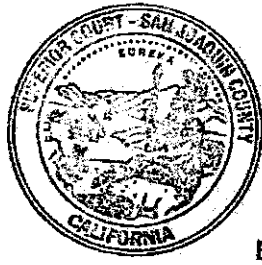


For service and receipt of a copy of this instrument

A. D. 191

Attorney for

Date <i>1/12/11</i>	SUPERIOR COURT COUNTY OF SAN JOAQUIN STATE OF CALIFORNIA	PLAINTIFFS LELAND MINER, JULIUS W. T. MOHS AND CHARLES A. BRANDETT et al.,	DEFENDANTS A. GAUL, et al.,	COMPLAINT.	Filed NOV 22 1911 EUGENE D. GRAHAM CLERK BY <i>[Signature]</i> DEPUTY	A. H. ASHLEY Recorder of Deeds and Taxes Recorder, San Joaquin County STOCKTON, CALIFORNIA
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THE ANNEXED INSTRUMENT IS A CORRECT COPY
 OF THE ORIGINAL ON FILE IN MY OFFICE.
 CAUTION: SEAL MUST BE IN PLACE.

ATTEST JAN 12 2011

ROSA JUNQUEIRA

By *[Signature]*
 Deputy

Clerk of the Superior Court
 San Joaquin County of California

LELAND MEYER, JULIUS W. T. MUHS
and CHARLES A. BRANDT as the
Trustees of, and for the benefit
of, Reclamation District No. 544,
and RECLAMATION DISTRICT NO. 544,

No. 11140
Dept. No. 1

Plaintiffs,

-vs-

A. GAUL, JOHN DOE, RICHARD ROE,
PETER POE, JAMES COE, HENRY TOE
and JAMES BOE,

Defendants.

COMPLAINT.

Plaintiffs complain of defendants and for cause of action
alleges:

I.

That the above named plaintiff Reclamation District No. 544
has continuously, for five years next preceding the commencement
of this action, been acting as such, and prosecuting and maintain-
ing its works of reclamation in good faith; that the above named
plaintiffs Leland Meyer, Julius W. T. Muhs and Charles A. Brandt
were at all times hereinafter mentioned, and they now are, the
only elected, qualified and acting trustees of said Reclamation
District No. 544.

II.

That all of said district is situated in the county of San
Joaquin, state of California; that said district embraces within
its exterior limits those certain lands situated within said county
of San Joaquin which are bounded by the San Joaquin River, Old
River, Middle River, and, on the north, by a so-called cross-
levee; that the reclamation works of said district, in so far
as the same are here involved, include large levees or protective

1 continued until it reached to the bank or edge of old River
2 that early in the year 1911 the waters of Old River reached a
3 flood stage and began to overflow the levee constructed
4 and upon which it was built, by washing away the same under
5 around an old wooden flood gate remaining in said levee; that
6 to prevent said levee at such point from being undermined and
7 washed away, the said district, by and through its said trustees,
8 at an expense of about \$2,000., widened and raised said levee
9 so that there was a large and sufficient levee in front of, be-
10 hind and over said old flood gate; that since said time, said
11 district, by and through its trustees, has maintained said levee
12 so enlarged at such point; that the lands of said district are
13 so situated that if said levee be breached or undermined at said
14 point, a wide and costly breach will be made in the reclamation
15 works of said district and the waters of Old River will flow
16 therethrough and flood, damage and destroy the crops and other
17 property now upon said district; that said crops and other prop-
18 erty are of an estimated value of \$2,000,000.

19 That, by reason of the warm weather, the snows are being
20 melted in the mountains from which said rivers derive their waters
21 and the waters of Old River are, at such point, much higher than
22 the level of the banks at such point and than the level of the
23 larger portion of said Roberts Island.

24 IV.

25 That both by law and by the by-laws of said district, the
26 trustees of said reclamation district have entire charge and con-
27 trol of the levees of said district, and it is their duty to con-
28 trol and maintain the same, and especially to grade and protect
29 and maintain the same at the point where said old slough dis-
30 under said levee.

31 V.

32 That heretofore the plaintiff trustees have caused to be
33 served upon the defendant Gaul a written notice that he must not
34 cut nor open the reclamation levee of said district at said point

1 that, notwithstanding such notice, and without any permission
2 from said court, he has against their direct orders and the orders
3 of the superintendent of said district, the defendant A. Gaul, by
4 and through his servants and employees, or persons acting, or
5 claiming to act, under and by virtue of his authority and direc-
6 tion, is opening and causing to be opened, and to be cut and in-
7 jured, the levee of said district at said point.

8 VI.

9 That the true names of the defendants herein, other than
10 A. Gaul, are unknown to these plaintiffs, and they are therefore
11 sued herein by their fictitious names, and plaintiffs ask leave,
12 when their true names are discovered, to amend this complaint by
13 inserting herein their true names.

14 VII.

15 That the defendant A. Gaul will either personally, or by or
16 through others acting under his direction, or claiming to act by
17 or through him, unless restrained by the orders of this court,
18 cut, injure and destroy said levee and continue to cut, injure
19 and destroy the same; that if he does cut said levee of said
20 district at said point, or if he or his servants or employees, or
21 those claiming under or through him, are permitted so to cut or to
22 injure or to destroy said levee at such point, the waters of Old
23 River will, to a large extent, flow through said cut and destroy
24 the levee of said district, and flood, damage, devastate and
25 destroy the lands of said district and the growing crops and other
26 property thereon; that the loss which will result if such lands
27 of said district be flooded cannot be accurately estimated, and
28 such loss will not be confined to said district alone, but the
29 lands of the Middle and Lower Divisions of said Island will be
30 flooded or damaged and the crops growing thereon or other property
31 damaged or destroyed.

32 VIII.

33 That the said acts being done by said defendant A. Gaul, or
34 through him or for him, and so threatened to be done, and so un-

1 claiming to be done by him, and which he is about to do
2 procure for himself, in violation of the rights of the
3 plaintiffs.

4
5 That plaintiffs have no plain, speedy and adequate remedy
6 at law; that it is the duty of these plaintiffs to prevent, if
7 possible, the cutting, injury and damage of said levee by de-
8 fendants; that if the waters of said Old River should flow
9 through, or be permitted to flow through, said levee and over and
10 across the lands of said island, the resulting loss and damage
11 might be so great and so far-reaching to other levees and reclama-
12 tions that the same would be incapable of any estimate; that
13 if said levee be seriously breached at said point, a large por-
14 tion of the waters of the San Joaquin river flowing therein prior
15 to its junction with Old River would flow across the lands of said
16 district; that Old River is a branch of said San Joaquin river;
17 that it is the right of these plaintiffs to have the said A.
18 Gaul, his servants, employees and tenants, restrained from doing
19 any further injury to said levee and to have such levee restored
20 to its original condition and strength hereinabove stated.

21 X.

22 That the said levee works of said reclamation district No.
23 544 have been damaged by the said cutting and injury thereof by
24 said defendant A. Gaul to the extent and in the sum of one thousand
25 and dollars.

26 XI.

27 That the defendant A. Gaul is financially able to respond
28 in damages and pay said mere \$1,000. of damage done to said Recla-
29 mation District's levee at said point; that the commission or con-
30 tinuance by defendant A. Gaul, or by those acting or claiming
31 to act under him, of the said cutting and injury of said levee at
32 said point during this litigation will produce injury so great
33 to be irreparable; that the exact amount of said loss can not be
34 accurately stated; that it would probably amount to more than

1 \$200,000, and said amount is \$2,000,000, and more; that
2 would and should be greater than said land can or is able to
3 pay; that pecuniary compensation to said district for said dam-
4 age and for the injury to said levee would not and will not
5 afford adequate relief; that plaintiffs are entitled to the re-
6 lief by injunction hereby demanded; that such relief consists
7 in restraining the commission or the continuance by said A. Gaul
8 of the acts hereby complained of, perpetually; that said Gaul
9 has done, and threatens, or is about to do, or will procure to
10 be done further acts of cutting, injuring and weakening said levee
11 in violation of the said rights of these plaintiffs, and the same
12 will tend to render the judgment herein ineffectual; that it
13 would be and is extremely difficult (as hereinabove indicated) to
14 ascertain the amount of compensation herein which would or will
15 afford adequate relief; that by reason of the acts done by or
16 for said A. Gaul at said point to and in said levee of said dis-
17 trict, said levee is now in such a weakened condition that any
18 further injury thereto or weakening thereof will be not merely
19 dangerous, but perilous, even to the extent of possibly preventing
20 a breach of said levee and the flooding of more than 30,000 acres
21 of land upon which there are growing crops, trees, and vines, farm
22 poultry and live-stock, human beings, dwellings, barns and other
23 improvements which will be injured, damaged, imperilled or de-
24 stroyed; and because of which a multiplicity of suits or other
25 judicial proceedings will and must result; that, in the very na-
26 ture of things, the exact amount or the extent of the breach, wash-
27 ing or injury to said reclamation levee by a breach thereof and
28 by the passage through the same of large bodies of water can not
29 be stated; that at said point in said old slough there is a
30 dissolving quicksand, and the soil nearby is of such a character
31 that it dissolves in water; that, as a consequence, the very
32 foundation of the levee will undermine and can not be replaced
33 except with coarse, heavy sand or some similar material.



Due Service of within Answer
 admitted this First day of June, 1914
A. P. Ashley
 Attorney for plaintiffs

No. 11140

SUPERIOR COURT

County of San Joaquin,
 STATE OF CALIFORNIA

IRLAND MEYER, JULES N. TAYLORS,
 and CHARLES A. DEWITT, the
 first named defendants and not law
 owners of the said land, do hereby
 certify that the said land is the
 property of the said TAYLORS,
 and that the said MEYER, TAYLORS,
 and DEWITT are not law
 owners of the same.

WITNESS MY HAND AND THE GREAT SEAL
 OF THE STATE OF CALIFORNIA, THIS
 15th DAY OF JUNE, 1914.

ATTEST:

Richard H. Hight
Engineer & Surveyor
By the County Clerk, San Joaquin Co., Cal.

S. M. SPURRIER,
 ATTORNEY FOR

Defendants

1 State of California,

2 County of San Joaquin,

3 A. GAUL,

4 being duly sworn, deposes and says that he is one of the defendants

5
6 in the above entitled action; that he has *heard* read the foregoing answer

7
8 and knows the contents thereof; that the same is true of his own knowledge, except as
9 to such matters as are therein stated on information or belief, and as to those matters he
10 believes it to be true.

11

12

13

14

15

16

17 Subscribed and sworn to before me this

18 12th day of June 1914.

19

20

Ch. J. [Signature]
Notary Public

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
2 COUNTY OF SAN JOAQUIN
3
4
5

6 LELAND MEYER, JULIUS W.T. NUHS and
7 CHARLES A. BRANDT as the Trustees of,
8 and for the benefit of, Reclamation
9 District No. 544, and Reclamation
District No. 544,
Plaintiffs,

No. 11140.

Dept. No. 2.

10 -vs-

11 A. GAUL, JOHN DON, RICHARD ROE,
12 PETER POE, JAMES COE, HENRY
13 TOE and JAMES BOE,
Defendants.
14

15 Comes now the defendant, A. Gaul, and for answer to the
16 complaint herein denies and alleges as follows:
17

18 -I-

19 That, ^{to} the allegation in paragraph three of said com-
20 plaint, "that formerly said slough continued under said levee to
21 the bank or edge of Old River," the defendant has no information
22 or belief upon the subject sufficient to enable him to answer
23 said allegation, and placing his denial on that ground, denies
24 that said slough ever continued under said levee to the bank of
25 Old River, or ever ran under said levee at all;
26

-II-

27 Denies that, said waters of Old River in the year 1914,
28 began to, or ever did undermine the levee constructed near or
29 upon said old slough; and denies that there is, or ever was a
30 wooden floodgate in said levee, at said point, but on the
31 contrary alleges, that the flood-gate in said levee thereat,
32 is constructed of brick and mortar, and always has been for
more than ten years last past, a solid, sufficient, and sub-

1 airtight flood-gate, and was constructed in a workman-like
2 manner in accordance with the custom and usage in said
3 district; and defendant further alleges that it was not
4 necessary or was time to construct other levees, or walls, or
5 raise or improve said levee, either behind or in front of
6 said flood-gate, but that without the knowledge or consent of
7 this defendant, someone unknown to defendant, on or about
8 the 27th day of January, 1914 raised the gate of said flood-
9 gate, and that the waters of said river upon rising in its
10 banks, commenced to, and did pour through said open flood-gate
11 on to the lands of this defendant, and that the officers and
12 trustees of said reclamation district No. 544, carelessly,
13 negligently, and without right or authority, and over the
14 protest of defendant, proceeded to and did, throw into said
15 flood-gate, great quantities of brick and sacks of sand which
16 prevented said flood-gate from being lowered and closed, and
17 thereby permitted and caused said water to flow through said
18 flood-gate upon the adjoining lands, and thereafter proceeded
19 to and did erect other levees on both sides of the levee at
20 the point where said flood-gate is constructed and thereby
21 prevented the use by defendant of said flood-gate for the
22 purpose of irrigating his crops in the usual and ordinary
23 manner of farmers in that neighborhood and in said reclamation
24 district;

25 -III-

26 That said flood-gate and the maintenance thereof is not
27 a menace to said levee or to said reclamation district, and
28 defendant alleges that there is no danger whatever that said
29 levee will be breached or undermined by the use of said flood-
30 gate for the purposes of irrigating the lands of defendant,
31 nor will the crops or other property now in said district be
32 endangered, damaged or destroyed. The defendant further

2 alleges that the maintenance of said additional levees, constructed
3 at by said reclamation district at the point of intake and
4 across of said flood-gate are not necessary to the protection
5 of said district, and the only purpose their being is to
6 prevent said defendant from using the waters of said river
7 to irrigate his said lands in the manner usual to said neigh-
8 borhood, and the manner in which he has been accustomed to
9 use same for more than fifteen years last past;

10
11 -IV-

12 Defendant denies that the removal of said levees for the
13 purpose of permitting said water to flow through said flood-
14 gate will flood, damage devastate, or destroy any lands of said
15 district, or any crops or other property thereon, and denies
16 that such use by him as aforesaid will result in flooding said
17 district; but on the contrary alleges, that by means of said
18 flood-gate, defendant can, and always has been able to, control
19 and regulate the flow of waters through said flood-gate, and to
20 use said water for the purpose of irrigating his said crops
21 without flooding or damaging lands or the crops of any other
22 person or persons;

23
24 -V-


25 Defendant denies that plaintiffs have no plain, speedy or
26 adequate remedy at law, and denies that said levee or the works
27 of said reclamation district No. 544 has been damaged or injur-
28 ed by defendants in any sum whatsoever, and denies that the
29 removal of said outside levees as aforesaid, will produce great
30 or irreparable injury, or any injury at all to the plaintiffs,
31 or any of them, and denies that the use of said flood-gate by
32 defendants for irrigating his said crops or the removal of
33 said outside levees for said purpose will result in any injury
34 to any one, or that it will weaken the main levee of said

1 district or the courts, or that a multiplicity of suits or
2 proceedings, judicial or otherwise, will be necessary or errors
3 plaintiff might be denied that at said point of location of
4 said flood-gate there is subsidence or soil of unusual charac-
5 ter which the same use of said flood-gate would render dangerous
6 to others or to property.

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-VI-

And further answering, defendant alleges that he and his
predecessors in interest have owned said land in said Reconna-
tion District described in the complaint for more than fifteen
years last past; that said flood-gate was constructed by his
grantors at a cost upwards of one thousand dollars and that for
more than ten years said flood-gate has been used by him and
said grantors each and every season for the purpose of irrigat-
ing the crops growing on said described lands of Defendant,
without let or hindrance, and that he and his grantors have
paid taxes on said lands during the whole of said period.

WHEREFORE, the defendant prays that he be dismissed with
his costs, that plaintiffs take nothing herein, and that the
temporary injunction heretofore granted herein be dissolved.


Attorney for said Defendants.

No. 11100

Book No. 2

SUPERIOR COURT

COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Edward Meyer as sec. et al.

PLAINTIFFS

vs.

A. Gaul, et al.,

DEFENDANTS

FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

Filed

Sept 11 1914

Edward O. Graham
Clk.

A. H. ASHLEY

Attorney for Plaintiff

San Joaquin County, California

EDWARD O. GRAHAM

Attorney for

IN THE SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA.

Leland Meyer, et al.,

Plaintiffs,

No. 11,140.

-vs-

Dept. No. 2.

A. Gaul, et al.,

Defendants.

NOTICE AND ADMISSION OF SERVICE OF COPY
OF PROPOSED FINDINGS.

To the above named defendant A. Gaul and to S. M. Spurrier, Esq., his attorney:

The above entitled court having on July 13, 1914, expressed its opinion in this matter, and directed that the attorney for plaintiffs should prepare findings herein, a copy of the proposed findings herein is herewith served upon you, and the original thereof will, on this day, be delivered to, or left for, the Hon. J. A. Plummer, the judge to whom said cause was submitted for decision.

Dated: August 6, 1914.

A. H. Ashley

Attorney for Plaintiffs.

The above copy of proposed findings was, with a copy of this notice, served upon the undersigned on August 1914.

S. M. Spurrier

Attorney for defendant, A. Gaul.

1 IN THE SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN,
2 STATE OF CALIFORNIA.
3

4 Leland Meyer, as etc., et al.,

5 Plaintiffs,

6 -vs-

7 A. Gaul, et al.,

8 Defendants.
9

No. 11,140.

Dept. No. 2.

10
11 FINDINGS OF FACT AND CONCLUSIONS OF LAW.
12

13 The complaint in this action, duly verified, was
14 filed herein, and summons and an order to show cause (tempor-
15 arily restraining defendants) were issued herein on May 22,
16 1914, on which day a bond therefor was approved and filed.
17 The defendant, A. Gaul, filed herein his answer (duly verified)
18 and the matter came on regularly for hearing upon said order to
19 show cause, on June 1, 1914, at 1:30 o'clock P. M.; but the
20 court being then so engaged with other business that it could
21 not then take up the matter, the same was regularly continued
22 until June 11, 1914; on which day, for the same reason, it
23 was continued until June 12, 1914, at 10 o'clock A. M. There-
24 upon (A. H. Ashley, appearing for plaintiffs and S. M. Spurrier
25 for defendant A. Gaul) evidence was received, and the further
26 hearing continued until June 22, 1914, when it appeared that
27 under the conditions then existing, no danger would probably
28 result from permitting said Gaul to complete his contemplated
29 improvement to the satisfaction of Henry B. Budd, as the engin-
30 eer of the plaintiff district, and use the water of Old River
31 for irrigation.

32 Therefore, on said date an order was made modifying
33 said restraining order and the further hearing continued until
34 June 29, 1914, at 1:30 o'clock P. M. for the purpose of per-

1 mitting plans for said work (satisfactory to said Budd) to be
2 presented and filed. Said plans not having been presented, the
3 further hearing of said matter was continued until July 13, 1914,
4 (said plans also in number) being submitted and filed herein on
5 July 5, 1914.

6 On June 29, 1914, the plaintiffs and the defendant A.
7 Gaul, in open court, stipulated and agreed, in view of the de-
8 velopments, that the evidence taken and proceedings had upon the
9 hearing of said order to show cause, should be in all respects,
10 treated as if taken and had at a trial (upon the merits) of said
11 action; and that the said hearing should, in all respects be
12 treated, as if a trial of said action upon the merits, as well
13 as a hearing upon said order to show cause. The respective
14 parties having presented and filed their respective claims for
15 costs, and plaintiffs having made objections to items claimed
16 by defendant A. Gaul as costs, the matter was submitted to the
17 court for its decision. The court, having duly considered the
18 matter, from the evidence makes the following

19
20 FINDINGS OF FACT.

21
22 -I-

23 While the evidence does not show that the slough men-
24 tioned in paragraph III of plaintiffs' complaint formerly con-
25 tinued under the levee or artificial embankment mentioned in said
26 paragraph, the evidence does show that running Northerly from the
27 North end of the conduit through the levee at that point, there
28 is a slough or drain filled with sand or earth ^{of} such a character
29 that it dissolves or melts away in water; and that South of said
30 conduit, on the river side (between the bank or edge of Old River
31 at that point, and the Southerly end of said conduit) the ground
32 is composed of earth of such a character that it becomes solu-
33 ble or dissolves in water, so as to lose its compactness (unless
34 restrained by artificial means). That the elevation of the sur-

1 face of the ground Northerly from said levee is much lower than
2 the berm of said levee.

3 II

4 That there was in the year 1914, and there now is, the
5 said conduit made of brick and cement mortar and plastered with
6 cement, running through said levee of said reclamation district
7 at that point; that the waters of Old River in the year 1914
8 rose to a height of several feet above the elevation, on the river
9 side of the Southerly opening of said brick conduit so that said
10 waters covered the berm at that point for a width of approxi-
11 mately 50 feet and rose upon said levee of said district to within
12 a short distance of the top of the same; that at such time said
13 conduit was ^{entirely} not closed, and by reason of the said elevation and
14 of the pressure of said waters, the same were sucked into said
15 Southerly opening of said brick conduit with a fall of several
16 feet and rushed out into said slough and filled the same, at
17 least near said levee; that in entering said conduit, said waters
18 caused so much suction that the earth or contents of said levee
19 around the mouth (on the river side) of said conduit were in
20 danger of being sucked or carried down into and through said
21 conduit; that said waters rushed Northerly from said conduit
22 with such force as to disintegrate the sand and earth in said
23 slough or ditch.

24 III.

25 That the gate or cut off in said conduit through said
26 levee of Old River was at the Southerly or river end thereof, and
27 consisted of a wooden gate sliding in wooden grooves; that South-
28 erly from said gate or cut off through the berm of said river
29 levee for a distance of about 50 feet, there was an uncovered
30 wooden box or conveyor; that said conduit was constructed in
31 the year 1898; that it was constructed in a workman like manner;
32 that the said wood work South of the same had at the time of this
33 said hearing, become rotten; that said sliding gate or cutoff
34 was not in efficient condition; that in January, 1914, said

1 cutoff had not been, ~~constructed~~ closed; that plaintiff
2 trustee ~~had~~ and others endeavored to close the same; that the
3 plaintiff officers of Reclamation District No. 544 were then un-
4 able to ascertain by what means or in what manner said water was
5 pouring through said levee, and attempted to prevent the same
6 from flowing through said levee by means of bulkheads made of
7 sacks of earth piled in front of, and back of said conduit, and
8 thereafter by dredger work caused said levee to be widened and
9 raised and said water passage covered; that in endeavoring to
10 stop said flow of said water through said levee, the trustees of
11 said district dumped, or caused to be dumped, in front of said cut
12 off, some bricks which happened to be near said levee, but there-
13 by said waters were not prevented from running through said con-
14 duit; that said conduit was of sufficient size to permit bricks
15 and sacks of sand or dirt to be carried through the same; that
16 there is no evidence that any trustee of said district ^{intentionally} placed, or
17 caused to be placed, under said cutoff, any brick for the purpose
18 of keeping the same from closing.

19 IV

20 That defendant, was then the owner of the land described
21 in said complaint and of said conduit; that he did not keep the
22 same closed on or about January 27, 1914;

23 V

24 That on February 7, 1914, the plaintiff Leland Meyer
25 as the president of said board of trustees, at a meeting of said
26 board, stated to said A. Gaul that the plaintiff district had
27 built said levee behind (that is, North) of said conduit, and
28 that he would then notify him (said Gaul) that that levee must
29 not be cut, pierced, torn down, or breached in any way, or be
30 permitted to be breached by him (said Gaul), until after the
31 (Old) river had gone down subsequent to the summer rise. That
32 thereafter said engineer of plaintiff district under the orders
33 of its board of trustees, inspected said levee at said point and
34 reported to said board that said levee should not be permitted

1 to be cut and opened at said point, until after the opening of
2 said Old River.
3 That on May 20, 1914, T. A. Hitchcock, as the
4 superintendent of said district, personally served upon said Gaul
5 a written notice signed by the secretary of said district, re-
6 quiring him not to cut, and to refrain from cutting, said levee
7 at said point, and demanding that he restore the same and make
8 the same safe. That on May 2, 1914, said board of trustees made
9 its order directing that the said directions of its said engin-
10 eer and said directions of its secretary be enforced to the
11 satisfaction of said superintendent. That said Gaul did not
12 comply therewith, but, prior to and at the time of the commence-
13 ment of this action, caused said levee to be cut and opened for
14 the purpose of putting such approaches, gate and conduit in a
15 condition such that the waters of Old River could be passed
16 through the same for the purpose of irrigating said land owned
17 by Gaul on said North bank of Old River and adjoining said levee
18 of said district.

19 VI

20 That during the trial of this action excavations were
21 made with such difficulty South and North of said conduit and
22 such other proper protective measures taken as in the judgment
23 of said engineer for the plaintiff district, were safe and
24 sufficient; that by and under a modification of said restraining
25 ing order said defendant has been permitted to replace and re-
26 pair the wood work South of said conduit; that he presented to
27 said engineer of said district, plans for said flood gate which
28 were satisfactory to said engineer (and for that reason to the
29 plaintiffs); that if said plans are complied with and the
30 approaches to said conduit are constructed and completed in
31 accordance therewith, said conduit will be safe and sufficient
32 and said levee will not thereby be breached or undermined, nor
33 by the immediate use of said conduit for purposes of irrigation,
34 nor by the use thereof for other appropriate uses at reasonable

1 times and in a reasonable manner;

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11 VIII

12 That the plaintiffs herein disclaim any other purpose
13 of this suit but the protection of the reclamation works and
14 lands of said Reclamation District, and have expressly waived
15 (on the said statement of said engineer of said district) any
16 damages for said cutting of said levee by said defendant after
17 February 1, 1914, provided he completes said flood gate in
18 accordance with said plans; that said plans or blue prints are
19 two in number and were filed herein on July 3, 1914.

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34 VIII

35 That for about ^{five} ~~seven~~ years said conduit has not been
36 used at all for purposes of irrigation.

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IX

That the said levee on Old River is a part of the
public works of the plaintiff district, and was being maintained
by said Reclamation District as such at all times herein mentioned
and now is so maintained;

X

That except as occasioning and explaining acts and
notices thereafter, and, as bearing upon the safety of the acts
of the defendant Gaul immediately prior to, and at the time of
the commencement of this action, and during said hearing, the
said facts or occurrences during January, 1914, are not within
any of the issues made by the pleadings in this action, and the
court makes no finding of fact thereon, except for such purpose.

XI

That prior to the trial of this action neither the
plaintiff district, nor its board of trustees ever adopted
any rules, regulations or specifications of any kind either
for the construction, time of construction, or use of flood
gates or culverts for purposes of irrigation or drainage.

XII

That neither the summons herein nor the restraining

1 order herein has been served upon any of the defendants other
2 than the defendant A. Gaul.

3 From the foregoing facts, the court makes the following
4

5 CONCLUSIONS OF LAW.

6
7 I

8 That the levee on Old River mentioned in the foregoing
9 findings is a part of the public reclamation works of the plain-
10 tiff Reclamation District No. 544, created and maintained under
11 its jurisdiction and authority.

12 II

13 That the defendant A. Gaul is the owner of the land
14 described in plaintiffs' complaint; that said land is a part
15 of said reclamation district and within its exterior boundaries;
16 that by reason of its adjoining said river and levee, it is
17 riparian to said river; that the defendant A. Gaul, as such
18 riparian owner, has the right to use the waters of Old River
19 for purposes of irrigation, subject to such reasonable and
20 general or specific regulations as may be necessary in the
21 premises and as affecting the protection and safety of said
22 levee of said district.

23 III

24 That the board of trustees of the plaintiff district
25 has the right, and may exercise the privilege of directing and
26 of specifying the location, and the manner and method of the
27 construction of head gates and culverts through the levees of
28 said district, and specifically, the said levee on Old River;
29 that upon compliance therewith an owner or an occupant of
30 riparian lands may construct and maintain such culverts and
31 head gates for purposes of irrigation as he may wish; that for
32 such purpose, defendant has the right to use the waters of Old
33 River; but his use thereof is subject to and dependent upon his
34 compliance with the reasonable regulations adopted by the board

1 of trustees of said district for the purpose of safeguarding its
2 lands from encroachment, and of preventing breakage or other injury
3 to its levees, and to any necessary and reasonable change there-
4 in or thereto,

5
6 IV

7 That neither the plaintiffs or the defendants herein
8 are entitled to recover any costs; that it was and it is the
9 duty of the defendant A. Gaul to maintain said conduit, culvert
10 and headgate or cutoff and all approaches thereto in a condition
11 such as not to endanger the levees or the lands of said district
12 during periods of high water; that of the existence of such
13 danger or of the probability thereof, its board of trustees is,
14 subject to the control of the courts, the sole judge; that said
15 defendant A. Gaul failed to keep said conduit closed in January,
16 1914.

17 V

18 That the defendant A. Gaul is entitled to the use of
19 the waters of Old River adjoining his lands through the headgate
20 and culvert referred to in the proceedings when he has conformed
21 to, and so long as he conforms to, the said plans for the same now
22 on file herein. In other words, he must put and keep said conduit
23 and headgate, and its approaches in the condition specified by
24 said plans, and use the same in a reasonable and safe manner.

25 VI

26 That the defendants other than A. Gaul, sued herein
27 by fictitious names, are neither necessary nor proper parties
28 to this action; that said defendant A. Gaul is solely responsible
29 for the acts and the duties and obligations hereinabove specified,
30 that said action should be dismissed as to said defendants sued by
31 their fictitious names.

32 VII

33 That neither party to this action is entitled to any
34 other or further relief herein, except that the defendant A. Gaul
35 must complete said flood gate and said approaches as required by

1 This plan, by the registration of the engineer of said State,

2 is hereby approved and ordered accordingly.

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J. A. Dummer
JUDGE.

This service and receipt is a copy of the original.

FILED BY _____

A. D. 1917

Attorney for _____

COMPARATIVE

No. 11140 Dep't. No. 2

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Leland Meyer et al. et al.

PLAINTIFFS

vs.

A. Gaul, et al.,

DEFENDANTS

JUDGMENT

*Filed
Sept 11th 1917
Eugene D. Ashley
Att'y.*

A. H. ASHLEY

ATTORNEY AT LAW AND REAL ESTATE BROKER, STOCKTON, CALIFORNIA

Attorney for Plaintiffs.

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
2 AND FOR THE COUNTY OF SAN JOAQUIN.

3
4 LELAND MEYER, WILLIAM B. T. MUIR and
5 CHARLES A. BRANT as the Trustees of,
6 and for the benefit of, Reclamation
7 District No. 544, and RECLAMATION
8 DISTRICT No. 544,

9 Plaintiffs,

No. 11,140.
Dept. No. 2.

10 -vs-

11 A. GAUL, JOHN DOE, RICHARD ROE,
12 PETER POE, JAMES COE, HENRY TOE
13 and JAMES BOE,

14 Defendants.

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J U D G M E N T

The court files herein its findings of fact and con-
clusions of law,

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that
this action be and it hereby is dismissed as to all defendants
other than the defendant A. Gaul; that the two blue prints or
plans filed in this action on July 3, 1914, have been deter-
mined to be satisfactory and sufficient and have been accepted
and approved by Henry B. Budd, the engineer of Reclamation Dis-
trict No. 544; that by reason of his said approval thereof the
plaintiff trustees and said Reclamation District have waived
herein any claim for damages herein for all acts of the defend-
ant A. Gaul in cutting the levee specified in their complaint
after February 1, 1914, provided he completes his said conduit
or culvert and its approaches and said floodgate in accordance
with such plans and to the satisfaction of the said Henry B.
Budd, as such engineer of said district; that the plaintiffs
recover herein no damages; that neither party to this action
recover any costs; that the defendant A. Gaul, as the owner
and occupant of the land described in said complaint adjoining

1 Old River, has the right and is entitled to the use of the waters
2 of Old River at reasonable times and in a reasonable manner through
3 said approaches, floodgate and culvert for purposes of irrigation,
4 being himself responsible in said use thereof for any damage or
5 injury which may result therefrom to the levees of said district;
6 that the mutual rights, duty and obligation of said defendant A.
7 Gaul and other individual land owners in said district can not
8 be and are not determined in this action; that Reclamation Dis-
9 trict No. 544 is the owner of, and has been, and is maintaining the
10 levee on Old River at the point specified in said complaint; that
11 the plaintiff trustees constitute and are its Board of Trustees;
12 that such board has jurisdiction and control of said levee subject
13 to the right of the defendant A. Gaul so to use said approaches,
14 floodgate and culvert for purposes of irrigation under such
15 necessary and reasonable rules and regulations or specifications
16 as it may hereafter adopt; that said board has (and its success-
17 ors have) the right and power to and may adopt and enforce,
18 subject to the control thereof by the courts such reasonable
19 regulations concerning the maintenance, control and use of said
20 approaches, flood gate and culvert as it determines to be neces-
21 sary, and from time to time, if reasonably necessary, to modify
22 or change the same; that the defendant Gaul is not hereby re-
23 lieved or released or freed from any duty, obligation, liability
24 or damage he may hereafter owe, incur, suffer, cause or occasion
25 by any act or omission (if any) of his hereafter, to said levee or
26 to the other levees of said district, or to the property of in-
27 dividuals therein; that the right (if any) of the plaintiffs
28 herein to recover for its expenditures in maintaining said levee
29 of Old River at said point in January 1914, is in no way invol-
30 ved in or precluded by this action.

31 Dated: ~~1914~~ 11th 1914.

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JUDGE.
Page 2.

No. 11140

—IN THE—

SUPERIOR COURT

—OF THE—

State of California

IN AND FOR THE

County of San Joaquin

Katherine M. Myers, et al,

Plaintiffs;

vs.

G. Gault, et al,

Defendants;

JUDGMENT ROLL

Filed Sept. 12th 1914

Eugene H. Graham,
Clerk.

By M. J. J. [Signature]
Deputy Clerk.

INVESTMENT BANK

In the Superior Court of the State of California, in and for the
County of San Joaquin.

Richard Meyer, et al.,

Plaintiffs,

vs.

A. Gant, et al.,

Defendants.

I, the undersigned, County Clerk of the County of San Joaquin, State of California, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled action, and recorded in Judgment Book "P" of said Court, at page 362. And I further certify that the foregoing papers hereto annexed constitute the Judgment Roll in said action.

WITNESS my hand, and the seal of said Superior Court

this 12th day of September, A. D. 1914.

Eugene W. Graham, Clerk.

By Richard Briggs, Deputy Clerk.

Office of the Sheriff of the
County of San Joaquin

I hereby certify that I received ^{a certified} ~~the~~ ~~copy~~ ~~of~~ ~~the~~ ~~hereto~~ ~~annexed~~ ~~original~~ Temporary Restraining Order

copy of the hereto annexed original Temporary Restraining Order
on the 23rd day of May 1914 and personally served the
same upon the hereinafter named A. Gaul
by delivering to and taking with A. Gaul

personally in the County of San Joaquin, at the time set opposite his ^{certified} names a copy of
said Temporary Restraining Order.

Name of Person Served.	Time of Service.
A. Gaul	May 23 1914

Dated at Stockton, May 23 1914 19

Wm. H. Riecks SHERIFF

Sheriff's Fee \$

Henry Orndorff Deputy Sheriff

...admitted this

day of

A. D. 191

Attorney for

No. <u>11140</u> Date <u>2</u>	SUPERIOR COURT COUNTY OF SAN JOAQUIN <small>STATE OF CALIFORNIA</small>	ELLIARD WEBER, JEREMIAH W. LEWIS AND CHARLES A. BRADY AS DEC. et al., <small>PLAINTIFFS</small>	vs. A. GAUL, et al., <small>DEFENDANTS</small>	TEMPORARY RESTRAINING ORDER.	Filed <u>MAY 23 1914</u> 191... EUGENE D. GRAHAM CLERK BY <i>[Signature]</i> D. RUTT	A. H. ASHLEY <small>REGISTER BAYERN AND LARK HOUSE BUILDING, 508 FRODO STOCKTON, CALIFORNIA</small>	ATTORNEY FOR PLAINTIFFS.
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IRLAND HEYER, JUDGE W. T. MUNS
and CHARLES A. BRANNAN as the
Trustees of, and for the benefit
of, Reclamation District No. 544,
and RECLAMATION DISTRICT NO. 544,

No. 11110
Dept. No. 2

Plaintiffs,

-vs-

A. PAUL, JOHN DOE, RICHARD ROE,
HETER POE, JAMES COE, HENRY TOE,
and JAMES BOE,
Defendants.

TEMPORARY RESTRAINING ORDER.

The above named plaintiffs having commenced the above en-
titled action in the Superior Court of the county of San Joaquin,
State of California, against the above named defendants, and it
appearing from the facts shown by the verified complaint herein
that great and irreparable injury will result to the reclamation
levee works of said Reclamation District No. 544 before the matter
of issuing a temporary or any other injunction herein could be
heard on notice, now, it satisfactorily appearing from the said
complaint, duly verified, that there are sufficient grounds for
the issuance of a temporary restraining order and that such an
order should be forthwith issued,

IT IS THEREFORE ORDERED AND DIRECTED that the defendant A.
Paul, his servants, employees, agents and tenants, and all other
persons acting by, through or under him, he, and they are, until
the further order of this court, and each of them is, hereby re-
strained from further cutting, injuring or destroying, or in any
manner interfering with, the reclamation levee work of Reclamation
District No. 544 on Old River at a point in Section 30, Township
One South, Range Six East, at or near which an old slough running
in a general northerly and southerly direction intersects said

IT IS ORDERED AND DECREED that the defendant A. Gaul and his tenants and all other persons claiming to act by or through or under him, should not, during the pendency of this action and until the final determination thereof, be enjoined from cutting, injuring or destroying, or in any way interfering with, the reclamation levee works of said Reclamation District No. 544 on Old River in said district.

2 of this court at the hour of 1:30 o'clock P.M. on May 19th 1914, why an injunction should not be granted herein, and the defendant A. Gaul, his servants, agents and employees, or tenants, or any other persons claiming to act by or through or under him, should not, during the pendency of this action and until the final determination thereof, be enjoined from cutting, injuring or destroying, or in any way interfering with, the reclamation levee works of said Reclamation District No. 544 on Old River in said district.

IT IS FURTHER ORDERED that this order become, and shall be, effective upon the filing herein of an undertaking in the penal sum of \$500. with good and sufficient sureties, which said undertaking and surety shall be approved by one of the judges of this court, and that upon the approval of said bond, this restraining order become, and be, in force and effect.

IT IS FURTHER ORDERED that a certified copy of this order and of the complaint herein be forthwith served upon the defendant A. Gaul and any and all other persons cutting, injuring or interfering with, or about to cut, interfere with, injure or weaken, the levee of said reclamation district specified in said complaint.

Dated: May 22, 1914.

J. A. Plummer
JUDGE

Bond approved by Hon. J. A. Plummer this 22nd day of May 1914 and filed in the office of the County Clerk this 22nd day of May 1914

Office of the Sheriff,
Of the County of San Joaquin

I hereby certify that I received the within summons on the 22d day of May
A. D. 1914, and personally served the same upon the hereinafter named defendant, by delivering
to and leaving with A. G. Gump

personally, in the County of San Joaquin, at the time set opposite his name, a copy
of said summons; and I further certify that the copy so delivered and left with
defendant was attached to a copy of the complaint
in the action named in said summons

NAME OF WITNESS SERVED	TIME OF SERVICE
<u>A. Gump</u>	<u>MAY 22 1914</u>

Dated at Stockton,
MAY 22 1914 1914

Wm. H. Riicks Sheriff.
By Henry C. ... Sheriff

No. 111110

IN THE
SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF SAN JOAQUIN

Department No.

IRLAND, MEYER, et. al., Plaintiff s,
vs.
A. GALL, et. al., Defendant s.

Received MAY 22 1914

Filed by Deputy Sheriff, by
Henry C. ... Clerk

By A. B. ASHLEY, Deputy Clerk
Attorney for Plaintiff s.

For 100-100-1000

STATE OF CALIFORNIA, }
County of San Joaquin. }

being duly sworn, deposes and says: That
he is and was at the time of the service
of the within summons, referred to, a citizen
of the County of San Joaquin, over the age of
eighteen years, and was a party to the
within entitled action, that he personally
served the within summons on the
day of May, A. D. 1914, on

IRLAND, MEYER, et. al., Plaintiff s,
defendants, their names, by deliver-
ing to said defendant, personally in
the County of San Joaquin, a copy of said
summons and upon defendant

personally, in the
County of San Joaquin,
a copy of said summons and each of them
attached to the complaint
in the action hereinafter mentioned.

Subscribed and sworn to before me this
day of May, A. D. 1914.

In the Superior Court of the State of California, in and for the
County of San Joaquin

IRLAND MEYER, JULIUS W. THOMAS and
CHARLES A. BRANDT as the Trustees
of, and for the benefit of, Recla-
mation District No. 544, and RECLA-
MATION DISTRICT NO. 544,

Plaintiff &

vs.

A. GAIL, JOHN DOE, RICHARD ROE,
PETER POE, JAMES COE, HENRY TOE
and JAMES BOE,

Defendant &

Action brought in the Superior Court of the
State of California, in and for the County
of San Joaquin, and the Complaint filed in
the office of the Clerk of Said County of
San Joaquin.

A. H. ASHLEY,

Attorney for Plaintiff &

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETING:

To A. GAIL, JOHN DOE, RICHARD ROE, PETER POE, JAMES COE, HENRY TOE
and JAMES BOE,

Defendants &

You are hereby directed to appear and answer the complaint in an action entitled as above,
brought against you in the Superior Court of the State of California, in and for the County of San
Joaquin, within ten days after the service on you of this summons if served within this county; or
within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said
plaintiff & will take judgment for any money or damages demanded in the complaint, as arising
upon contract, or they will apply to the Court for any relief
demanded in the complaint.

Given under my hand and Seal of the Superior
Court of the County of San Joaquin, State of
California, this 22nd day of May,

A. D. 1914,

EUGENE D. GRAHAM

Clerk.

By *J. H. Johnson* Deputy Clerk.

OFFICE OF THE SHERIFF

Of the County of San Joaquin.

I hereby certify that I received the hereto annexed Subpoena on the 11th day of June A. D. 1914, and personally served the same upon the witnesses named therein by showing to said witnesses, personally, in the County of San Joaquin, at the time set opposite names, the annexed original and delivering a copy thereof.

NAME OF WITNESS SERVED	TIME OF SERVICE	REMARKS
Adolph Kunze	June 6-1914	Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded

Dated at Stockton,

1914

Wm. H. Riexas

Sheriff

By Henry C. ... Sheriff

DEPARTMENT No. 2

No. 1111-0

IN THE

SUPERIOR COURT

OF THE

STATE OF CALIFORNIA

IN AND FOR THE

COUNTY OF SAN JOAQUIN

Leland Meyer et al.

D. & ... et al.

CIVIL SUBPOENA

June 11 1914
By ...

Deputy Clerk

MADE BY ...

In the Superior Court of the State of California
in and for the County of San Joaquin

Felix D. Lopez et al.

Plaintiff

SUBPOENA

A. G. Smith et al.

Defendant

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETING:

To *Adolph Kuzel, Henry Frueck*
A. H. Henderson, B. H. Adler.

We Command you, that all and singular business and excuses being laid aside, you appear and attend before the Superior Court of the State of California, in and for the County of San Joaquin, at the Court House thereof, in the City of Stockton, in said County, on the *1st* day of *June* A. D. 191*4*, at *10* o'clock *A. M.* in Department No. *7* thereof, then and there to testify in the above stated cause now pending in said Superior Court on the part of *Defendants*.

And for a failure to attend you will be deemed guilty of a contempt of Court and liable to pay all loss and damage sustained thereby to the party aggrieved.

Witness, Hon. *J. A. Plummer* Judge
of said Court, at the Court House in the County of San
Joaquin and the seal of said Court, this *3rd* day
of *June* A. D. 191*4*.

Eugene T. Spalding

Clerk

By *J. H. Plummer*

Deputy Clerk

Received Copy
Due Service of within

admitted this 29th day of June 1914

A. H. Ashley
Attorney for plaintiff

Day

Superior Court

IN THE

of

County of San Joaquin
STATE OF CALIFORNIA

Lehard, Alleged
Plaintiff

vs
A. H. Ashley
Defendant

Dependant's bail
of court

S. M. SPURRIER.

ATTORNEY AT LAW

Dependant
STOCKTON, CALIFORNIA
ATTORNEY AT LAW

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
AND FOR THE COUNTY OF SAN JOAQUIN.

Leland Meyer, et al.,

vs.

A. Gaul, et al.,

Memoranda of Cost and Disbursements
of Defendant.

.....000.....

Clerks fees,	\$ 3.00
Sheriff's fees,	\$ 9.75
Reporters fees,	\$ 7.50
Witness fees:-	
Adolph <i>King</i>	\$ 15.00
Henry Finck,	\$ 4.00
Henry Janka,	\$ 2.80
Expenses already incurred in repairing damages to the flood- gate in installing a new valve and removing unnecessary earth placed there by plaintiffs as follows :-	
Eighty days labor at \$ 1.50 per day,	\$ 120.00
six days work of a carpenter,	\$ 30.00
New Lumber,	\$ 32.05
Hiring of pumps and gasoline,	\$ 50.00
Charges of H.H.Henderson for services, as engineer, superintending the work under the order of the court as per bill attached,	\$ 151.97
Estimated cost of removing earth on inside of the levee place of there by the plaintiffs and installing the additional improvements to the flood-gate according to the estimate of H.B. Budd, engineer,	\$ 250.00
Total-	Total
	\$ 676.07

State of California,

County of San Joaquin.

State of California)
County of San Joaquin) ss

A. Gaul makes oath, and says that he is the
Defendant in the above-entitled action, and that the
items in the above Memorandum of Costs and Disbursements
are correct, and that said Costs and Disbursements have been
necessarily incurred in the action, according to the best of
his knowledge and belief.

A. Gaul

Subscribed and sworn to before me this
29th day of June, A.D. 1914.

W. M. Jones

Notary Public, in and for the
County of San Joaquin, State of
California.

Return of this writ shall be made to the court and notice of return of this writ shall be given to the defendant.

D. W. Graham
Attorney for Defendant *Gaul*

FILED 11-11-14 DEPT. NO. 21

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

LELAND MEYER, et al.,

PLAINTIFFS
vs.

A. GAUL, et al.,

DEFENDANTS

**OBJECTION AND NOTICE OF
MOTION SERVED OUT COSTS.**

JUL -7 1914
EUGENE D. GRAHAM
E. D. Graham
SERVED

A. H. ASHLEY

STOCKTON SAVINGS AND LOAN SOCIETY BUILDING, 6TH FLOOR
STOCKTON, CALIFORNIA

ATTORNEY FOR PLAINTIFFS

IRLAND MEYER, et al.,

Plaintiffs,

-vs-

A. GAUL, et al.,

Defendants.

No. 11,140.

Dept. No. 2.

OBJECTION AND NOTICE OF MOTION STRIKE OUT COSTS.

To the defendant A. Gaul, and to his attorney, S. M. Spurrier:

The plaintiff hereby object to, and at the hour of 1:30 P. M. of Monday, July 13, 1914, in the court-room of Department No. 2 of said Superior Court in the county court house in the city of Stockton, will move to strike out from said defendant's so-called "Memorandum of Costs and Disbursements", the items thereof, to-wit:

Expenses already incurred in repairing damages to the flood-gate in installing a new valve and removing unnecessary earth placed there by plaintiffs as follows:-

Eighty days labor at \$1.50 per day,	\$ 120.00
Six days work of a carpenter,	\$ 30.00
New lumber,	\$ 32.05
Hiring of pumps and gasoline,	\$ 50.00

Charges of R. H. Henderson for services, as engineer, superintending the work under the order of the court as per bill attached,	\$ 151.97
--	-----------

Estimated cost of removing earth on inside of the levee placed there by the plaintiffs and installing the additional improvements to the flood-gate according to the estimate of R. S. Budd, engineer,	\$250.00
--	----------

upon the several grounds:

1. That the same are and that each of the same is in no sense or manner costs or any part of the costs in this action.
2. That the same are not, and that neither of the same is, within any of the issues tendered in this action.
3. That said Court has no jurisdiction thereof, or to allow the same either as costs or otherwise.

4. That by section 3453 of the Political Code, the management of the affairs of every reclamation district is vested in its board of trustees.

5. That by section 3454 of that code, such board of trustees is expressly given the power not only to construct, but the power to maintain and to keep in repair all works requisite and necessary for the reclamation of its lands, and to do all other acts and things necessary or required for the reclamation of the lands embraced in the district, even to the extent of going outside of the district. (3471).

That the provisions of sections 3486 and 3487 of the Political Code are repealed by the later amendments of other sections and especially by the amendments of section 3490.

6. That by virtue of said sections 3454 and 3490, the trustees are made the servants and agents of, and controlled by, the law itself.

7. That the levee cut and interfered with by defendant A. Gaul is public property, acquired by the agents of the state for state purposes.

Plaintiffs further object that the item or charge of \$15. for the witness Kunze is unreasonable and excessive as a witness-fee; and if claimed otherwise, is within the preceding objections.

They further claim that the item or charge of \$9.75 for sheriff's fees is unreasonable and excessive and without specific statement or itemizing sufficient to enable the plaintiffs to object to the same.

They further object to the whole of said bill as a cost bill and move to strike out the same because no decision has been made and no judgment entered in this action.

Yours, etc.,

A. H. Ashley
Attorney for plaintiffs.

1170

Richard Meyer, et al.

v.
D. Gault, et al.

Opinion.

filed July 18th 1914

Ernest W. Graham, Clerk.

By Richard H. Briggs, Deputy Clerk

In the Superior Court of the State of California, in and for the
County of San Joaquin.

Leland Meyer, et als.,
Plaintiffs,
vs.
A. Gaul, et als.,
Defendants.)

This action was begun to obtain both a temporary and permanent restraining order prohibiting and restraining the defendant, A. Gaul, from cutting or making any excavation in a certain levee described in the complaint, also for the recovery from the defendant of the sum of one thousand dollars damages.

The matter has been before the Court several times in relation to the restraining order and certain modifications made, not necessary to discuss herein, and the plaintiff also has waived any question as to the recovery of damages in this action and the matter is now before the Court really for a statement in this opinion of the character of the decree that should be entered and a determination of the question of costs.

It appears from the evidence that the levee in question is a part of the public works created and maintained under the jurisdiction and authority of Reclamation District No. 544; that the defendant, Gaul, is the owner of certain land lying in said district

and adjoining levee of the levee line in controversy, that sometime during the winter of 1914 during a period of high-water in the San Joaquin River it was discovered that a considerable volume of water was passing through the head-gate and culvert maintained in said levee by the defendant Gaul and that an effort was made to close the door to said head-gate, which effort was not successful. At that time the difficulty was not discovered, later developments showing however that a brick had been placed either lengthwise or had lodged lengthwise in said head-gate which prevented the effectual and complete closing of the door thereto. Under these conditions the Trustees of the District did considerable work and incurred considerable expense in stopping the flow of water through said headgate and culvert; that thereafter the defendant began to clear away the additional levee construction made by the District to stop the flow of water above referred to, which action led to the institution of this suit and the issuance of a temporary restraining order and order to show cause herein.

Upon the hearing of the order to show cause it developed by the testimony of the engineer of the district that if certain plans were followed in reconstructing the headgate herein referred to and of the water approaches thereto and also of further work on the land side of said culvert according to said plans and specifications, copies of which are on file in this action, that it would be perfectly safe to permit said work to be done and that the safety of the levee would not thereby be endangered, and in accordance with such testimony the Court has permitted such work to be done.

In order that the Court might make such determination relative

to the costs herein as equity required the respective parties were requested to file with the Court a statement of their costs and expenses incurred for and on account of this proceeding. In one of said statements a detailed account is given of the amount expended for surveying, making maps and other items of work which are not under the decision in the case of Bathgate vs. Irvine, 126 Cal., 135, allowable as costs in any case, whether in law or in equity; but it is proper that the Court should be informed of the amount of such expenditures in order that equity may be done herein. And for that purpose the Court has carefully examined such statement and from said statement it appears that the defendant has or will incur an expenditure approximating \$678.00, and that the plaintiffs have incurred on account of this proceeding costs in the sum of \$53.00 or thereabouts.

In order to adjust the question of costs it is necessary for the Court to express its opinion as to the law applicable to this case and the respective rights of the parties involved. In the first place it may be stated that Reclamation District 544 is a public agency and that the trustees thereof are exercising certain rights and powers as officers of the state agency to accomplish a certain purpose, to-wit: the protection of the lands of the district from overflow. The defendant is the owner of riparian lands situate in said district adjoining the levee constructed by said state agency and which for the purposes of this case must be deemed and considered as public property.

Section 3454 of the Political Code as amended gives to the trustees of said district the authority to construct and maintain

said levee and any necessary repairs thereon.

Section 3480 of the same Code gives to the Board of Trustees of said district the right to prosecute actions and recover damages occasioned by the cutting or injuring or destroying of any levee or other works of reclamation in such district.

Sections 3486 and 3487 of the Political Code are a part of the same Code Act, are grouped with and placed in that part of the Code relating to reclamation districts, and in the opinion of the Court are not repealed or modified by any of the other sections. They are peculiar in their wording in some respects, but are indicative of certain rights and privileges which the Legislature had in mind attached to the riparian lands lying within such districts.

Section 3486 of the Political Code is as follows: "Any person owning or occupying lands upon the banks of any stream where the lands lying back of such stream are lower than the bank thereof, is responsible for all damages which may be sustained by the owners or occupants of lower lands by reason of any cut or embankment made in the bank of such stream by the owner or occupant of the bank."

Section 3487 of the same Code reads: "If such cuts were made for the purpose of irrigation, and head-gates and culverts have been made which competent persons consider sufficient to restrain the water, and where great diligence has been made to prevent damage, these facts may be pleaded and proved, in mitigation of damages."

A reference may also be properly had to Section 607 of the Penal Code for the purpose of ascertaining the intent of the Legislature in this matter. That section, so far as applicable to the cutting of levees, reads: "Every person who willfully and maliciously

cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure created to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation or agricultural purposes", etc., "or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same," etc., "is guilty of a misdemeanor".

It will be observed that this section does not make it a crime to cut a levee for the purpose of using the water for irrigation, nor is there any other section of the penal code which makes it an offense to construct and maintain a culvert and head-gate in a levee for the use of the waters of an adjoining stream for any agricultural or legitimate purpose. It is only when such act is maliciously done or performed with intent to injure the levee that any penal consequences attach.

The Sections of the Political Code numbered 3486 and 3487, as hereinbefore set forth, can only be construed as a recognition of the right of a riparian owner to use the adjoining waters, specifying, however, his liability.

Taking these sections in connection with the sections of the Political Code giving control of the construction, maintenance and repair of levees to the trustees of the district, it is evident to the Court that the following is a correct statement of the law:

The board of trustees of a reclamation district have the right and may exercise the privilege of directing and specifying the man-

The service and receipt of a copy of this instrument is hereby acknowledged.

Witness my hand and seal of office this _____ day of _____, A.D. 1911.

A.D. 1911

Attorney for _____

Date: _____ SUPERIOR COURT COUNTY OF SAN JOAQUIN STATE OF CALIFORNIA	PLAINTIFFS LELAND KRYER, JULIUS W.T. MOHS and CHARLES A. BRANDE et al., et al.	DEFENDANTS A. GAUL, et al.	COMPLAINT.	Filed NOV 22 1911 EUGENE D. GRAHAM CLERK BY <i>[Signature]</i> DEPUTY	A. H. ASHLEY Recorder of Deeds and Taxes for the County of San Joaquin, California
--	--	--------------------------------------	-------------------	--	---



THE ANNEXED INSTRUMENT IS A CORRECT COPY
 OF THE ORIGINAL ON FILE IN MY OFFICE.
 CAUTION: SEAL MUST BE IN PLACE.

ATTEST JAN 12 2011

ROSA JUNQUEIRA

By *[Signature]*

County Clerk Superior Court
 and Recorder of Deeds and Taxes for the County of
 San Joaquin, State of California

Deputy

LELAND MEYER, JULIUS W. T. WINS
and CHARLES A. BRANDT as the
Trustees of, and for the benefit
of, Reclamation District No. 544,
and RECLAMATION DISTRICT NO. 544,

No. 1140

Plaintiffs,

Dept. No. 2.

-vs-

A. GAUL, JOHN COE, RICHARD ROE,
PETER COE, JAMES COE, HENRY COE
and JAMES COE,

Defendants.

COMPLAINT.

Plaintiffs complain of defendants and for cause of action
alleges:

I.

That the above named plaintiff Reclamation District No. 544
has continuously, for five years next preceding the commencement
of this action, been acting as such, and prosecuting and maintain-
ing its works of reclamation in good faith; that the above named
plaintiffs Leland Meyer, Julius W. T. Wins and Charles A. Brandt
were at all times hereinafter mentioned, and they now are, the
only elected, qualified and acting trustees of said Reclamation
District No. 544.

II.

That all of said district is situated in the county of San
Joaquin, state of California; that said district embraces within
its exterior limits those certain lands situated within said county
of San Joaquin which are bounded by the San Joaquin River, Old
River, Middle River, and, on the north, by a so-called cross-
levee; that the reclamation works of said district, in so far
as the same are here involved, include large levees or protective

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which shall be the boundary of said district; the said
levee shall be on the east side, and have a cross-section in
width five feet, and a base extending in width ten feet.

III.

That the defendant A. Gaul is the owner of all that certain
lot, piece or parcel of land situate, lying and being in the
County of San Joaquin, State of California, and particularly de-
scribed as follows, to-wit:

Beginning at the Northeast corner of San Joaquin County
Survey No. 3577 on the South side of the Public Road running East
and West through the centre of Section Twenty-four (24) Township
One (1) South, Range Five (5) East, Mount Diablo Base and Meridian
thence East along the South side of said road 2803 feet to post;
thence South 2245 feet to a post on the West bank of a slough;
thence East 18 feet to the center line of said slough; thence
Southerly along the centre line of said slough to a stake in the
centre of the levee on the North bank of Old River; thence South
to the right or North bank of Old River; thence Westerly along
the right or North bank of Old River to the East line of said
County Survey No. 3577; thence North along said East line to a
stake in the centre of the levee on the right bank of Old River;
thence North 6° 35' West along fence on East line of said County
Survey No. 3577 a distance of 4793 feet to the place of beginning
containing 334.85 acres. All courses are true bearings; Mag-
netic Variation 17½° East, according to Survey made December 21st
1910 by Henry B. Bidd.

That upon the eastern boundary of said tract of land owned
by said defendant A. Gaul, there is an old slough which commences
at a point in the section line between Sections 19 and 30, in
Township 1 South, Range 6 East, M. D. B. & M., and running in a
general southerly direction to the north side of the levee upon
the north or right bank of Old River and under the same to the
edge of the waters of Old River; that locally said slough

1 situated at the bank or edge of said levee,
2 that early in the year 1911 the waters of Old River rose to a
3 flood stage, and in consequence the levee was undermined and
4 and upon said levee, by cutting away the same under and

5 around an old wooden flood gate remaining in said levee; that
6 to prevent said levee at such point from being undermined and
7 washed away, the said district, by and through its said trustees,
8 at an expense of about \$2,000., widened and raised said levee
9 so that there was a large and sufficient levee in front of, be-
10 hind and over said old flood gate; that since said time, said
11 district, by and through its trustees, has maintained said levee
12 so enlarged at such point; that the lands of said district are
13 so situated that if said levee be breached or undermined at said
14 point, a wide and costly breach will be made in the reclamation
15 works of said district and the waters of Old River will flow
16 therethrough and flood, damage and destroy the crops and other
17 property now upon said district; that said crops and other prop-
18 erty are of an estimated value of \$2,000,000.

19 That, by reason of the warm weather, the snows are being
20 melted in the mountains from which said rivers derive their water,
21 and the waters of Old River are, at such point, much higher than
22 the level of the banks at such point and than the level of the
23 larger portion of said Roberts Island.

24 IV.

25 That both by law and by the by-laws of said district, the
26 trustees of said reclamation district have entire charge and con-
27 trol of the levees of said district, and it is their duty to pro-
28 tect and maintain the same, and especially to grade and protect
29 and maintain the same at the point where said old slough dis-
30 under said levee.

31 V.

32 That heretofore the plaintiff trustees have caused to be
33 served upon the defendant, said a written notice that he shall not
34 cut nor open the reclamation levee of said district at said point.

1 that, notwithstanding such notice, and without any permission
2 from said court, and against their direct orders and the orders
3 of the superintendent of said district, the defendant A. Gaul, by
4 and through his servants and employees, or persons acting, or
5 claiming to act, under and by virtue of his authority and direc-
6 tion, is opening and causing to be opened, and to be cut and in-
7 jured, the levee of said district at said point.

8 VI.

9 That the true names of the defendants herein, other than
10 A. Gaul, are unknown to these plaintiffs, and they are therefore
11 sued herein by their fictitious names, and plaintiffs ask leave,
12 when their true names are discovered, to amend this complaint by
13 inserting herein their true names.

14 VII.

15 That the defendant A. Gaul will either personally, or by or
16 through others acting under his direction, or claiming to act by
17 or through him, unless restrained by the orders of this court,
18 cut, injure and destroy said levee and continue to cut, injure
19 and destroy the same; that if he does cut said levee of said
20 district at said point, or if he or his servants or employees, or
21 those claiming under or through him, are permitted so to cut or to
22 injure or to destroy said levee at such point, the waters of Old
23 River will, to a large extent, flow through said cut and destroy
24 the levee of said district, and flood, damage, devastate and
25 destroy the lands of said district and the growing crops and other
26 property thereon; that the loss which will result if such lands
27 of said district be flooded cannot be accurately estimated, that
28 such loss will not be confined to said district alone, but the
29 lands of the Middle and Lower Divisions of said island will be
30 flooded or damaged and the crops growing thereon or other property
31 damaged or destroyed.

32 VIII.

33 That the said acts being done by said defendant A. Gaul, or
34 through him or for him, and so threatened to be done, and to con-

1 timing to actions of him, and which he is about to do
2 produce some injury to violation of the rights of
3 plaintiffs.

4
5 That plaintiffs have no plain, speedy and adequate remedy
6 at law; that it is the duty of these plaintiffs to prevent, if
7 possible, the cutting, injury and damage of said levee by de-
8 fendants; that if the waters of said Old River should flow
9 through, or be permitted to flow through, said levee and over and
10 across the lands of said island, the resulting loss and damage
11 might be so great and so far-reaching to other levees and recla-
12 mations that the same would be incapable of any estimate; that
13 if said levee be seriously breached at said point, a large por-
14 tion of the waters of the San Joaquin river flowing therein prior
15 to its junction with Old River would flow across the lands of said
16 district; that Old River is a branch of said San Joaquin river;
17 that it is the right of these plaintiffs to have the said A.
18 Gaul, his servants, employees and tenants, restrained from doing
19 any further injury to said levee and to have such levee restored
20 to its original condition and strength hereinabove stated.

21 X.

22 That the said levee works of said reclamation district No.
23 544 have been damaged by the said cutting and injury thereof by
24 said defendant A. Gaul to the extent and in the sum of One thousand
25 and dollars.

26 XI.

27 That the defendant A. Gaul is financially able to respond
28 in damages and pay said mere \$1,000. of damage done to said Recla-
29 mation District's levee at said point; that the commission or
30 continuance by defendant A. Gaul, or by those acting or claiming
31 to act under him, of the said cutting and injury of said levee at
32 said point during this litigation will produce injury so great
33 to be irreparable; that the exact amount of said loss can not
34 accurately stated; that it would probably amount to more than

1 \$200,000 and the same amount in \$2,000,000 and more that
2 would and should be greater than said land can or is able to
3 pay; that payment of compensation to said district for said dam-
4 age and for the loss of said levee would not and will not
5 afford adequate relief; that plaintiffs are entitled to the re-
6 lief by injunction hereby demanded; that such relief consists
7 in restraining the commission or the continuance by said A. Gaul
8 of the acts hereby complained of, perpetually; that said Gaul
9 has done, and threatens, or is about to do, or will procure to
10 be done further acts of cutting, injuring and weakening said levee
11 in violation of the said rights of these plaintiffs, and the same
12 will tend to render the judgment herein ineffectual; that it
13 would be and is extremely difficult (as hereinabove indicated) to
14 ascertain the amount of compensation herein which would or will
15 afford adequate relief; that by reason of the acts done by or
16 for said A. Gaul at said point to and in said levee of said dis-
17 trict, said levee is now in such a weakened condition that any
18 further injury thereto or weakening thereof will be not merely
19 dangerous, but perilous, even to the extent of possibly preventing
20 a breach of said levee and the flooding of more than 30,000 acres
21 of land upon which there are growing crops, trees, and vines, farm
22 poultry and live-stock, human beings, dwellings, barns and other
23 improvements which will be injured, damaged, imperilled or de-
24 stroyed; and because of which a multiplicity of suits or other
25 judicial proceedings will and must result; that, in the very na-
26 ture of things, the exact amount or the extent of the breach, wast-
27 ing or injury to said reclamation levee by a breach thereof and
28 by the passage through the same of large bodies of water can not
29 be stated; that at said point in said old slough there is a
30 dissolving quicksand, and the soil nearby is of such a character
31 that it dissolves in water; that, as a consequence, the very
32 foundation of the levee will undermine and can not be replaced
33 except with coarse, heavy sand or some similar material.

1 That the defendant A. Gaul, his servants, agents, employees, tenants,
2 or otherwise, and all other persons claiming by, through, or under him,
3 shall be forever enjoined from in any way cutting, injuring or destroying the
4 reclamation levee work; that upon due hearing, said tem-

5 porary restraining order be made a permanent injunction, and that
6 the defendant A. Gaul, his servants, agents, employees, tenants,
7 and all other persons claiming by, through, or under him, be for-
8 ever enjoined from in any way cutting, injuring or destroying the
9 reclamation levees or levee works of said district.
10

11 That the plaintiffs have and recover from the defendant A.
12 Gaul its said damages in the sum of One thousand dollars, and its
13 costs of suit herein incurred.

14 That the plaintiffs have such other or further relief in the
15 premises as may be necessary, proper or just.

16
17 *A. H. Ashley*
Attorney for Plaintiffs

18 STATE OF CALIFORNIA,)
19 County of San Joaquin,) ss.

20 A. H. ASHLEY, being duly sworn, deposes and says: that he
21 now is, and for more than nineteen years has been, the secretary
22 of Reclamation District No. 544, and of the board of trustees of
23 said district; that many of the facts hereinabove stated are actu-
24 ally within his personal knowledge; that as such secretary of
25 said district, he verifies this complaint; that he has read the
26 foregoing complaint and knows the contents thereof; that the same
27 is true of his own knowledge except as to the matters therein stated
28 on information and belief, and that as to those matters he believes
29 it to be true.

30 *A. H. Ashley*

31 Subscribed and sworn to before me this 20th day of May, A.D. 1914.

32 *John M. ...*
Notary Public,
33 In and for the county of San Joaquin,
State of California.
34



Due Service of within Answer
 admitted this First day of June, 1914
A. H. Ashley
 Attorney for plaintiffs

No. 11310

SUPERIOR COURT

County of San Joaquin.
 STATE OF CALIFORNIA

WELAND HESLER, GEORGE N. TAYLORS,
 FARM COMPANY, and GEORGE W. BROWN,
 THE TRAILERS, and JOHN W. BROWN,
 DEFENDANT vs. THE CORPORATION OF
 THE CITY OF SAN JOAQUIN,
 PLAINTIFF.

A. H. ASHLEY, JOHN W. BROWN, RICHARD A. BROWN,
 HENRY C. BROWN, GEORGE W. BROWN,
 JAMES BROWN, and
 JAMES BROWN, Attorneys for Plaintiff.

AMEND

Richard A. Brown
Engineer & Surveyor
By the Court of Appeals, App. Clerk.

S. M. SPURRIER,
 ATTORNEY FOR

Defendants

1 State of California,

2 County of San Joaquin,

3 A. GAUL,

4 being duly sworn, deposes and says that he is one of the defendants

5
6 in the above entitled action; that he has *read* read the foregoing answer

7
8 and knows the contents thereof; that the same is true of his own knowledge, except as
9 to such matters as are therein stated on information or belief, and as to those matters he
10 believes it to be true.

11

12

13

14

15

16

17 Subscribed and sworn to before me this

18 19th day of June 1914.

19

20

Ch. J. ...
Notary Public

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
2 COUNTY OF SAN JOAQUIN.
3
4
5

6 LELAND MEYER, JULIUS W.T. MUHS and
7 CHARLES A. BRANDT as the Trustees of,
8 and for the benefit of, Reclamation
9 District No. 544, and Reclamation
10 District No. 544,
11 Plaintiffs,

No. 11140.

Dept. No. 2.

12 -vs-

13 A. GAUL, JOHN DOE, RICHARD ROE,
14 PETER POE, JAMES COE, HENRY
15 TOE and JAMES BOE,
16 Defendants.
17

18 Comes now the defendant, A. Gaul, and for answer to the
19 complaint herein denies and alleges as follows:
20

21 -I-

22 That, ^{to} as the allegation in paragraph three of said com-
23 plaint, "that formerly said slough continued under said levee to
24 the bank or edge of Old River," the defendant has no information
25 or belief upon the subject sufficient to enable him to answer
26 said allegation, and placing his denial on that ground, denies
27 that said slough ever continued under said levee to the bank of
28 Old River, or ever ran under said levee at all;

29 -II-

30 Denies that, said waters of Old River in the year 1914,
31 began to, or ever did undermine the levee constructed near or
32 upon said old slough; and denies that there is, or ever was a
33 wooden floodgate in said levee, at said point, but on the
34 contrary alleges, that the flood-gate in said levee thereat,
35 is constructed of brick and mortar, and always has been for
36 more than ten years last past, a solid, sufficient, and sub-

1 essential flood-gate, and was constructed in a workmanlike
2 manner in accordance with the custom and usage in said
3 district and defendant further alleges that it was not
4 necessary at any time to construct other levees, or walls, or
5 raise the level of said levee, either behind or in front of
6 said flood-gate, but that without the knowledge or consent of
7 this defendant, someone unknown to defendant, on or about
8 the 27th day of January, 1914 raised the gate of said flood-
9 gate, and that the waters of said river upon rising in its
10 banks, commenced to, and did pour through said open flood-gate
11 on to the lands of this defendant, and that the officers and
12 trustees of said reclamation district No. 544, carelessly,
13 negligently, and without right or authority, and over the
14 protest of defendant, proceeded to and did, throw into said
15 flood-gate, great quantities of brick and sacks of sand which
16 prevented said flood-gate from being lowered and closed, and
17 thereby permitted and caused said water to flow through said
18 flood-gate upon the adjoining lands, and thereafter proceeded
19 to and did erect other levees on both sides of the levee at
20 the point where said flood-gate is constructed and thereby
21 prevented the use by defendant of said flood-gate for the
22 purpose of irrigating his crops in the usual and ordinary
23 manner of farmers in that neighborhood and in said reclamation
24 district;

25 -III-

26 That said flood-gate and the maintenance thereof is not
27 a menace to said levee or to said reclamation district, and
28 defendant alleges that there is no danger whatever that said
29 levee will be breached or undermined by the use of said flood-
30 gate for the purpose of irrigating the lands of defendant,
31 nor will the crops or other property now in said district be
32 endangered, damaged or destroyed. The defendant further

3. alleges that the maintenance of said additional levees, constructed
4. at by said reclamation district at the point of intake and
5. across of said flood-gate are not necessary for the protection
6. of said district, and the only purpose they serve is to
7. prevent said defendant from using the waters of said river
8. to irrigate his said lands in the manner usual to said neigh-
9. borhood, and the manner in which he has been accustomed to
10. use same for more than fifteen years last past;

9
-IV-

10
11 Defendant denies that the removal of said levees for the
12 purpose of permitting said water to flow through said flood-
13 gate will flood, damage devastate, or destroy any lands of said
14 district, or any crops or other property thereon, and denies
15 that such use by him as aforesaid will result in flooding said
16 district; but on the contrary alleges, that by means of said
17 flood-gate, defendant can, and always has been able to, control
18 and regulate the flow of waters through said flood-gate, and to
19 use said water for the purpose of irrigating his said crops
20 without flooding or damaging lands or the crops of any other
21 person or persons;

22
-V-

23 Defendant denies that plaintiffs have no plain, speedy or
24 adequate remedy at law, and denies that said levee or the works
25 of said reclamation district No. 544 has been damaged or injur-
26 ed by defendants in any sum whatsoever, and denies that the
27 removal of said outside levees as aforesaid, will produce great
28 or irreparable injury, or any injury at all to the plaintiffs,
29 or any of them, and denies that the use of said flood-gate by
30 defendants for irrigating his said crops or the removal of
31 said outside levees for said purpose will result in any injury
32 to any one, or that it will weaken the main levee of said

1 district to be made, or that a multiplicity of suits or
2 proceedings, civil or otherwise, will be necessary if either
3 plaintiff or defendant denies that at said point of location of
4 said flood-gate there is a deposit of soil of unusual charac-
5 ter which the said use of said flood-gate would render dangerous
6 to others or to property.

7
8 -VI-

9 And further answering, defendant alleges that he and his
10 predecessors in interest have owned said land in said Reclama-
11 tion District described in the complaint for more than fifteen
12 years last past; that said flood-gate was constructed by his
13 grantors at a cost upwards of one thousand dollars and that for
14 more than ten years said flood-gate has been used by him and
15 said grantors each and every season for the purpose of irrigat-
16 ing the crops growing on said described lands of Defendant,
17 without let or hindrance, and that he and his grantors have
18 paid taxes on said lands during the whole of said period.

19 WHEREFORE, the defendant prays that he be dismissed with
20 his costs, that plaintiffs take nothing herein, and that the
21 temporary injunction heretofore granted herein be dissolved.

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23 
24 Attorney for said Defendants.
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No. 11100 Case No. 2

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Leina Meyer as etc. et al.
PLAINTIFFS

vs.

A. Gaul, et al.,
DEPENDANTS

FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

Filed

Sept 11 2 1914

Ernest O. Graham
Clerk

A. H. ASHLEY

Attorney at Law, 100 North Broadway, San Francisco, California

SAN FRANCISCO, CALIFORNIA

PLAINTIFFS

Attorney for

IN THE SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA.

Leland Meyer, et al.,

Plaintiffs,

-vs-

A. Gaul, et al.,

Defendants.

No. 11,140.

Dept. No. 2.

NOTICE AND ADMISSION OF SERVICE OF COPY
OF PROPOSED FINDINGS.

To the above named defendant A. Gaul and to S. M. Spurrier, Esq., his attorney:

The above entitled court having on July 13, 1914, expressed its opinion in this matter, and directed that the attorney for plaintiffs should prepare findings herein, a copy of the proposed findings herein is herewith served upon you, and the original thereof will, on this day, be delivered to, or left for, the Hon. J. A. Plummer, the judge to whom said cause was submitted for decision.

Dated: August 10, 1914.

A. H. Ashley

Attorney for Plaintiffs.

The above copy of proposed findings was, with a copy of this notice, served upon the undersigned on August 1914.

S. M. Spurrier

Attorney for defendant, A. Gaul.

1 IN THE SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN,
2 STATE OF CALIFORNIA.
3

4 Leland Meyer, as etc., et al.,

5 Plaintiffs,

No. 11,140.

6 -vs-

Dept. No. 2.

7 A. Gaul, et al.,

8 Defendants.
9

10
11 FINDINGS OF FACT AND CONCLUSIONS OF LAW.
12

13 The complaint in this action, duly verified, was
14 filed herein, and summons and an order to show cause (tempor-
15 arily restraining defendants) were issued herein on May 22,
16 1914, on which day a bond therefor was approved and filed.
17 The defendant, A. Gaul, filed herein his answer (duly verified)
18 and the matter came on regularly for hearing upon said order to
19 show cause, on June 1, 1914, at 1:30 o'clock P. M.; but the
20 court being then so engaged with other business that it could
21 not then take up the matter, the same was regularly continued
22 until June 11, 1914; on which day, for the same reason, it
23 was continued until June 12, 1914, at 10 o'clock A. M. There-
24 upon (A. H. Ashley, appearing for plaintiffs and S. M. Spurrier
25 for defendant A. Gaul) evidence was received, and the further
26 hearing continued until June 22, 1914, when it appeared that
27 under the conditions then existing, no danger would probably
28 result from permitting said Gaul to complete his contemplated
29 improvement to the satisfaction of Henry B. Budd, as the engin-
30 eer of the plaintiff district, and use the water of Old River
31 for irrigation.

32 Therefore, on said date an order was made modifying
33 said restraining order and the further hearing continued until
34 June 29, 1914, at 1:30 o'clock P. M. for the purpose of per-

1 mitting plans for said work (satisfactory to said Budd) to be
2 presented and filed. Said plans not having been presented, the
3 further hearing of said matter was continued until July 13, 1914,
4 (said plans ~~are~~ in number) being submitted and filed herein on
5 July 5, 1914.

6 On June 29, 1914, the plaintiffs and the defendant A.
7 Gaul, in open court, stipulated and agreed, in view of the de-
8 velopments, that the evidence taken and proceedings had upon the
9 hearing of said order to show cause, should be in all respects,
10 treated as if taken and had at a trial (upon the merits) of said
11 action; and that the said hearing should, in all respects be
12 treated, as if a trial of said action upon the merits, as well
13 as a hearing upon said order to show cause. The respective
14 parties having presented and filed their respective claims for
15 costs, and plaintiffs having made objections to items claimed
16 by defendant A. Gaul as costs, the matter was submitted to the
17 court for its decision. The court, having duly considered the
18 matter, from the evidence makes the following
19

20 FINDINGS OF FACT.

21
22 -I-

23 While the evidence does not show that the slough men-
24 tioned in paragraph III of plaintiffs' complaint formerly con-
25 tinued under the levee or artificial embankment mentioned in said
26 paragraph, the evidence does show that running Northerly from the
27 North end of the conduit through the levee at that point, there
28 is a slough or drain filled with sand or earth ^{of} such a character
29 that it dissolves or melts away in water; and that South of said
30 conduit, on the river side (between the bank or edge of Old River
31 at that point, and the Southerly end of said conduit) the ground
32 is composed of earth of such a character that it becomes solu-
33 ble or dissolves in water, so as to lose its compactness (unless
34 restrained by artificial means). That the elevation of the sur-

1 face of the ground Northerly from said levee is much lower than
2 the berm of said levee.

3 II

4 That there was in the year 1914, and there now is, the
5 said conduit made of brick and cement mortar and plastered with
6 cement, running through said levee of said reclamation district
7 at that point; that the waters of Old River in the year 1914
8 rose to a height of several feet above the elevation, on the river
9 side of the Southerly opening of said brick conduit so that said
10 waters covered the berm at that point for a width of approxi-
11 mately 50 feet and rose upon said levee of said district to within
12 a short distance of the top of the same; that at such time said
13 conduit was ^{entirely} not closed, and by reason of the said elevation and
14 of the pressure of said waters, the same were sucked into said
15 Southerly opening of said brick conduit with a fall of several
16 feet and rushed out into said slough and filled the same, at
17 least near said levee; that in entering said conduit, said waters
18 caused so much suction that the earth or contents of said levee
19 around the mouth (on the river side) of said conduit were in
20 danger of being sucked or carried down into and through said
21 conduit; that said waters rushed Northerly from said conduit
22 with such force as to disintegrate the sand and earth in said
23 slough or ditch.

24 III.

25 That the gate or cut off in said conduit through said
26 levee of Old River was at the Southerly or river end thereof, and
27 consisted of a wooden gate sliding in wooden grooves; that South-
28 erly from said gate or cut off through the berm of said river
29 levee for a distance of about 50 feet, there was an uncovered
30 wooden box or conveyor; that said conduit was constructed in
31 the year 1898; that it was constructed in a workman like manner;
32 that the said wood work South of the same had at the time of this
33 said hearing, become rotten; that said sliding gate or cutoff
34 was not in efficient condition; that in January, 1914, said

1 cutoff had not been ~~intentionally~~ closed; that plaintiff
2 trustee Lube and others endeavored to close the same; that the
3 plaintiff officers of Reclamation District No. 544 were then un-
4 able to ascertain by what means or in what manner said water was
5 pouring through said levee, and attempted to prevent the same
6 from flowing through said levee by means of bulkheads made of
7 sacks of earth piled in front of, and back of said conduit, and
8 thereafter by dredger work caused said levee to be widened and
9 raised and said water passage covered; that in endeavoring to
10 stop said flow of said water through said levee, the trustees of
11 said district dumped, or caused to be dumped, in front of said cut
12 off, some bricks which happened to be near said levee, but there-
13 by said waters were not prevented from running through said con-
14 duit; that said conduit was of sufficient size to permit bricks
15 and sacks of sand or dirt to be carried through the same; that
16 there is no evidence that any trustee of said district ^{intentionally} placed, or
17 caused to be placed, under said cutoff, any brick for the purpose
18 of keeping the same from closing.

19 IV

20 That defendant, was then the owner of the land described
21 in said complaint and of said conduit; that he did not keep the
22 same closed on or about January 27, 1914;

23 V

24 That on February 7, 1914, the plaintiff Leland Meyer
25 as the president of said board of trustees, at a meeting of said
26 board, stated to said A. Gaul that the plaintiff district had
27 built said levee behind (that is, North) of said conduit, and
28 that he would then notify him (said Gaul) that that levee must
29 not be cut, pierced, torn down, or breached in any way, or be
30 permitted to be breached by him (said Gaul), until after the
31 (Old) river had gone down subsequent to the summer rise. That
32 thereafter said engineer of plaintiff district under the orders
33 of its board of trustees, inspected said levee at said point and
34 reported to said board that said levee should not be permitted

to be cut and opened at said point until after the removal of
said Old River.
That on May 10, 1914, J. A. Hittage, as
superintendent of said district, personally served upon said Gaul
a written notice signed by the secretary of said district, re-
quiring him not to cut, and to refrain from cutting, said levee
at said point, and demanding that he restore the same and make
the same safe. That on May 2, 1914, said board of trustees made
its order directing that the said directions of its said engin-
eer and said directions of its secretary be enforced to the
satisfaction of said superintendent. That said Gaul did not
comply therewith, but, prior to and at the time of the commencing
of this action, caused said levee to be cut and opened for
the purpose of putting such approaches, gate and conduit in a
condition such that the waters of Old River could be passed
through the same for the purpose of irrigating said land owned
by Gaul on said North bank of Old River and adjoining said levee
of said district.

VI

That during the trial of this action excavations were
made with such difficulty South and North of said conduit and
such other proper protective measures taken as in the judgment
of said engineer for the plaintiff district, were safe and
sufficient; that by and under a modification of said restraining
order said defendant has been permitted to replace and re-
pair the wood work South of said conduit; that he presented to
said engineer of said district, plans for said flood gate which
were satisfactory to said engineer (and for that reason to the
plaintiffs); that if said plans are complied with and the
approaches to said conduit are constructed and completed in
accordance therewith, said conduit will be safe and sufficient
and said levee will not thereby be breached or undermined, nor
by the immediate use of said conduit for purposes of irrigation;
nor by the use thereof for other appropriate uses at reasonable

1 times and in a reasonable manner.

2 VII

3 That the plaintiff's heretofore and other purposes
4 of this suit are the protection of the reclamation works and
5 lands of said Reclamation District, and have expressly waived
6 (on the said statement of said engineer of said district) any
7 damages for said cutting of said levee by said defendant after
8 February 1, 1914, provided he completes said flood gate in
9 accordance with said plans; that said plans or blue prints are
10 two in number and were filed herein on July 3, 1914.

11 VIII

12 That for about ~~two~~ years said conduit has not been
13 used at all for purposes of irrigation.

14 IX

15 That the said levee on Old River is a part of the
16 public works of the plaintiff district, and was being maintained
17 by said Reclamation District as such at all times herein mentioned
18 and now is so maintained;

19 X

20 That except as occasioning and explaining acts and
21 notices thereafter, and, as bearing upon the safety of the acts
22 of the defendant Gaul immediately prior to, and at the time of
23 the commencement of this action, and during said hearing, the
24 said facts or occurrences during January, 1914, are not within
25 any of the issues made by the pleadings in this action, and the
26 court makes no finding of fact thereon, except for such purposes.

27 XI

28 That prior to the trial of this action neither the
29 plaintiff district, nor its board of trustees ever adopted
30 any rules, regulations or specifications of any kind either
31 for the construction, time of construction, or use of flood
32 gates or culverts for purposes of irrigation or drainage.

33 XII

34 That neither the summons herein nor the restraining

1 order herein has been served upon any of the defendants other
2 than the defendant A. Gaul.

3 From the foregoing facts, the court makes the following
4

5 CONCLUSIONS OF LAW.

6
7 I

8 That the levee on Old River mentioned in the foregoing
9 findings is a part of the public reclamation works of the plain-
10 tiff Reclamation District No. 544, created and maintained under
11 its jurisdiction and authority.

12 II

13 That the defendant A. Gaul is the owner of the land
14 described in plaintiffs' complaint; that said land is a part
15 of said reclamation district and within its exterior boundaries;
16 that by reason of its adjoining said river and levee, it is
17 riparian to said river; that the defendant A. Gaul, as such
18 riparian owner, has the right to use the waters of Old River
19 for purposes of irrigation, subject to such reasonable and
20 general or specific regulations as may be necessary in the
21 premises and as affecting the protection and safety of said
22 levee of said district.

23 III

24 That the board of trustees of the plaintiff district
25 has the right, and may exercise the privilege of directing and
26 of specifying the location, and the manner and method of the
27 construction of head gates and culverts through the levees of
28 said district, and specifically, the said levee on Old River;
29 that upon compliance therewith an owner or an occupant of
30 riparian lands may construct and maintain such culverts and
31 head gates for purposes of irrigation as he may wish; that for
32 such purpose, defendant has the right to use the waters of Old
33 River; but his use thereof is subject to and dependent upon his
34 compliance with the reasonable regulations adopted by the board

1 of trustees of said district for the purpose of safeguarding its
2 lands from overflow, and of preventing breakage or other injury
3 to its levees, and to any necessary and reasonable change there-
4 in or thereto.

5
6 IV

7 That neither the plaintiffs or the defendants herein
8 are entitled to recover any costs; that it was and it is the
9 duty of the defendant A. Gaul to maintain said conduit, culvert
10 and headgate or cutoff and all approaches thereto in a condition
11 such as not to endanger the levees or the lands of said district
12 during periods of high water; that of the existence of such
13 danger or of the probability thereof, its board of trustees is,
14 subject to the control of the courts, the sole judge; that said
15 defendant A. Gaul failed to keep said conduit closed in January,
16 1914.

17 V

18 That the defendant A. Gaul is entitled to the use of
19 the waters of Old River adjoining his lands through the headgate
20 and culvert referred to in the proceedings when he has conformed
21 to, and so long as he conforms to, the said plans for the same now
22 on file herein. In other words, he must put and keep said conduit
23 and headgate, and its approaches in the condition specified by
24 said plans, and use the same in a reasonable and safe manner.

25 VI

26 That the defendants other than A. Gaul, sued herein
27 by fictitious names, are neither necessary nor proper parties
28 to this action; that said defendant A. Gaul is solely responsible
29 for the acts and the duties and obligations hereinabove specified,
30 that said action should be dismissed as to said defendants sued by
31 their fictitious names.

32 VII

33 That neither party to this action is entitled to any
34 other or further relief herein, except that the defendant A. Gaul
35 must complete said flood gate and said approaches as required by

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said plan of the registration of the engineer of said State.

and shall be entered accordingly.

1914.

R. A. Thummes
JUDGE.

Don't miss and receive if a copy of the ...

A. D. 191...

Attorney for

COMPLAINT

No. 13340 Dept. No. 2

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Leiland Meyer as etc. et al.
PLAINTIFFS

vs.

A. Gaud, et al.,
DEFENDANTS

J U D G M E N T

*Filed
Sept 11th 1914
Eugene J. ...*

A. H. ASHLEY

REGISTER SAYERS AND SONS PRINTING OFFICE
STOCKTON, CALIFORNIA

Plaintiffs

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
2 AND FOR THE COUNTY OF SAN JOAQUIN,
3

4 LELAND MEYER, WILLIAM E. T. MUMS and
5 CHARLES A. BRADY as the Trustees of,
6 and for the benefit of, Reclamation
District No. 544, and RECLAMATION
DISTRICT No. 544,

7 Plaintiffs,

No. 11,140.

Dept. No. 2.

8 -vs-

9 A. GAUL, JOHN BOE, RICHARD ROE,
10 PETER POE, JAMES COE, HENRY TOE
and JAMES BOE,

11 Defendants.
12

13
14 J U D G M E N T

15
16 The court files herein its findings of fact and con-
17 clusions of law,

18 WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that
19 this action be and it hereby is dismissed as to all defendants
20 other than the defendant A. Gaul; that the two blue prints or
21 plans filed in this action on July 3, 1914, have been deter-
22 mined to be satisfactory and sufficient and have been accepted
23 and approved by Henry B. Budd, the engineer of Reclamation Dis-
24 trict No. 544; that by reason of his said approval thereof the
25 plaintiff trustees and said Reclamation District have waived
26 herein any claim for damages herein for all acts of the defend-
27 ant A. Gaul in cutting the levee specified in their complaint
28 after February 1, 1914, provided he completes his said conduit
29 or culvert and its approaches and said floodgate in accordance
30 with such plans and to the satisfaction of the said Henry B.
31 Budd, as such engineer of said district; that the plaintiffs
32 recover herein no damages; that neither party to this action
33 recover any costs; that the defendant A. Gaul, as the owner
34 and occupant of the land described in said complaint adjoining

1 Old River, has the right and is entitled to the use of the waters
2 of Old River at reasonable times and in a reasonable manner through
3 said approaches, floodgate and culvert for purposes of irrigation,
4 being himself responsible in said use thereof for any damage or
5 injury which may result therefrom to the levees of said district;
6 that the mutual rights, duty and obligation of said defendant A.
7 Gaul and other individual land owners in said district can not
8 be and are not determined in this action; that Reclamation Dis-
9 trict No. 544 is the owner of, and has been, and is maintaining the
10 levee on Old River at the point specified in said complaint; that
11 the plaintiff trustees constitute and are its Board of Trustees;
12 that such board has jurisdiction and control of said levee subject
13 to the right of the defendant A. Gaul so to use said approaches,
14 floodgate and culvert for purposes of irrigation under such
15 necessary and reasonable rules and regulations or specifications
16 as it may hereafter adopt; that said board has (and its success-
17 ors have) the right and power to and may adopt and enforce,
18 subject to the control thereof by the courts such reasonable
19 regulations concerning the maintenance, control and use of said
20 approaches, flood gate and culvert as it determines to be necess-
21 ary, and from time to time, if reasonably necessary, to modify
22 or change the same; that the defendant Gaul is not hereby re-
23 lieved or released or freed from any duty, obligation, liability
24 of damage he may hereafter owe, incur, suffer, cause or occasion
25 by any act or omission (if any) of his hereafter, to said levee or
26 to the other levees of said district, or to the property of in-
27 dividuals therein; that the right (if any) of the plaintiffs
28 herein to recover for its expenditures in maintaining said levee
29 of Old River at said point in January 1914, is in no way invol-
30 ved in or precluded by this action.

31 Dated: *Sept 11th* 1914.

32

33

34

J. A. Plummer

Page 2. JUDGE.

No. 11140.

—IN THE—

SUPERIOR COURT

—OF THE—

State of California

IN AND FOR THE

County of San Joaquin

Kenneth Meyer, et al,

Plaintiffs;

vs.

G. Paul, et al,

Defendants;

JUDGMENT ROLL

Filed Sept. 12th 1914.

Emerson R. Spahrman,
Clerk.

By W. J. [Signature]
Deputy Clerk.

INVESTMENT PRINT

In the Superior Court of the State of California, in and for the
County of San Joaquin.

Richard Meyer, et al.,

Plaintiffs,

vs.

A. Gaul, et al.,

Defendants.

I, the undersigned, County Clerk of the County of San Joaquin, State of California, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled action, and recorded in Judgment Book "D" of said Court, at page 362. And I further certify that the foregoing papers hereto annexed constitute the Judgment Roll in said action.

WITNESS my hand, and the seal of said Superior Court

this 13th day of September, A. D. 1914.

Eugene W. Graham, Clerk.

By *Hubert Briggs*, Deputy Clerk.

Office of the Sheriff of the
County of San Joaquin

I hereby certify that I received the ^{a certified} ~~original~~

copy of the hereto annexed original Temporary Restraining Order
in the 23rd day of May 1914 and personally served the
same upon the hereinafter named A. GAUL
by delivering to and taking with A. GAUL

personally in the County of San Joaquin, at the time set opposite ^{his} ~~names~~ ^{certified} ~~a copy of~~
said Temporary Restraining Order.

Name of Person Served.	Time of Service.
<u>A. Gaul</u>	<u>May 23 1914</u>

Dated at Stockton May 23 1914 19

Wm. H. Riecks

SHERIFF.

Sheriff's Fee \$

Henry Onckler Deputy Sheriff.

submitted this

day of

A. D. 191

Attorney for

No. <u>11140</u> DEPT. <u>2</u>	SUPERIOR COURT COUNTY OF SAN JOAQUIN <small>STATE OF CALIFORNIA</small>	ELIASE MEER, JAMES W. LEWIS AND CHARLES A. BRANT AS ETC., et al., PLAINTIFFS	vs. A. GAUL, et al., DEFENDANTS	TEMPORARY RESTRAINING ORDER.	Filed <u>MAY 23 1911</u> 191... EUGENE D. GRAHAM CLERK BY <i>[Signature]</i> D. PUTT	A. H. ASHLEY <small>STOCKTON BARBER AND LAW OFFICE BUILDING, 620 FIFTH STOCKTON, CALIFORNIA</small>	ATTORNEY FOR PLAINTIFFS.
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
COUNTY OF SAN JOAQUIN.
-----000-----

IRLAND MEYER, JUNIOR & T. MUNS
and CHARLES A. BRANT as the
Trustees of, and for the benefit
of, Reclamation District No. 544,
and RECLAMATION DISTRICT NO. 544,

Plaintiffs,

-vs-

A. PAUL, JOHN DOE, RICHARD ROE,
HETER POE, JAMES COE, HENRY TOE,
and JAMES BOY,

Defendants.

No. 11110

Dept. No. 2

TEMPORARY RESTRAINING ORDER.

The above named plaintiffs having commenced the above en-
titled action in the Superior Court of the county of San Joaquin,
State of California, against the above named defendants, and it
appearing from the facts shown by the verified complaint herein
that great and irreparable injury will result to the reclamation
levee works of said Reclamation District No. 544 before the matter
of issuing a temporary or any other injunction herein could be
heard on notice, now, it satisfactorily appearing from the said
complaint, duly verified, that there are sufficient grounds for
the issuance of a temporary restraining order and that such an
order should be forthwith issued,

IT IS THEREFORE ORDERED AND DIRECTED that the defendant A.
Paul, his servants, employees, agents and tenants, and all other
persons acting by, through or under him, be, and they are, until
the further order of this court, and each of them is, hereby re-
strained from further cutting, injuring or destroying, or in any
manner interfering with, the reclamation levee work of Reclamation
District No. 544 on Old River at a point in Section 30, Township
One South, Range Six East, at or near which an old slough running
in a general northerly and southerly direction intersects said

IT IS ORDERED that the defendant A. Gaul and his servants, agents and employees, or tenants, or any other persons claiming to act by or through or under him, should not, during the pendency of this action and until the final determination thereof, be enjoined from cutting, injuring or destroying, or in any way interfering with, the reclamation levee works of said Reclamation District No. 544 on Old River in said district.

2 of this court at the hour of 12⁰⁰ o'clock P.M. on May 21st, 1914, why an injunction should not be granted herein, and the defendant A. Gaul, his servants, agents and employees, or tenants, or any other persons claiming to act by or through or under him, should not, during the pendency of this action and until the final determination thereof, be enjoined from cutting, injuring or destroying, or in any way interfering with, the reclamation levee works of said Reclamation District No. 544 on Old River in said district.

IT IS FURTHER ORDERED that this order become, and shall be, effective upon the filing herein of an undertaking in the penal sum of \$500. with good and sufficient sureties, which said undertaking and surety shall be approved by one of the judges of this court, and that upon the approval of said bond, this restraining order become, and be, in force and effect.

IT IS FURTHER ORDERED that a certified copy of this order and of the complaint herein be forthwith served upon the defendant A. Gaul and any and all other persons cutting, injuring or interfering with, or about to cut, interfere with, injure or weaken, the levee of said reclamation district specified in said complaint.

Dated: May 21, 1914.

J. A. Summer
JUDGE

Bond approved by Hon J. A. Summer this 22nd day of May 1914 and filed in the office of the County Clerk this 27th day of May 1914

Office of the Sheriff,
of the County of San Joaquin

I hereby certify that I received the within summons on the 22d of May
A. D. 1914, and personally served the same upon the hereinafter named defendant, by delivering
to and leaving with A. Paul
personally, in the County of San Joaquin, at the time set opposite his name, copy
of said summons; and I further certify that the copy so delivered and left with
defendant was attached to a copy of the complaint
in the action named in said summons

NAME OF WITNESS SERVED	TIME OF SERVICE
<u>A. Paul</u>	<u>MAY 22 1914</u>

Dated at Stockton,

MAY 22 1914

1914

Wm. H. Riecks

Sheriff.

By Henry C. ... Sheriff

No. 111110

—IN THE—
SUPERIOR COURT
—OF THE—
STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF SAN JOAQUIN

Department No.

IRLAND MEYER, et al.,
Plaintiff s.,
vs.
A. EARL, et al.,
Defendants.

Received MAY 22 1914

Filed May 22 1914

By Henry C. ... Deputy Clerk

A. F. ASHLEY,
Attorney for Plaintiff s.

THE ATTORNEY GENERAL

STATE OF CALIFORNIA, } ss.
County of San Joaquin. }

being duly sworn, deposes and says: That he is and was at the time of the service of the papers herein referred to, a citizen of the United States, over the age of eighteen years, and not a party to the within entitled action, that he personally served the within summons on the ... day of ... A. D. 191... on ... defendant, herein named, by delivering to said defendant, personally in ... County of ... a copy of said summons, and upon defendant ... a copy of said summons and each of them ... in the action therein mentioned.

Subscribed and sworn to before me this ... day of ... A. D. 191...

In the Superior Court of the State of California, in and for the
County of San Joaquin

IRLAND WYDER, JULIUS W. T. SMITH and
CHARLES A. BRANDT as the Trustees
of, and for the benefit of, Recla-
mation District No. 544, and RECLA-
MATION DISTRICT NO. 544,
Plaintiff s,

vs.

A. GAUL, JOHN DOE, RICHARD ROE,
PETER POE, JAMES COE, HENRY TOE
and JAMES BOE,
Defendant s,

Action brought in the Superior Court of the
State of California, in and for the County
of San Joaquin, and the Complaint filed in
the office of the Clerk of Said County of
San Joaquin.

A. E. ASHLEY,
Attorney for Plaintiff s,

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETING:

To A. GAUL, JOHN DOE, RICHARD ROE, PETER POE, JAMES COE, HENRY TOE
and JAMES BOE,
Defendants,

You are hereby directed to appear and answer the complaint in an action entitled as above,
brought against you in the Superior Court of the State of California, in and for the County of San
Joaquin, within ten days after the service on you of this summons if served within this county; or
within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said
plaintiff s will take judgment for any money or damages demanded in the complaint, as arising
upon contract, or they will apply to the Court for any relief
demanded in the complaint.

Given under my hand and Seal of the Superior
Court of the County of San Joaquin, State of
California, this 22nd day of May,

A. D. 1914.
EUGENE B. GRAHAM Clerk.
By *[Signature]* Deputy Clerk.

OFFICE OF THE SHERIFF

Of the County of San Joaquin.

I hereby certify that I received the hereto annexed Subpoena on the *1st* day of *June* A. D. 191*4*, and personally served the same upon the witnesses named therein by showing to said witnesses, personally, in the County of San Joaquin, at the time set opposite to names, the annexed original and delivering a copy thereof.

NAME OF WITNESS SERVED	DATE OF SERVICE	REMARKS
<i>Adolph Kurze</i>	<i>June 6-1914</i>	Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded
		Fees demanded

Dated at Stockton,

191*4*

Wm. H. Riex's

Sheriff

By Henry C. Miller Deputy

Sheriff

DEPARTMENT No. 2

No. 11100

IN THE
SUPERIOR COURT
OF THE
STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF SAN JOAQUIN

Jelwood W. Meyer et al.

v.
D. A. Smith et al.

CIVIL SUBPOENA

June 11 1914
By Wm. H. Riex

Deputy Clerk

MADE IN CALIFORNIA

In the Superior Court of the State of California
in and for the County of San Joaquin

Fred W. Sawyer et al.

Plaintiff

A. G. Smith et al.

Defendant

SUBPOENA

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETING:

To *Adolf Kuntz, Henry Frueck*
A. H. Henderson, B. H. Keller

We Command you, that all and singular, business and excuses being laid aside, you appear and attend before the Superior Court of the State of California, in and for the County of San Joaquin, at the Court House thereof, in the City of Stockton, in said County, on the *1st* day of *June* A. D. 191*4*, at 10 o'clock A. M., in Department No. *7* thereof, then and there to testify in the above stated cause now pending in said Superior Court on the part of *Defendants*

And for a failure to attend you will be deemed guilty of a contempt of Court and liable to pay all loss and damage sustained thereby to the party aggrieved.

Witness, Hon. *J. A. Plummer* Judge
of said Court, at the Court House in the County of San
Joaquin and the seal of said Court, this *3rd* day
of *June* A. D. 191*4*.

Eugene T. Spaulding

Clerk

By *J. H. Plummer*

Deputy Clerk

Received copy
Due Service by within

admitted this 29th day of June 1914

A. H. Ashley

Attorney for plaintiff

Superior Court

—IN THE—

—OF—

The

County of San Joaquin
STATE OF CALIFORNIA

Leahnd Allegretto
Plaintiff

vs
A. H. Ashley
Defendant

Appendants and
of costs.

S. M. SPURRIER.

ATTORNEY AT LAW

Stockton, California

11200 MARKET STREET, STOCKTON, CAL.

Leland Meyer, et al.,

vs.

Memoranda of Cost and Disbursements
of Defendant.

A. Gall, et al.,

.....000.....

- Clarks fees,\$ 3.00
- Sheriff's fees,\$ 9.75
- Reporters fees,\$ 7.50
- Witness fees:-
- Adolp Kingl\$ 15.00
- Henry Finck,\$ 4.00
- Henry Jonka,\$ 2.80

Expenses already incurred in repairing damages to the flood-gate in installing a new valve and removing unnecessary earth placed there by plaintiffs as follows :-

- Eighty days labor at \$ 1.50 per day,\$ 120.00
- six days work of a carpenter,\$ 30.00
- New Lumber,\$ 32.05
- Hiring of pumps and gasoline,\$ 50.00

Charges of H.H.Henderson for services, as engineer, superintending the work under the order of the court as per bill attached,\$ 151.97

Estimated cost of removing earth on inside of the levee place of there by the plaintiffs and installing the additional improvements to the flood-gate according to the estimate of H.B. Budd, engineer,\$ 250.00

Total-Total _____
\$ 676.07

State of California,
County of San Joaquin.

A. Gaul makes oath, and says that he is the Defendant in the above-entitled action, and that the items in the above Memorandum of Costs and Disbursements are correct, and that said Costs and Disbursements have been necessarily incurred in the action, according to the best of his knowledge and belief.

A. Gaul

Subscribed and sworn to before me this
29th day of June, A.D. 1914.

W. J. ...

Notary Public, in and for the
County of San Joaquin, State of
California.

and receipt of the sum of *five hundred dollars* and no more of *the sum of five hundred dollars* July 1, 1914

W. H. Ashley
Attorney for *Defendant Gaul*

No. 11,150 DEPT. NO. 2.

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

LELAND MEYER, et al.,

PLAINTIFFS
vs.

A. GAUL, et al.,

DEFENDANTS

OBJECTION AND NOTICE OF
MOTION STRIKE OUT COSTS.

FILED JUL - 1 1914

EUGENE D. GRAHAM
CLERK

E. D. Graham
CLERK

A. H. ASHLEY

RECORDS SALES AND LOAN BROKER TRADING, 608 PLYMOUTH
STOCKTON, CALIFORNIA

ATTORNEY FOR PLAINTIFFS.

IRLAND MEYER, et al.,

Plaintiffs,

-vs-

A. GAUL, et al.,

Defendants.

No. 11,140.

Dept. No. 2.

OBJECTION AND NOTICE OF MOTION STRIKE OUT COSTS.

To the defendant A. Gaul, and to his attorney, S. M. Spurrier:

The plaintiff hereby object to, and at the hour of 1:30

P. M. of Monday, July 13, 1914, in the court-room of Department No.

2 of said superior court in the county court house in the city of

Stockton, will move to strike out from said defendant's so-called

"Memoranda of Costs and Disbursements", the items thereof, to-wit:

Expenses already incurred in repairing damages to the flood-gate in installing a new valve and removing unnecessary earth placed there by plaintiffs as follows:-

Eighty days labor at \$1.50 per day,	\$ 120.00
Six days work of a carpenter,	\$ 30.00
New lumber,	\$ 32.05
Hiring of pumps and gasoline,	\$ 50.00

Charges of H. K. Henderson for services, as engineer, superintending the work under the order of the court as per bill attached,

	\$ 151.97
--	-----------

Estimated cost of removing earth on inside of the levee placed there by the plaintiffs and installing the additional improvements to the flood-gate according to the estimate of H. K. Budd, engineer,

	\$250.00
--	----------

upon the several grounds:

1. That the same are and that each of the same is in no sense or manner costs or any part of the costs in this action.
2. That the same are not, and that neither of the same is, within any of the issues tendered in this action.
3. That said Court has no jurisdiction thereof, or to allow the same either as costs or otherwise.

4. That by section 3453 of the Political Code, the management of the affairs of every reclamation district is vested in its board of trustees.

5. That by section 3454 of that code, such board of trustees is expressly given the power not only to construct, but the power to maintain and to keep in repair all works requisite and necessary for the reclamation of its lands, and to do all other acts and things necessary or required for the reclamation of the lands embraced in the district, even to the extent of going outside of the district. (3471).

That the provisions of sections 3486 and 3487 of the Political Code are repealed by the later amendments of other sections and especially by the amendments of section 3490.

6. That by virtue of said sections 3454 and 3490, the trustees are made the servants and agents of, and controlled by, the law itself.

7. That the levee out and interfered with by defendant A. Gaul is public property, acquired by the agents of the state for state purposes.

Plaintiffs further object that the item or charge of \$15. for the witness Kunze is unreasonable and excessive as a witness-fee; and if claimed otherwise, is within the preceding objections.

They further claim that the item or charge of \$9.75 for sheriff's fees is unreasonable and excessive and without specific statement or itemizing sufficient to enable the plaintiffs to object to the same.

They further object to the whole of said bill as a cost bill and move to strike out the same because no decision has been made and no judgment entered in this action.

Yours, etc.,

A. H. Ashley.
Attorney for plaintiffs.

1170

Richard Meyer, et al.
vs.

D. Gault, et al.

Opinion.

Writ July 10th 1916
Targem W. Graham, Clerk.
By Abelbert H. Briggs, Deputy Clerk

In the Superior Court of the State of California, in and for the
County of San Joaquin.

Leland Meyer, et als.,
Plaintiffs,
vs.
A. Gaul, et als.,
Defendants.)

This action was begun to obtain both a temporary and permanent restraining order prohibiting and restraining the defendant, A. Gaul, from cutting or making any excavation in a certain levee described in the complaint, also for the recovery from the defendant of the sum of one thousand dollars damages.

The matter has been before the Court several times in relation to the restraining order and certain modifications made, not necessary to discuss herein, and the plaintiff, also has waived any question as to the recovery of damages in this action and the matter is now before the Court really for a statement in this opinion of the character of the decree that should be entered and a determination of the question of costs.

It appears from the evidence that the levee in question is a part of the public works created and maintained under the jurisdiction and authority of Reclamation District No. 544; that the defendant, Gaul, is the owner of certain land lying in said district

and adjoining levee of the levee here in controversy, that sometime during the winter of 1914 during a period of high-water in the San Joaquin River it was discovered that a considerable volume of water was passing through the head-gate and culvert maintained in said levee by the defendant Gaul and that an effort was made to close the door to said head-gate, which effort was not successful. At that time the difficulty was not discovered, later developments showing however that a brick had been placed either lengthwise or had lodged lengthwise in said head-gate which prevented the effectual and complete closing of the door thereto. Under these conditions the Trustees of the District did considerable work and incurred considerable expense in stopping the flow of water through said headgate and culvert; that thereafter the defendant began to clear away the additional levee construction made by the District to stop the flow of water above referred to, which action led to the institution of this suit and the issuance of a temporary restraining order and order to show cause herein.

Upon the hearing of the order to show cause it developed by the testimony of the engineer of the district that if certain plans were followed in reconstructing the headgate herein referred to and of the water approaches thereto and also of further work on the land side of said culvert according to said plans and specifications, copies of which are on file in this action, that it would be perfectly safe to permit said work to be done and that the safety of the levee would not thereby be endangered, and in accordance with such testimony the Court has permitted such work to be done.

In order that the Court might make such determination relative

So the costs as lawfully required the respective parties were requested to file with the Court a statement of their costs and expenses incurred for and on account of this proceeding. In one of said statements a detailed account is given of the amount expended for surveying, making maps and other items of work which are not under the decision in the case of Bathgate vs. Irvine, 126 Cal., 133, allowable as costs in any case, whether in law or in equity; but it is proper that the Court should be informed of the amount of such expenditures in order that equity may be done herein. And for that purpose the Court has carefully examined such statement and from said statement it appears that the defendant has or will incur an expenditure approximating \$675.00, and that the plaintiffs have incurred on account of this proceeding costs in the sum of \$53.00 or thereabouts.

In order to adjust the question of costs it is necessary for the Court to express its opinion as to the law applicable to this case and the respective rights of the parties involved. In the first place it may be stated that Reclamation District 544 is a public agency and that the trustees thereof are exercising certain rights and powers as officers of the state agency to accomplish a certain purpose, to-wit: the protection of the lands of the district from overflow. The defendant is the owner of riparian lands situate in said district adjoining the levee constructed by said state agency and which for the purposes of this case must be deemed and considered as public property.

Section 3454 of the Political Code as amended gives to the trustees of said district the authority to construct and maintain

said levee and also any necessary repairs thereon.

Section 3486 of the same Code gives to the Board of Trustees of said district the right to prosecute actions and recover damages occasioned by the cutting or injuring or destroying of any levee or other works of reclamation in such district.

Sections 3486 and 3487 of the Political Code are a part of the same ~~same~~ Act, are grouped with and placed in that part of the Code relating to reclamation districts, and in the opinion of the Court are not repealed or modified by any of the other sections. They are peculiar in their wording in some respects, but are indicative of certain rights and privileges which the Legislature had in mind attached to the riparian lands lying within such districts.

Section 3486 of the Political Code is as follows: "Any person owning or occupying lands upon the banks of any stream where the lands lying back of such stream are lower than the bank thereof, is responsible for all damages which may be sustained by the owners or occupants of lower lands by reason of any cut or embankment made in the bank of such stream by the owner or occupant of the bank."

Section 3487 of the same Code reads: "If such cuts were made for the purpose of irrigation, and head-gates and culverts have been made which competent persons consider sufficient to restrain the water, and where great diligence has been made to prevent damage, these facts may be pleaded and proved, in mitigation of damages."

A reference may also be properly had to Section 607 of the Penal Code for the purpose of ascertaining the intent of the Legislature in this matter. That section, so far as applicable to the cutting of levees, reads: "Every person who willfully and maliciously

cuts, breaks, injures or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation or agricultural purposes", etc., "or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same," etc., "is guilty of a misdemeanor".

It will be observed that this section does not make it a crime to cut a levee for the purpose of using the water for irrigation, nor is there any other section of the penal code which makes it an offense to construct and maintain a culvert and head-gate in a levee for the use of the waters of an adjoining stream for any agricultural or legitimate purpose. It is only when such act is maliciously done or performed with intent to injure the levee that any penal consequences attach.

The Sections of the Political Code numbered 3486 and 3487, as hereinbefore set forth, can only be construed as a recognition of the right of a riparian owner to use the adjoining waters, specifying, however, his liability.

Taking these sections in connection with the sections of the Political Code giving control of the construction, maintenance and repair of levees to the trustees of the district, it is evident to the Court that the following is a correct statement of the law:

The board of trustees of a reclamation district have the right and may exercise the privilege of directing and specifying the man-

ner and method of the reconstruction of head-gates and culverts through the levees of the district over which they exercise control and that upon the compliance therewith an owner of riparian lands may construct or maintain such culverts and head-gates, and that the right to the use of the water depends upon a compliance with the reasonable regulations adopted by the trustees of any district for the purpose of safe-guarding the lands of said district from overflow and preventing breakage or other injury to the levees.

It further appears to the Court in this action that sofar as the head-gate and water-way approaching thereto from the river side required reconstruction and also additional work on the culvert on the land side and that the right to the use of the water of the adjoining stream by the defendant was subject to such reasonable regulations. The Court is of the opinion, however, that these regulations and the method and manner of using water by the respective land-owners should have been provided for many years in advance of the arising of the contingencies considered herein and that the failure of said district so to do has occasioned considerable extra cost to the defendant Gaul in complying with the plans and specifications for doing said work approved by the engineer of said district during the pendency of this hearing herein. It is in consonance with equity and good conscience to leave the plaintiff with its rights established and awarding it no part of the \$53.00 costs incurred by reason hereof.

As to the defendant, Gaul, it would only be possible in this proceeding for the Court to award him approximately \$42.00 of the sum of \$675.00 expenses, and as the duty was incumbent upon him

is maintaining the head-gate in repair the same either closed or
in a condition not to endanger the district during periods of high
water and that his failure so to do occasioned all the trouble
herein it would not be either inequitable or contrary to good con-
science to deny him any costs herein.

Plaintiff will have a decree adjudging and setting forth the
rights of said district as hereinbefore stated, and the defendant,
Gaul, will be allowed the use of the waters of the San Joaquin
River adjoining his lands through the head-gate and culvert referred
to in these proceedings so long as he conforms to the plans and
specifications referring to the same, now on file in this action.

*Counsel for Plaintiff will prepare findings & decree
according to Linnell.*

J. A. [Signature]
Judge.

84, 11, 140

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Reclamation District No. 500
et al.,
PLAINTIFFS

vs

A. Gaul, et al.,
DEFENDANTS

**NOTICE OF DECISION AND
NOTICE OF ENTRY OF JUDGMENT**

Filed SEP 17 1974
EUGENE D. GRAHAM
CLERK

[Signature]
CLERK

A. E. ASHLEY
CLERK OF COURTS AND CLERK OF DISTRICT COURTS
STOCKTON, CALIFORNIA

[Signature]

Attorney for Defendant A. Gaul

A. D. 1974

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
AND FOR THE COUNTY OF SAN JUANITO.

RECLAMATION DISTRICT No. 22
et al.,

Plaintiffs,

-vs-
A. Gaul, et al.,

Defendants.

No. 11,140.

Dept. No. 2.

NOTICE OF DECISION AND NOTICE OF ENTRY OF JUDGMENT.

To the above named defendant and to his attorney,
S. M. Spurrier, Esq.;

You and each of you are hereby notified that Findings
of Fact and Conclusions of Law were filed with the clerk of said
court, and that said court made its decision in said action on
September 11, 1914.

You are further notified that on September 12, 1914,
judgment in said action was entered in Judgment Book "P" at
page 362 of said Superior Court.

Yours respectfully,

A. H. Ashley

Attorney for Plaintiffs

Check service and receipt of a copy of this document.

A. D. 1917

Attorney for _____

No. 11,149. Entry No. 2.

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

Reclamation District No. 540
et al.,
PLAINTIFF

A. Gaul, et al.,

DEFENDANT

COPY OF LETTER.

Filed - OCT - 9 PM
EUGENE D. GRAHAM
CLERK

E. D. Graham
DEPUTY

A. E. ASHLEY

PROCTOR HAYDEN AND LEAH SECURITY BUILDING, 578 N. 10th
STOCKTON, CALIFORNIA

Attorney for Plaintiff.

Stockton, California, October 3, 1914.

To A. H. Ashley, Esq.,
U. S. District Court, Stockton, California.

On the 29th day of September, 1914, this district received from its engineer, Henry B. Dodd, a communication of which the following is a copy:

Stockton, Cal. Sept. 29, 1914.

Trustees Rec. Dist. No. 544,
Stockton, Calif.

Gentlemen:-

As per your recent request, transmitted to me thru your Secretary, Mr. A. H. Ashley, I have today examined the flood gate on the Canal Place on Old River which was to have been reconstructed and repaired according to plans, approved by myself, made by Henderson & Hillwiler, Civil Engineers, which plans are on file in my office and also with Judge Planner of the Superior Court.

Said plans are in two parts, one plan calling for repair of floodgate as proposed by A. H. Ashley, Esq., and the other is entitled "Plan of concrete extension to present flood gate of A. H. Ashley, Esq."

I beg to report that the work called for in the latter plan for the concrete extension to flood gate has not as yet been started. The work called for under the first plan for repair to floodgate has been partially completed. The wood work has been put in place, as called for in the plans, in a substantial manner and bolted to the old brick work, and the sliding gate has been constructed and a chain attached to same for the missing thereof, whereas the plans call for a wheel operated, screw stem fastened to gate, a device which is necessary to obtain a tight closing of the gate.

The gate at present is raised, and the box approaching the opening to the brick tube as well as the tube itself is full of sand to the top thereof, making it impossible at the present time to close the gate even partially without first excavating the sand.

This floodgate at the present time, not having been completed according to plans therefor, is not in a condition satisfactory to the undersigned. As engineer of your District, I would respectfully recommend that the owner be immediately requested to finish the work according to plans therefor and if same be not done in a reasonable length of time, the sand outside the tube should be excavated to the floor of the tube, the gate lowered to a firm and smooth fit on the bottom and then fastened to the timber uprights with heavy lag screws to prevent the raising of said gate during high water.

The sand can then be shoveled back against the gate and the whole will be in a condition to withstand the high water with no leakage.

If the owner does not intend to use gate hereafter, the river side can be plugged with concrete and the wooden gate and standards removed and the whole covered with earth.

If the owner still wishes to use the gate, I would respectfully recommend that the trustees do not allow said use until gate and tube are completed as provided in plans therefor.

Respectfully submitted,

Henry B. Budd
Eng. Rec. Dist. No. 544.

Demand is made upon you, Mr. Gaul, to complete said flood gate and the concrete extension thereto in accordance with said plans prior to November 1, 1914, and you are advised that if you do not do so, the district will be compelled to take such steps as may seem to it best in the premises.

Yours very respectfully.

BY ORDER OF THE BOARD OF TRUSTEES,

A. H. Ashley
Secretary of Reclamation District No. 544.

Department and receipt of a copy of this document

A. D. 191

Attorney for

DEPARTMENT

No. 12,140. DEPT. NO. 2

SUPERIOR COURT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

RECLAMATION DISTRICT NO.
544, et al.,

PLAINTIFFS

vs.

A. GAUL, et al.,

DEFENDANTS

ORDER FOR RETURN OF PLAIN-
TIF'S EXHIBITS.

Filed NOV 13 1914 191...
EUGENE D. GRAHAM
CLERK

by *J. H. Ashley*
DEPUTY

A. H. ASHLEY

PROCTOR, HAYES AND LOAN BROKER, 678 F STREET
STOCKTON, CALIFORNIA

PLAINTIFFS

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
COUNTY OF SAN JOAQUIN.

RECLAMATION DISTRICT NO. 544,
et al.,

Plaintiffs,

No. 11,150.

-vs-

Dept. No. 2.

A. GAUL, et al.,

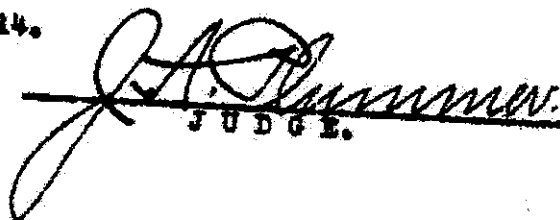
Defendants.

ORDER FOR RETURN OF PLAINTIFFS' EXHIBITS.

No further reason appearing why the exhibits in this case should not be returned to the respective parties thereto, and the plaintiffs having, by their attorney A. H. Ashley, asked that the exhibits filed by plaintiffs be returned to plaintiffs,

IT IS ORDERED that the clerk of this court deliver to plaintiffs all exhibits filed by plaintiffs herein.

DATED: November 13, 1914.


JUDGE.

IN THE SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN, STATE
OF CALIFORNIA.

Leland Meyer, et al.,

Plaintiffs,

-vs-

A. Gaub, et al.,

Defendants.

No. 11,140.

Dept. No. 2.

PLAINTIFFS' COSTS AND DISBURSEMENTS.

1914		<u>Clerk's Fees.</u>		
May 22	Filing complaint,		\$6.-	
May 22	Certified copy of restraining order.		.50	\$ 6.50
		<u>Reporter's Fees.</u>		
June 12	Per diem,		\$5.-	
June 22	"		2.50	7.50
		<u>Notary Fees.</u>		
May 20	Gordon A. Stewart, verifying complaint,		.60	
May 22	H. S. Spurr, affidavit undertaking.		1.-	1.50
		<u>Sheriff's Fees.</u>		
May 23	Serving summons,		\$3.75	
May 23	copy restraining order.		.50	4.25
		<u>Witness Fees.</u>		
Joe Avilla	June 11 and 12,	13 miles,	\$5.30	
Joe Larkin	do.	13 miles,	5.30	
Joe Hatto	"	13 "	5.30	
John Larkin	"	13 "	5.30	
Chas. Feck	"	13 "	5.30	
Henry Lehman	"	8 "	4.50	
Peter Chu	"	8 "	4.50	
George Chu	"	5 "	4.50	
Henry B. Budd,	June 20 and 22,	1914	4.-	
T. A. Hitchcock	" 11 and 12,	1914, 9 miles,	4.90	
Henry Jenks	" 11, 1914,		2.-	
Capt. McRary.	" 11, 1914,		2.-	53.20

COST OF SUBSERVING ABOVE WITNESSES.

By T. A. Hitchcock, (Estimated)

Serving

Joe Avilla, Jas. Larkin, Joe. Ratto, John
Larkin, Chas. Peck, Henry Lehman, Peter
Chas. George Chas. Henry Jenks, Captain Mc
Army.

Mileage do.

\$5.00
2.50 \$7.50