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Chicago 7th ed.
, "Court of Claims to hear claims of Columbia Basin Orchard and others," U.S.
Congressional Serial Set (1953): 1-4

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COLUMBIA BASIN ORCHARD AND OTHERS

FEBRUARY 12, 1953.—Committed to the Committee of the Whole House and ordered to be printed

Mr. JONAS of Illinois, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 2033]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2033) to confer jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claims of the Columbia Basin Orchard, the Seattle Association of Credit Men, and the Perham Fruit Corp., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

An identical bill was favorably reported by the committee and passed the House in the Eighty-second Congress, but no action taken by the Senate. The facts will be found fully set forth in House Report No. 2213, Eighty-second Congress, second session, which is appended hereto and made a part of this report. Therefore, your committee concurs in the former recommendation.

[H. Rept. No. 2213, 82d Cong., 2d sess.]

The purpose of the proposed legislation is to confer jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon certain claims of the Columbia Basin Orchard, the Seattle Association of Credit Men, and the Perham Fruit Corp.

STATEMENT OF FACTS

This bill is merely to refer these claims to the United States Court of Claims for determination and judgment.

Therefore, your committee recommends favorable consideration of the proposal.

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY,
Washington 25, D. C., January 23, 1952.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

MY DEAR MR. CELLER: We are glad to comply with your request for a report on H. R. 4398, a bill to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon certain claims of the Columbia Basin Orchard, the Seattle Association of Credit Men, and the Perham Fruit Corp.

I recommend that this bill be not enacted.

The facts in connection with this claim, as viewed by this Department, are set forth herein. The Columbia Basin Orchards, located approximately 26 miles south of Grand Coulee Dam and about 4 miles north of Coulee City, Wash., contained 560 acres of land, more or less, of which about 196 acres were irrigated and planted to orchard. The majority of the trees were apple. There was a substantial number of pear, and a few cherry, peach, prune, and apricot trees. About one-half mile west of the orchard, there is an alkaline flat area in which water collected in the spring from melting snow and spring rain. In the summertime this area usually dried up, except for small sections fed by springs. At the eastern edge of this area, generally known as Orchard Lake, there was a spring from which water was pumped to the orchard for irrigation purposes. During the period from 1936 to 1940, personnel of the Bureau of Reclamation of this Department were engaged in determining whether this particular area and other lands within the Grand Coulee would be suitable for use in connection with the Grand Coulee equalizing reservoir, which was subsequently constructed and which is now being filled. On or about June 16, 1939, a test shaft known as the Ankeny shaft penetrated an underground flow of water.

From that date until April 10, 1940, water was pumped from the shaft by Bureau of Reclamation employees. Part may have flowed into Orchard Lake, though the Bureau personnel involved testified that they saw no evidence of this. By April 1940, the somewhat alkaline waters of the lake had risen and had inundated the claimants' spring. The claimants, with full knowledge thereof, started irrigating the orchard on April 28 and performed one complete irrigation and part of another before their spring cleared up around the middle of June. The spring of 1940 was a season of unusually high runoff and precipitation, a fact established by official Weather Bureau records. No water was pumped out of Ankeny shaft by the Bureau after the spring of 1940, but it appears that the lake reached equally high levels in the springs of 1941 and 1942, which were also unseasonably wet.

It also appears that during the late summer of 1940, some of the trees and fruit of the orchard exhibited deleterious effects which the claimants alleged were caused by contamination of their irrigation water by reason of the flooding of their spring, but which were, in the judgment of personnel of the Bureau of Reclamation, attributable to other factors such as fire blight. Notwithstanding this situation, the orchard bore a better-than-usual crop during that season. Because the property ultimately was to be acquired for the equalizing reservoir, suggestions were made by the claimants in the spring and summer of 1940, that the Bureau of Reclamation purchase the orchard, but it did not have the authority or funds to do so at that time. In the spring of 1941 the Columbia Basin Orchards, which was indebted to the other claimants in excess of \$100,000 and which was having difficulty financing operations for that year, sprayed a large portion of the orchard with tar oil spray to kill the bloom and prevent the orchard from bearing a commercial crop that season. The orchard was not irrigated or operated after 1941.

A claim was filed June 27, 1942, with this Department, which, after thorough consideration, was denied on November 19, 1942, for the reason that the claimant failed to establish that the contamination of the spring was caused by pumping operations of the Bureau of Reclamation or that the deterioration of the orchard was caused by any contamination of the irrigation water. After denial of the claim in 1942, no further action in the matter was taken until 1946 when the United States, with the urging of claimants' attorneys who were concerned about the statute of limitations running against their claim, resorted to condemnation proceedings to acquire the land for reservoir purposes. In 1946 the orchard, which had not been irrigated since 1941, plus the spring and appurtenant diversion and distribution works, was appraised for the Bureau of Reclamation as an abandoned orchard and valued at \$17,700. The property had also been appraised

on June 13, 1940, as a going orchard, and was then valued at \$61,826. The condemnation proceeding was concluded on September 25, 1947. There was a verdict of \$70,000 in favor of the claimants.

On May 17, 1948, action was instituted in the Court of Claims to recover \$165,000 on the theory that the act of the United States in pumping water from Ankeny shaft constituted a taking of the orchard property without due process of law. It was alleged that alkali from Orchard Lake had contaminated the spring and it was the theory of the action that the contaminated water, by damaging the orchard, constituted a confiscation of the claimants' property, as fully as though it had been physically appropriated. This suit resulted in an opinion dated March 6, 1950 (116 Ct. Cls. 348), dismissing the case on the ground that it was barred by the statute of limitations, inasmuch as the action was not commenced within 6 years after plaintiff was aware of the damage allegedly caused by the United States. The court did not consider the defenses which were raised by the United States, because it did not consider that it had jurisdiction to do so.

Prior to the filing of the claim in 1942, a thorough investigation was made of the amount of water being pumped from Ankeny shaft. These investigations were made by competent engineers of the Bureau of Reclamation under the direction and supervision of Mr. Frank Banks, then the supervising engineer for the Columbia Basin project. The conclusion was reached that, even if water from the shaft reached the lake, no appreciable rise in the lake resulted from pumping operations of the Bureau of Reclamation. During this same period exhaustive examinations of the orchard and the soil conditions therein and of the waters of the lake and spring were also made by experienced Bureau personnel and others. None of the officials engaged in these investigations concluded that the orchard damage was in any way attributable to the United States.

It appears, therefore, that the claim has been fully considered by this Department, that the claimants have already recovered \$70,000 in the condemnation action above-mentioned, and that they have been heard in expensive litigation in the Court of Claims. Much time and effort have been expended in investigating the claim and every consideration has been accorded the claimants. The claimants have been accorded a full and adequate hearing, and there is, I believe, no warrant for further litigation. As early as November 1942 the claimants had received an authoritative decision concerning their rights and, had they so desired, they could have brought action at that time.

In view of its full participation in this claim, this Department is fully aware of all the pertinent facts and arguments, many of them conflicting, which claimants have advanced from time to time. Based on the entire record, it is our view that the claim is not justified and that the United States should not be put to further expense in defending it. It also appears that the claimants have already recovered more than the value placed upon the orchard on June 13, 1940, just prior to the time the alleged damage became apparent according to the claimants by a board of disinterested appraisers who were well experienced in orchard valuations.

Furthermore, if the claimants are permitted to bring an action in the Court of Claims, as proposed by H. R. 4398, notwithstanding the lapse of time and provision of law to the contrary, the result would be to grant an extra-legal remedy to such claimants. In the absence of a much more meritorious case for the waiver of the statute of limitations than is here presented, I cannot recommend the enactment of such a bill as H. R. 4398 which could be seized upon as a precedent to open the doors of the Federal courts to an undeterminable number of persons alleging claims against the United States which are now barred by the statute of limitations.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

R. D. SEARLES,
Acting Secretary of the Interior.

HOUSE OF REPRESENTATIVES,
Washington, D. C., January 25, 1952.

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Old House Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: H. R. 4398 for the relief of Columbia Basin Orchard, Seattle Association of Credit Men, et al., is pending before your committee and I understand the report from the department concerned requested by the committee has been received.

This is a measure to provide for the Court of Claims to hear the Columbia Basin Orchard case, notwithstanding the statute of limitations. The reason for the introduction of this legislation will be found in the decision of the Court of Claims (88 Fed. Supp. 738). In this connection there is attached the report of the commissioner filed July 28, 1949, in the United States Court of Claims.

The commissioner took testimony for a period of about 6 or 8 days I understand and it is hoped this testimony may be considered and thus avoid the necessity of going through the entire litigation again. It is contended that damage occurred to the Columbia Basin Orchard, a large orchard tract north of Coulee City in the State of Washington, due to activities of the Bureau of Reclamation as described in the report of the commissioner. The orchard was abandoned and in 1946 the Bureau of Reclamation filed condemnation proceedings. The situation is outlined in the following information received from Mr. Charles L. Powell, of the law firm of Moulton, Powell & Gess, Kennewick, Wash., representing the orchard company and others:

"The Columbia Basin Orchard was well known, being the large orchard tract north of Coulee City. In 1940 damage appeared. We think it was established that the damage was due to the Bureau's activity. Later the orchard was abandoned and in 1946 the Bureau filed condemnation. The case was tried in 1947, in October, in Spokane, and resulted in a verdict fixing the value of the property and orchard in its then damaged condition, at \$70,000 as of June 4, 1946.

"The court instructed the jury that it was not to take into consideration the damage to the orchard. Thereafter and on May 17, 1948, a complaint was filed in the Court of Claims and evidence was taken before a commissioner in February 1949; he made his report July 28, 1949. The case was set for argument and argued in February 1950, and resulted in a dismissal because the Court of Claims held it was without jurisdiction, the action not having been filed within 6 years from the date of damage.

"You can see the dilemma Mr. Wonn (Columbia Basin Orchard) was placed in. The Bureau withheld condemnation till 6 years after the damage started. At the trial, the court in the condemnation case said the jury should not consider the damage. In July or June of 1942 Mr. Wonn determined that he could then ascertain the extent of damage. We filed in the Court of Claims within 6 years thereafter but the court held that the 6-year statute started earlier and in 1940, and held it was without jurisdiction."

Further information received from Mr. Powell is as follows:

"The act as drafted appears to be entirely in order and if it is passed I am sure it will solve our difficulties in that respect. We had hoped that there was some way by which we could use the examiner's report on the Court of Claims hearing without the necessity of going through the entire litigation again. We took testimony before the commissioner of the Court of Claims, Mr. Vance, starting on February 22, 1949, for a period of about 6 or 8 days. There are a number of pages of testimony, which testimony was submitted to the Court of Claims at the time of the argument in February of 1950.

"I am wondering if you would mind going over the matter with the counsel handling the type of legislation with the House Committee on the Judiciary. Please refer him to the decision of the Court of Claims (88 Fed. Supp. 738). Also, we have sent you the report of the commissioner. If there is some way by which the matter could be perhaps stopped in the middle to save us taking the testimony all over again, it would be an immense benefit and saving to everybody concerned, and the Court of Claims could then reconsider the testimony and hear the case on its merits on reargument rather than taking the testimony all over again."

I will greatly appreciate having the proper subcommittee go into this matter and determine the merits of the proposed legislation.

Very truly yours,

HAL HOLMES,
Member of Congress.