EXHIBIT 36

Notice of Motion to Amend Bill of Complaint
and related documents, October 24, 1931

Filed _____ 1930 IN EQUITY

_____ Clerk No. C-125

By _____ Deputy

COLE L. HARWOOD
Solicitor for the Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF NEVADA.

UNITED STATES OF AMERICA,
Plaintiff,
-vs-
WALKER RIVER IRRIGATION DISTRICT, a corporation, et al,
Defendants.

NOTICE OF MOTION TO AMEND BILL OF COMPLAINT.

SIRS:

PLEASE TAKE NOTICE that upon the affidavits of E. W. KRONQUIST, verified October 22, 1930; GEORGE SPRINGMEYER, verified October 23, 1930; and COLE L. HARWOOD, verified October 23, 1930, and upon all of the pleadings, records and files in this case, and also upon the testimony taken before the Special Master heretofore appointed herein, the plaintiff will move the Court at the Court Room of the United States District Court in the United States Building in Carson City, Nevada, at the opening of the Court on Monday, November 3, 1930, or as soon thereafter as counsel can be heard, for an order permitting the plaintiff to amend the Amended Bill of Complaint filed herein March 19, 1926, in the following respects:

1. To amend and change Paragraph III of the Amended

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Bill of Complaint by striking out the words:

"150 cubic feet per second of time"

in the third line on Page 9 of the printed copy of said Amended Bill of Complaint, and substituting therefor:

"4½ feet per acre, measured at the point of diversion from the river for each acre of land irrigated during the irrigation season, beginning on or about the 15th day of March and extending to and including the 15th day of September in each year; also a constant flow of not less than one second foot in each of the main canals on said reservation now constructed or hereafter to be constructed, measured at a point at or near the end of each said main canal, for stock watering and domestic purposes."

2. To amend and change the said Amended Bill of Complaint by adding to Paragraph VI thereof, the following:

"Provided, however, that the plaintiff does not recognize as effective or binding, or for any purpose the said Decree in Equity #731 so far as it adjudicates or attempts to adjudicate or grant a water right to any person for or appurtenant to, or for use upon lands that were not in the year 1905 actually irrigated (that being the date fixed in the said decree for the adjudication of the rights described therein), and/or in any case where, on account of lapse of time, abandonment or non-use, the parties to said suit or their successors have lost the water right granted or adjudicated by said Decree #731. The complainant alleges that the said Decree #731 attempts to adjudicate and grant water rights for many thousands of acres of land that were not in the year 1905 irrigated, and that were not entitled to a water right. The complainant further alleges, according to its information and belief, that in some cases the water right adjudicated or granted by said decree in Equity #731, has been abandoned or lost by non-use or intentional abandonment since the making of said decree. The defendants should therefore be required to set up and establish the acreages actually irrigated by them and entitled to a water right in the year 1905, and such rights as they claim to have severally acquired since that date."

"Provided further, that the plaintiff does not recognize as effective or binding the said decree in Equity #731 so far as the duty or use of water is concerned, for the reason that said decree in Equity #731 does not fix any period of time when the amount of water expressed in cubic feet per second may be used by the several parties to said decree; nor limit

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the amount of water in acre feet per season or otherwise that may be used for the irrigation of the lands of the parties to said decree or for other purposes; and does by its terms permit the use of waters of the Walker River 'without limit as to time, method, application or use of any beneficial character whatsoever for the irrigation of land, the watering of stock, domestic uses and other beneficial purposes.' The plaintiff alleges that the use permitted and actually practised by the defendants herein claiming under said decree, is wasteful, not beneficial, nor economical in character."

3. Change and amend the prayer of the said Amended Bill of Complaint in the Paragraph numbered 4 thereof, by striking out the words in the fourth and fifth lines on Page 17 of the printed copy of said Amended Bill of Complaint:

"150 cubic feet per second of time"

and substituting therefor:

"4½ feet per acre, measured at the point of diversion from the river for each acre of land irrigated during the irrigation season, beginning on or about the 15th day of March and extending to and including the 15th day of September in each year; also a constant flow of not less than one second foot in each of the main canals on said reservation now constructed or hereafter to be constructed, measured at a point at or near the end of each said main canal, for stock watering and domestic purposes."

Also to strike out wherever else appears in said Amended Bill of Complaint the words or figures:

"150 cubic feet per second of time,"

and to substitute therefor:

"4½ feet per acre, measured at the point of diversion from the river for each acre of land irrigated during the irrigation season,"

as herein alleged elsewhere.

Said motion will be made upon the ground that:

(1) As to the water requirement: The allegations of the amended Bill of Complaint do not properly express the duty or use of water necessary for the beneficial and economical irrigation of plaintiff's lands; also upon the ground

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that the said Amended Bill of Complaint should be amended to conform to the proof already admitted in evidence in this case in this respect.

(2) On the ground that the amendment made to the complaint, December 22, 1925 and carried into the engrossed and printed Amended Bill of Complaint filed March 19, 1926, was made inadvertently and without knowledge of the actual areas irrigated and for which water rights existed and could properly be claimed by the defendants in this case, who were parties to the suit in which Decree #731 was entered, referred to in the affidavits; the facts being as appears from the affidavits referred to that approximately 60% only of the areas were actually irrigated at the time fixed in said decree and/or entitled to a water right as of that or any prior date; and on the further ground that the said facts were not brought to the attention of the solicitors for the plaintiff and their important relation to the other facts in this suit was not brought out or made apparent until a very recent time, to-wit, six weeks prior to the making of this motion; and upon the further ground in order to do justice and equity to the plaintiff and the various parties in this suit, the said proposed amendments should be made.

Dated, Reno, Nevada, October 24, 1930.

Cole L. Harwood
Solicitor for Plaintiff.

ETHELBERT WARD of Counsel.

TO: Messrs. Green & Lunsford
W. H. Kearney, Esq.,
A. P. Lasher, Esq.,
Geo. L. Sanford, Esq.
Sardis Summerfield, Esq.
Messrs. Thatcher & Woodburn
W. W. Watson, Esq.
Solicitors for Defendants.

WILLIAM H. KEARNEY
ATTORNEY AT LAW
RENO, NEVADA

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_____ Clerk No. C-125

By _____ Deputy

COLE L. HARWOOD
Solicitor for the Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF NEVADA.

UNITED STATES OF AMERICA,
Plaintiff,
-vs-
WALKER RIVER IRRIGATION DISTRICT, a corporation, et al,
Defendants.

AFFIDAVIT OF E. W. KRONQUIST, on Motion to amend Bill of Complaint.

STATE AND DISTRICT OF NEVADA,)
County of Washoe.) SS.

E. W. KRONQUIST being duly sworn, deposes and says: That he is Foreman and acts as engineer of the Walker River Indian Reservation, and is employed in the Indian Irrigation Service of the Bureau of Indian Affairs, Department of the Interior, United States.

That he resides at Schurz, Nevada, on the Indian Reservation and has been employed in various capacities in the Indian Irrigation Service and has lived on the Walker River Indian Reservation since March 5, 1919, except for a period of eight months during the year 1926. During part of the time he was employed under John A. Beemer, who was engineer in charge of the Indian Irrigation Service on the Walker River Indian Reservation, and that

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he, in connection with the said John A. Beemer, made reconnoissance surveys of the entire Walker River Basin. On many occasions he has made observations of the Walker River Basin, and during two or three years has been engaged in making water measurements at the head waters of the river on the East Fork; at various points on the East Walker; and on the Main Walker River, as well as upon the reservation, and has also made observations and measurements upon the West Fork of the river, and is familiar with the lands irrigated upon the entire Walker River Basin, and capable of irrigation therein. He is also familiar with the irrigation practice and the irrigation systems throughout the entire Basin. That deponent is a practical irrigation engineer and understands irrigation engineering and practice generally in this region, and in particular upon the Walker River Basin.

That deponent is familiar with the decree of this court commonly known as Decree #731 entered in the case, entitled "Pacific Live Stock Company, a corporation, (substituted as complainant in the place and stead of Miller & Lux, a corporation), Complainant, -vs- Thomas B. Rickey, et al, Original Defendants, Antelope Valley Land & Cattle Company (a corporation) et al, Substituted Defendants, " so that the title of the case when the decree was entered was: "Pacific Livestock Company, a corporation, complainant -vs- Antelope Land & Cattle Company, et al., Defendants." That deponent has made a computation of the area of lands which were given water rights under that decree. The total area so given water rights is 83,617.35 acres. He has also made a computation of the total flow of water in cubic feet per second given or allotted to said lands in said decree, and

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the total is approximately 1161.16 cubic feet per second of constant flow.

In 1905 a survey was made under the supervision of L. H. Taylor, then an engineer in the Bureau of Reclamation of the Department of the Interior, of the Walker River Basin covering all of the lands in the basin then irrigated, showing the contours of the land, the location of the streams, the ditches, fences, lands cultivated and irrigated, lands uncultivated and irrigated, crops or grasses then growing - in other words, a complete topographic survey of the Walker River Basin was made showing actual conditions as they existed at that time. Deponent has made an examination of the copies of the plats of such survey which were received from the office of the Bureau of Reclamation, and has made a calculation of the areas of the lands which were irrigated in 1905 as shown by said survey. The total area actually irrigated at that ime, according to the calculations of deponent, based upon the said plats of survey and covering the same lands to which rights were ascribed or adjudicated in said decree #731, is 50,138 acres.

Decree #731 fixes the rights of all parties as of the year 1905. It does not cover all of the lands in the Walker River Basin that were then irrigated, for the reason that not all of the land-owners in California were parties to the suit. These lands not included in Decree #731 were principally in Bridgeport Meadows on the East Walker River, and its head waters, and the remainder were on the West Walker River in the upper part of Antelope Valley, and a few hundred acres in Leavitt Meadows. The calculations made by deponent were made upon the same basis as the decree, that is to say, only

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the lands that were covered by Decree #731 were taken into account in making deponent's calculations. In making these calculations deponent partly estimated them by observation and simple measurements, and partly, and mostly in fact, by the use of a planimeter with which he carefully and accurately followed the outlines of the irrigated lands. Deponent believes that the result arrived at in his calculations, to-wit, 50,138 acres, is in excess of the actual area irrigated in 1905 as shown by said plats of survey.

Deponent, as above stated, is familiar with the entire Walker River Basin, and with the lands now irrigated therein. Some of the lands formerly irrigated, particularly in the lower part of Mason Valley, are not now irrigated and have not been irrigated for several years last past. Some lands that were not irrigated or shown as irrigated by the said plats of survey made in 1905, have since been irrigated, and according to deponents's best information and belief, the aggregate increase of irrigated area since 1905 will not exceed 10%, or approximately 5000 acres. These figures take into account the whole basin and relate to lands claimed by the defendants.

That deponent did not see or have occasion to examine the said plats of survey until sometime in the latter part of August, 1930.

That in deponent's opinion the defendants in this case should be required to show the actual areas of the lands claimed by them to be entitled to water rights, both as among themselves and as against plaintiff in this case, and the several priorities that their lands should have. Since 1905 two large reservoirs have been constructed by the Walker

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River Irrigation District, one of the defendants. One of these reservoirs is upon the East Walker River and Bridgeport Valley, and the other on the West Walker River and Antelope Valley. The Walker River Irrigation District covers practically all of the lands of the defendants in Nevada. Some of the defendants have also enlarged or attempted to enlarge the storage capacity of Twin Lakes in Mono County, California. The Sierra Pacific Power Company is claiming the right to construct a reservoir in Leavitt Meadows; the Walker River Irrigation District is also claiming the right to build additional reservoirs; the plaintiff in this case may also build a reservoir on the reservation. All of these things greatly complicate the situation from a practical standpoint. All of the defendants having lands in Nevada have rights in the reservoirs of the Walker River Irrigations District, so that the situation is changed materially from that existing in 1905 or in 1919 when Decree #731 was actually entered.

A water master must necessarily be appointed to have charge of the entire Walker River Basin, and in the opinion of deponent it will be unjust, both to the plaintiff and to the defendants, to permit a decree to be entered in this case based upon the adjudication made in Decree #731. Rights to water are being claimed, and in some cases enforced by the defendants in that case which are not based upon actual facts as they existed in 1905 or 1919 or at any time since, and if legal rights actually were established by Decree #731 among the parties to that suit, they have been lost either by abandonment or non-use and do not at the present time exist. This is shown by the great discrepancies between the area covered by said Decree #731 and the areas actually irrigated at the time ascribed to those areas by said decree and by

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present conditions. Deponent therefore believes that the concession made to the defendants in the Amended Bill of Complaint, which he is informed was made on December 22, 1925, should be withdrawn, and the defendants required to prove their rights as they exist.

E. W. Kronquist

Subscribed and sworn to before me
this 22d day of October, 1930.

Catherine M. Blainey
Notary Public

(SEAL)

WILLIAM H. KEARNEY
ATTORNEY AT LAW
RENO, NEVADA

Filed _____ 1930 IN EQUITY

_____ Clerk No. C-125

By _____ Deputy

COLE L. HARWOOD
Solicitor for the Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF NEVADA.

UNITED STATES OF AMERICA, Plaintiff, -vs- WALKER RIVER IRRIGATION DISTRICT, a corporation, et al, Defendants.	)	A F F I D A V I T

STATE AND DISTRICT OF NEVADA,) SS.
County of Washoe.)

GEORGE SPRINGMEYER being duly sworn deposes and says:

That he was formerly United States Attorney for the District of Nevada, and as such acted as solicitor for the United States in this suit from the time of its commencement until his term of office expired in 1926.

With reference to the amendment to the complaint which was prepared and filed by deponent December 22, 1925, and which was carried into the printed bill which was filed March 19. 1926, the facts regarding the said amendment were that there had been conferences and negotiations regarding a stipulation between the parties for the purpose of shortening the trial of the case. These conferences and the proposed stipu-

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lation between the parties for the purpose of shortening the trial of the case. These conferences and the proposed stipulation had failed because of disagreements, partly among the defendants themselves, and party between the plaintiff and defendants, but deponent was anxious nevertheless to shorten the trial with the expentation that the defendants would make concessions to the plaintiff as the trial progressed. It was therefore determined by deponent to concede to the defendants who were parties to Decree #731 the rights adjudged to the defendants in the action in this Court entitled: "Pacific Livestock Company, a corporation, complainant -vs- T. B. Rickey, et al, defendants," reserving to the United States however, its own rights and priority.

It was never called to deponent's attention that a survey had been made of the irrigated area in the Walker River Basin by and under the direction of the Bureau of Reclamation of the United States. Deponent took it for granted that the acreages established by Decree #731 were accurate, and were based upon actual proof, and deponent was not inclined to question the duty of water or other provisions of the decree, although the decree was not binding upon the United States, because the United States was not a party to it. He was not aware that the decree was in effect a consent decree in which the parties stipulated among themselves their respective claims of priority and acreage of lands irrigated, and he was not aware that the actual acreage irrigated in 1905, and/or entitled to water rights at that time, was very much less than was fixed by said Decree #731 - in fact about 60% of the acreage fixed by said decree. If deponent had been aware of the actual condition of affairs as shown by the survey made

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by the Bureau of Reclamation, or otherwise ascertained and/or brought to his knowledge, the complaint would not have been amended in the respect above indicated, to-wit, by the amendment of December 22, 1925, and the concessions to the defendants in effect made by said amendment, would not have been made.

GEORGE SPRINGMEYER

Subscribed and sworn to before me
this 23rd day of October, 1930.

J. N. Quinn
Notary Public
In and for the County of Washoe,
State of Nevada.

My Commission expires April 5, 1932.

(SEAL)

WILLIAM M. KEARNEY
ATTORNEY AT LAW
RENO, NEVADA