five (5) South, Range Twelve (12), E.B.M., thence North to the Northeast corner of Section Fifteen (15) in said Township; thence West to the Southwest corner of Section Seven (7) in said Township; thence North to the Northwest corner of said Section Seven (7); thence West to the Northwest corner of Section Seven (7), Township Five (5) South, Range Eleven (11), E.B.M.; thence South to Snake River.

It is further ORDERED, ADJUDGED and DECREED, until otherwise provided by Statute, the State Engineer of the State of Idaho, or his duly authorized deputy, shall determine what part of the water flowing in Snake River at the Minidoka and Milner Dams is storage waters, and what part is natural flow, as provided by the Idaho Session Laws of 1909, entitled (An Act to provide for the safe-guarding of the Rights of those Conserving Public Waters in Reservoirs and Prohibiting Misappropriation of such Waters by those having no Right to the Use of the Same, and declaring a Misdemeanor", the amount of the natural flow to be determined as such natural flow would be, if unaffected by the diversions or acts of the parties hereto or any or either of them or by the release of stored water, the natural flow to which the Twin Falls Projects are entitled to be measured to them at the Milner Dam.

It is further ORDERED, ADJUDGED and DECREED that the rights and priorities hereinbefore determined and awarded be and the same are each of them quieted and conformed as against

each and every party hereto; and furthermore that each and all claims to the waters of the Snake River by each or all of said parties, adverse to the rights herein awarded and determined, be and they are hereby held for nought and such parties forever barred from asserting same.

Done in Open Court this 20th day of June, 1913.

By the Court.

Edward A. Walters,

District Judge.

Filed June 20, 1913.

COPY

EXHIBIT "B"

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

TWIN FALLS CANAL COMPANY,
a corporation,

Plaintiff,

-vs-

CHARLES N. FOSTER ET AL.,

Defendants.

D E C R E E

This cause came on for hearing this 12th day of September A.D. 1916, upon the petition of Twin Falls North Side Land and Water Company, a corporation, and North Side Canal Company, Limited, a corporation, to amend and correct the judgment and decree in said action, which was entered on the 20th day of June, 1913, in manner and form as set forth in said petition; and notice of the time and place of the hearing of said petition having been duly given to all parties affected by said judgment and decree, or by said proposed amendment and correction, and the consent of said parties to said amendment and correction having been duly filed in this court:

It is, therefore, ORDERED and ADJUDGED and said judgment and decree be amended and corrected, nunc pro tunc, in manner and form, as prayed for in said petition; that for that portion of said judgment and decree, and all thereof, reading as follows:

"THAT the defendants, the TWIN FALLS NORTH SIDE LAND & WATER COMPANY and the NORTH SIDE CANAL COMPANY, LIMITED, be, and are hereby awarded the use of said waters of the natural flow of said Snake River diverted from a point on said Snake River at the Milner Dam on the North Side of the Snake River, through what is commonly known as the North Side Twin Falls Canal, for use upon lands lying on the North side of Snake River and between said river and the following described lines: commencing at a point where the West line of Section Three (3), Township Ten (10) South Range Eighteen (18) East, B.M., running thence North to the Northwest corner of Section Twenty-seven (27) in said township; thence East to the Northeast corner, Section Twenty-five (25), Township Nine (9) South, Range Twenty (20) E.B.M.; thence South to the Southeast corner of Section Thirty-six (36), in said township and range; thence East to the Northeast corner of Section Four (4), Township Ten (10) South, Range Twenty-one (21) East, B.M.; thence South along section lines to the North bank of Snake River, including within the above area all the lands included within List Six, being a Carey Act Segregation List filed in the United States Land Office at Hailey, Idaho, and comprising the lands commonly known as the First Segregation under the canal system of the Twin Falls North Side Land and Water Company: in the following amount from the following date: 400 second feet from October 11, 1900, and hereby designated as Right No. 2B; the following to be substituted:

"The the defendants, the Twin Falls North Side Land and Water Company, and the North Side Canal Company, Limited, be, and are hereby awarded the use of said waters of the natural flow of said Snake River diverted from a point on said Snake River at the Milner Dam on the North Side of the Snake River through what is commonly known as the North Side Twin Falls Canal, for use upon lands lying on the North side of Snake River, and between said river and the following described lands:

Commencing at a point where the west line of Section Three (3), Township Ten (10) South, Range Eighteen (18), E.B.M. intersects with Snake River, running thence North to the Northwest corner of Section Twenty-seven (27), in Township Nine (9), South, Range Eighteen (18) E.B.M., thence East to the Northeast corner of Section Twenty-five (25) in Township Nine (9) South of Range Twenty (20) E.B.M.; thence south to the South-east corner of Section Thirty-six (36), in Township Nine (9) South, Range Twenty (20) E.B.M.; thence East to the Northeast corner of Section Four (4) in Township Ten (10) South, Range Twenty-one (21) E.B.M.; thence South along Section lines to the north bank of Snake River; thence in a general westerly direction along the North bank of Snake River to the place of beginning; all of said lands being now in Minidoka County and formerly in Lincoln County Idaho, including within the above area all the lands included within list Six (6), being a Carey Act Segregation list filed in the United States Land Office at Hailey, Idaho, and comprising the lands commonly known as the First Segregation under the canal system of the Twin Falls North Side Land & Water Company, in the following amount from the following date: 400 second feet from October 11, 1900, and hereby designated as Right No. 2B," and judgment is hereby rendered accordingly.

Dated this 12th day of September, A.D. 1916.

Wm. A. Babcock
District Judge.

Filed Sept. 21st, 1916.

STATE OF IDAHO
County of Twin Falls)
ss.

CHAS. H. BROWN

being first duly sworn, deposes and says:

That he is the Assistant Secretary

of the Plaintiff corporation, and makes this

verification in its behalf; that he has read the foregoing

complaint and knows the contents thereof

and believes the facts therein stated to be true.

(Signed) Chas. H. Brown

Subscribed and sworn to before me this _____ day of _____ 1928

Notary Public

(Signed) *W. W. Chapman*
Notary Public for the State of Idaho, Residing at Twin Falls.

(SEAL)

34/
FRANK L. STEPHAN
ATTORNEY GENERAL

S. E. BLAINE
JOHN W. CRAMER
LEON M. FISK
ASSISTANTS

STATE OF IDAHO
OFFICE OF ATTORNEY GENERAL

BOISE

May 5, 1927.

Mr. George N. Carter
Commissioner of Reclamation

Mr. G. Clyde Baldwin
Deputy Commissioner of Reclamation
& Water Master District No. 36

Boise, Idaho

Gentlemen:

A little while ago you brought to my office a copy of the Summons and Complaint in the case of Twin Falls Canal Company v. George N. Carter, Commissioner of Reclamation, et al. You also left with me a letter from Mr. B. E. Stoutemyer, District Counsel for the Department of the Interior, which letter was directed to you and which calls attention to the above entitled case and in which Mr. Stoutemyer suggests that the government attorneys will appear for the defendants in the above named case.

I wish to advise you that it will be perfectly agreeable with this office if Mr. Stoutemyer will arrange to represent you in the above entitled matter.

I wish to call attention, however, to the fact that on May 3, 1927 a new law regarding the service of summons and time within which the defendant may plead went into effect. It changes the old law and cuts down the time where a defendant is served outside the judicial district where the action is started from forty days to twenty days. Perhaps it would well to have an appearance made in the above named case before the expiration of twenty days from the service even though Mr. Bothwell has used the old form of summons giving a defendant forty days rather than twenty days.

Very truly yours,

Frank L. Stephan

RECEIVED

MAY 5 1927

DEPARTMENT OF COMMERCE

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
BUREAU OF COMMERCE
WASHINGTON, D. C.
MAY 5 1927
TO THE HONORABLE SECRETARY OF THE DEPARTMENT OF COMMERCE
FROM THE HONORABLE SECRETARY OF THE DEPARTMENT OF COMMERCE
SUBJECT: [Illegible]

[Illegible text block]

[Illegible text block]

OFFICE OF ATTORNEY GENERAL
STATE OF TEXAS



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

May 10, 1927.

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

Dear Mr. Carter:

This is to advise you that I have today been
served with the Summons and Complaint in the case of
Twin Falls Canal Company versus Geo. N. Carter, et. al.

Sincerely yours,

G. Clyde Baldwin

Deputy.

*Phoned Ray -
May - 12 Carter*

RECEIVED
MAY 12 1927
DEPARTMENT OF AGRICULTURE

WESTERN BONE

CHAOI 10040
DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

RES:EAG

603 Postoffice Building
Portland, Oregon
May 14, 1927

Mr. G. Clyde Baldwin,
Deputy State Commissioner
of Reclamation,
Twin Falls, Idaho.

My dear Mr. Baldwin:

I am enclosing a form of general demurrer which we are filing for you and Mr. Carter in the case of Twin Falls Canal Company v. George W. Carter et al.

We think that the Secretary of the Interior should be made a party defendant in this case, as the real party in interest adverse to the plaintiff, and are preparing a motion to that effect, and in support of the motion to have the Secretary of the Interior joined as a party defendant we would like to have an affidavit setting out the facts showing that you and Mr. Carter have no interest in the suit and that the real party at interest is the Secretary of the Interior acting on behalf of the Minidoka project. I am enclosing a form of affidavit for this purpose.

If you find the enclosed affidavit satisfactory will you kindly sign and swear to it before a notary and return it to this office. If there is anything in the enclosed form of affidavit which you think should be changed or corrected, please feel free to make such corrections as you think are necessary or desirable.

Very truly yours,

B. E. Stouteney
District Counsel

encls.

cc - Mr. George W. Carter, ✓
Boise, Idaho

RECEIVED
MAY 16 1927
DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY
WASHINGTON, D. C.

TO THE SECRETARY
FROM THE DIRECTOR

RE: [Illegible]

[Illegible text block]

[Illegible text block]

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

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. 26.

Defendants.

H. E. RAY
B. E. STOUTENMYER
Attorney for Defendants;
Residing at Boise, Idaho, and
Portland, Oregon, respectively

COMES NOW HERE the defendants George W. Carter,
Commissioner of Reclamation of the State of Idaho, and
G. Clyde Baldwin, Deputy Commissioner of Reclamation
and Watermaster of District No. 26, by their attorneys
H. E. Ray and B. E. Stoutenmyer, and demur to the Com-
plaint of the plaintiff on file herein, for the reason
that said complaint does not state facts sufficient to
constitute a cause of action against these defendants,
or either of them, or at all.

1 IN THE DISTRICT COURT OF THE NINETEENTH JUDICIAL DISTRICT
2 OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

3 TWIN FALLS CANAL COMPANY, a
4 corporation,

5 Plaintiff

6 vs.

7 AFFIDAVIT

8 GEORGE W. CARTER, Commissioner
9 of Reclamation, G. CLYDE BALDWIN,
10 Deputy Commissioner of Reclamation,
11 G. CLYDE BALDWIN, Watermaster of
12 District No. 36,
13 Defendants

14 STATE OF IDAHO

15 County of _____

16 ss

17 G. Clyde Baldwin, being first duly sworn, upon his

18 oath deposes and says:

19 That he is one of the defendants named in the

20 within entitled action and now is, and for _____ years

21 last past has been, the duly appointed, qualified and

22 acting Watermaster of District No. 36 and Deputy Com-

23 missioner of Reclamation of the State of Idaho, and, as

24 such, in charge of the distribution of the waters of

25 Snake River to the plaintiff and others, directed by the

26 terms of that certain decree of adjudication of the res-

27 pective rights to the use of certain waters of Snake

28 River in Idaho, which said decree is commonly and herein-

29 after referred to as the Foster Decree, a true copy of

30 which is attached to the plaintiff's complaint as an

31 exhibit. And that said plaintiff and his predecessors in office

32 have distributed said waters, from long prior to the time

33 of entry of said decree until this, in accordance with

the terms of said decree and certain temporary decrees

entered from year to year immediately preceding the

time of entry of the permanent decree.

1 That neither the plaintiff, in his capacity as
2 Deputy Commissioner of Reclamation of the State of Idaho,
3 or as Watermaster of District No. 36 of the State of Idaho,
4 nor his co-defendant George W. Carter in his official
5 capacity of Commissioner of Reclamation of the State of
6 Idaho, nor in any capacity whatsoever, have any interest
7 in the rights to the use of water decreed in said Foster
8 Decree.
9 That during that portion of the irrigation season
10 when the waters of Snake River are distributed by the
11 Watermaster in charge thereof, the increment to the waters
12 of Snake River between the Hestley measuring station and
13 Milner Dam, referred to in the complaint herein as amount-
14 ing to from 300 to 500 second feet, in the return flow of
15 drainage and seepage water from the Kindoka Reclamation
16 Project of the United States Government, and is due to the
17 action of the Secretary of the Interior in causing said
18 Kindoka project to be constructed and the lands thereof
19 irrigated, and that the available records indicate that
20 prior to the irrigation of the Kindoka project there was
21 a loss in the natural flow of Snake River between said
22 Hestley gauging station and Milner Dam.
23 That the provisions of the said Foster Decree,
24 including the provision that the State Engineer of the
25 State of Idaho or his duly authorized deputy shall determine
26 that part of the water flowing in Snake River at the Kindoka
27 and Milner Dams is storage water and what part is natural
28 flow, and the provision "the amount of natural flow to be
29 determined as such natural flow would be if unaffected by
30 the diversions or acts of the parties hereto", was author-
31 ized by stipulation duly executed by the plaintiff Twin
32 Falls Canal Company and the Secretary of the Interior,
33 acting through their respective attorneys, and that prior

1 to the time the said stipulation was signed, providing for
2 the said final decree containing the language above quoted,
3 temporary orders or decrees containing the same language had
4 been made each year for several years and had been interpreted
5 from the natural flow to which the plaintiff is entitled,
6 and that the said language was adopted and by stipulation
7 inserted in the said permanent decree with such interpretation
8 already placed thereon and has been construed in the
9 same way ever since the entry of said final decree in 1913.
10 That plaintiff and his co-defendant, and their
11 respective predecessors in office, have all during the
12 time aforesaid, and under the direction of said Foster
13 decree, distributed the said increment, claimed to be
14 approximately 300 to 500 second feet continuous flow of
15 Snake River, referred to in paragraph VIII of the plaintiff's
16 complaint, not as the natural flow of that river but as
17 return flow or stored waters of said river, the right to
18 the use of which were by said decree granted in the
19 Secretary of the Interior of the United States for use
20 upon the Hinkoka Federal Reclamation Project, or subject
21 to alienation by contract with the said Secretary only;
22 that the right to the use of said 300 to 500 second feet
23 of water was a part of the subject matter of said Foster
24 decree and was thereby fully and finally adjudicated,
25 and by said adjudication the said return flow of the
26 Hinkoka project was excluded from the natural flow to
27 which plaintiff is entitled.

28 That in the administration of the terms of said
29 decree by plaintiff and his co-defendant and their predecessors
30 in office, they were required to and
31 did determine what part of the water flowing in Snake
32 River at the Hinkoka and Milner dams was storage water

1 and what part the natural flow, and in determining the
2 amount of said stream which was and is the natural flow
3 thereof, affiant and his co-defendant aforesaid, and their
4 respective predecessors in office, were by the terms of
5 said decree compelled to follow the rule laid down by
6 said decree that the natural flow of said stream was
7 as the same would be if unimpacted by the diversions or
8 acts of the parties to said decree, or by the release of
9 stored water in said stream; that in the administration
10 of the terms of said decree as aforesaid affiant and
11 his co-defendant, and their respective predecessors in
12 office, have considered and so always construed the
13 directions thereof as requiring the distribution and de-
14 livery of the water in controversy in the action above
15 entitled to the use of the Mindoka Federal Reclamation
16 Project as being return flow or stored waters, right to
17 use of which was granted in the Secretary of Interior of
18 the United States by said decree as aforesaid, and not to
19 the lands of the plaintiff herein as constituting a por-
20 tion of the natural flow of said stream; that the said
21 water in controversy is return flow to said river channel
22 from the use upon the Mindoka Federal Reclamation Project
23 of the waters of Snake River, the right to use of which
24 is now and has since long prior to the entry of said
25 decree been in the name of the Secretary of the Interior,
26 and the said water in controversy would not be in said
27 stream at Milner dam were it not for the act of the said
28 Secretary of the Interior in the diversion of the water,
29 the right to the use of which is in him, in his official
30 capacity, upon the Mindoka Federal Reclamation Project,
31 and a portion of which seeps through the ground to the
32 channel of said stream above Milner Dam, to constitute
33 the water in controversy, which the plaintiff

1 is, by the action above designated, seeking to have this
2 Plaintiff and his co-defendant divert for use upon the
3 Plaintiff's lands as a part of the increment to the
4 natural flow of Snake River.

5 That the controversy is in truth and in fact
6 between the said Plaintiff on the one hand and the Secre-
7 tary of the Interior of the United States on the other;
8 that these defendants are nominal parties only, having
9 but nominal interest in the subject matter of the contro-
10 versy and that any decree in this action rendered as for
11 or against the prayer of Plaintiff's complaint cannot
12 adjudicate the rights of the real parties in interest,

13 the Plaintiff and the said Secretary of the Interior, to
14 the subject matter of this action without bringing in
15 as a party defendant to this action the said Secretary
16 of the Interior, nor is it possible, without such action,
17 to have the right of said Secretary of the Interior in the
18 subject matter of this controversy, in any decree which
19 may be entered herein in conformity with the prayer of
20 Plaintiff's complaint.

21 WHEREFORE, Plaintiff prays that an order of the
22 Court above entitled be entered making as an additional
23 party defendant to this action Hubert Work, the Secretary
24 of the Interior of the United States, and that he be
25 served with process in accordance with the statutes in
26 such case made and provided.

27
28 Subscribed and sworn to before me this _____ day
29 of _____ 1927

30
31 {Notarial Seal
32 Notary Public for Idaho
33 Residing at _____
My commission expires _____

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RECEIVED
MAY 16 1927
DEPARTMENT OF COMMERCE

North Side Canal Company, Ltd.

NSC

JEROME, IDAHO

May 21, 1927.

Hon. George N. Carter,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Carter:

My attention has been called to a suit brought by the South Side canal company against you and Mr. Baldwin, calling for a modification of the method of delivering water below Neeley gauging station.

You of course are familiar with the plan that has been in effect for the past 12 or 15 years, under which the volume of water in the river as found at Neeley is made the basis of the levy to the Minidoka Project, the South Side and the North Side. Whatever the amount of water found at Neeley which would belong to the South Side and the North Side, delivered at Milner, the gains and losses in the river between Neeley and Milner are absorbed and borne by the Minidoka Project.

The result of this is that the losses in the river between those two points are offset against the return flow and other gains.

I understand the Reclamation Service contend they have a legal right to the return flow, which is really the main bone of contention. It seems to me that this legal question is the important one to be threshed out in this case, and that the Reclamation Service should be asked to appear and defend.

Will you kindly advise me what the present status of this matter is?

Yours truly,

RES-K

R.E. Shepherd
R.E. Shepherd,
General Manager.

RECEIVED
MAY 23 1927
DEPARTMENT OF AGRICULTURE

JEROME IDAHO

U.S. DEPARTMENT OF AGRICULTURE

May 23, 1927

Re: Water District No. 36

MR. R. E. SHEPHERD
General Manager
North Side Canal Co., Ltd.
Jerome, Idaho

Dear Mr. Shepherd:

Reference is had to your inquiry of May 21, regarding status of case of Twin Falls Canal Company, plaintiff, versus Geo. H. Carter, Commissioner of Reclamation, and G. Clyde Baldwin, Deputy Commissioner of Reclamation and Watermaster of District 36, defendants.

I acknowledged service of summons and complaint about May 5, and Mr. Baldwin was served on May 10. Mr. Baldwin had a letter from Mr. Stoutemyer, copy of which I do not happen to have in the files, to the effect that they would like to have permission from the Attorney General to appear on behalf of the defendants. This matter was discussed with the Attorney General; whereupon, he wrote as per the enclosed copy.

I have also received copy of Demurrer, which I presume has been filed, by H. E. Ray, United States District Attorney and B. E. Stoutemyer; copy of Mr. Stoutemyer's letter to Mr. Baldwin; copy/affidavit to which Mr. Stoutemyer refers, and enclose copies of same for your information.

I have had no advice from Mr. Baldwin and assume that he subscribed to the affidavit prepared by Mr. Stoutemyer.

The foregoing is the sum total of my information on this action to date; however, it appears that the Reclamation Service is giving the necessary attention to the case.

Very truly yours,

Commissioner of Reclamation

GNC:E
Enclosures-4

BES-gwl

Burley, Idaho, June 2, 1927.

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

Dear Mr. Baldwin:

In the case of Twin Falls Canal Co. vs George W. Carter, Commissioner of Reclamation, et al, defendant's motion for an order making the Secretary of the Interior a party defendant was heard before Judge Babcock at Twin Falls yesterday. I enclose a copy of our brief which gives an outline of our argument on this point.

Judge Bothwell appeared for the plaintiff opposing the motion and is to file his brief in a few days. The Court will decide the question involved in the motion after the briefs are all filed and have been considered.

Nothing was said by the Judge which would indicate anything as to what his decision on this point is likely to be.

Very truly yours,

B. E. STOUTMYER
District Counsel.

1 Enclosure.

cc-- Geo. W. Carter
Commissioner of Reclamation,
with encls.

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

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.

DEFENDANTS BRIEF
IN SUPPORT OF MOTION

It appears from the complaint on file herein and from the affidavits filed in support of defendants motion that this is an action brought by the plaintiff Twin Falls Canal Company against George W. Carter, Commissioner of Reclamation of the State of Idaho, and G. Clyde Baldwin, Deputy Commissioner of Reclamation of the State of Idaho, and Watermaster of District No. 36, for the purpose of compelling these public officers to take certain disputed property from one of the claimants to such property and deliver the same to another claimant in a suit in which only one of the claimants is before the court.

The property right which is the subject matter of this suit, namely, the right to the return flow and drainage water coming into the Snake River between the Neeley Gaging Station and the Milner Dam from the Minidoka Project is in dispute between the Minidoka Project represented by the Secretary of the Interior and the Twin Falls South Side Project represented by the Twin Falls Canal Company. The nominal defendants, Carter and Baldwin, have no interests in the result of this litigation. The defendants ask and have a right to ask, that the real party in interest adverse to the

plaintiff be brought before the Court so that when the trial of this case is completed the judgment may be effective in disposing of the controversy concerning the property rights in issue and the defendants will be protected from the suits which otherwise might be brought against the defendants by the other claimants to the water right in question. If the defendants should take the water in issue from the parties who have been receiving the same for the last fifteen years, and deliver the same to the plaintiff in an action in which the rights of the other claimants are not before the court and cannot be passed upon and if the claimant thus deprived of the property right which he is now receiving and has been receiving for some fifteen years past should bring suit against the defendants for injunction or damages or both, and if in such case when the rights claimed by the Secretary of the Interior on behalf of the Minidoka Project are properly presented in the case to which such complainant is a party, the judgment in this case could not be pleaded as a bar to such suit by a party not before the court in this case, and if in such subsequent suit, the Secretary of the Interior acting on behalf of the Minidoka Project is found to hold a superior right, the officers who are made defendants in this case might be subject to an injunction and also might be required to respond in damages, and would have no protection against such subsequent action by the Secretary of the Interior unless the Secretary of the Interior is made a party to the suit now before the Court.

The Complaint in this case sets out as an exhibit thereto the Decree of the District Court in the case of Twin Falls Canal Company vs. Foster, et al, commonly referred to as the "Foster Decree". In this decree it appears that the rights awarded to the Minidoka Project were decreed to the Secretary of the Interior of the United States and his successors in office for use on the Minidoka Project, while the rights awarded to the South Side Twin Falls project were decreed in the name of the Twin Falls Canal Company for use upon the lands of the South Side Twin Falls Project.

The complaint is silent as to a number of facts which will be material to the final determination of the issues of this case, but the material facts which are not revealed by the complaint are quite fully set out in the affidavit of the Deputy State Commissioner of Reclamation and in the affidavit of E. B. Darlington, which affidavits have been filed in support of defendants' motion. The Court is no doubt somewhat familiar with the conditions along Snake River from the Neeley Gaging Station to the Milner Dam. The Neeley Gaging Station is located below American Falls and just above the upper end of the Lake Walcott Reservoir, which reservoir is formed by the Minidoka Dam; between the Neeley Gaging Station and a Milner Dam is located the Lake Walcott Reservoir, one of the reservoirs in connection with the Minidoka Project and also the irrigated lands of the Minidoka Project.

It appears from the record before the court in this case, that in this section of the Snake River, there was a loss to the natural flow prior to the construction of the Minidoka Project. The action of the Secretary of the Interior in constructing the Minidoka Project and providing for the irrigation thereof, has resulted in bringing up the ground water under the lands of the Minidoka Project to such an extent that an extensive drainage system has been found necessary and has been constructed by the Secretary of the Interior, and the drainage water collected in this drainage system, together with the seepage water from the Minidoka Project which goes directly into the Snake River has not only replaced the loss which naturally occurred in this section of the river, but has provided an artificial supply of water sufficient to add several hundred second feet to the flow of the river in addition to saving the losses which naturally occurred in the section in question.

In the Foster Decree which was authorized by stipulation, which stipulation was executed by the plaintiff and by the Secretary of the Interior acting through their respective attorneys, it is provided.

"It is further ordered, adjudged and decreed until otherwise provided by statute, the State engineer of the State of Idaho or his duly authorized deputy shall determine what part of the water flowing in Snake River at the Mindoka and Milner dams is storage water and what part is natural flow as provided by the Idaho Session Laws of 1909 entitled 'An Act to provide for the safe guarding of the rights to those conserving public water in reservoirs and prohibiting misappropriation of such waters by those having no right to the use of the same, and declaring a Misdemeanor', the amount of this natural flow to be determined as such natural flow would be, if unaffected by the diversions or acts of the parties hereto or any or either of them or by the release of stored water".

This provision of the Decree has been interpreted ever

since the Decree was entered in 1913, as meaning that the natural flow to which the Twin Falls Canal Company is entitled shall be determined as the natural flow would be if the Mindoka Project and never been built. The ground storage flowing into the river from the Mindoka Project and the drainage and seepage water coming in from that project being the result of the action of one of the parties to the suit, namely, the action of the Secretary of the Interior in causing the construction of the Mindoka Project including the Jackson Lake and Lake Walcott Reservoirs in which the flood water and winter flow of the rivers are impounded and the irrigation canals by means of which such stored water and also flood water, when flood water is available is conveyed to the lands of the project, and the drainage system in which seepage and drainage water is developed and recovered.

The complaint does not allege how long the construction

complained of has been in effect, but the affidavits now before the Court show that this construction of the language in question has been in effect ever since the Decree was entered in 1913, and also that prior to the entry of the final decree and prior to the stipulation authorizing the final decree containing the language quoted above, temporary orders were made each year by the Court for three years, namely 1910, 1911, and 1912, and the temporary orders in question contained the same language which by stipulation was inserted in the final decree and this language under the temporary orders had received the same construction which has been applied

to the final order since the entry thereof in 1913, this construction having been applied to the same language for three years under temporary orders, the parties made their stipulation for this provision in the decree in the light of the construction applied to the same language in the temporary orders.

This hearing on the motion for an order making the Secretary of the Interior a party defendant does not involve the consideration and determination of the merits of the case, but it does involve a sufficient consideration of the facts of the case to determine whether the Secretary of the Interior is a necessary or proper party defendant. If the Secretary of the Interior is a proper party to the suit, but not a necessary party to the suit, then the allowance of the Motion is within the sound discretion of the Court, but the statute requires, Section 5667:

"That when a complete determination of the controversy cannot be had without the presence of other parties the Court must then order them to be brought in"

so that the first question for the decision of the Court at this time is the question whether the controversy between the Minidoka Project represented in the Foster Decree by the Secretary of the Interior, and the Twin Falls Project represented in the same Decree by the Twin Falls Canal Company concerning the right to the drainage and return flow waters of the Minidoka Project is a controversy, the complete determination of which can be had in a suit in which only one of the claimants to the property right in issue is before the court. It is also necessary for the court to determine on this motion, and on the state of facts presented by the affidavits and other records before the Court, whether the remedy sought by the Plaintiff, namely, an order of court directing the state officers to take the disputed property right from the parties now enjoying the same, and to deliver the same to the plaintiff, could be granted in a case in which only one of the claimants is before the Court, without prejudice to the rights of the Secretary of the Interior, who is not before the Court.

The question whether a decree in this case without bringing in the Secretary of the Interior would be a complete determination of the controversy can be answered by asking the question whether the Decree in this case would be a bar to an action by the Secretary of the Interior or his successors in office.

Both the Federal Constitution and the State Constitution, prohibit the taking or impairment of the property rights of any citizen without due process of law; if water rights are property rights it follows that there can be no final determination of the property rights which are the subject matter of this suit, in a suit in which only one of the claimants is before the court. In this case the defendants neither have nor claim any right or interest whatever in the property in dispute and the subject of this litigation, and the remedy sought by the plaintiff can only be granted by taking from the parties who are not before the Court, the property which is in dispute between such parties and the plaintiff, and which is now being enjoyed by such parties not now before the Court and has been in the possession and enjoyment of such parties for more than fifteen years past. This is a case in which it is perfectly plain that,-

"A complete determination of the controversy cannot be had without the presence of other parties"

and therefore this case comes within the mandatory provision of the statute, that

"the court must then order them to be brought in".

If the Secretary of the Interior were merely a proper party but not a necessary party for the complete determination of the controversy, it would then be within the discretion of the Court to grant the defendants motion, and in the interests of a speedy and complete adjudication of the question in dispute, such discretion should be exercised in favor of the granting of the motion, but as the facts appear upon the record now before the court in this case, it is the apparent that as the courts have stated in similar cases, it is the imperative duty of the court in this case to bring

before the court the other claimant to the property which is the subject matter of the litigation.

Section 6657 of the Idaho Compiled Statutes, provides,-

"The court may determine any controversy between the parties before it when it can be done without prejudice to the rights of others or by saving their rights: but when a complete determination of the controversy cannot be had without the presence of other parties, the court must then order them to be brought in".

In a water adjudication suit, the suit is brought by the plaintiff who is one of the claimants to certain water rights from a stream in question against a defendant or defendants who claim title to rights adverse to the plaintiff; consequently in such a case there may be an issue which can be determined between the parties to the suit, e., i., the issue whether the property rights of the plaintiff are prior and superior to the rights of the defendants,- but the case at bar is not such a case, but is a suit brought against defendants who are more custodians, and who have no interest whatever in the property which is the subject matter of the suit, and this action represents an attempt to secure an ex parte adjudication by ordering public officers who have no interests in the subject matter of the suit to take property from one claimant and deliver the property to another claimant, without bringing before the court the adverse claimant to the property in issue.

The case of Pratt vs. Northern Pacific Express Company, 13 Idaho 373, 90 Pac. 341, was suit brought by the consignor against an express company to recover the value of an express package containing some six hundred dollars in money which was delivered by the plaintiff to the express company to be transmitted to a consignee in another locality,- the package having been lost or stolen, the consignor brought the suit against the express company and the question was raised by the defendant as to whether the consignor or the consignee was the proper party to demand the delivery of the package in question, and whether the suit could be maintained by the consignor.

The court held that the suit could be maintained by the consignor, and determined that this rule would impose no hard-

ship on the defendant for the reason that the defendant was obligated to deliver the package or pay the damages either to the consignor or the consignee, and that the company's only concern was to see that it was protected from payment a second time, and that in this particular the company had ample protection because,

"Under our statute (Rev. Stats., Sec. 4113: First Nat. Bank of ^Haley v. Bews, 3 Idaho 486, 31 Pac. 816). if there is any question or doubt as to the party to whom the carrier is liable, all necessary parties may be brought in and required to set up their interests, and thereby determine the respective rights and effectually protect the defendant from the possibility of the assertion of any further claim by other parties. So in the case at bar, the express company might have had the consignor brought in as a party to set up any interest or claim he might have".

Pratt v. Northern Pacific Express Company,
13 Idaho 373, at 383.

The provisions of Section 389 of the California Code of Civil Procedure are identical with the provisions above quoted from Section 6657 of the Idaho Compiled Statutes, and the Idaho statute was taken from the Statute of California.

One of the early California cases which refers to certain still earlier California cases is the case of O'Connor vs. Irvine, 16 Pac. 236. That case involved the right to property which it was found was being held by the defendant Irvine as a trustee under a resulting trust. The court held,

"The evidence shows that Irvine is a trustee for both Fair and Selover".

but Selover, one of the parties having an interest in the property which was the subject matter of the suit and which was held in trust by the defendant Irvine, was not before the Court in that case. In that case the Court said,

"The decree in this case declares Irvine to be a trustee for plaintiff of the whole 10,000 shares of the capital stock of

the Morgan Mining Company, and directs that he assign and transfer the same to plaintiff, and restrains perpetually the company defendant from making any transfer on its books of said stock, or any part or portion thereof, to any one but plaintiff herein, and directs the company to allow plaintiff all rights and privileges "be law incident to the full legal and equitable ownership of said 10,000 shares of stock".

In the absence of Selover as a party, complete determination of the controversy, we think, cannot be had without prejudice to his, Selover's rights. The decree, if enforced, might re-

sult in a sale to innocent purchasers of Selover's interest, and, as was said in *Reyes v. Sanford*, 5 Cal. 116, "would have no other effect than to renew litigation by producing more suits in order to settle and determine finally the rights of all parties". A court of equity will not permit litigation by piecemeal. The whole subject-matter and all the parties should be before it, and their respective claims determined once and forever. Generally, in suite between cestuis que trust and trustees, all the parties interested should be before the court. Barb. Parties, 439, 442, 444. If the necessary parties to a full determination are not before the court it is the duty of the court on its own motion to order them brought in; and this, although the defendants in the action have omitted to raise an objection of defeat of parties by demurrer or answer. The failure of the court so to do is fatal to the judgment. *Osterhoudt v. Board Sup'rs*, 98 N. Y. 239; *Settembre v. Putnam*, 30 Ca. 498; *Gates v. Lane*, 44 Cal. 396; Barb. Parties, 319.

"Selover is a party primarily interested in the stock disposed of by the judgment before us. The amount of his interest therein is not shown. Necessarily therefore, he would be prejudiced by the execution of this judgment, and must be made a party in order that a complete determination of the controversy may be had. We see no way to avoid a new trial in order to determine the controversy finally and without prejudice to the rights of Selover.

"Judgment and order reversed, and cause remanded for further proceedings in accordance with the views herein expressed and for a new trial".

O'Connor v. Irvine, 16 Cal. 236, at 238 and 239.

There is an analogy in the situation in the case at bar where the nominal defendants have no interest in the subject matter of the suit and are merely administering the water rights in question for the benefit of the real parties at interest, and in the situation presented in the case of *D'Conner vs. Irvin* where one of the parties interested in the subject matter of the suit brought the suit against the trustee who held the property in a trust capacity under a resulting trust for the benefit of the plaintiff and other parties and in that case the Supreme Court of California held that the failure of the District Court to bring in the other parties interested in the subject matter of the suit was fatal. The statement by the court in that case that

"A court of equity will not permit litigation by piecemeal; the whole subject matter and all the parties should be before it and their respective claims determined once and forever".

is also applicable to the case at bar for if the court should proceed

without bringing in the Secretary of the Interior, the result would be piecemeal litigation, for it would then become necessary for the other claimant to the property which is the subject matter of this suit to bring suit to prevent the wrongful delivery of the return flow water to the Twin Falls Canal Company, and there could never be any final determination of the issue between the Twin Falls Canal Company and the Secretary of the Interior until the matter is tried out in a suit in which both of these parties are before the Court.

The later California cases are the same effect.

In interpreting Section 6657 Idaho Compiled Statutes the judicial test seems to be whether the party whose presence is necessary to a determination of the controversy is a party whose rights must be determined and settled before the rights of the parties to the immediate action.

State v. Alaska Pac. Nav. Co., (Wash.) 194 Pac. 412
In the case of Solomon vs. Redona, it was held:

"It is the general rule in equity, continued in force by our code of Civil Procedure, that all who are interested in the subject matter of a litigation should be made parties thereto, in order that complete justice may be done, and that there may be a final determination of the rights of all parties interested in the subject-matter of the controversy. It is provided by section 389 of the Code of Civil Procedure that,

"When a complete determination of the controversy cannot be had without the presence of other parties, the court must then order them to be brought in"

"This provision of the statute is mandatory. When it appeared to the court, as, from the evidence, it necessarily must, that it was essential to a full and complete determination of the controversy before it that the owner of the undivided one tenth should be made a party, it was the imperative judicial duty of the court to order that party brought in. It was not a matter of discretion, but of duty for the court, even upon its own motion, to require the presence of such co-owner. O'Connor v. Irvine, 74 Cal. 442, 16 Pac. 236., See, also, Mitau vs. Roddan, 149 Cal. 1, 84 Pac. 145, 6 L.R.A. (N.S.) 275.

"In a suit for partition if a co-owner is not made a party plaintiff or defendant, and the non joinder appears by the record so that an appellate court may take cognizance of it, it will reverse the judgment whether the attention of the trial court was called to the defect or not. 30 Cyc. 201, 202; Russel v. Bell, 160 Ala. 480, 49 South. 314.

"Because the ownership of the undivided one tenth is not represented, the decree must be reversed."

Solomon vs. Redona, 198 Pac. 643 at 645.

The following in accord:

Merchants Trus. Co. v. Bentel, (Calif.) 101 Pac. 31.
Pomeroy, Remedies & Rem. Rights., Sec. 419.
Kinney, Irr. and Water Rights (2nd) Section 1543.

See also: Beasly v. Shively, 26 Pac. 846.
Lewis v. Fox (Calif.) 54 Pac. 823.

Respectfully submitted.

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