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Irrigation Confirmation Proceedings

BY CHARLES J. BEISE*

Nearly all irrigation projects constructed in the past twenty-five years involve, as the repayment entity, some form of irrigation district. It may be a reclamation district, a conservation district, or an irrigation district, financed by public bond sales or repayment contract with a federal agency.[a] Regardless of the name of the entity or the method of finance, nearly all such entities ultimately institute confirmation proceedings for the confirmation of the organization of the district, the issuance and sale of bonds, or the repayment contract, and, in many instances, water allotments to the individual user.[1] While water users' associations are sometimes the contracting entity, their use is ordinarily limited to those projects which have an existing adequate canal system as security.[2] When used their incorporation and contracts are likewise confirmed.

The confirmation proceeding is a product of the West, the child of California, born of necessity,[3] the original purpose being to make possible the sale of bonds to a doubting public. Besides irrigation works the statute produced much litigation with an attendant lack of uniformity in various states. By these proceedings, a landowner whose property is

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[a]The financial history of early irrigation district efforts is largely a story of defaulting bond issues caused mainly by inadequate capitalization, inadequate water supply, and litigation. Few projects today are financed by bond issues; virtually all are federal projects, the majority being those of the reclamation bureau. All federal projects grant an adequate repayment period, the lack of which was a frequent cause of the early day failure of districts.

[1]Statutory provisions of Colorado are the following: WATER USERS' ASSOCIATIONS, 1935 COLO. STAT. ANN. c. 41, §§155-161; IRRIGATION DISTRICT LAW OF 1905, 1935 COLO. STAT. ANN. c. 90, §§377-431; IRRIGATION DISTRICT LAW OF 1921, 1935 COLO. STAT. ANN. c. 90, §§432-471; PUBLIC IRRIGATION DISTRICT LAW OF 1935, 1935 COLO. STAT. ANN. c. 90, §§472-487; WATER CONSERVANCY DISTRICT ACT OF 1937, Colo. S. L. 1937, c. 266 and amendments. Statutory provisions of Utah are the following: IRRIGATION DISTRICTS 1917, UTAH CODE ANN. 100-9-1; Water Users Associations, general corporation laws; WATER CONSERVANCY ACT 1941, UTAH CODE ANN. 1943, 100-11-1. For other states, see the statutes of California, Idaho, Montana, Nevada, New Mexico, Oregon and Washington. All involve the same principles. Other procedures, quo warranto, etc., are discussed in the latter part of this article.

[2]Of all reclamation bureau projects in Colorado, the Uncompahgre and Grand Valley projects are the only two where such an entity is used. This form of entity probably was used because of then existing requirements in the federal reclamation law or because they were conceived at a time when irrigation districts were little known (the early nineteen hundreds). The form of entity was not used because of adequate security of then existing canals. Many supplemental water projects, particularly those in Utah, formed in recent years use this form of entity.

[3]ACT OF 1889, Statutes of Cal. 1889, c. 178, p. 212.

to be burdened is granted an Anglo-Saxon opportunity to have his day in court.

Because it is a special statutory proceeding largely confined to the West[4] and only to those areas where irrigation is practiced, the subject has heretofore been one of limited interest in a highly specialized field. The future is otherwise. Projects conceived and investigated today dwarf the dreams of early irrigation exponents. Modern equipment has revolutionized the realm of possible diversions.[5] And these gigantic engineering feats of the postwar era are "multiple purpose projects" involving irrigation, domestic and municipal water supply, hydroelectric power, flood control, recreation and navigation vitally affecting large areas including the sparsely settled ranch or grazing regions where the diversions are made to the largest metropolitan areas where waters are delivered.

The future of confirmation proceedings is, consequently, one of broader interest to the bar.

Virtually all states, in addition to providing for confirmation proceedings, have, as part of their irrigation district law, a statute of limitations barring actions to question the legality of the district organization[6] which is no part of the confirmatory acts. And these statutes of limitation do not preclude a landowner from challenging the legality of the district organization where a confirmation proceeding is instituted after the time limit has expired[7] since the limitation statute applies to proceedings other than "special proceedings."[8]

It is worth noting that confirmatory proceedings were not originally included in the Wright Act—the original irrigation district law of California, adopted in 1887,[9] and in 1889 an act "supplemental to

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[4]Drainage districts of eastern and southern states, likewise flood control and conservation acts of various kinds provide for similar proceedings but are beyond the scope of this article.

[5]Water tunnels six or seven miles in length were considered major undertakings twenty years ago. The Colorado-Big Thompson project of Colorado utilizes a thirteen mile tunnel, now nearly complete. Denver plans a system with a twenty-four mile tunnel and in Arizona a project is now being studied involving a tunnel approximately 120 miles in length with a possible diversion capacity of 6,000 second feet.

[6]Colorado's latest statute on the subject precludes all remedies except quo warranto proceedings commenced within ninety days from the time of the order establishing the district. Colo. S. L. 1937, c. 266, §7. Utah adopted the Colorado act in toto, Laws of Utah 1941, c. 99, §7, but this particular provision recently was held unconstitutional in Patterick v. Carbon Water Conservancy Dist., ... Utah ......, 145 Pac. (2d) 503 (Jan. 26, 1944), because of the Utah constitutional provision guaranteeing appeals. No such constitutional provision exists in Colorado. Other Colorado statutes are: IRRIGATION DISTRICT LAW OF 1905, 1935 COLO. STAT. ANN. c. 90, §§377 ff.; IRRIGATION DISTRICT LAW OF 1921, 1935 COLO. STAT. ANN. c. 90, §§432 ff. For similar proceedings in other states, see their statutes.

[7]*Re* Central Irr. Dist., 117 Cal. 382, 49 Pac. 354 (1897).

[8]This article does not assume to cover decisions involving these special statutes of limitation, as they are not a part of the confirmatory proceedings.

[9]Act of March 7, 1887, Statutes of Cal. 1887, c. 34, p. 29.

the Wright Act" was passed creating a special proceeding for the determination of the questions enumerated in the act. It is "an independent statutory enactment * * * having reference * * * to the Wright Act, but no more amendatory thereof than would be the special proceedings of certiorari or mandamus."[10] Colorado copied, to a large extent, the California statute[11] and the origin of the law has been judicially noted.[12]

As to the necessity of commencing such proceedings, the board of directors have the power of decision and it is not mandatory[13] and cannot be compelled by a landowner.

The proceeding is commenced by the filing of a petition by the board of directors. Before one can allege anything, he must give his proceeding a caption. If the suit seeks confirmation of a repayment contract and the district organization has already been confirmed, the heading or caption of the former proceeding is proper,[14] and if the district is one formed by court decree the subsequent proceedings are ordinarily captioned in the same manner.[15] If the suit is the first proceeding it can be captioned "In the Matter of * * * Water Conservancy District."[16] Some statutes require the petition to contain a definite allegation and the statutes of the state involved should be carefully read[17] but where the petitioner has failed to make the necessary allegations, this defect has been held not to be fatal on demurrer[18] and is cured by the introduction of evidence.[19] Many statutes provide that allegations not denied shall be deemed admitted or contain words of similar purport, hence, to take advantage of these provisions, each step in the proceedings being confirmed should be alleged in detail and the resolutions, notices, etc., referred to should be attached as exhibits.[20] This leads to a voluminous petition, but ultimately saves much time.[21]

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[10] *Re* Central Irr. Dist., 117 Cal. 382, 49 Pac. 354 (1897).

[11] Colo. S. L. 1901, c. 87, §§55-59, p. 198.

[12] Ahern v. High Line Irr. Dist., 39 Colo. 409, 89 Pac. 963 (1907).

[13] Surrage v. McKay, 60 Utah 117, 206 Pac. 722 (1922).

[14] American Falls Reservoir Dist. v. Thrall, 39 Idaho 105, 130, 228 Pac. 236 (1924).

[15] Upon appearance of a party objecting or answering the petition, the name of such party is added to the caption as a respondent.

[16] See statutes.

[17] The writer has not found any reported proceedings that were started in a federal court.

[18] Emmett Irr. Dist. v. Shane, 19 Idaho 332, 113 Pac. 444 (1911).

[19] *Re* Peshastin Irr. Dist., 116 Wash. 440, 200 Pac. 88 (1921).

[20] Stevens v. Melville, 52 Utah 524, 175 Pac. 602 (1918). See also: *California*, *Re* Madera Irr. Dist., 92 Cal. 296, 28 Pac. 272 (1891); *Colorado*, Wilder v. South Side Irr. Dist., 55 Colo. 363, 135 Pac. 461 (1913); *Idaho*, Progressive Irr. Dist. v. Anderson, 19 Idaho 504, 114 Pac. 16 (1911), seeking re-confirmation; Nampa and Meridian Irr. Dist. v. Petrie, 28 Idaho 227, 153 Pac. 425 (1915); *Washington*, *Re* Peshastin Irr. Dist., 116 Wash. 440, 200 Pac. 88 (1921).

[21] The district ordinarily is required to furnish a complete certified copy of its pleadings, or the final decree entered therein, to the agency furnishing the capital, therefore, it is well to make an extra copy of all documents and pleadings.

Notice of the pendency of proceedings and serving of process is ordinarily had by publication, although some statutes require posting in addition. Decisions dealing with required notice in proceedings for the formation of an irrigation district should not be confused with confirmatory proceedings.[22] The provisions of the statutes must be strictly complied with[23] and a change in the petition, by amendment, may necessitate a re-publication.[24] The validity of service of process by publication has been challenged and sustained.[25] Service of process, where provided by statute, is not complete until the statutory period following last date of publication has expired, which, in Oregon, is ten days.[26] The notice must be addressed to the proper parties where so required by statute and publication can be proved by affidavit of the publisher.[27] Where the statute is silent as to who shall sign the notice, it has been held proper for the clerk of court to do so.[28] The same decision furnishes the precedent for and form of a motion and order for publication, although it is common practice to dispense with a formal motion.

The appearance of parties after publication resisting the petition can be by demurrer, answer or objection depending on the statutes. Counter claims have been filed in opposition to the petition as well.[29] The demurrer has been held not to be well taken even though the petition omitted an allegation required by the statute, on the ground that no injury resulted from the technical defect in the pleading.[30]

The method generally used to contest proceedings is by answer which may raise both factual and constitutional questions[31] or objec-

[22]For a decision concerning notice in the formation of a district see Ahern v. High Line Irr. Dist., 39 Colo. 409, 89 Pac. 963 (1907).

[23]Special attention should be given to the number of times the notice should be published, as the acts are often inconsistent within themselves, *i. e.*, Colo. S. L. 1937, c. 266, §2, defines publication to mean three insertions, while §36 of the act dealing with confirmation requires five publications.

[24]Modesto Irr. Dist. v. Tregea, 88 Cal. 334, 26 Pac. 237 (1891).

[25]Crall v. Poso Irr. Dist., 87 Cal. 140, 26 Pac. 797 (1890).

[26]Medford Irr. Dist. v. Hill, 96 Ore. 649, 190 Pac. 957 (1920).

[27]*Re* Riggs, 105 Ore. 531, 207 Pac. 175, 1005, 210 Pac. 217 (1922).

[28]Harney Valley Irr. Dist. v. Bolton, 109 Ore. 486, 221 Pac. 171 (1923).

[29]Progressive Irr. Dist. v. Anderson, 19 Idaho 504, 114 Pac. 16 (1911).

[30]Emmett Irr. Dist. v. Shane, 19 Idaho 332, 113 Pac. 16 (1911).

[31]*California, Re* Bonds of South San Joaquin Irr. Dist., 161 Cal. 345, 119 Pac. 198 (1911); Fogg v. Perris Irr. Dist., 154 Cal. 209, 97 Pac. 316 (1908); *Re* Central Irr. Dist., 117 Cal. 382, 49 Pac. 354 (1897); *Colorado*, Wilder v. South Side Irr. Dist., 55 Colo. 363, 135 Pac. 461 (1913); *Idaho*, Progressive Irr. Dist. v. Anderson, 19 Idaho 504, 114 Pac. 16 (1911); Settlers Irr. Dist. v. Settlers Canal Co., 14 Idaho 504, 94 Pac. 829 (1908); *Oregon, Re* Riggs, 105 Ore. 531, 207 Pac. 175, 1005, 210 Pac. 217 (1922); *Washington, Re* Peshastin Irr. Dist., 116 Wash. 440, 200 Pac. 88 (1921).

tions.[32] A reading of decisions generally indicates that the parties objecting are frequently urging grounds which should have been raised in the inception of the proceedings to form a district rather than in confirmation suits.

While the statutes ordinarily make no provision for replications or further pleas, they frequently refer to or incorporate the codes of civil procedure and in those instances, further pleadings may be filed.

On issue being joined or default entered, a hearing is had. There is a direct conflict in the decisions as to the nature and scope of the hearing; Washington holding that confirmation proceedings are not de novo in their nature and the hearing is limited to the record made before the commissioners[33] and Colorado holding that the petitioners have the burden of proof and must establish each step taken to form the district by the common law rule of evidence.[34] A prior decree of confirmation is properly admissible[35] to prove lawful organization of the district and the scope of the hearing has been limited to those questions not considered in prior hearings even though both sides had assumed it "opened the record."[36]

There is little precedent as to the form of the decree to be rendered[37] and the safest practice seems to be to recite in detail that each step required by the statute in forming the district, holding the election or assessing benefits has been complied with.

Just what issues are settled by the proceedings and the decree is highly speculative, as there exists not only a conflict between states, but also within a state; state courts have expressly refused to follow the United States Supreme Court. Thus the United States Supreme Court[38] raised the query whether in advance of the issuance of bonds any case existed that could even go to judgment and that the proceeding purports to settle questions that may never arise, concluding, "it may well be doubted whether the adjudication binds anybody" and the proceeding is merely "one to secure evidence." This case had its origin in California and four years later California expressly repudiated the United States

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[32]*Re* Fort Shaw Irr. Dist., 81 Mont. 170, 261 Pac. 962 (1927). In this case the objections are treated as an answer.

[33]*Re* Wenatchee Reclamation Dist., 91 Wash. 60, 157 Pac. 38 (1916).

[34]Ahern v. High Line Irr. Dist., 39 Colo. 409, 89 Pac. 963 (1907). See also Fallbrook Irr. Dist. v. Abila, 106 Cal. 365, 39 Pac. 793 (1895).

[35]*Re* Fort Shaw Irr. Dist., 81 Mont. 170, 261 Pac. 962 (1927); Wilder v. South Side Irr. Dist., 55 Colo. 363, 135 Pac. 461 (1913).

[36]American Falls Reservoir Dist. v. Thrall, 39 Idaho 105, 130, 228 Pac. 236 (1924).

[37]Stevens v. Melville, 52 Utah 524, 175 Pac. 602 (1918).

[38]Tregea v. Modesto Irr. Dist., 164 U. S. 179, 41 L. ed. 395, 17 Sup. Ct. 52 (1896).

Supreme Court decision[39] and held that such decrees precluded subsequent attack.

Any general observation is hazardous, but if one can be ventured it is that if no constitutional or jurisdictional question of merit is involved in later proceedings the confirmatory decree will preclude an inquiry into the mechanics of the formation of the district or the election on the repayment contract and, contra, if such constitutional or jurisdictional question is raised the decree does not preclude a suit challenging its effect. Space will not permit an analysis of each case. Decisions holding the confirmatory procedure to be conclusive of some issues are listed under note forty,[40] those holding that the issue raised was not concluded are under note forty-one.[41] Some cases will be found under each note where issues of procedure and substance are both involved. The effect of the decree sometimes is challenged in purely collateral suits and has been held not determinative of the issue involved[42] or the court has ignored the decree completely[43] and never considered the decree. The decree has been used in condemnation proceedings[44] to establish authority for the taking; it has been held that such a decree does not prevent the exclusion of lands from a district where the owner was a non-resident

[39]People v. Linda Vista Irr. Dist., 128 Cal. 477, 61 Pac. 86 (1900).

[40]*California,* People ex rel. Fogg v. Perris Irr. Dist., 132 Cal. 289, 64 Pac. 399 (1901); People v. Linda Vista Irr. Dist., 128 Cal. 477, 61 Pac. 86 (1900); *Colorado,* Wilder v. South Side Irr. Dist., 55 Colo. 363, 135 Pac. 461 (1913); *Idaho,* Progressive Irr. Dist. v. Anderson, 19 Idaho 504, 114 Pac. 16 (1911); Oregon Short Line R. R. v. Pioneer Irr. Dist., 16 Idaho 578, 102 Pac. 904 (1909); Smith v. Progressive Irr. Dist. 28 Idaho 812, 156 Pac. 1133 (1916); *Montana,* O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 121 Pac. 283 (1912); *Re* Fort Shaw Irr. Dist., 81 Mont. 170, 261 Pac. 962 (1927); *Nevada, Re* Walker River Irr. Dist., 44 Nev. 321, 195 Pac. 327 (1921); *Utah,* Argyle v. Bonneville Irr. Dist., 74 Utah 480, 280 Pac. 722 (1929); Jackson v. Bonneville Irr. Dist., 66 Utah 404, 243 Pac. 107 (1926); Horn v. Shaffer, 47 Utah 55, 151 Pac. 555 (1915); *Washington,* Hanson v. Kittitas Reclamation Dist., 75 Wash. 297, 134 Pac. 1083 (1918).

[41]*U. S.,* Tregea v. Modesto Irr. Dist., 164 U. S. 179, 41 L. ed. 395, 17 Sup. Ct. 52 (1896); *California,* Fogg v. Perris Irr. Dist., 154 Cal. 209, 97 Pac. 316 (1908); Miller and Lux v. Board of Supervisors, 189 Cal. 254, 208 Pac. 304 (1922), not a confirmatory proceeding; People v. Perris Irr. Dist., 142 Cal. 601, 76 Pac. 381 (1904); *Idaho,* Oregon Short Line R. R. v. Pioneer Irr. Dist., 16 Idaho 578, 102 Pac. 904 (1909); *Nevada, Re* Walker River Irr. Dist., 44 Nev. 321, 195 Pac. 327 (1921); *Oregon,* Northern Pacific Ry. v. John Day Irr. Dist., 106 Ore. 140, 211 Pac. 781 (1923); *Utah,* Jackson v. Bonneville Irr. Dist., 66 Utah 404, 243 Pac. 107 (1926); Madsen v. Bonneville Irr. Dist., 65 Utah 571, 239 Pac. 781 (1925); Horn v. Shaffer, 47 Utah 55, 151 Pac. 555 (1915); *Washington,* Hanson v. Kittitas Reclamation Dist., 75 Wash. 297, 134 Pac. 1083 (1918).

[42]Interstate Trust Co. v. Steele, 65 Colo. 99, 173 Pac. 873 (1918).

[43]Montezuma Valley Irr. Dist. v. Longenbaugh, 54 Colo. 391, 131 Pac. 262 (1913).

[44]Rialto Irr. Dist. v. Brandon, 103 Cal. 384, 37 Pac. 484 (1894).

and not served with notice of the formation of the district;[45] nor does it prevent exclusion where an adequate water right existed.[46]

Statutory provisions regarding appeals from the decree must be complied with and thus appeals have been dismissed for failure to assign specific errors[47] or to perfect appeal within ten day statutory period.[48]

Other forms of remedy exist in which the validity or constitutionality of the formation of a district or its contracts, bonds or assessments can be tested. In retrospect it is hard to conceive why procedure for confirmatory proceedings was ever devised. Quo warranto,[49] prohibition,[50] injunction,[51] certiorari,[52] quiet title[53] and even general actions[54] have all been used to the same end, or in cases which indicate that the validity of districts or their acts could be determined.

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[45]Scilley v. Red Lodge-Rosebud Irr. Dist., 83 Mont. 282, 272 Pac. 543 (1928). This case goes farther in granting relief than almost any other case.

[46]*Re* Fort Shaw Irr. Dist., 81 Mont. 170, 261 Pac. 962 (1927). *Contra, Colorado,* Wilder v. South Side Irr. Dist., 55 Colo. 363, 135 Pac. 461 (1913); *Idaho,* Smith v. Progressive Irr. Dist., 28 Idaho 812, 156 Pac. 1133 (1916); *Utah,* Jackson v. Bonneville Irr. Dist., 66 Utah 404, 243 Pac. 107 (1926).

[47]Sunnyside Irr. Dist. v. Stephens, 21 Idaho 94, 120 Pac. 169 (1912).

[48]Palmdale Irr. Dist. v. Rathke, 91 Cal. 538, 27 Pac. 783 (1891).

[49]Quo warranto was used in the following cases: *California,* People v. Linda Vista Irr. Dist., 128 Cal. 477, 61 Pac. 86 (1900); People ex rel. Fogg v. Perris Irr. Dist., 132 Cal. 289, 64 Pac. 399 (1901); *Colorado,* Lockard v. People, 71 Colo. 213, 205 Pac. 944 (1922); People v. Lockhard, 26 Colo. App. 439, 143 Pac. 273 (1916); *Utah,* State ex rel. Cluff v. Weber County Irr. Dist., 62 Utah 209, 218 Pac. 732 (1923).

[50]Prohibition was used in Utah in State ex rel. Lundberg v. Green River Irr. Dist., 40 Utah 83, 119 Pac. 1039 (1911), wherein the fact that a confirmation decree existed seems to have been ignored, and in the recent case of Patterick v. Carbon Water Conservancy Dist., ... Utah ...., 145 Pac. (2d) 503 (Jan. 26, 1944).

[51]Injunction was used in the following cases: *C. C. A. (Colorado),* Nile Irr. Dist. v. Gas Securities Co., 248 Fed. 861 (C. C. A. 8th, 1918), wherein no emphasis was placed on the confirmatory decree, and which is one of the few cases in a federal court; *California,* Crall v. Poso Irr. Dist., 87 Cal. 140, 26 Pac. 797 (1890); *Colorado,* Montezuma Valley Irr. Dist. v. Longenbaugh, 54 Colo. 391, 131 Pac. 262 (1913); *Oregon,* Smith v. Hurlburt, 108 Ore. 690, 217 Pac. 1093 (1923); *Utah,* Argyle v. Bonneville Irr. Dist., 74 Utah 480, 280 Pac. 722 (1929), where it was held that a confirmatory decree precluded all but jurisdictional questions; Horn v. Shaffer, 47 Utah 55, 151 Pac. 555 (1915), which contains a good statement and summary of the effect of confirmation proceedings; *Washington,* Hanson v. Kittitas Reclamation Dist., 75 Wash. 297, 134 Pac. 1083 (1918).

[52]Certiorari is seldom used: Miller and Lux v. Board of Supervisors, 189 Cal. 254, 208 Pac. 304 (1922).

[53]Quiet title: *Idaho,* Smith v. Progressive Irr. Dist., 28 Idaho 812, 156 Pac. 1133 (1916), suit to quiet title to water; *Utah,* Jackson v. Bonneville Irr. Dist., 66 Utah 404, 243 Pac. 107 (1926).

[54]General suits: *United States,* Tulare Irr. Dist. v. Shepard, 185 U. S. 1, 46 L. ed. 773, 22 Sup. Ct. 53 (1902), in which the court consistently ignored the fact that a confirmatory decree existed; *California,* People v. Perris Irr. Dist., 142 Cal. 601, 76 Pac. 381 (1904); *Oregon,* Northern Pacific Ry. v. John Day Irr. Dist., 106 Ore. 140, 211 Pac. 781 (1923); Hanley Co. v. Harney Irr. Dist., 93 Ore. 78, 180 Pac. 724, 182 Pac. 559 (1919); *Utah,* Surrage v. McKay, 60 Utah 117, 206 Pac. 722 (1922).

Cases involving confirmation proceedings wherein the United States is involved are limited to those involving the bureau of reclamation and in none of these cases is the United States a party to the suit. The only case in the United States Supreme Court determines nothing except the jurisdiction of that court on appeal from state court decree.[55] Another decision contains no point of interest except the fact that the project was financed by a bond issue to the United States—a practice not followed in recent times.[56] Inconsistencies between the statutes of Idaho and the provisions of the federal reclamation law were aired in *Nampa District v. Petrie* in the state court,[57] but the United States Supreme Court declined to comment on the point.[58] No point of special interest is involved in the decision in *Re Fort Shaw Irrigation District*,[59] involving a repayment contract with the United States.

This article is not intended as an encyclopedic treatment of the subject. There may be many more equally valuable decisions that are not cited herein, but it is hoped the practitioner will find an entrance through this article.[60] The applicability of the Soldiers' and Sailors' Civil Relief Act to these proceedings is worthy of consideration, but space precludes any discussion of this point.

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[55]Petrie v. Nampa and Meridian Irr. Dist., 248 U. S. 154, 63 L. ed. 178, 39 Sup. Ct. 25 (1918).

[56]Nampa and Meridian Irr. Dist. v. Brose, 11 Idaho 474, 83 Pac. 499 (1905); see also American Falls Reservoir Dist. v. Thrall, 39 Idaho 105, 228 Pac. 236 (1924).

[57]28 Idaho 227, 153 Pac. 425 (1915).

[58]*Supra* note 55. It is odd that more cases do not exist having to do with these discrepancies, *i. e.*, the federal reclamation laws make the waters of their projects appurtenant to land, a provision contrary to many state laws. The federal laws also limit water to irrigable tracts of 160 acres, but no such limits appear in state statutes.

[59]81 Mont. 170, 261 Pac. 962 (1927).

[60]Every reported decision in Utah and Colorado was read: lack of time precluded this effort for other states.