36

1930

February 10, 1930

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

Dear Mr. Darlington:

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

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

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

Sincerely yours,

H. Clyde Baldwin
Deputy.

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DEPARTMENT OF RECLAMATION

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STATE OF IDAHO
DEPARTMENT OF RECLAMATION

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

WATER DISTRICT NO. 36

H. C. BALDRIDGE, GOVERNOR

IDAHO FALLS, IDAHO

February 11, 1930

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

Dear Mr. Carter:

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

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

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

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

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

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

Sincerely yours,

G. Clyde Baldwin

Deputy.

Encl.

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FEB 12 1930
DEPARTMENT OF RECLAMATION

February 12, 1930

Re: Water District 36 Miscellaneous

HONORABLE W. D. GILLIS
Attorney General
The Capitol

Dear Sir:

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

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

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

Yours very truly,

Commissioner of Reclamation.

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

(COPY)

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Moran, Wyo, March 19, 30.

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

Dear Mr. Darlington:

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

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

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

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

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

Survey 13th to 18 March

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MAR 27 1930
DEPARTMENT OF RECLAMATION

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

Dear Mr. Darlington:

Have completed snow survey on the Jackson Lake watershed. Due to mild weather the snow is well settled and although the depth is not greatly increased since last survey the water content shows an increase of 0.5%.

The following data was obtained on trip March 15th to 18th.

Station	Snow depth	Water Content
Moran	7"	2.5"
Moran Canyon	48"	12.0"
Arizona Station	43"	13.5"
Buckle-Perry Bridge	47"	14.0"
Snake River Station	44"	12.0"
Center Creek	24"	10.0"
Pacific Creek Bridge	34"	22.0"
Water Creek	28"	22.0"
Slide Creek	24"	10.0"
Mean depth	32"	
Mean Water Content		11"

Respectfully yours,
Assistant Engineer
(signed)

Mr. Darlington

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

56—e

Burley, Idaho,
March 26, 1930.

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

Gentlemen:

Attached is report of a snow survey of the Jackson Lake watershed made during the period from March 13th to 18th.

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

RECEIVED
MAR 27 1930
DEPARTMENT OF RECLAMATION

(COPY)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Moran, Wyo, April 18, 20.

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

Dear Mr. Darlington:

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

The following data was taken April 13th to 18th.

Station	Snow depth	Water content
Moran	None	
Moran Canyon	24"	10.8"
Arizona Station	20	8.0
Huckle-berry divide	26	10.0
Snake River Station	18	9.0
Coulter Creek	28	11.0
Lewis Lake divide	52	24.0
Aster Creek	48	22.5
Glade Creek	24	10.0

Mean depth (Setations)——30"
Mean water content——15"

Sincerely yours,
Joseph Markham
Ran, Supt."

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APR 25 1930
DEPARTMENT OF RECLAMATION

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Burley, Idaho,
April 25, 1930.

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

Gentlemen:

Attached is report of a snow survey of the Jackson Lake watershed made during the period from April 18th to 19th, 1930.

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

GPO

RECEIVED
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DEPARTMENT OF RECLAMATION

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

603 Postoffice Building
Portland, Oregon
May 16, 1930

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

Dear Mr. Carter:

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

Very truly yours,

B. E. Stoutemyer
District Counsel

encls

RECEIVED
MAY 17 1930
DEPARTMENT OF RECLAMATION

BSS:EAG

603 Postoffice Building
Portland, Oregon
May 16, 1930

Mr. G. Clyde Baldwin,

Idaho Falls, Idaho.

Dear Mr. Baldwin:

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

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

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

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

Very truly yours.

encls.

B. E. Stoutemyer
District Counsel

cc - Mr. Carter

(Copy)

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

May 14th, 1930.

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

Gentlemen:-

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

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

Very truly yours,

(Sgd) D. H. SUTPHEN

D.H.S./MC

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

TWIN FALLS CANAL COMPANY,
a corporation,

Plaintiff,

vs.

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

Defendants,

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

Additional Party Defendant,

NORTH SIDE CANAL COMPANY, LIMITED,
a corporation,

Intervener.

BRIEF
IN SUPPORT OF
PETITION FOR REMOVAL

STATEMENT

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

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

BRIEF AND ARGUMENT

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

Loop v. Winters' Estate, 115 Fed. 362
Camp v. Field, 189 Fed. 285
Dishon v. Railway Co., 133 Fed. 471
Atlanta, K&N Ry. v. So. Ry. Co., 153 Fed. 122
Hughes Fed. Prac. (2nd ed.) par. 152, page 280
Filer v. Levy, 17 Fed. 609
Lacroix v. Lyons, 27 Fed. 403

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

Fritzlen v. Boatmen's Bank, 35 L. ed. 557
Missouri Pac. R.Co. v. Fitzgerald,
160 U.S.556; 40 L. ed. 536;

Powers v. Chesapeake & O. R. Co.,
169 U.S. 92, 42 L. ed. 673.
Wecker v. N.E. R. R. Co.,
204 U.S. 177, 51 L. ed. 433.
Rea v. Missouri Ref. Co.,
30 Fed. (2) 410.
Bankers's Bank v. Pettibone,
135 Fed. 650.

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

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

(2) There is no right of substitution under State statute -
Boise-Nampa Irr. Dist. v. Harteem
(Idaho) 285 Pac. 456 (advance sheets)
United States v. Boutwell,
17 Wall. 604, 21 L. ed. 721.
Hall Beachy v. Lamkin,
1 Ida. 50.
Irvin v. Wright, 258 U.S. 219,
66 L. ed. 573.

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

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

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

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

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

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

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

Foster's Federal Practice,
Vol. 3, page 2042.
Bur. C.R.& N.Ry. Co. v. Dunn,
122 U.S.513; 30 L. ed. 1158.
K.C.Ft. S.& M.R.Co. v. Daughtry,
138 U.S.298; 34 L. ed. 965.

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

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

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

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

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

admitting the facts stated in the petition for removal to be true, it appears on the face of the record that the petitioner is entitled to a removal of the suit."
(30 L. ed. 1109)

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

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

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

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

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

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

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

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

In the case of Pritzlow v. Boatmen's Bank, a decision of the Supreme Court of the United States reported in 83 L. ed. page 551, a junior mortgagee residing in Kansas, brought an action against the mortgagor residing in Kansas and a senior mortgagee residing in Missouri, for the foreclosure of the junior mortgage and for the purpose of declaring the senior mortgage void and subsequent and inferior to the lien of the junior mortgagee. Boatmen's Bank, the senior mortgagee, petitioned for a removal and the action was removed to the U. S. District Court which retained jurisdiction until subsequently when a new presiding judge of the Circuit Court reconsidered the motion to remand and granted the motion upon the theory that the former action over-ruling the motion did not invest the Federal Court with jurisdiction, and that the question of jurisdiction might be raised at any time. The action was remanded. In the State Court the bank answered and sought to establish the priority of its mortgage lien and by answer, both the junior mortgagee and the mortgagor attacked the mortgage of the bank, when

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

> "But it is not open to controversy that if, after an order to remand has been made, it results from the subsequent pleading or conduct of the parties to the cause, that the cause is removable, on the development of such situation a second application to remove may be made, and the right to do so because of the changed aspect is not controlled by the previous order remanding the cause. Powers v. Chesapeake & O.R.Co. 169 U.S.92, 42 L. ed. 673, 18 Sup. Ct. Rep. 264. See also Wecker v. National Enameling & Stamping Co. 204 U. S. 177, 51 L. ed. 435, 27 Sup. Ct. Rep. 184, 9 A. & E. Ann Cas. 757. It follows, therefore that the contention that the necessary effect of the judgment below was to refuse to give effect to the previous remanding order is without foundation. It is said, however, that as the power to entertain a subsequent motion to remove depended upon a change in the condition of the record, that the result of the judgment below was to deny all effect to the prior order remanding the cause, as there had been no such change in the record as to justify the granting of the second order to remove. To sustain this proposition it is insisted that substantially the only change that resulted from the pleadings filed after the remanding of the cause was that brought about by the filing of the answer of Fritzlen, and the defenses set up in that answer against the mortgage held by the bank, which, it is argued, in the nature of things could not operate to affect the removability of the suit between Welden and Fritzlen. But the premise upon which the proposition rests is without foundation in fact. As we have seen the petition of Welden impleading Fritzlen and the bank, while it assailed the bank's mortgage in express terms, alleged that that mortgage, if it existed was junior in rank to the mortgage of Welden. And the serious consequences which that averment had upon the order to remand the cause is indicated in the opinion of Holmes, J., sustaining the motion to remand. The necessary effect of the answer of the bank, filed after the remanding, and of the answer by Fritzlen, as well as of the answer filed by Welden, expressly joining Fritzlen in his attack upon the mortgage of the bank, was to make clear the untruth of the averment of the junior character of the mortgage held by the bank, and to establish, therefore, the fact that the bank was not an indispensable or necessary party to the suit of Welden for the foreclosure of the mortgage against Fritzlen."
>
> (58 L. ed. 867)

See also - Missouri Pacific R.Co. v. Fitzgerald,
160 U.S.556, 40 L.ed. 536.
Powers v. Chesapeake & O.R.Co.,
169 U. S. 92; 42 L. ed. 673.
Wecker v. Nat. Enameling & S.Co.,
204 U.S.177, 51 L. ed. 433.
Bon v. Midwest Refining Co.,
30 Fed.(2) 410.
Dentmen's Bank v. Fritzlen,
135 Fed. 680.

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

> "The matter of allowing amendments by a state court under liberal statutory provisions can of course not be accepted in the federal courts as decisive of the point as to whether a new or different cause of action might be or has been set up. Very frequently courts have permitted amendments which virtually substituted new causes of action simply for the purpose of saving expense in starting over to litigants, thereby permitting the cause to proceed the same as though a new cause of action had been instituted and process issued thereon. But in these instances it is usually done when no substantial rights of the defendants are involved or have intervened."
> (30 Fed., 2nd ed., p. 411)

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

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

cannot be waived by either party. Mansfield, etc., Railway v. Swan, 111 U. S. 379 (4 S.Ct. 510, 28 L. ed. 462). But the time of filing a petition for removal is not essential to the jurisdiction; the provision on that subject is, in the words of Mr. Justice Bradley, 'but modal and formal,' and a failure to comply with it may be the subject of waiver or estoppel.'
(42 L. ed. 873)

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

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

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

In a case decided by the Idaho State Supreme Court as late as December 30, 1939, the authorities bearing upon the question are well selected and collected. In Boise-Kuna Irrigation District v. Hartson (285 Pac. 456) (advance sheets), upon proceedings for a writ of mandamus against a District Judge, the Supreme Court pointed out the failure of legislation upon the subject of substitution of successors in office from the time of the earliest case of that court to the present time. In the opinion, it was stated:

"This court, in the case of Hill Beachy v. Lankin, 1 Idaho 52, at page 52, an action brought against the defendant as territorial auditor to compel him to perform an official act, and who had been succeeded in office by H. B. Lane, said:

'Mr. Lane, even if he were the successor in office of Mr. Lankin, would not be a proper party to this record. The proceeding was against Lankin for neglect of duty and, being a personal default, would by no means involve his successor. Lankin was proceeded against for a personal failure to perform a duty charged as required by law. Mr. Lane, who has been guilty of no such neglect of duty could not be made responsible for the faults, however grievous, of his predecessor.'

We have no statute authorizing the substitution of the successor in office in an action against his predecessor. The only Idaho case we have been able to find holds with the rule announced by the Supreme Court of the United States and of the state courts

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

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

"The Supreme Court of the United States, prior to an Act of Congress passed February 8, 1899 (30 Stat. 822, c. 121, Comp. St. sec. 1594, 28 USCA 780, note), under which successors of United States officers who have been sued may be substituted for them upon a proper showing, have repeatedly held such an action to be against the individual, and personal, and that substitution should not be allowed. Irwin v. Wright, 258 U.S. 219, 42 S. Ct. 293, 295, 66 L. ed. 573; Pullman Co. v. Grom, 231 U. S. 571, 24 S. Ct. 182, 58 L. ed. 375; U. S. ex rel Bernadin v. Butterworth, 169 U. S. 600, 18 S. Ct. 441, 42 L. ed. 873; U. S. ex rel Lewis v. Boutwell, 17 Wall. 604, 607, 21 L. ed. 721, 722; New Mexico ex rel Caledonian Coal Co. v. Baker, 196 U. S. 432, 25 S. Ct. 375, 49 L. ed. 540.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"The Supreme Court of the United States prior to an Act of Congress passed Feb. 8, 1899 (30 Stat., 822, c. 121, Comp. St. 1594), under which successors of United States officers who have been sued may be substituted for them upon proper showing, have repeatedly held such action to be against the individual and personal."

Boise-Kuna Irr. Dist. v. Hartson, supra

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

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

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

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

"The main object of the present bill was to compel the defendant Hoke Smith, as Secretary

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

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

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

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

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

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

H E RAY

B M STOUTENBURG

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

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

(Copy)

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

TWIN FALLS CANAL COMPANY, a corporation,

Plaintiff,

vs

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

Defendants,

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

Additional Party Defendant,

NORTH SIDE CANAL COMPANY, LIMITED, a corporation,

Intervener.

REPLY BRIEF IN SUPPORT OF PETITION FOR REMOVAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The syllabus in the above case is as follows:

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

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

"The successor in office cannot be substituted

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H E RAY

B E STOUTEMYER

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

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MAY 17 1930
DEPARTMENT OF RECLAMATION

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Burley, Idaho,
December 30, 1930.

Bureau of Reclamation, Denver, Colorado;
Minidoka Irrigation District, Rupert, Idaho;
North Side Canal Co., Jerome, Idaho;
Aberdeen-Springfield Canal Co., Aberdeen, Idaho;
Mr. Lynn Crandall, Idaho Falls, Idaho;
Mr. Jos. Markham, Moran, Wyoming;
University of Idaho, Moscow, Idaho;
Twin Falls Canal Co., Twin Falls, Idaho;
Mr. T. A. McConnell, Milner, Idaho;
Idaho Power Company, Boise, Idaho;
Mr. S. H. Hollister, Idaho Power Co., American Falls, Idaho;
Myron Swenson, Asst. Gen'l. Counsel, Reclamation, Boise, Idaho.

Gentlemen:

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

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

RECEIVED
DEC 31 1930
DEPARTMENT OF RECLAMATION

6P0

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Heron, Nye, December 22, 30.

Mr. [illegible] Darlington,
Project Supt.
Burley, Ida.

Dear Mr. Darlington:

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

The ground is not frozen and is only about 30% saturated. Total precipitation since Sept. 1st, 6.25" comparing with 6.99" last year and 7.05" normal (Heron station). The precipitation on the upper water shed however is only about 70% of normal. Due to absence of wind the snow depths are very uniform.

The following data was obtained on Dry Lee, 14th to 20th.

Station	Snow Depth	Water Content
Heron	18.0"	2.8"
Heron Canyon	20	4.0
Arizona Station	27	5.3
Huckleberry divide	27	5.6
Snake River Station	16	3.5
Four Mile Post	21	3.4
Lewis Lake Divide	23	5.0
Aster Creek	21	5.0
Outlet & Snake	18	4.0
Slide Creek Meadows	20	4.5
Grassy Lake Divide	27	5.3

Mean depth ——19"
Mean water content ——4.5"

Sincerely yours,
Joseph Barlow
Asst. Supt.

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DEC 31 1930
DEPARTMENT OF RECLAMATION

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

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

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

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JAN 3 1990
DEPARTMENT OF RECLAMATION

Copy of Order as held by County Clerk Teton County, Earl Floyd.

STATE OF IDAHO

ENGINEERING DEPARTMENT

Irrigation Water District No.36-C

COUNTIES:

Fremont
Teton

WEST RANGE	TPS. N	TPS. S	EAST RANGE		
	7		44	45	46
	6		44	45	46
	5		44	45	46
	4		44	45	46
	3		44	45	46
	2		44	45	46

STREAMS:

Teton River
Teton River (North Fork)
Badger Creek
Leigh Creek
South Leigh Creek
Teton Creek
Garby Creek
Fox Creek
Trail Creek
Twin Creek
Horseshoe Creek
Packsaddle Creek

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and their tributaries.

Description of Boundary: (Beginning at the S. W. Cor. of 8N-44E in Fremont County: running thence S. on the range line to the S. boundary of Teton County; thence meandering easterly along the E. county line between Teton County and Bonneville County to the state line between Idaho and Wyoming; thence N. on said state line to the twp. line between 7 & 8 N.; thence W. on twp. line to the place of beginning.)

Voting Place - Driggs.

I hereby certify that the above correctly described the location, water supply, and general features of Water District No.36-C of the State of Idaho.

J.H.Smith, State Engineer.

Dated and filed January 26,1916. Signed By (Fred A. Wilkie) Deputy.

WATER DISTRICTS DEFINED -

FILED FEB. 5, 1916

Signed W. F. Robertson
Recorder

January 6, 1931

Re: DISTRICT No. 36-C Miscellaneous

Mr. LYNN CRANDALL
Idaho Falls
I d a h o

Dear Sir:

I am enclosing herewith a copy of an order which has been entered, affecting District No. 36-C.

After carefully checking the records, I found correspondence indicating that in 1919 and 1920, application was made to create a separate district and a hearing was conducted at which evidence tended to show that diversions from the Teton River and tributaries in this territory would not materially affect the flow of Teton River in its lower reaches, due to the fact that return flow and underground storage from irrigation would compensate for diversions. It would seem, however, that the commissioner was not entirely convinced of these facts and that it was decided to create a district with the provision that at any time it became necessary to effectively enforce the provisions of the Snake River decree the waters of the upper district be regulated in the interest of the lower stream.

Since 1920 the district has been operated as a separate district and on the state map on which water districts are divided, this district is indicated as a separate and distinct district; however, no formal order can be located in the files by which the said district was created.

After going over all of the files, it was determined in the interest of the record that a formal order should be entered which would put into effect the system of operation which has been in effect since 1920.

The provision at the end of this order that the watermaster of District No. 36 may assume jurisdiction at any time it may be deemed necessary to make effective the provisions of the Snake River decree, I think, will give sufficient safeguard to satisfy all concerned.

I hope it will not be necessary to make regulations for this district in the interest of the lower river as serious damage would result to the upper users and very little benefit would inure to the lower users.

Very truly yours,

Assistant Commissioner
of Reclamation

ORDER

Re: WATER DISTRICT No: 36-C
Teton River

WHEREAS, It appears from the record that during the irrigation seasons of 1919 and 1920, application was made and hearings were conducted relative to the advisability of creating a water district comprising the area served by the UPPER TETON RIVER in Teton and Fremont Counties; and,

WHEREAS, It appears that favorable action was taken on such application and that the waters of the said Teton River have been administered as a separate district, known as 36-C, since the irrigation season of 1920 to date; and,

WHEREAS, It appears that if a formal order, creating the said District No. 36-C was ever entered, the same has been lost or misplaced and is not now of record in this office;

NOW, THEREFORE, IT IS HEREBY ORDERED, That this instrument shall have the effect of reperpetuating the original order, if such was ever entered, or, if such order was never entered, this order shall have the effect of creating the said District No. 36-C, comprising the following described area:

Commencing at the initial point on Teton River where it crosses the west boundary line of:

Township 7 North, Range 44 East of the Boise Meridian thence north along the said boundary line to the northwest corner of said township and range, thence in an easterly direction along the divide between the tributaries of Teton River and the tributaries of Fall River to the Wyoming-Idaho state line, thence south along the said Idaho-Wyoming state line to the divide between the tributaries between the said Teton River and the South Fork of Snake River, thence in a northwesterly direction along the said divide to the southwest corner of:

Township 4 North, Range 44 East of the Boise Meridian thence north along the range line between 43 and 44 east to the point of beginning; the said area embraces the watershed of the Teton River and tributaries above the initial point hereinbefore described.

The creation of this district is made subject to the following provisions: That at any time it becomes necessary to effectively

enforce the provisions of that certain decree entered in the case of:

REXBURG IRRIGATION Co., et al. -vs- TETON IRRIGATION CANAL Co., et al.

in the 6th Judicial District of the State of Idaho, the water master of Water District No. 36 may assume jurisdiction of said District No. 36-C for the purpose of distributing the waters of the said district in accordance with the terms of the said decree.

Geo. N. Carter
Commissioner of Reclamation

Boise-Idaho
January 2, 1931

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Moran, Wyo, Jan, 21, 21.

(COPY)

Mr. C.B. Darlington,
Project Supt,
Dubois, Ida.

Dear Mr. Darlington:

Have completed snow survey on the Jackson Lake water shed. Prevailing conditions indicate the lightest depths on record during the past twelve years that we have carried on this work.

The snow is loose due to absence of wind and its density of 20.4% is the lightest ever recorded. Our general average for this time of year for the past twelve years is 45" snow, 11.7" water, density 25%. In comparison with this year we can use this as a criterion in forecasting future snow conditions.

The following data was obtained on trip Jan, 14th to 20th.

Station.	Snow depth.	Water content.
Moran	14"	5.5"
Moran Canyon	30	6.0
Arizona Station	26	5.0
Buckle-berry divide	24	5.0
Snake River Station	25	4.5
Four mile post	28	6.0
Lewis Lake divide	30	6.5
Astor Creek	28	6.0
Colter & Snake	24	5.0
Glade Creek meadows	26	5.0
Grassy Lake divide	42	8.0

Mean depth ——————— 27"
Mean water content ——————— 5.5"
Density ——— 20.4%

Sincerely yours,
Joseph Markham
Res, Supt."

RECEIVED
JAN 28 1981
DEPARTMENT OF RECLAMATION

Burley, Idaho,
January 26, 1931.

Bureau of Reclamation, Denver, Colorado;
Minidoka Irrigation District, Rupert, Idaho;
North Side Canal Co., Jerome, Idaho;
Aberdeen-Springfield Canal Co., Aberdeen, Idaho;
Mr. Lynn Crandall, Idaho Falls, Idaho;
Mr. Jos. Markham, Moran, Wyoming;
University of Idaho, Moscow, Idaho;
Twin Falls Canal Co., Twin Falls, Idaho;
Mr. T. M. McConnell, Milner, Idaho;
Idaho Power Company, Boise, Idaho;
Mr. S. H. McAlister, Idaho Power Co., American Falls, Idaho;
Commissioner of Reclamation, State House, Boise, Idaho.

Gentlemen:

The attached report has been received from Jos. Markham, reservoir superintendent at Jackson Lake reservoir, regarding snow conditions on the Jackson Lake drainage area.

Very truly yours,

R. B. Darlington,
Superintendent.
by Dana Templin

Encl.

RECEIVED
JAN 28 1981
DEPARTMENT OF EDUCATION

February, 19, 31.

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

Dear Mr. Darlington:

Have completed snow survey on the Jackson Lake water shed. The snow depth and water content are the lowest ever recorded for this time of year. The snow is loose and the ground is only about 25% saturated.

In comparison with last year we are 16" short on snow and 6.6" short on water. Our normal snow depth for this time of year is 60" with a water content of 17.4", density 30%. This years depth is 35", water content 6.0", density 21%.

The following data was taken on trip Feb 13th to 18th.

Station	Snow depth	Water content
Moran	16"	4.0"
Moran Canyon	30	6.5
Arizona Station	24	3.5
Huckle-berry divide	28	6.0
Snake River Station	29	5.0
Four mile post	40	7.5
Lewis Lake divide	42	8.5
Aster Creek	40	8.0
Coulter & Snake	38	6.0
Glade Creek meadows	54	6.5
Grassy Lake divide	50	12.0

Mean depth——————35"
Mean water content——————6.0"
Density ——21%

Sincerely yours,
Joseph J Markham
Res, Supt.

REC [illegible] D
FEB 28 1931
DEPARTMENT OF [illegible]

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Burley, Idaho,
February 21, 1931.

Bureau of Reclamation, Denver, Colorado;
Minidoka Irrigation District, Rupert, Idaho;
North Side Canal Co., Jerome, Idaho;
Aberdeen-Springfield Canal Co., Aberdeen, Idaho;
Mr. Lynn Crandall, Idaho Falls, Idaho;
Mr. Jos. Markham, Moran, Wyoming;
University of Idaho, Moscow, Idaho;
Twin Falls Canal Co., Twin Falls, Idaho;
Mr. W. M. McConnell, Milner, Idaho;
Idaho Power Company, Boise, Idaho;
Mr. S. H. McAlister, Idaho Power Co., American Falls, Idaho;
Commissioner of Reclamation, State House, Boise, Idaho.

Gentlemen:

The report hereto attached has been received from Jos. Markham, reservoir superintendent at Jackson Lake Reservoir, regarding snow conditions on the Jackson Lake drainage area.

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

GPO

(COPY)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Moran, Wyo, March 19, 31.

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

Dear Mr. Darlington;

Have completed snow survey on the Jackson Lake water shed. The snow has started to crust and due to mild weather and wet storms during the past ten days the water content has been materially increased.

The following data was taken on trip March 15th to 18th.

Station	Snow depth	Water content
Moran	16"	5.0"
Moran Canyon	32	7.5
Arizona Station	27	6.5
Huckle-berry divide	31	8.0
Snake River Station	31	7.0
Four mile post	48	12.0
Lewis Lake Divide	58	15.0
Aster Creek	48	12.0
Coulter & Snake	36	8.0
Glade Creek meadows	33	8.5
Grassy Lake divide	54	15.0

Mean depth ----------38"

Mean water content ------2.3"

Sincerely yours,
Joseph Markham
Res, Supt.

RECEIVED
MAR 26 1931
DEPARTMENT OF AGRICULTURE

36

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Burley, Idaho,
March 24, 1931.

Bureau of Reclamation, Denver, Colorado;
Minidoka Irrigation District, Rupert, Idaho;
North Side Canal Co., Jerome, Idaho;
Aberdeen-Springfield Canal Co., Aberdeen, Idaho;
Mr. Lynn Crandall, Idaho Falls, Idaho;
Mr. Jos. Markham, Moran, Wyoming;
University of Idaho, Moscow, Idaho;
Twin Falls Canal Co., Twin Falls, Idaho;
Mr. W. M. McConnell, Milner, Idaho;
Idaho Power Company, Boise, Idaho;
Mr. S. H. McAlister, Idaho Power Co., American Falls, Idaho;
Commissioner of Reclamation, State House, Boise, Idaho.

Gentlemen:

Enclosed is copy of a report on snow conditions on the Jackson Lake watershed made by Joseph Markham, reservoir superintendent, under date of March 20, 1931.

Very truly yours,

E. B. Darlington

E. B. Darlington,
Superintendent.

Encl.

GPO

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION



"Home of Americ[illegible] Dog Derby" The Best Trout [illegible]ning in U. S. A.

West Gateway Yellowstone National Park

HOTEL ASHTON

HUGH H. RANKIN, Prop.

Rooms With or Without Bath

ASHTON, IDAHO, May 13 193[illegible]

Hon. C. Ben Ross.
Boise, Idaho.
Dear Governor: We are writing you regarding the water question as affecting the upper Valley, there were three canals cut out this morning and the question of storage is of vital importance may we suggest to you that you and your Mr Ferris Commissioner of Reclamation here at once and we will go over the matter

"Home of Americ[redacted]Dog Derby" The Best Trout [redacted]ning in U. S. A.
West Gateway Yellowstone National Park

HOTEL ASHTON
HUGH H. RANKIN, Prop.

Rooms With or Without Bath

ASHTON, IDAHO,.....193...

feelly with him we have much data and we am sure you will be doing the state a service and am sure this will prove the Post of wisdom in doing this you could then give out an interview regarding the matter. a committee was appointed Earlier in the year at a mass meeting of landowners and water users. for Certain Political reasons. no action has been taken to date,

"Home of Americ[illegible] Dog Derby" The Best Trout [illegible]ning in U. S. A.

West Gateway Yellowstone National Park

HOTEL ASHTON

HUGH H. RANKIN, Prop.

Rooms With or Without Bath

ASHTON, IDAHO,.....193...

Governor we hope you
Since the full importance
of this question, particularly
political, as it involves
the Entire upper Snake
River Valley

Yours always.

Joseph Andrasen

Hugh H. Rankin.

P.S.

Please advise at once

May 16, 1931

Mr. Hugh H. Rankin
Ashton, Idaho

Dear Mr. Rankin:

This will advise that I am this day forwarding your letter to Mr. Faris, the Commissioner of Reclamation, in the hope that some immediate action can be given your request, as the Governor is now confined in the hospital where he will be for some time.

Trusting all is well with you and assuring you this office will be glad to cooperate in any way possible, I am

Yours very truly,

Parker P. Carver
Sec'y to Governor

PPC:PR

District No. 36-C

May 18, 1931

MR. HUGH H. RANKIN,
Ashton,
Idaho

My dear Mr. Rankin:

Your letter dated May 13th addressed to Governor Ross, has been referred to this office for reply.

I have an appointment at Blackfoot on the 27th inst., and will arrange to visit you either just before or after that date. In the meantime, kindly advise as to what matters you have in mind for consideration so that we may examine the records of this office pertaining thereto and be in a position to discuss such matters intelligently.

With kindest personal regards, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

"Home of American Dog Derby" The Best Trout Fishing in U. S. A.

West Gateway Yellowstone National Park

HOTEL ASHTON

HUGH H. RANKIN, Prop.

Rooms With or Without Bath

ASHTON, IDAHO, May 21, 1931

Mr Robt Ferris
Commissioner:
Boise. Ida.

My Dear Ferris: we have all the data and Etc. Necessary for you come as Early as Possible wire when you will be here this is Important.

Yours truly,
Hugh H Rankin

CLASS OF SERVICE DESIRED			
DOMESTIC		CABLE	
TELEGRAM		FULL RATE	
DAY LETTER		DEFERRED	
NIGHT MESSAGE		CABLE LETTER	
NIGHT LETTER		WEEK END LETTER	

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

COPY OF WESTERN UNION TELEGRAM

July 2, 1931

R. G. MEIKLE
Tetonia
I d a h o

LYNN CRANDALL WATERMASTER DISTRICT THIRTY-SIX WILL BE IN TETONIA TOMORROW MORNING AWAIT HIS ARRIVAL AND PLACE YOURSELF UNDER HIS ORDERS IN REGARD TO DISTRIBUTION OF WATER.

MANS H. COFFIN
Acting Assistant Commissioner of Reclamation

CHARGE:
Dept. of Reclamation
State House

(Letterhead)

STATE OF IDAHO
OFFICE OF ATTORNEY GENERAL
BOISE

COPY

July 3, 1931

Mr. R. W. Faris
Commissioner of Reclamation
State House

Dear Sir:

We are in receipt of your letter of June 4th in which you request an opinion regarding priority to the use of stored waters substituted or exchanged for an equal amount of water diverted from a stream or river into which such water flows, or any tributary thereof.

If I understand the facts upon which the question herein is based, correctly, they are as follows:

The ENTERPRISE IRRIGATION DISTRICT is supplied by a canal which diverts from FALL RIVER with a late natural flow right, Fall River being a tributary of Henry Fork, which in turn is a tributary of SNAKE RIVER.

For about four years, the ENTERPRISE IRRIGATION DISTRICT has had, and now has, a contract with the United States to purchase the stored waters from the AMERICAN FALLS RESERVOIR. The District also has a lease for such waters. The stored waters, so contracted, are taken from JACKSON LAKE and the appropriators of the natural flow of the waters of Fall River are so situated that they can use such stored waters. The Enterprise Irrigation District is situated above such stored waters and cannot use same, but is so situated that it can use the natural flow of Fall River.

There are other canal companies using the natural flow of Fall River, which are contemplating the rental of stored waters in American Falls Reservoir, for this season, and they desire to substitute or exchange such stored waters, under a similar procedure as the Enterprise Irrigation District. The natural flow of Fall River will not be sufficient to fill all the demands for the Enterprise Irrigation District and the other canal companies desiring to make such exchange.

THIS FILE CARRIED in WATER DISTRICT No. 36 - 1931 LETTERS

You desire to know whether or not the Enterprise Irrigation District has a prior right to make such substitution or exchange.

Section 1 of Article XV of our Constitution provides that:

> "The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulation and control of the state in the manner prescribed by law."

Section 3 of Article XV of our Constitution provides, in part, that:

> "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied. Priority of appropriation shall give the better right as between those using the water; * * *."

Section 5561, C.S., provides as follows:

> "As between appropriators, the first in time is first in right."

Section 5559, C.S., provides as follows:

> "The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases."

Section 5560, C.S., provides as follows:

> "The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; and water may be turned into any ditch, natural channel or waterway from reservoirs or other sources of water supply, and such water may be substituted or exchanged for an equal amount of water diverted from the stream, creek or river into which such water flows, or any tributary thereof, but in reclaiming the water so mingled, or diverting water in lieu thereof from any such stream, creek, river or tributary, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage."

It will be noted from the facts stated that the Enterprise Irrigation District has, for a period of four years, contracted with the United States for stored waters of the American Falls Reservoir, such right being a permanent right. It will be further noted that the other canals on Fall River have only a temporary and occasional right to the stored waters of said reservoir, the same being acquired through a contemplated lease for this season. It would therefore occur to me that the Enterprise Irrigation District desires to substitute or exchange its stored waters for each continuous season and is a permanent use, while the other canals contemplate only a temporary use, very likely during seasons of shortage of water.

From the foregoing facts, it appears that the stored waters are mingled with the natural flow waters appropriated from Fall River and may be used by the appropriators of the natural flow of Fall River, and the natural flow of Fall River may be used upon the lands within the Enterprise Irrigation District, but the district is unable to use the stored waters. By such mingling of waters, the identity thereof is lost and the appropriators of the natural flow are in no way injured by the mingling of the stored waters; in fact, they are benefited.

While I do not find any authority upon this direct question, it appears to me that the rule of "First in time, first in right" should be applied in this instance. The Enterprise Irrigation District has purchased a permanent right to the stored waters, and wish to substitute or exchange them for the natural flow of Fall River. This may be done, as provided by Section 5560, C.S.

It therefore is my opinion that the Enterprise Irrigation District, by reason of its priority of contract, has the priority of time to the substitution or exchange of such waters.

Very truly yours,

(Signed) FRED J. BABCOCK
Attorney General

July 3, 1931.

Re: District No. 36 C

Mr. R. G. Mcikle
Watermaster, Dist. No. 36C
Tetonia, Idaho

Dear Sir:-

In explanation of my telegram of July 2nd -

In 1919 the water users of Teton River Basin petitioned the Commissioner of Reclamation to create a new water district comprising the upper reaches of the Teton River. A hearing was held and favorable action was taken by the Commissioner of Reclamation to create a new district to be known as District No. 36 C.

But with this proviso, "That at any time it becomes necessary to effectively enforce the provisions of that certain decree entered in the case of : "Rexburg Irrigation Co. et al., vs. Teton Irrigation Canal Co., et al.", in the 6th Judicial District of the State of Idaho, the watermaster of Water District No. 36 may assume jurisdiction of said District No. 36 C for the purpose of distributing the waters of the said district in accordance with the terms of the said decree"

Since the formation of District No. 36 C, this has been the first time that it has been found necessary to enforce the proviso. Mr. Crandall, the watermaster of District No. 36, has been duly notified by the water users of the lower stretches of the river, demanding the enforcement of this proviso, thus necessitating the order contained in yesterday's telegram.

Very truly yours,

Acting Assistant Commissioner.

Driggs, Idaho
July 7, 1931

C. M. Hatch,
Victor, Idaho

Dear Sir:

In the table below is given the information requested by you, relative to the flow of water in the streams of Teton County as measured by me in August 1919. These measurements were made from the 27th to the 30th of the month, inclusive.

Creek	Where Measured	Discharge Sec. Ft.
Spring (Trib. N. Leigh)	40 rods from junction	7.36
North Leigh	1/4 Mi. E. Idaho-Wyo. Boundary	4.53
South Leigh	1 Mi. E. Idaho-Wyo. Boundary	9.72
Teton	3½ Mi. E. Idaho-Wyo. Boundary	20.31
Spring (Alta)	1/4 Mi. E. Idaho-Wyo. Boundary	2.21
Rapid	1/4 Mi. E. Idaho-Wyo. Boundary	2.46
Darby	1½ Mi. E. Idaho-Wyo. Boundary	14.[illegible]
Fox	1/4 Mi. W. Idaho-Wyo. Boundary	11.12
Game	At Highway Bridge	11.[illegible]
Trail	25 rds. below Moose Creek	56.52
Warm (Several Branches)		9.02
Campbell	Near Campbell Saw-mill	2.16
Grove	Near Krupqueweit's House	1.32
Kunz Springs	Outlet of Pond	3.47
Mahogany	At Thos.-Bates' Headgate	4.04
Horseshoe	Above Madson's Ranch	5.11
Packsaddle	Mouth of Canyon	2.27
Badger	At Fisher's Saw-Mill	2.04
	Total - - -	168.53
Teton River	50 rds. below Mouth of Badger	355.19

Yours truly,

T. Ross Wilson

MEASUREMENTS MADE BY M. LUKE & R. G. MEIKLE ON STREAMS IN TETON BASIN, July 9, 1951.

	Sec. Ft.		Inches
North Leigh Creek	12.5	or	625
South Leigh Creek	11.2	or	560
Dry Creek (Est.)	1.0	or	50
Grand Teton Canal 15.9 plus 5 laterals	22.4	or	1121
Spring Creek (near Pratt)	3.0	or	150
Darby Creek	23.9	or	1195
Fox Creek	10.7	or	535
Game Creek	18.0	or	900
Trail Creek	57.1	or	2855
Badger Creek (Est.)	2.0	or	100
Small Creek (West from Victor) (Est.)	1.0	or	50
Teton River S. W. from Driggs	185	or	9300
Teton River S. W. from Tetonia	253	or	12650

Making a total of 162.8 Sec. Ft. coming into the Basin.

There is 253 Sec. Ft. coming out.

Melvin Luke

Hydrographer.

Ed Shaw

Water District No. 36

COPY

Idaho Falls, Idaho

July 24, 1931

Mr. C. H. Linsenmann,

Driggs, Idaho.

Dear Sir:

Following are results of recent measurements by

Mr. Luke:

July 16, 1931,	Trail Creek above String Canal	56.6	sec. ft.
" 16, "	Trail Creek just above live water near mouth	5.6	" "
" 22, "	Trail Creek just above live water near mouth	10.2	" "
" 16, "	Game Creek 100 yards above highway	15.0	" "

multiply by 50 to get miles.

Very truly yours,

(Signed) LYNN CRANDALL

Watermaster

C. M. HATCH
REPRESENTATIVE
TETON COUNTY
HOME ADDRESS:
VICTOR, IDAHO

COMMITTEES:
FISH AND GAME---CHAIRMAN
WATERWAYS AND DRAINAGE
BANKING

IDAHO STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

TWENTY-FIRST SESSION

BOISE, IDAHO

Aug. 7, 1931.

Mr. R.W.Ferris,
Commissioner of Reclamation,
Boise, Idaho.

Dear Sir;

In 1919 the water users of Teton County petitioned the Commissioner of Reclamation to create a new water district comprising the upper reaches of the Teton River. A careful survey and measurement of all the water flowing into this valley from all streams and springs was made, and a measurement of the discharge at a point 50 rods below the mouth of Badger Creek, where Teton River leaves this valley. This measurement was made by T. Ross Wilson from Aug. 27, to Aug. 30 both dates inclusive and showed a total inflow of 168.53 Sec. feet, and a discharge of 355.19 Sec. feet. Our contention was that we act as a reservoir, using the waters in early spring for irrigation and diverting it from its natural channel in winter for watering stock, and for domestic purposes, thus saving it for the users lower down on the river, making it available for irrigation when it is most needed. A hearing was held, and favorable action was taken, and Dist. 36C was created. We thot that the water independence of the valley was established, but, now we are told that there was a proviso - " that anytime it became necessary to effectively enforce the provisions of that certain decree, entered in the case of 'Rexburg Irrigation Co. et al, Vs Teton Canal Co. et al.' the water master of Water Dist. 36 may assume jurisdiction of said Dist. 36C for the purpose of distributing the water of said district in accordance with the terms of the said decree." Acting on this proviso the users of water on the lower end of Teton River demanded the water, and it was ordered turned down the river. Weprotested this action and asked for further investigation and a new measurement . This measurement was made by Melvin Luke July 9, 1931, and showed a total of 162.8 Sec. feet coming into this valley, and 253 Sec. feet going out, again establishing the fact that as a result of our [redacted] of the water, we are discharging more than we have coming in. We therefore contend that we are and of right ought to be independent from the water users of District 36, or any other water district.

Conditions are so serious with us in this water matter, and we feel so strongly about it that we are now asking you to come up here some time next week and go over the problem with us. We would gladly come to you at your office but we are convinced that the only way for you or anyone else to properly understand and appreciate the condition, is to see it first hand.

In the matter of the proposed reservoir in the north end of our county we would like information that we are confident you can give us.

Trusting that we will see you early next week, I am;

Sincerely yours,

C. M. Hatch.

RECEIVED
AUG 10 1931
DEPARTMENT OF

August 10, 1931

Re: DISTRICT NO. 36-C

Hon. C. M. HATCH,
Victor,
I d a h o

My dear Mr. Hatch:

I have your letter of the 7th inst. re conditions in District No. 36-C.

My present plans are to accompany the Congressional Delegation on its trip of investigation throughout Southeastern Idaho, leaving here at noon the 13th, and arriving in the upper Snake River Valley about the 15th. I will get in touch with you while in that vicinity and arrange to make an examination and inquiry into your situation.

Anticipating a pleasant visit with you and others interested in your community, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

Tetonia, Idaho

August 10th, 1931.

Mr. R. W. Ferris, Commissioner,
Department of Reclaimation,
Boise, Idaho

Dear Mr. Ferris:

I just learned that you with other Reclaimation officialw will be in our Valley on the 15th of this month.

I am very desirous of a short conference with you while you are here if such a meeting can be arranged. There are a few matters here that, I feel, need your attention and will greatly appreciate it if you can stop over long enough to assist us.

Yours very truly,

R. G. Meikle, Watermaster 36C

RECEIVED
AUG 12 1931
DEPARTMENT OF RECLAMATION

Tetonia, Idaho

August 10th, 1931.

Mr. H. W. Ferris, Commissioner,
Department of Reclamation,
Boise, Idaho

Dear Mr. Ferris:

I just learned that you with other Reclamation officials will be in our Valley on the 15th of this month.

I am very desirous of a short conference with you while you are here if such a meeting can be arranged. There are a few matters here that, I feel, need your attention and will greatly appreciate it if you can stop over long enough to assist us.

Yours very truly,

H. G. Meikle, Watermaster 3&C

August 12, 1931

Re: DISTRICT NO. 36-C

Mr. R. G. MEIKLE,
Watermaster, District No. 36-C,
Tetonia, Idaho

Dear Mr. Meikle:

I have your letter of August 10th re conditions in your District. Mr. HATCH of Victor, accompanied by a delegation of citizens from that vicinity, was here last Monday with reference, I imagine, to some of the matters you have in mind.

I am leaving Boise tomorrow (Thursday), at noon, with the Congressional Delegation on its trip through southeastern Idaho, and expect to be in your section about Saturday the 15th. I have already arranged with Mr. HATCH and others to make an investigation of conditions in your section during my trip. I would suggest that you get in touch with Mr. HATCH and arrange to go over the ground with us.

Very truly yours,

Commissioner of Reclamation

RWF/mt

August 21, 1931

Re: DISTRICT NO. 36 – C

HON. G. M. HATCH,
Victor,
I d a h o

My dear Mr. Hatch:

At the water users' meeting in St. Anthony Tuesday evening, I took up the matter of the distribution of water in TETON BASIN with the members of the Water Users' Committee for the Lower River, as promised. They evidenced a very friendly disposition toward the people of Teton Basin, but were inclined to insist upon their right to demand distribution of water under the Decree. I did not wish to argue the matter with them, for reasons discussed with you, but suggested thatanother conference be held between representatives of the Basin and the Lower Users in an attempt to reach an amicable arrangement, or at least a definite understanding as to the attitude of the parties, in the hope that if you could not agree, you might be able to reduct your contentions or bring them within limitations where I, as Commissioner of Reclamation, might intervene.

I advised the Committee as to the effort being made to adjust the differences as to the distribution of water from Wyoming, which seemed to interest them, and I hope may affect their attitude toward the handling of water in the Basin.

I am enclosing herewith letter from LYNN CRANDALL, Watermaster, with recent measurements made by Mr. LUKE. While in Idaho Falls I arranged with Mr. Crandall to make further measurements about the first of next month, and particularly as to the flow of TRAIL CREEK and TETON CREEK above all diversions, in view of the fact that the contention has been made that the difference between the outflow and the incoming flow of the Basin may be accounted for by underflow above the points of diversion.

I want to assure you again that I shall hold myself in readiness to cooperate with you at all times in your efforts looking toward the betterment of conditions, and trust that you may keep me fully advised as to developments.

With kindest personal regards to you all, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

Enc.

Re: DISTRICT No. 36 - C

August 21, 1931

Mr. JOSEPH T. JENSEN,
President, Water Users' Association,
Rexburg, Idaho

My dear Mr. Jensen:

At the general meeting the other evening it was a little difficult for me to understand just what your situation is, who are interested, and what your general plan of action is. To get the matter straight, and so that I may understand and work intelligently, I wish you would send me a complete set-up of your organization, just what your plans are, with any suggestions you may have as to how the Department or I, personally, might cooperate in a way that would be helpful.

With kindest personal regards to you all, and assuring you that I shall hold myself in readiness to cooperate with you in every way possible toward the furtherance of your plans and aims, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

August 27, 1931

Re: DISTRICT No. 36 - C

Mr. HUGH H. RANKIN,
Ashton,
Idaho

Dear Mr. Rankin:

I have your letter of August 22nd re conditions in your country, and hope that we may be of some service in solving your various problems. I have not yet been able to locate a copy of the President's Commissioners' Report on the TETON VALLEY reservoir site. If you could get hold of one there, I would greatly appreciate it if you would send it to me, and will guarantee safe return.

With kindest personal regards to you all, I am

Very truly yours,

Commissioner of Reclamation

RWR/mt

August 28, 1931

Re: DISTRICT No. 36-C

Hon. G. M. HATCH,
Victor,
I d a h o

Dear Mr. Hatch:

On our trip over the canals and lands on the Wyoming side of the line, something was said about a Decree of Judge Dietrich in the Federal Court some time ago covering one of these streams. I wish you would let me know the names of the parties to the suit and the name and location of the stream, so that we may look it up and see just how the matter was handled.

I would appreciate a line from you occasionally advising as to how your matters are shaping up.

With kindest regards to you all, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

C. M. HATCH
REPRESENTATIVE
TETON COUNTY
HOME ADDRESS:
VICTOR, IDAHO

COMMITTEES:
FISH AND GAME---CHAIRMAN
WATERWAYS AND DRAINAGE
BANKING

IDAHO STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

TWENTY-FIRST SESSION

BOISE, IDAHO

Sep. 9, 1931.

Mr. R.W.Faris,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Faris;

Since you were here I have been away from here most of the time. For that reason your letters of August 21 and 28 have not been answered. I called at your office last week but you were away on your vacation. Let me thank you for these letters. I surely appreciate your attitude in this water difficulty. We have held several meetings in an endeavor to find some effective, workable plan of organization. As yet we have not found one that would bring all the water users in in an effective way, so that each would be responsible and represented in proportion to his water interests. If you can suggest a plan we will be very much pleased.

I presume the case you enquire about in your letter of the 28th, is found in Idaho Report 15-1908, 1909, pages 265 to 273.

Again thanking you for your letters, which I will present at our meeting here tomorrow night, and trusting that I may hear from you soon, and that you will have some workable plan to recommend to us, I am;

Yours very truly,

C.M. Hatch

RECEIVED
SEP 12 1931
DEPARTMENT OF RECLAMATION

Sugar City, Idaho
Sept. 14, 1931

Hon. R. W. Faris
Commissioner of Reclamation
Boise, Idaho

Dear Mr. Faris:

In re: Grand Teton Reservoir.

You will please pardon the delay in replying to your recent letter with respect to the above reservoir. The writer has been absent from home a great deal during the last two weeks, and this is the first opportunity of writing you. I am very glad to furnish you with general information regarding our reservoir project.

The Grand Teton Reservoir Company is being organized at this time. Some twenty canal companies that hold decreed water rights on the Teton River have all signed up for the organization of this company. The Application for Permit has been filed in your office, but has not been returned completed as yet. This, however, will be done in the course of the next two weeks.

There are approximately 60,000 acres of irrigated and cultivated land in the area covered by the organizers of this project. Some of these lands have been settled upon for more than 45 years and represent some of the oldest and best cultivated farming lands in the Upper Snake River Valley. It is not the intention of the promoters of the project to take on any new lands, but merely to protect the present water users by having a supply of water available when low water years come, as this past season has been.

There is probably a population of some 20,000 people in the area which this storage water will supply, and the assessed valuation is in excess of $10,000,000. The existing canal companies are all of the mutual type, owned exclusively by the water users. The cost of maintaining is very low, and practically all of the companies are free of indebtedness. This places us in a position where we should have no trouble whatsoever in financing the construction of the reservoir.

You are, of course, quite familiar with all of the Upper Snake River Valley and it is hardly necessary for me to mention that this area included under our project is in a very high state of cultivation, and that the soil is as fertile as we have in the valley. The chief crops are sugar beets, seed peas, alfalfa, potatoes, vegetables, fruit and grains. The dairying and poultry industry are making very rapid strides.

I cannot inform you definitely as to the approximate cost of the project, but it is roughly estimated that it will be somewhere in the neighborhood of from $200,000 to $300,000. This is but a rough guess, however. The organizers of the project are all very much united, and very excellent progress is being made. There are a few apparent obstacles that will probably have to be surmounted, but I do not think that these are of any serious consequence.

We appreciate very much the co-operation and assistance we have so far secured from your office, and we feel assured that you will continue to help us until we get the matter fully completed.

Thanking you for what you and your office have already done, and assuring you that we very much appreciate your co-operation in this matter, I am

Yours very truly,

J. E. Jensen

September 16, 1931

Re: DISTRICT 36-C

Hon. C. M. HATCH,
Victor,
I d a h o

My dear Mr. Hatch:

I have your letter of September 9th, received during my absence from the city, and was sorry that I was not here when you called.

I am delighted to find that the long-lost Order creating Irrigation Water District No. 36-C has come to light, but am now in doubt as to what sort of a situation we are in by reason of the order creating No. 36-C conditionally. However, we have in contemplation some radical revisions of water districts during the coming winter and before the next irrigation season, and this matter will have attention when we come to it.

I have given your situation a great deal of thought, but I am sorry to have to advise that no workable plan has suggested itself to me. I had hoped that your people and the people down the river might enter into negotiations along lines where we might be able to intervene and get you together.

I have an appointment with State Engineer WHITING, of Wyoming, on BEAR RIVER, for the 21st and 22nd, at which time I will go into the matter of the inter-State water in which you are interested, with him further, and hope to be able to consummate some sort of an agreement with reference to handling such water that will be satisfactory to all concerned. In the meantime, I hope that your negotiations and plans may progress to a point where I may be able to rencer you some real assistance in the solution of your problem.

With kindest personal regards to you all, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

District 36-C

September 16, 1931

Mr. J. E. JENSEN,
Sugar City,
I d a h o

Dear Sir:

I have your letter of the 14th inst. re GRAND TETON RESERVOIR, and am pleased to know that you are making progress toward the consummation of your undertaking. You may be assured that this Department and I, personally, are anxious to cooperate with you at all times with reference to the matter.

Very truly yours,

Commissioner of Reclamation

RWF/mt

EARL FLOYD, CLERK
BOARD OF
COUNTY COMMISSIONERS

OFFICE OF
CLERK OF THE DISTRICT COURT
EX-OFFICIO AUDITOR AND RECORDER
TETON COUNTY
DRIGGS, IDAHO

BOARD MEMBERS--
ED. RIGGAN, CHAIRMAN
D. P. LETHAM
H. W. STOTT

Sept. 28, 1931

Commissioner of Reclamation,
Boise, Idaho

Attention, Mr. Coffin, Deputy:

Dear Sir:

Some time ago I was in Boise and called at your office and left with you a copy of a water order, wherein #36C had been created early in the year of 1916.

If you remember, you promised to let me know just what the Commissioner's attitude was on this matter. Kindly let me hear from you at your earliest convenience, advising as to whether or not the Commissioner has gone into this matter and just how he feels about it.

Very truly yours,
Earl Floyd
Auditor & Recorder.

EF:MB

RECEIVED
SEP 29 1931
DEPARTMENT OF RECLAMATION

(WATER ORDER RETURNED TO MR. FLOYD)

September 29, 1931

Re: WATER DISTRICT #36-C Misc.

Mr. EARL FLOYD,
County Auditor,
Driggs, Idaho

Dear Sir:

Referring to your letter of the 28th in re Water District 36-C, I have had another conference with Mr. WHITING, State Engineer of Wyoming, with reference to distribution and handling of inter-state water, since you were in, which I hope will result in a satisfactory agreement with reference to the matter. Pending the consummation of such an agreement, the matter of the handling of this District will be held in abeyance. The whole matter will, however, be taken care of before the next irrigation season.

Please advise interested parties accordingly.

Very truly yours,

Commissioner of Reclamation

RWF/mt

October 19, 1931

Re: DISTRICT NO. 36 - C

Mr. LYNN CRANDALL, Watermaster
District No. 36,
Idaho Falls, Idaho

Dear Mr. Crandall:

When I was in Idaho Falls about the middle of August, it was agreed that you would make further water measurements in the TETON BASIN, and particularly with reference to stream flow above diversions to check overflow. I would like to have a copy of whatever measurements you have made in that connection.

Very truly yours,

Commissioner of Reclamation

RWF/mt

UNITED STATES

DEPARTMENT OF THE INTERIOR

GEOLOGICAL SURVEY

Idaho Falls, Idaho
October 20, 1931

Mr. Robert W. Faris,
Commissioner of Reclamation,
Boise, Idaho.

Dear Sir:

Referring to your letter of October 19, 1931:

Following is a list of measurements made in Teton Basin during September:

Fox Creek, 9/12/31, Discharge 4.32. Measurement made in flume where canal crosses road at base of mountains.

Trail Creek, 9/12/31, Discharge 36.6. Measurement made 200 feet above diversion of String Canal.

Game Creek, 9/12/31, Discharge 8.59. Measurement made 150 feet above where Highway crosses Game Creek.

Darbey Creek, 9/12/31, Discharge 10.2. Measurement made at diversions of upper canals.

Grand Teton Creek, 9/12/31, Discharge 17.5. Measurement made about 150 feet above upper diversion on Creek.

South Leigh, 9/12/31, Discharge 5.47. Measurement made 1 mile above Wyoming line.

Trusting that the above information is what you require, I am

Very truly yours,

W. V. Farris

Assistant Engineer.

RECEIVED
OCT 22 1931
DEPARTMENT OF RECLAMATION

4.32
36.60
8.59
10.20
17.50
5.47
82.69
80
6807.20

October 22, 1931

Re: DISTRICT NO. 36-e

Mr. LYNN CRANDALL, Watermaster
District No. 36,
Idaho Falls, Idaho

Dear Lynn:

I have your letter of October 20, 1931, by Mr. IRONS, with list of measurements made in TETON BASIN during September, which I assure you I appreciate.

I failed in my former letter to request measurements of the river at the dam site. I would also like these measurements at about the same time the measurements were made of the streams entering the basin.

Very truly yours,

Commissioner of Reclamation

RWF/mt

#36-C

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

Idaho Falls, Idaho
October 23, 1931

Mr. Robert W. Faris,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Faris:

Referring to your letter of October 22:

Teton River nr. Tetonia, Ida. 9/15/31 Discharge 170

We are visiting this station in the near future and if the recorder trace shows a different gage height for the period when the measurements, which were mailed you, were made, we will send you the gage height and corresponding discharges.

Very truly yours,

W. V. Farns

Assistant Engineer.

RECEIVED
OCT 26 1931
DEPARTMENT OF RECLAMATION

SHELBY HUGH ATCHLEY
PROSECUTING ATTORNEY

OFFICE OF
PROSECUTING ATTORNEY
TETON COUNTY

DRIGGS, IDAHO,

Nov.2,1931

Department Of Reclamation
Boise,Idaho

Gentlemen:

Numerous inquires have come to my office relative to the proposed reservoir at Tetonia, Teton County,Idaho.I have no data pertaining to same. Therefore I should like to have any information from your office that you may happen to have or would be kind enough to send me in regard to this project.I need to know just how the proposed reservoir will benefit Teton County water users in order to discuss the matter with them intelligently and to be of service to them in this regard.Primarily the citizens here are interested in knowing how they will be benefited.

Yours very truly,

S.H.Atchley

RECEIVED
NOV 3 1931
DEPARTMENT OF RECLAMATION

Re: DISTRICT 36-C

November 3, 1931

Mr. SHELBY H. ATCHLEY,
Prosecuting Attorney,
Driggs, Idaho

My dear Mr. Atchley:

We have your letter of November 2nd re proposed reservoir at TETONIA. Beg to advise that several filings have recently been made on what is known as the "Narrows" site at the lower end of the Basin, for permit to build a dam and store water for power and irrigation purposes.

I also understand that the parties in interest on the lower river have negotiations pending with the United States Reclamation Service for surveys to determine the feasibility and cost of utilizing this site for storage purposes.

The benefits that might accrue to land owners in the TETON BASIN from the construction of this reservoir would be that from the purchase of an interest therein the flood waters would be stored for use on the lower river, and the natural flow of the streams left available to supply the users in the Teton Basin.

Trusting that the foregoing gives you the information you desire, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

November 18, 1931

DISTRICT No. 36 MISCELLANEOUS
Re: TETON RESERVOIR and DAM

COPY

UPPER SNAKE RIVER IRRIGATION COMMITTEE
St. Anthony
I d a h o

Gentlemen:

I very much appreciate your invitation to meet with you for the discussion of problems affecting the water supply in the Upper Snake River Valley, in which we are all interested, but having been away from the office a great deal lately I find business accumulated and demanding attention to such an extent that it is impossible for me to get away at this time.

With reference to the proposed Teton Reservoir and Dam and your inquiry as to my impressions and judgment as to the feasibility and economy of construction: I visited the site last summer and so far as I was able to see, it appears a most favorable one and where construction costs would not be excessive; from experience under similar conditions I would not expect to encounter any unusual engineering or construction difficulties.

The report of JAMES G. CAMP of the U. S. Reclamation Service, dated April 19, 1905, contains the following with reference to this site:

THIS FILE CARRIED IN DISTRICT No. 36-C - MISCELLANEOUS

November 18, 1931

DISTRICT No. 36 - C
Re: TETON RESERVOIR and DAM

UPPER SNAKE RIVER IRRIGATION COMMITTEE
St. Anthony
I d a h o

Gentlemen:

I very much appreciate your invitation to meet with you for the discussion of problems affecting the water supply in the Upper Snake River Valley, in which we are all interested, but having been away from the office a great deal lately I find business accumulated and demanding attention to such an extent that it is impossible for me to get away at this time.

With reference to the proposed Teton Reservoir and Dam and your inquiry as to my impressions and judgment as to the feasibility and economy of construction: I visited the site last summer and so far as I was able to see, it appears a most favorable one and where construction costs would not be excessive; from experience under similar conditions I would not expect to encounter any unusual engineering or construction difficulties.

The report of JAMES G. CAMP of the U. S. Reclamation Service, dated April 19, 1905, contains the following with reference to this site:

"The dam site is at the lower end of the basin where a lava flow has formed, dammed up the basin; through this the river has broken a channel, leaving very abrupt bluffs of shattered lava on each side. It is especially adapted for a rock-fill dam, there being plenty of loose rock of all sizes convenient and at an elevation that they can with a cable be placed in the dam by gravity. The bed of the stream is loose rock but solid rock on both sides would indicate that rock would be found at no great depth."

In the report of the YELLOWSTONE NATIONAL BOUNDARY COMMISSION covering investigations made during the year 1929 is found the following with reference to this site:

"A satisfactory substitute for the Beckler site may be had in a reservoir in the Teton River Basin, which is outside of the park boundaries and, therefore, free from the above mentioned disadvantages (that of the Bechler being in the Yellowstone National Park). There remains the question as to the feasibility of construction, amount of water available, and cost. The results of this investigation indicate, briefly, that the Teton Project involves no construction problems which can not be as readily and successfully solved as those involved in the Bechler Project; that the water supply is larger than the Bechler Project; and that the cost would be about the same."

A comparison of the estimated cost of storage water in the two sites is as follows:

PROJECT	STRUCTURE	CAPACITY	COST
Bechler	earth dam 60 feet	186,000 acre feet at spillway elevation	$1,903,935.00 total cost exclusive of right-of-way or approximately $10.23 per acre foot
Teton	storage reservoir rock-fill dam, 100 ft. high	294,000 acre feet at spillway	$1,254,650.00 or approximately $4.27 per acre foot

The probability of segregation of the Bechler Meadow site from the National Park seems very remote, if at all possible, and if released by the Government might revert to the State of Wyoming, in which case the situation would not be improved for the reason that Wyoming persistently refuses to grant permit for the storage or diversion of water from Wyoming for use in Idaho.

As I understand it, the field investigations and report of the Park Boundary Commission were conducted by Mr. Bock under the direction and supervision of ARTHUR E. MORGAN, member of the commission. I am quite well acquainted with Mr. Morgan, who is an outstanding member of the engineering profession of national reputation, and to whose opinion and judgment in such matters I would attach great weight. Under the circumstances it seems to me that a careful investigation should be made covering the Teton Basin site.

You may be assured that you will have my hearty personal cooperation and that of this department in your efforts to relieve the distressing water conditions in your valley.

With kindest personal regards to you all, I remain,

Cordially yours,

Commissioner of Reclamation

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1931 NOV 21 AM 11 02

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HON C BEN ROSS=

GOVERNOR OF IDAHO BOISE IDA=

RETEL TWENTIETH, AM FAVORABLE TO ANY FEASIBLE RESERVOIR ON UPPER SNAKE, LETTER FOLLOWS GIVING WHAT INFORMATION WE HAVE ABOUT GEOLOGICAL AND OTHER CONDITIONS AFFECTING TETON BASIN RESERVOIR=

MEAD.

WESTERN UNION MESSENGERS ARE AVAILABLE FOR THE DELIVERY OF NOTES AND PACKAGES

ADDRESS ALL COMMUNICATIONS TO
THE COMMISSIONER

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

WASHINGTON

OFFICE OF THE COMMISSIONER

RECEIVED
NOV 27 1931
GOVERNOR'S OFFICE

NOV 23 1931

Hon. C. Ben Ross, Governor,
State of Idaho,
Boise, Idaho.

My dear Governor Ross:

Your telegram of November 20th regarding the Teton basin reservoir site, to which I replied on the same day, would indicate a misconception of position of the Bureau of Reclamation in this matter. The Bureau has made no investigations of this site excepting only the original survey thereof in 1904. The Geological Survey has recently made a geological reconnaissance of the dam site and reports that the structures believed to exist there are likely to permit leakage which might prove dangerous to a dam. In order to ascertain more conclusively what the prospects of such leakage may amount to, it will be necessary to do more geological work and to supplement it by drilling and test pit exploration. Under these circumstances we are withholding judgment as to feasibility until the needed investigations have been made.

I am hopeful that a way will be found to improve the situation in the locality that can not be aided by the Jackson Lake and American Falls reservoirs.

Very truly yours,

Elwood Mead

Commissioner.

STATE OF IDAHO
OFFICE OF THE GOVERNOR
BOISE

November 28, 1931

Mr. R. W. Faris
Commissioner of Reclamation
State House

Dear Sir:

Attached hereto you will find a letter from Commissioner Mead, which we have been looking for for some time.

I trust the same will be of interest to you.

Yours very truly,

Parker P. Carver

Parker P. Carver
Sec'y to Governor

ppc/pr

"Home of America[illegible]og Derby" The Best Trout [illegible]ing in U. S. A.

West Gateway Yellowstone National Park

HOTEL ASHTON

HUGH H. RANKIN, Prop.

Rooms With or Without Bath

ASHTON, IDAHO, Aug 22 193.!

My Robt Ferris.
Commissioner Reclamation

My Dear Mr. Ferris; I was delighted to read your interviews and am sure they have had a good effect.

I am so glad you came over as you now have a real first hand cross section of our problems as to water for this section.

I am sending you map, covering section that it would be desirable to arrange a deal with Wyo. on. I hope this can be accomplished If I can be of service

"Home of Americ[illegible] Dog Derby" The Best Trout[illegible]hing in U. S. A.

West Gateway Yellowstone National Park

HOTEL ASHTON

HUGH H. RANKIN, Prop.

Rooms With or Without Bath

ASHTON, IDAHO,.....193...

to you In any matters In this section Call on me I and my Brother spent two years on the water sheds from the south fork to yellowstone Park and I believe I know them as well as any man In the Country. May be over to Boise In near future

I hope you have Covered the President's Commissioners Report, which looks to me as the basis to work from.

Yours very truly,

Hugh H Rankin

P.S.

Map under Seperate Cover.

RECEIVED
AUG 24 1931
DEPARTMENT OF RECLAMATION

pair of double blankets, a single nket, one spread and one pillow).

A lot of misery consists in simply nembering.

dissolved in one-half pint witch hasel. At drug stores.

Had Proof

"D[illegible]you believe that there is a high[illegible]power?

"My good man, I married her."

For STRONG BONES *and* TEETH



Now is the time to help your children build strong bones and healthy teeth. The wealth of Vitamin D—and the mineral salts—in Scott's Emulsion of Cod Liver Oil, will help you do this. And doctors recommend its Vitamin A content too. This promotes growth and increases resistance to disease. Scott's Emulsion is also good for expectant mothers and run-down adults. It helps ward off colds. Pleasantly flavored. Easy to take. Scott & Bowne, Bloomfield, N. J. Sales Representatives, Harold F. Ritchie & Co., Inc., N. Y.

LISTEN TO *Scott's Emulsion's "Romances of the Sea" every Sunday at 7:30 p. m. over Stations KHJ Los Angeles, KOIN Portland, KFRC San Francisco, KOL Seattle, KVI Tacoma and KEPY Spokane*

Scott's Emulsion

OF NORWEGIAN COD LIVER OIL

Family Secret

Teacher—Where does wool come m?

Boys—Sheep.

Teacher—What is made from it?

No answer.

Teacher—Well, for instance, what your trousers made of?

Willie volunteers—My dad's.

TOP THAT COUGH!

Bronchitis is increasingly preva- t at this season. Alone, it is sel- n serious, although the cough may very annoying. But the serious of Bronchitis and other mild ections of the lungs and throat is t the inflamed tissues may be in- ed by some far more serious anism, particularly Pneumonia. his is a real danger in most es. It is the best of reasons why ronchial cough or an attack of ngitis should be stopped as ckly as possible.

he quick effective way to check se troubles is to apply B. &. M., Penetrating Germicide, three es a day, spreading it over the re chest and throat. Usually the t application will bring out a red- flush showing where the trou- is.

. & M. is obtainable from most ggists. If yours cannot supply it, d his name and $1.25 for a ge-size bottle sent postpaid. Help- booklet free on request. F. E. LLINS COMPANY, 53 Beverly Boston, Mass.—Adv.

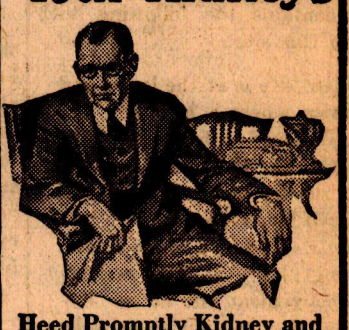
When the right man meets a crisis is not excited.

Aha!

Mrs. Wife—I'm sorry, but dinner is a bit burned tonight, dear.

Mr. Husband—Oh, so they had a fire at the delicatessen?

Don't Neglect Your Kidneys



Heed Promptly Kidney and Bladder Irregularities

If bothered with bladder irregularities; nagging backache and a tired, nervous, depressed feeling due to disordered kidney action or bladder irritation, don't delay. Users everywhere rely on *Doan's Pills*. Praised for more than 50 years. Recommended the country over. Sold everywhere.



Doan's Pills

A DIURETIC FOR THE KIDNEYS

Alps' New Attraction

The Alps have produced their first water geyser. It came into being in the course of sounding operations near the bath resort of Schulsp. The geyser erupts regularly every 15 minutes, the jet attaining a height of more than 30 feet.

American Sapphire Fields

There are two notable sapphire fields in the United States. One, along the great corundum deposits of Macon county, N. C., has yielded some fine gems. The other is in the gold-bearing, sandy region near Helena, Mont.—Gas Logic.

Salvage From Films

At the end of the normal life of a motion picture, three years, the film is burned and the raw silver extracted from the ash. This is quite considerable—200,000 pounds of film yielding about 250 pounds of the metal.

City of Silk

Lyons is the center of the silk industry of France and one of the great manufacturing cities of the world. Around Lyons more than 90,000 looms are at work, employing about 150,000 hands.

Could Still Hear, However

Even there was the case of the show that was so bad that, after about ten minutes, a man came out and asked the lady at the box office if she could have his seat to one behind a pillar.—Dublin Opinion.

The "big wind" in Ireland occurred on the night of January 6, 1839. In Limerick, Galway and Athlone hundreds of houses were blown down and hundreds more were burned by the spreading of fires from those blown down. It was called the "big wind" because it was the worst of its kind known to the people of Ireland.

"Christian" Still Progresses

In response to an urgent request from New Guinea, the Religious Tract society published "Pilgrim's Progress" in Tubetube, one of the Papuan tongues. This is the one hundred and twenty-third language in which the society has printed Bunyan's classic.

No Pleasure to Meet Him

"I don't mind meetin' a man dat thinks well of hisse'f," said Uncle Eben. "What I don't like is to meet one dat tries to make me think he's a picture card when he knows as well as anybody dat he's only a deuce."—Washington Star.

Going Up!

If you are finding the path that you are traveling is uphill, then you may know you are progressing. This is the way a famous industrialist is able to tell whether or not he is advancing in his chosen field.

Beginning the Fantastic

In the domain of the fantastic there are no known boundary lines, but they become apparent as soon as you begin, however vaguely, to imitate ordinary human drama. — Jean Morienval, French writer.

Plaque on Historic Spot

A bronze plaque marking the spot where gold was first discovered in Silver Bow county, Montana, recently was dedicated by the Butte chapter of the Daughters of the American Revolution. The plaque, which is mounted on a six-ton granite boulder, marked the spot where B. Barker and companions panned the first gold from Silver Bow creek in 1864. The spot is between Nissler and Silver Bow.

Right!

Mary—What's a saw-horse?

John—Past tense of a sea-horse.—Exchange.

A torn jacket is soon mended; but hard words bruise the heart of a child.—Longfellow.

RELIEVES HEAD, CHEST and BACK COLDS

McKesson's **ALBATUM** 35¢

Stainless "Rub In" and inhalant unsurpassed in preventing and relieving cold congestions

QUALITY SINCE 1833 — McKESSON & ROBBINS — SOLD AT ALL DRUG STORES

Idaho Reclamation Commissioner Gives Encouragement to Teton Reservoir Site

Mr. R. W. Faris, commissioner of reclamation of the state of Idaho, November 18th, wrote the following letter to the new proposed organization, Upper Snake River Irrigation District, which will be interesting reading for the water users of this portion of the valley:

Gentelmen:

I very much appreciate your invitation to meet with you for the discussion of problems affecting the water supply in the Upper Snake River Valley, in which we are all interested, but having been away from the office a great deal lately I find business accumulated and demanding attention to such an extent that it is impossible for me to get away at this time.

With reference to the proposed Teton Reservoir and Dam and your inquiry as to my impressions and judgment as to the fesability and economy of construction: I visited the site last summer and so far as I was able to see, it appears a most favorable one and where construction costs would not be excessive; from experience under similar conditions I would not expect to encounter any unusual engineering or construction difficulties.

The report of James G. Camp of the U. S. Reclamation Service, dated April 19, 1905, contains the following with reference to this site:

> "The dam site is at the lower end of the basin where a lava flow has formed, dammed up the basin; through this the river has broken a channel, leaving very abrupt bluffs of shattered lava on each side. It is especially adapted for a rock-fill dam, there being plenty of loose rock of all sizes convenient and at an elevation that they can with a cable be placed in the dam by gravity. The bed of the stream is loose rock but solid rock on both sides would indicate that rock would be found at no great depth."

In the report of the Yellowstone National Boundary Commission covering investigations made during the year 1929 is found the following with reference to this site:

> "A satisfactory substitute for the Bechler site may be had in a reservoir in the Teton River Basin, which is outside of the park boundaries, therefore, free from the above mentioned disadvantages, (that of the Bechler being in the Yellowstone National Park). There remains the question as to the feasibility of construction, amount of water available, and cost. The results of this investigation indicate, briefly, that the Teton Project involves no construction problems which can not be as readily and successfully solved as those involved in the Bechler Project; that the water supply is larger than the Bechler Project; and that the cost would be about the same."

A comparison of the estimated cost of storage water in the two sites is as follows:

Bechler; structure, earth dam 60 feet; capacity, 186,000 acre feet at spillway elevation; cost, $1,903,935.00 total cost exclusive of right-of-way ot approximately $10.23 per acre foot.

Teton—structure, rock-fill dam, 100 feet high; capacity 294,000 acre feet at spillway; cost, $1,254,630.00 or approximately $4.27 per acre foot.

The probability of segregation of the Bechler Meadow site from the National Park seems very remote, if at all possible, and if released by the Government might revert to the state of Wyoming, in which case the situation would not be improved for the reason that Wyoming persistently refuses to grant permit for the storage or diversion of water from Wyoming for use in Idaho.

As I understand it, the field investigations and report of the Park Boundary Commission were conducted by Mr. Bock under the direction and supervision of Arthur E. Morgan, member of the commission. I am quite well acquainted with Mr. Morgan, who is an outstanding member of the engineering profession of national reputation, and to whose opinion and judgment in such matters I would attach great weight. Under the circumstances it seems to me that a careful investigation should be made covering the Teton Basin site.

You may be assured that you will have my hearty personal cooperation and that of this department in your efforts to relieve the distressing water conditions in your valley.

With kindest personal regards to you all, I remain,

Cordially yours,
R. W. FARIS,
Commissioner of Reclamation.

The following propaganda has gone all over the United States in the press dispatches, but which, after the damages was done, was disputed by Mr. Harrigfeld, who now contends through his home town paper that has very little outside circulation, that he was misrepresented. Be that as it may, following is a sample of AP dispatch:

Mead Disapproves Teton River Site

"The proposed Teton river reservoir site has been held unsuitable by Elwood Mead, commissioner of reclamation, George Harrigfeld of Ashton, a member of the committee of nine of irrigation distruct 36, has been advised."

Commissioner Mead declared the Bechler Meadows site in Yellowstone national park is the only one available. Engineers investigated the Teton river site and found the rock strata filled with cracks and sand, it was stated. This would probably afford an unstable foundation and permit seepage, it was held.

"Nigger in the woodpile" somewhere! Commissioner Mead has denied that he ever made such a statement, and Harrigfeld claims he was misquoted.

Commissioner Faris Mr. Bock and Mr. Camp, consider the Teton reservoir dam feasible and at a much reduced cost per acre feet.

WHAT WE NEED IS MORE WATER AND LESS POLITICS

What the people in this part of the state crave is more water and less politics. For twelve years we have been kidded along, paying for thousand dollar junketing trips to Washington; promises that right after the next election we will be amply taken care of and with all the promises, and all of the government money spent on irrigation in the state of Idaho the Upper country has never received one Buffalo nickle.

What we wish is water, not delays, promises, nor politics, but, if we remember right history says Nero fiddled while Rome burned.

Another Smoke Screen

As usual beclouding the real issue which is obtaining storage water for the upper country, reports are coming out of Washington almost daily in regard to the merits of the Teton reservoir site, with a view of holding it up another year, while another survey is made and, etc.

Several surveys and examinations of this project have been made and favorable reports given, one, this past summer by former state reclamation commissioner, Myron T. Swensen, who personally endorsed this site, in a public meeting held at Rexburg, with Congressman Smith and Senator Thomas, in attendance.

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14 BOYS ARE GUESTS AT PAROLE DINNER

Superintendent and Mrs. E. Ova Cook were hosts to 14 boys at the November parole dinner, at the Idaho Industrial Training school last week. There were no federal boys among this group and all companies were represented except Co.C,

Pretty favors with fortunes inclosed were placed at each cover. Place cards marked the covers for the hosts, Parole Officer and Mrs. John R. Ault, and the following boys: Lavoir Mason, Marvin Smith, Eldon Alispach, Paul Brown, Joe DeLashmutt, Clements Hurst, Melvin Mangum, Samuel Allen, Edwin Groves Leroy Groves, Benjamin Ivie, Donald Shaver, Ernest Thomas and John Cherry.

EXPLOSIONS

If Japan smashes China it will be just another Irish (cook) trick.

* * *

Edison's death has left the world holding a lot of contraptions that it does not understand, or know what to do with.

* * *

Lot of fellows who can't pay—in fact, need help—will find a way to pay and to help themselves if they will look in that tin box in the stove pipe hole, or up behind Dad's enlarged photo.

* * *

Some of the boys complaining of the high tax on their bedding, carpets, chairs and other little personal belongings. They do not seem to understand that it had to be done that way so that the tax could be taken off of the non-resident real estate holder and saddled onto the boys who live here and "make Idaho."

SPA RK PLUG.

SHERIFF FREDRICKSON HOME

Sheriff James A. Fredrickson returned home Tuesday night from Hastings, Neb., where he went last week to return Mr. B. W. Kennedy to the Nebraska Insane Asylum. While in Hastings, Mr. Fredrickson, visited Mr. McElwain, a brother of our tonsorial artist, Jimmie McElwain. At Omaha he visited Mr. and Mrs. John D. C.Kruger and Karlie Kruger at Lincoln Nebraska. Mr. Kruger now has a receivership of a bank in a Nebraska town. Mr. Fredrickson reported them all doing well and desired to be remembered to all old friends.

Roberts—Bids opened for construction of three-mile stretch of Idaho-Montana Highway north of here.