THE
"FARM UNIT"
UNDER THE
YUMA PROJECT
AS AFFECTING THE HOMESTEADER

A LETTER TO THE
Secretary of the Interior

By

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Yuma, Arizona, Jan. 1, 1913

To the Secretary of the Interior,
Washington, D. C.

Sir: The establishment of the "Farm Unit" in the Yuma and Gila valleys under the Yuma Reclamation Project is a matter of greater importance than at first it may appear to one not being on the soil, and calls for the exercise of very careful business judgment by persons experienced in agriculture in the West; otherwise great injustice will probably be done, to the extent of confiscation of all the net assets of many entrymen, and serious injury to all of them.

Our information is that you must largely rely upon the engineers and the Director of the Reclamation Service for advice as to the size of the farm unit sufficient to support a family. So far as we are informed, forty (40) acres has been recommended by such officials. We are opposed to such recommendations and allege that they are based upon arguments that are un-businesslike in their nature, and also allege that any reduction of the acreage entered, would be, at this time, contrary to law. Therefore, on behalf of the entrymen under this project, we respectfully submit our views on the question for your consideration.

A Practical View

It seems to be conceded by all that Congress intended to leave this question to the discretion or business judgment of the Secretary of the Interior to be exercised at the time he determined the project practicable, which implies that his decision should be governed by conditions as they were then found to exist. The only conditions applicable are

such as may be termed agricultural conditions, or the conditions under which agriculture must be carried on in the regions of the lands to be entered. To illustrate; Grazing lands require greater area than citrus fruit lands, which two characters of lands might be deemed extreme conditions applicable to the subject. Other mesne conditions are grain and alfalfa lands. These conditions are modified by proximity to established lines of transportation and markets. In the Yuma and Gila valleys we have no citrus fruit lands, but only grain and alfalfa lands that are homestead entries, and all such are very remote from markets and railroad transportation. The citrus fruit lands frequently referred to as being in this locality are on the mesa and are not within the project as yet contemplated, and to such lands our remarks do not refer.

We desire to call the Secretary's attention to the following paragraphs from the testimony of Director F. H. Newell before the House Committee on Irrigation of Arid Lands, on January 27 and February 3rd and 8th, 1912, and found on pages 46 and 47. He says:

> The figures given as the financial returns from onion culture on the project (Truckee-Carson Project) indicate wonderful success. Of course, all the land is not onion land, but a large proportion of the project soil will grow anything that can be produced, climate considered, For instance, A. M. Trolson who lives near Northam postoffice, states that he has marketed 47 tons of onions from two acres, receiving therefor $28 per ton, or a gross total of $1,316; while a neighbor, Geo. Burton, had to be content with fifteen tons from a measured acre, receiving $30 or a gross income for the same of $450. In either case the returns are certainly sufficiently attractive, when known, to induce further attempts at onion culture and **warrant the prediction** that

> some day the valley should take rank as a leader in onion production,
>
> "Now, these are concrete examples of how farmers can make land. not necessarily $50 land, pay interest on a sum, many times in excess of what the ordinary selling figure amounts to. The farmer who accomplish es this happy condition is a winner in two respects—he has the larger income and the value of his property has increased."

In reply to the above it is simply necessary to state that the present price of onions will not pay for the harvesting of the crops, and that Mr. Trolson and Mr. Burton have ceased further attempts to make a living from growing onions. In support of which statements I quote from the Los Angeles Times under date of December 5, 1912, as follows:

> "(By direct wire to the Times.)
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> Stockton, Dec. 4.—(Exclusive Dispatch)—Owing to the over-production of onions in San Joaquin County this season, and the reduced marginal profit consequent upon the same, about 50,000 bags, will be dumped into the San Joaquin river, according to statements made by island farmers to-day."

Such statements of Mr. Newell's, and many others in his testimony, coming from such supposedly high authority, are misleading to intending settlers, and show positively unbusiness-like views on the general subject of agriculture, and he is therefore unqualified to advise the secretary on the subject of the farm unit Mr. Newell's training as an engineer has not, unfortunately, fitted him to take a comprehensive view of agriculture, any more than a farmer's training as an agriculturist, would fit the latter to perform the duties of a storage dam engineer. We therefore recommend that men properly trained in agriculture be selected to advise the Secretary as to the establishment of the area sufficient to support a family. Onions, poppy seed and ginseng, or any of

the other forty-seven varieties of garden products, do not afford the proper basis for determining the amount of land required for raising farm staples sufficient to support a United States family.

A Legal View

We claim that the Reclamation law provides that the Secretary shall limit the area per entry by public notice at the time the project is determined to be practicable, and at no other time.

The Reclamation law, Section 4, reads:

"That upon the determination by the Secretary of the Interior that any irrigation project IS PRACTICABLE, he may cause to be let contracts for the construction of the same..... ....and thereupon he SHALL GIVE PUBLIC NOTICE of the lands irrigable under said project, and limit of area per entry," etc, etc

What is the antecedent of the word "thereupon" occurring in the fourth line above? Does it not refer to the time when the project is determined to be practicable? The word "thereupon" as used has no meaning whatever except to indicate when and in what sequence the public notice SHALL be given. It also has the added meaning that such notice shall be given as a proper consequence of the act to which the word "thereupon" refers, viz: the determination that a project is practicable, and therefore must immediately follow that act or determination, or be a part thereof. A good and sufficient reason for using that word is perfectly manifest, namely, that all proposed entrymen may have due and timely notice of the limitations of entry so that there may be no uncertainty, or that they shall not be permitted to enter

and improve larger tracts than they may afterwards be legally entitled to receive patents therefor.

The public notice required specifies five distinct things which shall be published to-wit:

1. Lands to be irrigated.
2. Limit of entry.
3. The charges per acre.
4. The number of installments.
5. The time when payments shall commence.

Only one notice is provided for, and such notice shall contain all the above items. Information as to each of those items gives practically all the basic facts required for any entryman to make a decision as to whether he desires to enter a homestead under the project, The "charges" provided for in the third item can only be ascertained after "area to be irrigated," as provided in the first item, has been determined. Therefore the items are more or less linked together, and taken as a whole are intelligible, consistent and complete, and the omission of any one of the items causes uncertainty unless such uncertainty is otherwise provided for by law. Therefore, if the intent of the Act is to be carried out, it is manifest that the notice required shall contain all the stated items.

But it has been contended that the notice may be given when the contracts are let, and that the word "thereupon" refers to the time of letting of contracts; and as contracts are being let during the entire period of construction, therefore the notice may be given at the time when the last contract, (perhaps for some trivial culvert) shall be let. Such construction for the antecedent of the word "thereupon" is an attempted excuse for the Secretary's omission of duty, rather than a reason why he did not give the notice of area per entry. In the notice for the Yuma project, all the items

required by the section were properly given except that establishing the limit of area per entry, at the time the project was declared to be practicable, and not the time when contracts were let. If such construction prevailed as to four of the items in the public notice required by law, what possible reason can be advanced for thinking the second item, or that relating to the limit of entry, should not be construed likewise, especially as that item is, next to the charges, the most important information for the public welfare.

If our contention is correct, it follows that it was the duty of the secretary to give notice of the limit of entry in 1903, when he determined that the Yuma project was practicable, and that if he omitted to give such notice at that time, it is not to be inferred or implied that the law will permit him to give such notice ten years, more or less, after entries have been made. A REASONABLE time after determination of practicability is the limit of construction for the word "thereupon." Ten years afterwards is not a reasonable construction for the word "thereupon." In the meantime entries have been made and lands cleared and leveled and prepared under the supposition that the Secretary did not desire to exercise his rights on such a delicate subject, and it is perfectly reasonable to conclude that he thought that the limit of entry under the homestead law, and the law limiting the use of water to 160 acres, would be a sufficient and practical limitation, and that, therefore, a special notice that would not alter the existing limitations was unnecessary. The ommission to exercise his rights within the time limited by law leaves the area as already established. If the power is still in the Secretary after ten or more years of development work and investing of personal interests, and the establishment of farm improvements according to the scale of acreage entered, then there can be no limitation of time when he cannot reduce the area of an entry, and he is privileged to hold up the patents so long as he leaves the farm unit not established, which is the actual condition even after the provisions authorizing patents in the recently passed three-year homestead law.

The present withholding of patent titles in the Yuma project for many years after residence and cultivation requirements are complied with, thus rendering it practically impossible to sell a portion of the land or mortgage it, for purposes of further development, all because the Secretary has not yet decided the momentous question of how much land in his opinion is sufficient to support a family, is a hardship that is now driving many into bankruptcy, and preventing the cultivation of lands that would otherwise be cultivated, and such procedure is inconsistent with the Secretary's written requests to the writer, as president of the Yuma County Water Users' Association, that he encourage entrymen to prepare all their lands for cultivation. Would the Secretary act on such request if he were in the entryman's place. and prepare 160 acres fcr cultivation not knowing what day an attempt may be unlawfully made to reduce the entry to 40 acres.

An entry **becomes an entry** when the application is allowed. The **limiting of an entry** can have no other possible meaning than that of limiting the area for which **future** applications will be received and allowed. It is a notice to the public to not **thereafter** apply for more than a certain specified area, and an instruction to the land offices to not **thereafter** allow more than such specified area?

Any act attempting to reduce the area of a lawful entry is without warrant of any law in the United States. There is not a word in the Reclamation Act that either directly, indirectly, by inference or implication, gives the secretary the right to **reduce** the area of a bona-fide homestead entry. The fact that reclamation entries are made subject to "limitations, charges, terms aud conditions of the reclamation law" does not effect the controversy, for the reason that there is nothing in that law that relates to the subject of **reduction** of entries. The limitations, charges, terms and conditions are either established by the law itself or provided for in the public notice required to be given in Section 4 at the time the project is determined to be practicable. Section 3 provides for entries of 40 to 160 acres at option of en-

tryman, and Section 4 provides a specified time when public notice limiting the maximum area of an entry **shall** be given, and until it is given, if at all, all entries previous to such notice as is the case with all entries within the Yuma project, are entries without being limited, and are therefore not subject to reduction.

The power to **limit** the area per entry does not mean power to **reduce** the area once lawfully entered.

The words "limit of area per entry" must be construed to mean to limit the area **at the time of entry** and does not mean, and cannot possibly be construed to mean to permit maximum area with reservation of power to afterwards reduce, as there is no such word as reduce in the reclamation law, and no clause implying such power of reservation. The meaning of the law is perfectly plain and unmistakable that notice of any limitation of area of entry which the Secretary considers sufficient to support a family, shall be given at the time that the project is determined to be practicable. The nature and meaning of legal notices are well understood not only by the legal profession, but equally well by the general public. The objects of such public notices are to put the public on their guard against doing what is not permissible and permitting the doing of what is permissible. **The nature of a notice is not such as can be retroactive in its effect.** Our constitution prohibits expost facto laws, and laws which violate contracts, and as a public notice is, in effect, a law, when it is an authorized notice, it comes under the same constitutional inhibition.

Reduction of entry was never contemplated by Congress. The very thought of reducing the area of a bona-fide entry, many years afterwards, when improvements have been fully or partially completed, is so very repugnant and incompatible with justice, that even its mention seems to be sufficient to condemn it without discussion.

Respectfully submitted.

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