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SENATE

REPORT
No. 1253

COLUMBIA BASIN ORCHARD AND OTHERS

APRIL 26 (legislative day, APRIL 14), 1954.—Ordered to be printed

Mr. LANGER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2033]

The Committee on the Judiciary, to which was referred the bill (H. R. 2033) 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., having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

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

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 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 the Department of the Interior, 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 claimant's 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 con-

cluded 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.

The Department of the Interior states that 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.

The Department of the Interior opposes enactment of the legislation on the ground that the claim has been fully considered by that Department, that the claimants have already recovered $70,000 in condemnation proceedings, and further that the claim has been litigated in the Court of Claims, and in view of that the Department of the Interior states the claim is not justified and that the United States should not be put to further expense in defending it.

The committee is constrained to disagree with the adverse report of the Interior Department. That Department contends that passage of the instant bill would result in an extralegal remedy to claimants. This committee feels that the peculiar circumstances arising herein are novel in that they encompass a combination of the partial, indirect taking by the Government of a part of a citizen's landholdings by act of law and the later taking of the entire holdings by a court of law. The Government did not institute condemnation proceedings until 1946. During the period 1942–46 the Bureau of Reclamation and claimants knew that the Government was going to take title to the orchard because it was needed for the equalizing reservoir under the Columbia Basin project. The question was as to when the Government would file its condemnation action. The landowner was in a dilemma as to what to do, his attorneys believing that the whole action should be tried in one lawsuit. At the beginning of the trial of the condemnation action late in 1947, in a pretrial conference, the

court indicated that it would rule that the damages caused by the flooding of the spring could not be shown in the condemnation action, that they were two separate cases, and it was not until that date that either the claimant or the Government knew how to proceed in the case. The court later instructed the jury in the condemnation action that it could not take into consideration the damages caused by the flooding of the spring. In the pretrial conferences the Government attorney objected to the introduction of any evidence as to the damage to the orchard in 1940–42. The court agreed.

The committee notes that the Government in arguing the case before the Court of Claims, objected to the splitting of the causes of action, and before they had objected to trying them together in the condemnation action. Information before the committee indicates that the unusual way in which this case arose contributed to the confusion of the landowners and their attorneys, complicated by the fact that the Government delayed its condemnation action to a time which made it impossible for claimants to bring their action within the 6-year limitation period. The condemnation proceeding was not concluded until the fall of 1947 and the action in the Court of Claims was commenced in the rpring of 1948. The committee believes it reasonable to infer from the matters outlined herein, that claimants were not sleeping on their rights, for until the court ruled on the matter, the parties were uncertain whether the action should be split or tried in one cause of action.

The Interior Department further contends that because claimants have already recovered $70,000 in the condemnation proceedings, they have been adequately compensated. This contention ignores the findings by the Commissioner for the Court of Claims, who found from the evidence that the loss in value to the orchard from the flooding of the spring amounted to $75,000 in recoverable damages.

In view of the facts as set out above, the committee recommends that this bill be favorably considered. This proposed legislation does not decide the merits of the controversy, but merely permits these claimants the opportunity to have their cause heard in the Court of Claims. The bill will not result in special or favored legislation because of the peculiar facts surrounding this case. The committee has in the past recognized unusual circumstances, such as herein, and have permitted persons their day in court, notwithstanding the bar of limitations. The committee is of the opinion that this legislation is meritorious and therefore recommends favorable consideration of H. R. 2033.

Attached hereto and made a part of this report is a letter from the Department of Interior submitted in connection with an identical bill of the 82d Congress.

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 not 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.

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