



BROWN V. UNITED STATES: THE GREATER GOOD BE DAMNED

JEFFREY BALDRIDGE*

* Major Jeffrey D. Baldrige is a Litigation Attorney at the Los Angeles Regional Office (LARO) of the Labor Law Field Support Center (LLFSC), in the General Litigation Division (JACL) of the Civil Law Domain (JAC), Headquarters AF/JA. The LLFSC represents the Air Force in labor and employment law litigation worldwide before the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, and federal courts. Major Baldrige is a graduate of Brigham Young University-Idaho, where he enlisted and served in the Army Reserve/ROTC. After receiving his bachelor's degree, he earned a commission as an Armor Officer within the Idaho Army National Guard. Maj Baldrige deployed to Iraq from September 2010-2011 as a Security Team OIC. He attended law school upon returning and graduated from law school at the University of Utah. Maj Baldrige is admitted to practice law before the Supreme Court of Minnesota, the Air Force Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the United States Supreme Court. The views (if any) inside of this article are the author's and in no way represent views or opinions of the United States Air Force or the Department of Defense.

TABLE OF CONTENTS

I. INTRODUCTION	97
II. THE PATHWAY TO AMERICAN FALLS RESERVOIR.....	98
A. The Bureau of Reclamation.....	98
B. Minidoka Project	98
C. The Sundry Civil Appropriation Act	100
III. THE CONDEMNATION OF DEWITT GARRISON BROWN’S HOMESTEAD	101
A. DeWitt G. Brown & Roosa H. Calkin.....	101
B. Condemnation Action by the United States.....	103
C. Negotiations & Valuation	104
IV. THE LEGAL CHARACTERS	106
A. Attorneys for DeWitt & Roosa Brown (Joseph H. Petersen & Thomas C. Coffin)	106
B. Attorneys for the United States (William.W. Dyar & James M. Beck).....	108
C. The Supreme Court & Chief Justice Taft	108
V. EMINENT DOMAIN & “PUBLIC USE”	109
VI. THE LITIGATION PATH OF <i>BROWN</i>	110
A. District Court (Condemnation as a Matter of Law)	110
B. District Court (Jury Valuation)	111
C. Supreme Court	112
i. Argument for DeWitt Brown	112
ii. Argument for the United States	113
iii. Decision	113
VII. MOVING AMERICAN FALLS & DAM CONSTRUCTION	114
A. How Do You Move a City?.....	114
B. American Falls Dam.....	116
VIII. THE FALLOUT.....	117
A. “Public Use”	117
B. The Human Impact.....	117
IX. WHY THIS STORY MATTERS	118
A. Challenging the Actions of the United States	118
X. PHOTO APPENDIX.....	120

I. INTRODUCTION

On April 23, 1904, Ethan A. Hitchcock authorized the Minidoka Project along the Snake River in Idaho and Wyoming in his capacity as the Secretary of the Interior.¹ As a consequence of that action, nearly two decades later, a local farmer named DeWitt Garrison Brown would have most of his homestead condemned by the United States Government in order to complete a dam in American Falls, Idaho.² DeWitt refused to concede the 120 acres sought by the United States, and challenged the condemnation (both, the legal right of the United States to take the property, and the United States' valuation of his property) in court.³ Other members of the community had accepted payment, or chose to stop fighting condemnation, but not DeWitt.⁴

Specifically, DeWitt challenged the subsequent sale of his condemned land by the United States to property owners whose land would be flooded in the private marketplace; essentially, the United States acting as a real estate brokerage.⁵ While he defiantly won more money than was offered in negotiations at a jury trial, plus interest, he lost the legal challenge to the United States' authority to condemn his property at both the District and Supreme Court.⁶

Decided early in "public use" jurisprudence,⁷ *Brown v. United States* provides a primitive view of the broad scope of "public use" and paved the way for future public works across the United States. The ideas presented in *Brown* were novel. As Chief Justice Taft said in the Court's opinion, "[t]he circumstances of this case are peculiar. An important town stood in the way of a necessary improvement by the United States."⁸ *Brown* represents a 20th century version of the biblical tale of David and Goliath. The local farmer performed nobly as David, but in a surprise twist on the original story, Goliath won the day.⁹ This article will discuss the background of how the United States promulgated their plan to build the dam in American Falls, follow the significant characters that were in the story, articulate the legal context and decisions giving the United States the ability to condemn DeWitt's property, and the aftermath of a broad interpretation of "public use."

1. ERIC A. STENE, BUREAU OF RECLAMATION, MINIDOKA PROJECT 6 (1997), <https://www.usbr.gov/projects/pdf.php?id=137>.

2. *Brown v. United States*, 263 U.S. 78 (1923).

3. *Id.* at 81.

4. STENE, *supra* note 1, at 10; Transcript of Record at 22, *Brown v. United States*, 263 U.S. 78 (1923); *Brown*, 263 U.S. at 81, 83; *United States v. Brown*, 279 F. 168 (D. Idaho 1922).

5. *Brown*, 263 U.S. at 80 (1923).

6. Transcript of Record at 7, 10, 17, *Brown v. United States*, 263 U.S. 78 (1923) [hereinafter Transcript of Record].

7. The Court acknowledged as such stating, "[t]he circumstances of this case are so peculiar that it would not be surprising if no precedent could be found to aid us as an authority." *Brown v. United States*, 263 U.S. 78, 83 (1923).

8. *Id.* at 81.

9. For the actual biblical story of David and Goliath, see 1 *Samuel* 17.

II. THE PATHWAY TO AMERICAN FALLS RESERVOIR

A. The Bureau of Reclamation

The Bureau of Reclamation was created by the Reclamation Act on June 17, 1902.¹⁰ Its creation was championed by President Theodore Roosevelt.¹¹ President Roosevelt believed that if water reclamation projects were completed, the arid western United States could better support farms and homes.¹² Born of the early 20th century, the Bureau of Reclamation approved 70 of its 180 projects prior to World War II.¹³ One of those approved projects was the Minidoka Project along the Snake River in Wyoming and Idaho.¹⁴ It was expected that the users of the water that would be provided by these projects were expected to repay the construction costs, not the general taxpayer.¹⁵ After all, the local farmers were the beneficiaries of such projects.¹⁶

Today, the Bureau of Reclamation operates 338 reservoirs that store 140 million acre-feet of water; enough for 140 million families of four.¹⁷ Reclamation also provides 20% of the water in the western United States for farmers.¹⁸ These western farmers maintain 10 million farmland acres, and produce 60% of the United States' vegetables, and 25% of its fruit and nuts.¹⁹ Finally, Reclamation provides 10 trillion gallons of water to upwards of 31 million people each year.²⁰ It seems safe to say that President Roosevelt was correct in his assessment of what regulated water could accomplish for the western United States.

B. Minidoka Project

The Bureau of Reclamation performs the goals mentioned above by managing "projects." One of the 180 approved projects was the damming of the Snake River in Wyoming and Idaho, named the Minidoka Project.²¹ In order to evaluate the Snake River for its irrigation potential, the Secretary of the Interior, Ethan A. Hitchcock, removed irrigable land from public entry in November of 1902.²² Later that year, surveyors conducted inspections, and D.W. Ross, Reclamation's District

10. Most of the information contained concerning this topic is drawn from a publication published by the Bureau of Reclamation's History Program. *Brief History of the Bureau of Reclamation*, 1 BUREAU OF RECLAMATION; Reclamation Act of 1902, Pub. L. No. 57-161, 32 Stat. 388, <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/32/STATUTE-32-Pg388.pdf>.

11. U.S. BUREAU OF RECLAMATION, BRIEF HISTORY OF THE BUREAU OF RECLAMATION 3, <https://www.usbr.gov/history/2011NEWBRIEFHISTORY.pdf>.

12. *Id.*

13. *Id.* at 5.

14. STENE, *supra* note 1, at 2.

15. *Id.* at 4.

16. *See id.* at 2.

17. *About Us – Fact Sheet*, BUREAU OF RECLAMATION, <https://www.usbr.gov/main/about/fact.html> (last updated Oct. 30, 2020).

18. *Id.*

19. *Id.*

20. *Id.*

21. STENE, *supra* note 1.

22. *Id.* at 5.

Engineer in Idaho, recommended to Secretary Hitchcock to proceed immediately with work along the Snake River.²³ Secretary Hitchcock approved the Minidoka Project on April 23, 1904, and allocated \$2.6 million (approximately \$77 million in current dollars) to the Project.²⁴

The Project began work immediately, commencing with a dam in Minidoka, Idaho in late 1904, with it being completed in October 1906.²⁵ Labor for the Minidoka Dam came principally from immigrants.²⁶ This was not because the work was especially dangerous or hazardous, rather, the local workers produced sub-par results.²⁷ The Minidoka Project was ambitious and revolutionary, being one of the first Reclamation projects to use hydroelectric power.²⁸

The next dam authorized by the Project was Jackson Lake Dam in modern day Teton National Park, Wyoming.²⁹ A temporary dam was installed in 1906, but the wood rotted and burst.³⁰ A permanent dam was approved in 1910, and completed several years later (due to the short work season—only three months per year) in 1916.³¹

23. *Id.*

24. *Id.*; CPI INFLATION CALCULATOR, <http://www.in2013dollars.com/us/inflation/1904?amount=2600000> (last visited May 5, 2021).

25. STENE, *supra* note 1, at 5–6.

26. *Id.* at 6.

27. *Id.*

28. *Id.*

29. *Id.* at 8–9.

30. *Id.* at 9.

31. STENE, *supra* note 1, at 9–10.

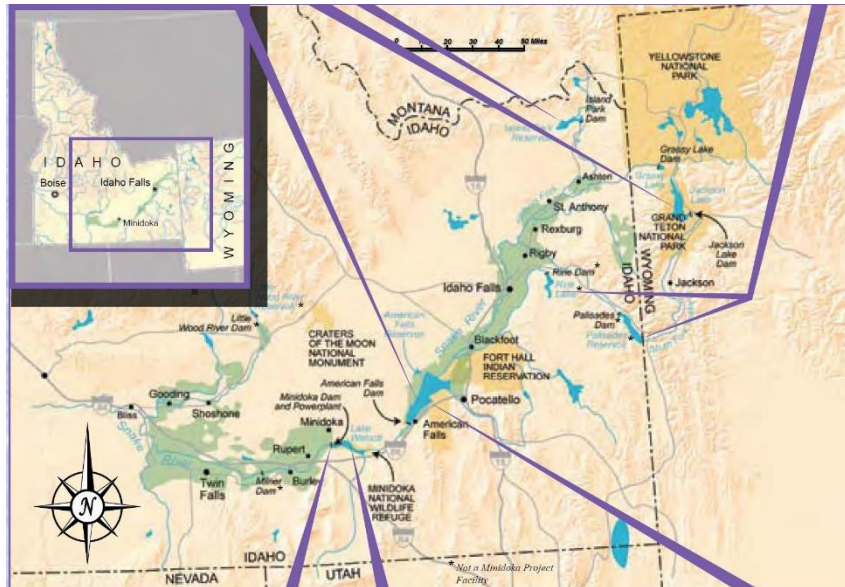


Figure [1] – A detailed view of the Minidoka project. Each of the off-map details point to dam along the Snake River.³²

C. The Sundry Civil Appropriation Act

After the completion of Jackson Lake Dam, there was a lull in construction within the Minidoka Project.³³ In fact, no further construction projects were attempted until the passage of the Sundry Civil Appropriations Act.³⁴ On March 4, 1921, the Sundry Civil Appropriations Act was passed, allocating \$1,735,000 (nearly \$25 million in 2019³⁵) to assist with the Minidoka Project along the Snake River. The relevant portion of that law provides:

Minidoka project, Idaho: For operation and maintenance, continuation of construction, and incidental operations, with authority in connection with the construction of American Falls Reservoir, to purchase or condemn and to improve suitable land for a new townsite to replace the portion of the town of American Falls which will be flooded by the reservoir, and to provide for the removal of buildings to such new site and to plat and to provide for appraisal of lots in such new town site

32. U.S. BUREAU OF RECLAMATION, RECLAMATION MANAGING WATER IN THE WEST: THE STORY OF THE MINIDOKA PROJECT, IDAHO-WYOMING, (Sept. 2010), <https://www.usbr.gov/projects/pdf.php?id=216>.

33. STENE, *supra* note 1, at 10.

34. *Id.*

35. CPI INFLATION CALCULATOR, <http://www.in2013dollars.com/us/inflation/1921?amount=1735000> (Last visited Feb. 21, 2021).

and to exchange and convey such lots in full or part payment for property to be flooded by the reservoir and to sell for not less than the appraised valuation any lots not used for such exchange, \$1,735,000, together with the unexpended balance of the appropriation for this project for the fiscal year 1921.³⁶

The Bureau of Reclamation's next objective was clear; a dam would be built on the Snake River in American Falls, Idaho.

III. THE CONDEMNATION OF DEWITT GARRISON BROWN'S HOMESTEAD

A. DeWitt G. Brown & Roosa H. Calkin

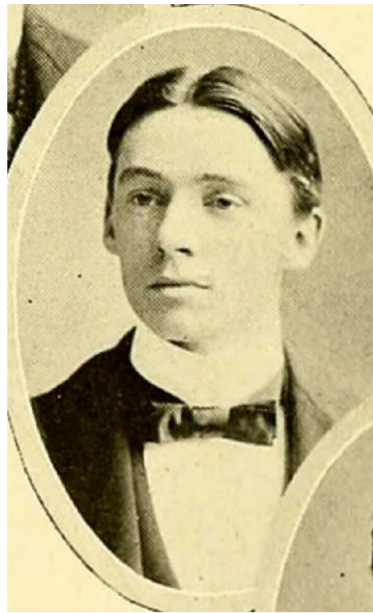


Figure [2] - DeWitt Brown's photograph from Purdue University in 1898.

The case's principal namesake,³⁷ DeWitt Garrison Brown, was born on June 27, 1875, in Traer, Iowa to Garrison and Elizabeth Brown.³⁸ His father, Garrison, was a physician.³⁹ At some point prior to 1900, his family had moved from Iowa to

36. Transcript of Record, *supra* note 6 at 53.

37. The case is formally titled as Brown, et al. Roosa (DeWitt's spouse) was the other party.

38. *1880 United States Federal Census for Dewitt G. Brown*, U.S. CENSUS BUREAU (1880) (on file with author at <https://bit.ly/2QQBuWJ>); DeWitt Brown's WWI Registration Card (on file with author at <https://bit.ly/3vT5zUt>).

39. *1990 United States Federal Census for Delbert G. Brown*, U.S. CENSUS BUREAU (1900) (on file with author at <https://bit.ly/3xQjTyL>).

Iroquois County, Illinois.⁴⁰ They settled into a very small town called Crescent City, nearly 325 miles away.⁴¹ DeWitt would later attend Purdue University and graduate with degrees in pharmacy in 1898.⁴² While he was working as a drug clerk in the summer of 1900, he married Roosa H. Calkin.⁴³ Roosa was born in May 1879 to Samuel and Adilade Calkin.⁴⁴ The Calkins were a family of farmers in the same town, Crescent City, Illinois.⁴⁵

At the time of the 1900 Census, both families lived near Crescent City.⁴⁶ According to the 1900 Census, the population of Crescent City was 371 people.⁴⁷ It would be fair to conclude two facts central to this story. First, due to the small rural town, DeWitt would have been familiar with farming. Second, that the Browns and Calkins would likely have known each other.

DeWitt and Roosa were married on June 26, 1900.⁴⁸ Over the course of their marriage, the couple would have at least two sons, Fay and Monroe.⁴⁹ Additionally, the young couple also had a deceased child who is not named or identified by gender.⁵⁰ Roosa was a public-school teacher, and she would continue that profession through most of her life.⁵¹

Sometime after they were married, but prior to 1910, the young couple (DeWitt being twenty-four, and Roosa being twenty) moved to Idaho.⁵² Although there is no documentation to ascertain *why* DeWitt and his wife moved to Idaho, the author would like to suggest that DeWitt had designs of running his own drug store.⁵³ Whatever his motivations were for moving to Idaho, DeWitt began a life of farming.⁵⁴ Shortly after moving to Idaho, DeWitt was granted a homestead of 160

40. *Id.*

41. *Id.*

42. 1898 Purdue Class Yearbook (on file with author at <https://bit.ly/3h8mRsi>).

43. 1990 United States Federal Census for Delbert G. Brown, U.S. CENSUS BUREAU (1900); Marriage License of DeWitt Brown and Roosa Calkin (on file with author at <https://bit.ly/3o1r2aP>).

44. 1990 United States Federal Census for Delbert G. Brown, U.S. CENSUS BUREAU (1900).

45. *Id.*

46. *Id.*

47. *Id.*

48. Marriage License of DeWitt Brown and Roosa Calkin (on file with author at <https://bit.ly/3o1r2aP>); 1880 United States Federal Census for Dewitt G. Brown, U.S. CENSUS BUREAU (1880).

49. 1920 United States Federal Census for Dewitt G. Brown, U.S. CENSUS BUREAU (1920) (on file with author at <https://bit.ly/3erZjNv>); 1930 United States Federal Census for DeWitt G. Brown, U.S. CENSUS BUREAU (1930) (on file with author at <https://bit.ly/3yU0Jsb>).

50. See *supra* note 49; 1940 United States Federal Census for DeWitt G. Brown, U.S. CENSUS BUREAU (1940) (on file with author at <https://bit.ly/3wHPsJA>); Death Certificate of DeWitt Garrison Brown (on file with author at <https://bit.ly/3cbqryN>).

51. 1910 United States Federal Census for DeWitt G. Brown, U.S. CENSUS BUREAU (1910) (on file with author at <https://bit.ly/3g48q6s>); 1920 United States Federal Census for DeWitt G. Brown, U.S. CENSUS BUREAU (1920) (on file with author at <https://bit.ly/3vHZQRE>); 1930 United States Federal Census for DeWitt G. Brown, U.S. CENSUS BUREAU (1930) (on file with author at <https://bit.ly/3ilTRHF>).

52. 1910 United States Federal Census for DeWitt G. Brown, U.S. CENSUS BUREAU (1910).

53. According to the National Registry of Historic Places, a Historic House and Drug Store exists in White Bird, Idaho. NAT'L ARCHIVES, <https://catalog.archives.gov/id/84250176> (last visited Feb. 2, 2021). I surmise that if presented with a similar opportunity, DeWitt would have happily become the pharmacist for American Falls, Idaho. See *id.* at 17–30.

54. 1910 United States Federal Census for DeWitt G. Brown, U.S. CENSUS BUREAU (1910).

acres on June 5, 1911.⁵⁵ In a strange series of events, the President who had signed his homestead, William H. Taft, was the future Chief Justice of the Supreme Court who wrote the decision in favor of the United States, taking most of DeWitt's homestead away.⁵⁶

DeWitt listed his profession on his World War I Registration Card as a self-employed farmer when it was completed on September 12, 1918.⁵⁷ When the Minidoka project was approved, DeWitt embodied the "American Dream." A brown-hair, blue-eyed young man of medium height and build, had been granted a homestead and brought his young family to the American West, and became a self-employed farmer.⁵⁸ The Brown family was exactly who President Roosevelt wanted to attract to the western United States.

B. Condemnation Action by the United States

In a letter from the First Assistant of the Secretary of the Interior, E.C. Finney, to the United States Attorney General, dated April 21, 1921 (only a month after receiving the substantial influx of money from the Sundry Appropriations Act), the United States made its claim to DeWitt's property.⁵⁹ It stated:

Under the authority of the National Irrigation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, the United States Reclamation Service is now engaged in work preliminary to the construction of a large dam across the Snake River at American Falls, Idaho, which dam is intended to be used in connection with an extension of the Minidoka Federal Irrigation project.

The proposed reservoir would flood a major portion of the land now included within the corporate limits of the City of American Falls, a town of about 1,500 people. Our plan is to develop a new town just outside the limits of the present town and above the high- water line of the proposed reservoir, purchasing or condemning the lands within the submerged area, and, where practicable, making an exchange of lots and removing houses and other improvements from the old town site to the new town site. An adjustment of this kind would permit the Government to secure the required area for the reservoir at much less expense than would otherwise be the case, and consequently would

55. *Document of Land Description for Dewitt Garrison Brown, General Land Office Records, U.S. DEPT. OF THE INTERIOR BUREAU OF LAND MGMT.*, <https://glorerecords.blm.gov/details/patent/default.aspx?accession=203137&docClass=SER&sid=dkmhzqdc.3yu> (last accessed Oct. 3, 2019).

56. *Id.*

57. DeWitt Brown's WWI Registration Card (on file with author at <https://bit.ly/3vT5zUt>).

58. *Id.*

59. Transcript of record, *supra* note 6. For a detailed look at the property in dispute, please refer to the photos contained in this article. *See infra* Figures 3, 8, 9.

make the construction of the reservoir more feasible through a reduction of the cost.⁶⁰

Condemnation proceedings were undertaken by the United States using the justification provided by Mr. Finney. But, DeWitt challenged the right of the United States to condemn his land for town site purposes.⁶¹ DeWitt's homestead was a large portion of the new townsite—the new version of American Falls.⁶² The United States' aim was to provide low-price property for the residents of American Falls who were forced to move, but that goal induced DeWitt Brown and his attorneys into the belief that this was not a valid "public use" of the taking of his homestead.⁶³ Approximately three months after the Sundry Act passed, in June 1921, DeWitt was served the summons for the condemnation of his property.⁶⁴

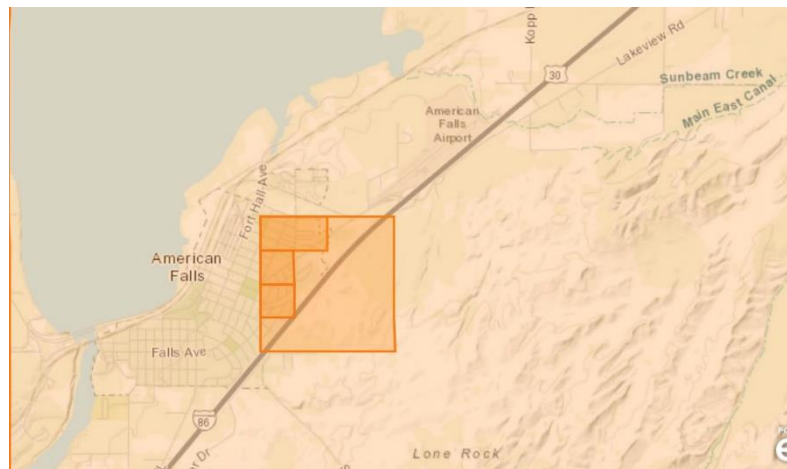


Figure [3]. A detailed look at DeWitt Garrison's homestead. The three boxes on the left-hand corner were his original 160 acres. The previous townsite has been flooded and cannot be seen in this map.⁶⁵

C. Negotiations & Valuation

As noted in the record, attempts were made to negotiate the transfer of DeWitt's property to the United States.⁶⁶ The government had previously acquired

60. Transcript of record, *supra* note 6.

61. *Id.* at 36

62. *Id.* at 36

63. STENE, *supra* note 1, at 11. "Reclamation brought the new site for American Falls to keep property prices down for those residents of the old site forced to move."

64. Transcript of record, *supra* note 6, at 14.

65. The author took a screenshot of the images for ease of inclusion. See *supra* note 55.

66. Transcript of record, *supra* note 6.

495 acres and needed DeWitt's 120 acres to complete the new townsite.⁶⁷ The United States declared the reasonable value of the 120 acres as \$3,000.⁶⁸ DeWitt's valuation of his property was \$24,000.⁶⁹

In the course of the case, the dispute went to a jury trial over the value of the property.⁷⁰ The jury found that, on the date of summons, the value of DeWitt's property was \$6,250.⁷¹ Although DeWitt was chiefly concerned with the government's ability to legally take the 120 acres of his homestead, he had to have been *very* concerned about the fact that he was being offered 12.5% of fair market value (according to his valuation). In fact, DeWitt's attorneys asked the Supreme Court, that in the event that the Court decided that the land could be condemned, that the Court give DeWitt *his* valuation.⁷² To quote DeWitt's attorneys, "[that] in case the Court should determine that the plaintiff is entitled to condemn the land of these defendants, that these defendants to have judgment against the plaintiff for the true value thereof, namely: Twenty-four Thousand (\$24,000.00) Dollars, and for costs of suit."⁷³

The difference between the government's valuation and what DeWitt saw as reasonable was a significant disagreement amongst the parties. In today's money, the difference was nearly \$350,000 vice \$43,000.⁷⁴ For DeWitt and his family, this valuation was the difference between starting a new life or barely scraping by. Unfortunately for DeWitt, the latter occurred.⁷⁵ Assuming that the government had no money on the balance sheet for the Minidoka Project beginning in fiscal year 1921, the asking price of \$24,000 represented 1.3% of the money available to the government at the time of condemnation.⁷⁶ The Sundry Act provided money specifically for land acquisition and had nothing to do with the construction of the dam.⁷⁷ Instead of spending from June, 1921 until November 12, 1923 in litigation, the government could have simply paid the demanded amount. The fact that the parties engaged in litigation over this acreage for two and a half years demonstrates the dedication that both sides possessed. The United States clearly thought that what the government was doing was permissible and necessary. DeWitt on the other hand, believed that the government had gone beyond its constitutional power.⁷⁸

67. *United States v. Brown*, 279 F. 168 (D. Idaho 1922) (out of the 165 acres still needed, DeWitt possessed 120).

68. Transcript of record, *supra* note 6 at 10.

69. *Id.* at 13.

70. *Brown v. United States*, 263 U.S. 78, 80 (1923).

71. *Id.*

72. Transcript of record, *supra* note 6 at 14.

73. *Id.*

74. CPI INFLATION CALCULATOR, <https://www.in2013dollars.com/us/inflation/1921?amount=3000> (last visited March 22, 2021).

75. *Brown*, 263 U.S. 78.

76. *Id.* at 80 ("The Sundry Civil Act of March 4, 1921 . . . appropriates \$1,735,000."). *See also*, Sundry Civil Act of March 4, 1921, ch. 161, 41 Stat. 1367, 1403 (1921). The author divides \$24,000 by \$1,735,000 to find the percentage of money available to the government.

77. *Brown*, 263 U.S. at 80. *See also*, Sundry Civil Act, *supra* note 76, at 1403.

78. *Brown*, 263 U.S. at 81.

IV. THE LEGAL CHARACTERS

A. Attorneys for DeWitt & Roosa Brown (Joseph H. Petersen & Thomas C. Coffin)

Mr. Petersen and Mr. Coffin represented the Browns throughout the proceedings, all the way to the Supreme Court.⁷⁹ Their office was located in Pocatello, Idaho.⁸⁰ In the American Bar Association directory for 1922, Peterson & Coffin had clients listed in Illinois, Colorado, Minnesota, and Utah.⁸¹ Both men were highly educated attorneys, Peterson graduated from Columbian University Law School (which would become George Washington University in 1904), and Coffin from Yale Law School.⁸² After receiving their education, both men served the state of Idaho in the attorney general's office, where presumably they met and decided to branch out on their own in Pocatello, Idaho.⁸³

Joseph Hans Petersen was born in 1880 in Plain City, Utah.⁸⁴ He performed a religious mission for The Church of Jesus Christ of Latter-Day Saints from 1900-1901 based in Baker, Oregon.⁸⁵ As noted above, Joseph attended Columbian University Law School (George Washington University) and graduated with his degree in 1905.⁸⁶ After graduating and being admitted to the bar in Idaho, Joseph became an assistant attorney general.⁸⁷ He would remain in that position from 1906-1912, until he would become Idaho's attorney general.⁸⁸ Joseph served as Idaho's attorney general from 1913-1916.⁸⁹

79. Transcript of Record, *supra* note 6.

80. James Clark Fifield, *The American Bar: A Biographical Directory of Contemporary Lawyers of the United States and Canada*, 1921 A.B.A. DIRECTORY 192-93.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Joseph Hans Peterson: Christensen Family Tree*, ANCESTRY (last visited Feb. 3, 2021), https://www.ancestry.com/family-tree/person/tree/16867314/person/1791565365/facts?_phsrc=Ubl109&_phstart=successSource.

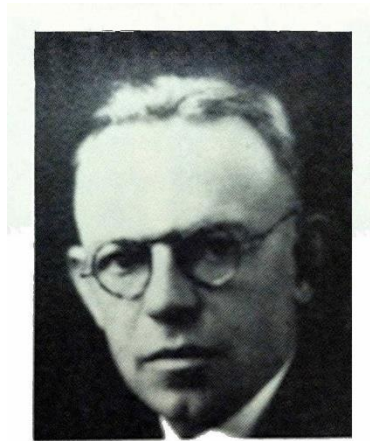
85. *Id.*

86. Fifield, *supra* note 80.

87. *Id.*

88. IDAHO ATTORNEY GENERAL'S ANNUAL REPORT V (2019) (listing T.A. Walters as Rep. of the Att'y Gen. of the State of Idaho for the Years 1917-1918).

89. *Id.*



Thomas C. Coffin
1931 - 1933

Figure [4] – Thomas Coffin’s photograph from his ancestry entry.

Thomas Chalkley Coffin was born on October 25, 1887, in Caldwell, Idaho.⁹⁰ While he was young, his family moved to Boise in 1898.⁹¹ Eventually, Thomas graduated from Yale in 1910 with a degree in law.⁹² In 1911, Thomas was admitted to the bar and began practicing in Boise.⁹³ In 1912, Thomas served as an assistant county attorney.⁹⁴ From 1913-1915, Thomas served as an assistant attorney general.⁹⁵ After his time in the attorney general’s office was completed, Thomas moved to Pocatello, Idaho.⁹⁶ Unfortunately, World War I would interrupt his legal practice.⁹⁷ He served in Naval Aviation in Pelham Bay, New York.⁹⁸ Upon completion of his service, Thomas would return to Pocatello and continue practicing law.⁹⁹

90. *Thomas Chalkley Coffin*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <https://bioguide.congress.gov/search/bio/C000592> (last visited Feb. 1, 2021).

91. *Id.*; see also *1900 United States Federal Census for Thomas C. Coffin*, U.S. CENSUS BUREAU (1900) (on file with author at <https://bit.ly/2SOyQkV>).

92. *Thomas Chalkley Coffin*, *supra* note 90.

93. *Id.*

94. Fifiield, *supra* note 80.

95. *Thomas Chalkley Coffin*, *supra* note 90.

96. *Id.*

97. *Id.*

98. War Department: O.Q.M.G. Form No. 623, Application for Headstone (on file with author at <https://bit.ly/3fWwYOO>). See also *Thomas Chalkley Coffin*, *supra* note 90.

99. *1920 United States Federal Census for Thomas C. Coffin*, U.S. CENSUS BUREAU (1920) (on file with author at <https://bit.ly/3pa1rNz>).

B. Attorneys for the United States (William.W. Dyar & James M. Beck)

Appearing on behalf of the United States was James M. Beck, the Solicitor General, and a public lands division attorney from the Department of Justice William W. Dyar.¹⁰⁰ Mr. Dyar was a quiet public servant. Unlike the other attorneys in this case, information concerning significant details about his life is limited. The only information uncovered for this article is contained in a Department of Justice directory that listed William W. Dyar in the public lands division with an annual salary of \$4,500.¹⁰¹

Mr. Beck, on the other hand, was in the public eye for nearly three decades. James Beck was born in Philadelphia, Pennsylvania on July 9, 1861.¹⁰² After graduating from Moravian College in Bethlehem, Pennsylvania in 1880, James worked as a clerk for a railway company.¹⁰³ While gainfully employed during the day, James studied law at night and eventually was first admitted to the bar in 1884.¹⁰⁴ James had an incredible career, serving as Assistant United States Attorney in the eastern district of Pennsylvania and as the United States Attorney for Pennsylvania.¹⁰⁵ James was nominated to become the Attorney General of the United States in 1900 by President William McKinley, where he served in the capacity from 1900-1903.¹⁰⁶ Afterwards, he was in private practice based out of Philadelphia, New York City, and Washington D.C.¹⁰⁷ In 1921, he was appointed by President Warren Harding to serve as the Solicitor General and held that post until he resigned in 1925.¹⁰⁸ Following his time as the Solicitor General, James ran for Congress and was reelected several times.¹⁰⁹ James resigned from Congress on September 30, 1934 and quietly passed away on April 12, 1936.¹¹⁰

C. The Supreme Court & Chief Justice Taft

The Supreme Court in 1923 was headed by Chief Justice William Taft.¹¹¹ Chief Justice Taft was born in Cincinnati, Ohio, on September 15, 1857.¹¹² He attended Yale for undergraduate work, graduating in 1878.¹¹³ Fiercely loyal to Ohio, he returned to Cincinnati and completed law school at Cincinnati Law School in

100. *Brown v. United States*, 263 U.S. 78, 78 (1923).

101. DEP'T OF JUSTICE, DEPARTMENT OF JUSTICE DIRECTORY (1922).

102. *James Montgomery Beck*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <https://bioguide.congress.gov/search/bio/B000290> (last visited March 24, 2021).

103. *Id.*

104. *Id.* (commencing practice in Philadelphia).

105. *Id.*

106. *Id.*

107. *Id.*

108. *James Montgomery Beck*, *supra* note 102.

109. *Id.*

110. *Id.*

111. *History of the Court - Timeline of the Justices - William Howard Taft, 1921-1930*, SUP. CT. HIST. SOC'Y, https://supremecourthistory.org/timeline_taft.html https://supremecourthistory.org/?page_id=521 (last visited March 24, 2021) [hereinafter *History of the Court*].

112. *Id.*

113. *Id.*

1880.¹¹⁴ He began his career as a prosecutor and judge in Ohio, followed by an appointment as the Solicitor General of the United States in 1890.¹¹⁵ Following that appointment, Chief Justice Taft was destined for high office, serving President Roosevelt as his Secretary of War, then elected as President in 1908.¹¹⁶ Upon leaving the White House, Chief Justice Taft taught at Yale and routinely traveled the lecture circuit.¹¹⁷ Finally, in 1921, President Warren Harding nominated Chief Justice Taft to the Supreme Court.¹¹⁸ He was confirmed on the exact same day, June 30, 1921.¹¹⁹ Chief Justice Taft has been the only person in the history of the United States to be both President and a justice on the Supreme Court.¹²⁰ However, being a Supreme Court justice seemed to be more important to Chief Justice Taft as he is quoted as saying, “I don’t remember that I ever was President.”¹²¹

V. EMINENT DOMAIN & “PUBLIC USE”

The concept of “eminent domain” is born out of the idea that sovereigns have the ability to repossess the land within their territory for any purpose that the sovereign deems necessary.¹²² In the United States, however, the Fifth Amendment to the Constitution is a limiting principle. That limitation on federal power provides, “nor shall private property be taken for public use, without just compensation.”¹²³

The first significant case that came before the United States Supreme Court regarding this power was *Kohl v. United States*.¹²⁴ In that case, the landowner was challenging the condemnation of his land in Ohio to use as a custom house and a post office.¹²⁵ The Court held that the government’s ability to exercise this power was “essential to its independent existence and perpetuity.”¹²⁶

Eminent domain has been used in our country’s history to facilitate transportation, supply water, construct public buildings, and assist with defense capabilities.¹²⁷ Another purpose for eminent domain occurred with the

114. *Id.*

115. *Id.*

116. *Id.*

117. *History of the Court*, *supra* note 111.

118. *Id.*

119. *Id.*

120. *Id.*

121. *William Howard Taft*, WHITE HOUSE, <https://www.whitehouse.gov/about-the-white-house/presidents/william-howard-taft/> (last visited March 24, 2021).

122. *History of the Federal Use of Eminent Domain*, DEP’T OF JUST. (May 15, 2015), <https://www.justice.gov/enrd/history-federal-use-eminant-domain> (history of Eminent Domain as it pertains to the federal government).

123. U.S. CONST. amend. V.

124. DEP’T OF JUST., *supra* note 122; *Kohl v. United States*, 91 U.S. 367, 371 (1875).

125. *Kohl*, 91 U.S. at 371.

126. *Id.*

127. DEP’T OF JUST., *supra* note 122; *Kohl*, 91 U.S. at 367; *United States v. Great Falls Mfg. Co.*, 112 U.S. 645 (1884) (aqueducts for drinking water in Washington D.C.); *United States v. Chandler-Dunbar Co.*, 229 U.S. 53 (1913) (maintenance of navigable water by acquiring land north of canal in Michigan); *Sharp v. United States*, 191 U.S. 341 (1903) (production of war materials).

condemnation of land near Gettysburg, Pennsylvania—recreation.¹²⁸ Following on the heels of *Gettysburg* was the creation of a park within Washington D.C. that was twice the size of New York City’s Central Park, Rock Creek Park.¹²⁹ The Supreme Court upheld the constitutionality of recreational condemnations in *Shoemaker v. United States*.¹³⁰

All of the above had one thing in common: direct public benefit. Who doesn’t want railways or recreation? The town site in *Brown*, however, was truly a novel idea. The United States had never before condemned land that they were not going to own, keep, or maintain.¹³¹

VI. THE LITIGATION PATH OF *BROWN*

A. District Court (Condemnation as a Matter of Law)

Before the case went to jury over valuation, the circumstances of the condemnation were tried before United States District Court Judge Frank S. Dietrich.¹³² Judge Dietrich heard testimony from an engineer that the United States planned to use the land for worker lodging, however he concluded that the only authority for the action came from the letter issued by Mr. Finney (using the land as a new town site).¹³³ It was important to note that DeWitt and his attorneys were not challenging the right of the government to build a dam, or to condemn land needed for that purpose.¹³⁴ This case was about whether or not the government could condemn private land to provide a town site.¹³⁵

Judge Dietrich reasoned that because the Sundry Act was passed and money was allocated to alleviate land issues in American Falls, the legislature had declared the usage public.¹³⁶ Although he stated that the judiciary was the final voice on “public use,” he would defer to the legislature in this circumstance.¹³⁷ Although he was concerned that the government did not have the express authority to condemn this property, he thought it was close enough to allow the government to proceed.¹³⁸

Judge Dietrich continued to reason that because landowners had to be paid “just compensation,” the likelihood of abuse was low, saying specifically, “the amount must be raised by taxation where the land is taken by the government itself, there is not much ground to fear any abuse of the power.”¹³⁹ In Judge Dietrich’s view, the fact that Congress was accountable to the people would result

128. DEP’T OF JUST., *supra* note 122; *United States v. Gettysburg Elec. Ry. Co.*, 160 U.S. 668 (1896).

129. DEP’T OF JUST., *supra* note 122.

130. *Shoemaker v. United States*, 147 U.S. 282 (1893).

131. *Brown v. United States*, 263 U.S. 78, 83 (1923).

132. *United States v. Brown*, 279 F. 168 (Idaho Dist. Ct. 1922).

133. *Id.* at 169.

134. *Id.* at 170.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Brown*, 279 F. at 171.

139. *Id.*

in a limited use of condemnation or abuses thereof.¹⁴⁰ In his conclusion, Judge Dietrich stated that “it may have been fairly concluded that, without such authority, it would be impracticable for the Reclamation Service to execute the reservoir project.”¹⁴¹ On February 10, 1922, it was decided that DeWitt Brown was going to lose his homestead.¹⁴²

Further, the American Falls Press stated on February 17, 1922:

The validity of the act under which condemnation of property wanted for the building the great American Falls dam by the federal government is made was upheld Monday by Federal Judge F.S. Dietrich. Judge Dietrich ruled in the case of the United States against DeWitt Garrison Brown of Power County. The government by exercising the right of eminent domain is seeking to acquire in fee simple to 120 acres of land near American Falls which is deemed necessary in the program of building the dam and making a new townsite.¹⁴³

It seems clear from this contemporary account, as well as Judge Dietrich’s opinion, that this particular issue had not been subjected to enough litigation throughout the country as to provide a common understanding of what constituted “public use” in condemnation proceedings. The only remaining question after Judge Dietrich’s decision was, how much would the government pay DeWitt for his homestead? Surely the government would pay DeWitt “just compensation” as to not abuse their authority in taking his land, just like Judge Dietrich concluded.¹⁴⁴

B. District Court (Jury Valuation)

On March 15, 1922, the case went before a jury in Idaho to determine the amount of damages that DeWitt and Roosaa suffered as a result of the condemnation of their homestead.¹⁴⁵ Naturally, both the United States and the Browns were represented.¹⁴⁶ The Idaho Attorney General and the Power County Attorney also were in appearance.¹⁴⁷ The state of Idaho had an interest in the property due to a mortgage for \$1,500, while Power County had a small tax lien.¹⁴⁸ In fact, DeWitt had not paid Power County its taxes for 1920 and 1921.¹⁴⁹ Ultimately the matter was resolved with the jury valuation of \$6,250.¹⁵⁰ The Idaho Republican ran the following entry on March 23:

140. *Id.*

141. *Id.*

142. *Id.*

143. *Condemnation Priviledge [sic] of Reclamation Service Uphead by Feder Judge Deitrich, AM. FALLS PRESS*, Feb. 17, 1922 (on file with author at <https://bit.ly/3uGU5IQ>).

144. *Brown*, 279 F. at 171.

145. Transcript of record, *supra note* 6 at 17.

146. *Id.*

147. *Id.* at 18–19.

148. *Id.* at 19.

149. *Id.* at 9, 17–18.

150. *Id.* at 17.

The federal court spent practically the entire day Wednesday [March 15, 1922] in hearing the case of the United States vs. DeWitt Garrison Brown et al, a condemnation case on land involved in the proposed American Falls reservoir project. The case was given to the jury at 5 [p.m.] and after deliberating for approximately six hours, it returned a verdict awarding the defendants the sum of \$52 per acre for the land involved. The original sum asked for by the defendants was \$200 per acre.¹⁵¹

Finally, Judge Dietrich assessed 7% interest to the United States from June 1921 until March 15, 1922.¹⁵² A result of \$328.27 was added to the \$6,250 that the jury assessed, and judgment was entered.¹⁵³ Unfortunately for DeWitt, the mortgage took \$1563.33 (with added interest) and his tax obligation was \$41.52.¹⁵⁴ By the time DeWitt received his compensation, it was reduced to \$4,973.27.¹⁵⁵ That value represents 20.7% of market value, according to DeWitt.¹⁵⁶

C. Supreme Court

The case arrived directly to the Supreme Court without going to an intermediate appellate court through a provision in the Judicial Code at the time. Chief Justice Taft stated:

The plaintiffs denied the power of the Congress under the Federal Constitution to condemn the land because [sic] not taken for a public use. This entitled them to come to this Court under § 238 of the Judicial Code; and so the United States sued out a cross writ of error to question the legality of including in the judgment the interest item.¹⁵⁷

i. Argument for DeWitt Brown

DeWitt's argument hinged on the definition and scope of "public use." DeWitt's principal argument was this:

The Government, after the condemnation of the land in question, if it is permitted, cannot be compelled to sell the land. The public at large would have no interest in the land. A person whose land has been condemned in the old town site would have no vested right in the land condemned in the new town site. The price to be charged by the Government for land which remains after it has concluded its exchanges is to be at the Government's option, for such price as the Government may desire, to such persons as it may desire to sell. In

151. *Cases Being Tried in Federal Court*, IDAHO REPUBLICAN, Mar. 23, 1922.

152. Transcript of record, *supra* note 6 at 20.

153. *Id.* at 34.

154. *Id.* at 20.

155. *Id.* at 19-20.

156. *Id.* at 19-20.

157. *Brown v. United States*, 263 U.S. 78, 80 (1923).

condemning this land the Government does not desire to retain it but to dispose of it and this disposition to the public is not, and cannot be, a public use.¹⁵⁸

The idea of the United States pretending to be a good-willed real estate broker greatly concerned DeWitt's attorneys. The public largely had to rely on the Government doing what they promised, which is not written in the text of the Fifth Amendment. Troubling for DeWitt, his attorneys could not point to any particular case before the Supreme Court, stating "[w]hile we have not found a case where the United States Government itself has undertaken to condemn property for private uses and purposes analogous to the case at bar, yet the Government is governed by the same doctrines and rules of law that apply to lesser governmental instrumentalities."¹⁵⁹

ii. Argument for the United States

The United States' major contention was obviously that this condemnation was within the scope of their authority. The United States brief used the *Gettysburg* decision to describe that "[w]hen the sovereign itself seeks to exercise the power of eminent domain the presumption that the intended use is a public one is much stronger than in cases where private corporations seek to condemn under authority delegated to them by the sovereign."¹⁶⁰ The United States contended as well that while the question of what is "public use" is a judicial one, the legislature acts on behalf of the public, and if the legislature deems something justified, it is for the public benefit.¹⁶¹ The United States clarified that "[u]nder these circumstances Congress apparently felt that there was a moral obligation on the Government to provide [the residents of American Falls] with a new town site where, by the appraisal of lots in advance and their exchange or sale by Government officials, they would be protected"¹⁶² Just like the Browns, the United States had trouble pointing to any particular case that helped their cause as well.¹⁶³

iii. Decision

Again, the novelty of the situation presented the Court with a difficult decision: accept the Brown's argument and cost the United States a significant amount of money and time, or deny the Brown's claim and trample on private landowner rights that were foundational to the United States of America. Chief Justice Taft wrote the opinion for the Court, with no dissenting opinions being registered.¹⁶⁴ Chief Justice Taft began his analysis by discussing a legislative act that

158. Brief for DeWitt Garrison Brown at 20, *Brown*, 263 U.S. 78 (Nos. 97 & 98).

159. *Id.* at 22.

160. Brief for the United States at 5–6, *Brown*, 263 U.S. 78 (Nos. 97 & 98).

161. *Id.* at 6.

162. *Id.* at 8–9.

163. *See id.* at 6–13.

164. *Brown*, 263 U.S. 78.

would create a railroad.¹⁶⁵ Logically, the railroad project would need to condemn land adjacent to the right-of-way in order to build up the embankments or other components of the railway.¹⁶⁶ He stated, “[t]he purchase of a site to which the buildings of a town can be moved and salvaged and the dispossessed owners be given lots in exchange for their old ones is a reasonable adaptation of proper means toward the end of the public use to which the reservoir is to be devoted.”¹⁶⁷

It seemed to Chief Justice Taft that the plan for the United States to act in this manner was the only viable option to accomplish the task before Reclamation. Chief Justice Taft believed that everyone in this situation was aggrieved, he said “[a] town is a business center. It is a unit. If three-quarters of it is to be destroyed by appropriating it to an exclusive use like a reservoir, all property owners, both those ousted and those in the remaining quarter, as well as the State, whose subordinate agency of government is the municipality are injured.”¹⁶⁸ He then illustrated the “substitution” theory of compensation by stating that “[a] method of compensation by substitution would seem to be the best means of making the parties whole. The power of condemnation is necessary to such a substitution.”¹⁶⁹ Chief Justice Taft struggled to find any case that would assist his assessment of the case.¹⁷⁰ He did, however, rely on a case cited by the United States concerning a railroad company.¹⁷¹ In that case, the railroad company condemned private land to provide the public access to a highway, since the railway had just taken over the previous access, and the right-of-way was no longer open to the public.¹⁷² Chief Justice Taft seemed satisfied with what was occurring in *Brown* was the most fair thing to do for everyone involved. DeWitt Brown would surely disagree, but he was going to lose his homestead. On the bright side, Chief Justice Taft did allow the United States to be assessed interest.¹⁷³

VII. MOVING AMERICAN FALLS & DAM CONSTRUCTION

A. How Do You Move a City?

After acquiring the acreage needed to relocate the town, the overarching question was, how in fact do you move a town? The answer is, carefully and methodically. Luckily for the community, Reclamation was able to move many of the large structures from the old town site to their new locations.¹⁷⁴ Some structures were relocated at the owner’s expense.¹⁷⁵ The largest buildings that

165. *Id.* at 81–82.

166. *Id.* at 82.

167. *Id.*

168. *Id.* at 82–83.

169. *Id.* at 83.

170. *Brown*, 263 U.S. at 83.

171. *Id.*

172. *Id.*

173. *Brown*, 263 U.S. at 88.

174. STENE, *supra* note 1, at 11.

175. *Id.*

were moved were the Grand Hotel and grain elevators.¹⁷⁶ Since four-fifths of the town was going to be submerged, it wasn't possible to save every structure.¹⁷⁷ This tedious work began in the spring of 1925.¹⁷⁸

St. John's Episcopal Church was built
in 1911 in the Riverside Addition in
the original town site.



Figure [5] – A historic photo of a church being moved.¹⁷⁹ The basic “how to” was to raise the structures up on logs and then pull the logs with a tractor or other machinery.¹⁸⁰

176. *Id.*

177. *Moving American Falls*, POWER CNTY. HIST. SOC'Y, <http://www.co.power.id.us/historical-society-and-museum/power-county-historical-society/moving-american-falls/> (last visited Mar. 22, 2021).

178. *Id.*

179. *Id.*

180. *Id.*



Figure [6] – A historic photo of two houses being moved.¹⁸¹

Over the course of a year, at a cost of \$3 million, the Minidoka Project moved forty-six businesses, three hotels, a school, at least five churches, a hospital, six grain elevators, a flour mill, and various shacks and sheds.¹⁸² On average, it took a day to move a home, and two to three days to move the larger buildings.¹⁸³ Imagine the expense had the government not condemned DeWitt's land to put the new town. The government would have had to move buildings further, taking more time and money to accomplish this task.

B. American Falls Dam

Construction of the American Falls Dam began in 1925 after the Utah Construction Company received the Reclamation contract.¹⁸⁴ Initially, Utah Construction began on the east side of the dam and would lay the foundation for the western section in 1926.¹⁸⁵ Several grain elevators were not moved until late May 1926.¹⁸⁶ A little later that year, on July 29, the "moving road" across the Dam construction site was closed.¹⁸⁷ The Dam was completed sixty days ahead of schedule on April 21, 1926.¹⁸⁸

181. *Id.*

182. *Id.*

183. *Moving American Falls*, *supra* note 177.

184. STENE, *supra* note 1, at 11; *Moving American Falls*, *supra* note 177.

185. STENE, *supra* note 1, at 11–12.

186. *Moving American Falls*, *supra* note 177.

187. *Id.*

188. *Id.*

VIII. THE FALLOUT

A. “Public Use”

While it is easily understood that a landowner must receive “just compensation” and litigation over valuation has been extensive in condemnation proceedings, “public use” has been litigated very rarely. Several cases have been critical in understanding this issue, but without any definitive rules. In 1984, the Supreme Court decided *Hawaii Housing Authority v. Midkiff*.¹⁸⁹ In that case the state government of Hawaii passed a law that would transfer title from lessors to lessees.¹⁹⁰ The government sought to increase the amount of real estate owners by breaking up a concentration of ownership.¹⁹¹ A unanimous Court held that determining “public use” was better left for the legislature.¹⁹² In 2005, the Supreme Court held in a 5-4 decision in *Kelo v. City of New London*, that the taking of private land to transfer it to a private developer in order to further “economic development” was “public use.”¹⁹³

A few cases cite *Brown* for the proposition that “just compensation” could be land, rather than currency – the so called “substitute-facilities doctrine.”¹⁹⁴ A thorough discussion of that principle is contained in *United States v. 50 Acres of Land*.¹⁹⁵ Further, it is cited in *Dohany v. Rogers* as well, stating that a condemnation of a railroad right-of-way as part of a public highway improvement was permissible.¹⁹⁶ All of these cases in context leaves a question: what can’t the United States do in an eminent domain proceeding?

B. The Human Impact

Just before his land was taken and he was defeated in court, DeWitt ironically became an assessor for Power County (he did not plant a crop in 1921 due to the uncertainty around his land).¹⁹⁷ He continued in that profession through at least 1935.¹⁹⁸ By April 25, 1940, and as early as 1939, DeWitt and his wife had moved to Ada County (Boise) and began living with their son, Fay.¹⁹⁹ After moving to Boise,

189. *Haw. Housing Auth. v. Midkiff*, 467 U.S. 229 (1984).

190. *Id.*

191. *Id.*

192. *Id.* at 230.

193. *Kelo v. City of New London*, 545 U.S. 469, 481 (2005).

194. See *United States v. 50 Acres of Land*, 469 U.S. 24 (1984); *Dohany v. Rogers*, 281 U.S. 362 (1930).

195. 469 U.S. at 31–33.

196. 281 U.S. at 366.

197. *1920 United States Federal Census for Dewitt G. Brown*, U.S. CENSUS BUREAU (1920); Transcript of record, *supra* note 6 at 33.

198. *1930 United States Federal Census for Dewitt G. Brown*, U.S. CENSUS BUREAU (1930). The 1940 Census has a question that asks for county of residence in 1935. DeWitt lists his residence still as Power County. *1940 United States Federal Census for Dewitt G. Brown*, U.S. CENSUS BUREAU (1940).

199. *1940 United States Federal Census for Dewitt G. Brown*, U.S. CENSUS BUREAU (1940); *Brown Death Certificate*, *supra* note 50.

DeWitt was employed as an office clerk for Ada County making \$1,200 a year.²⁰⁰ DeWitt would pass away a few years later at St. Luke's Hospital in Boise, Idaho on December 29, 1943.²⁰¹ He endured a one-hundred-day stay at the hospital and appeared to have died from a heart condition.²⁰² Roosa would outlive her husband, and would subsequently die in 1954.²⁰³ Roosa and DeWitt were buried at the same cemetery in Boise with very simple markers.²⁰⁴ Had DeWitt and Roosa been given their demand for their acreage, who knows where they would have gone. As it stands, the once self-employed farmer with 160 acres, died a government worker living with his son and daughter-in-law.

Shortly after *Brown*, Thomas Coffin was elected mayor of Pocatello from 1931 to 1933.²⁰⁵ Additionally, Thomas would represent southeast Idaho in the United States Congress, beginning on March 4, 1933.²⁰⁶ Unfortunately, Thomas would serve a little more than a year before he was killed by a taxicab just off the steps of the United States Capitol on June 8, 1934.²⁰⁷ Joseph Peterson practiced law in Pocatello for approximately twenty more years.²⁰⁸

IX. WHY THIS STORY MATTERS

A. Challenging the Actions of the United States

In the Bible, David wins. In *Brown*, Goliath wins. Understanding who DeWitt Brown was frames exactly why he was upset with the United States enough to take this case to the Supreme Court. It was only a decade after DeWitt received his homestead that it was taken from him.²⁰⁹ During the interim decade, how much money had DeWitt and his family spent on his homestead?—not to mention the amount of labor he must have poured into his property.

Remember, this is *prior* to the construction of the reservoir and its irrigation plan.²¹⁰ Conversely, understanding how important DeWitt's 120 acres were to the Minidoka Project is crucial.

Without DeWitt's 120 acres, there would be a substantial portion of American Falls that would have been displaced with nowhere else to call home.²¹¹

200. 1920 United States Federal Census for Dewitt G. Brown, U.S. CENSUS BUREAU (1940).

201. Brown Death Certificate, *supra* note 50.

202. *Id.*

203. See *infra* app. at Figure [14].

204. *Id.*

205. COFFIN, Thomas Chalkley: 1887–1934, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000592> (last visited Mar. 27, 2021).

206. *Id.*

207. Message from his son-in-law to author on Ancestry.com (October 18, 2019) (on file with author at <https://bit.ly/3ia8ep6>); War Department: O.Q.M.G. Form No. 623, Application for Headstone (on file with author at <https://bit.ly/3fWwYOO>).

208. See CITY OF POCATELLO, POCATELLO CITY DIRECTORY 175 (1927); CITY OF POCATELLO, POCATELLO CITY DIRECTORY 224 (1930–31).

209. See *supra* notes 55–56.

210. See *supra* Section VI.B.

211. Transcript of record, *supra* note 6.

For the rest of American Falls, DeWitt could have been seen as a thorn causing unnecessary trouble. Contemporaneous newspaper accounts declared in a headline the “VALLEY STANDS TOGETHER FOR DAM.”²¹² Further, had DeWitt won his challenge, he would have been in possession of 120 acres of prime real estate.²¹³

This case was not an incredibly newsworthy episode, nor was the opinion drafted by Chief Justice Taft extensive. To illustrate this point, the case was in the Idaho Attorney General’s report for 1921-1922, when the case was at the District Court.²¹⁴ However, the same publication did not even list the Supreme Court decision the next year.²¹⁵ Similarly, Chief Justice Taft’s papers located at the Library of Congress make no mention of this case to any of his colleagues.²¹⁶ Ultimately, the innovative idea that was contrived by the United States was seen as a win for everyone but DeWitt Brown.²¹⁷ As Chief Justice Taft stated, “an important town stood in the way of a necessary improvement by the United States.”²¹⁸

Today, American Falls Reservoir is a critical component of the irrigation, recreation, and settlement of southeast Idaho. While DeWitt did not view the taking of his homestead as a “public use” for the new townsite, all of southeast Idaho now benefits from having an abundant source of water available to the residents. At its capacity, American Falls Reservoir is the largest reservoir on the Snake River.²¹⁹ Additionally, it is also the largest reservoir in the state of Idaho.²²⁰ In addition to the irrigation and drinking water, American Falls Reservoir provides abundant recreational activities.²²¹ The reservoir is stocked with fish, has boating activities, and offers camping sites.²²² DeWitt’s struggle for his 120 acres has a powerful lesson for landowners. The United States has incredibly broad power in determining whether or not to exercise eminent domain. Knowing the rest of the story illuminates how and why this case came before the Supreme Court. It also further illuminates the complex issues involved in taming the American West, the perils of land ownership, and the unapologetic sovereignty of the United States.

212. *Valley Stands Together for Dam*, AM. FALLS PRESS, Feb. 17, 1922, at 1.

213. See *infra* Figure 8. The new town was built right on top of DeWitt’s farm.

214. ROY L. BLACK, REPORT OF THE ATTORNEY GENERAL OF THE STATE OF IDAHO FOR THE YEARS 1921-1922 (1992).

215. A.H. CONNER, REPORT OF THE ATTORNEY GENERAL OF THE STATE OF IDAHO FOR THE YEARS 1923-1924 (1924).

216. *William H. Taft Papers*, LIBRARY OF CONGRESS, <https://www.loc.gov/collections/william-howard-taft-papers/> (last accessed Mar. 29, 2021). The author looked at every letter and writing from September 1923 to November 1923 to each of the justices on the Supreme Court at the time. While Chief Justice Taft wrote many different letters, none of them were concerned with the 120 acres at issue.

217. I think the American Falls Press Headline “Valley Stands Together For Dam” is a strong indication (combined with the sale / acquisition of the amount of acreage) that the majority of people in American Falls wanted the dam. This also is the realization of President Roosevelt’s vision for Reclamation.

218. Brown, 263 U.S. at 83.

219. *American Falls Reservoir*, RECREATION.GOV (2021), <https://www.recreation.gov/camping/gateways/105>.

220. *Id.*

221. *Id.*

222. *Id.*

X. PHOTO APPENDIX



Figure [7] – A pharmacist's office with adjoining home.²²³

223. See United States Department of the Interior National Park Service, *National Register of Historic Places Registration Form, Foscett. Dr. Wilson. Home and Drugstore*, (last visited May 5, 2021), https://history.idaho.gov/wp-content/uploads/2018/09/Foscett_Dr._Wilson_Home_and_Drugstore_05000337.pdf. These images were available through a document published by the National Register of Historic Places. The author took a screenshot of the images for ease of editing.

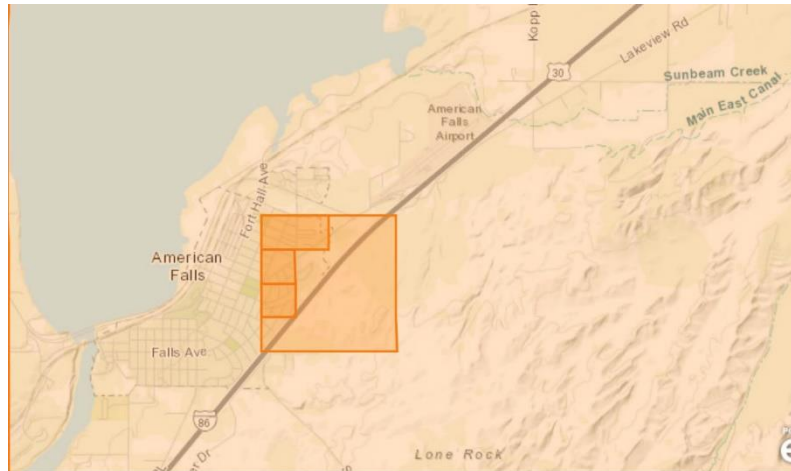


Figure [8]- A detailed look at DeWitt Garrison's homestead. The three boxes on the left-hand side were his 160 acres.²²⁴

224. These images were available via the Bureau of Land Management General Land Office Records. The author took a screenshot of the images for ease of editing and inclusion. See Document of Land Description for Dewitt Garrison Brown, General Land Office Records, U.S. DEPT. OF THE INTERIOR BUREAU OF LAND MGMT., https://glorerecords.blm.gov/details/patent/default.aspx?accession=203137&docClass=SER&sid=dkmhqdc.3yu_ (last accessed Oct. 3, 2019).

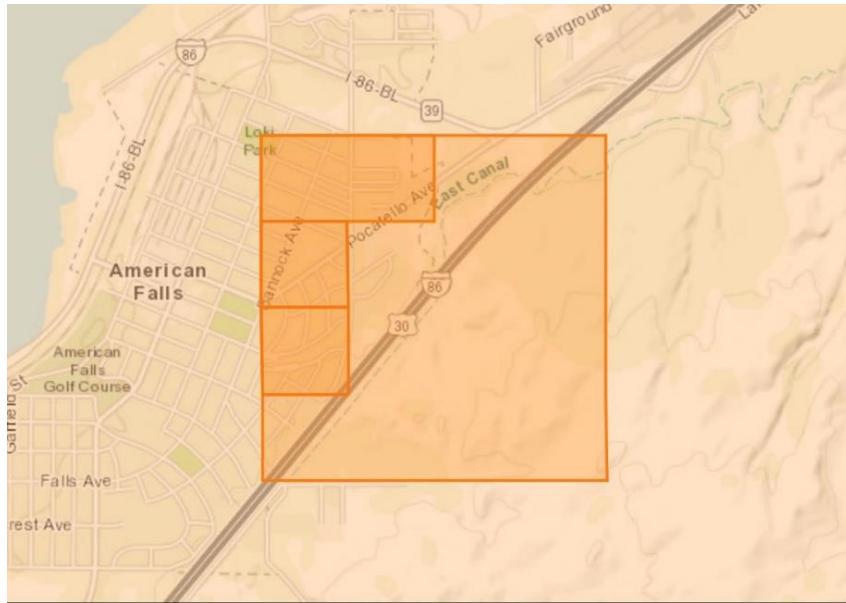


Figure [9] A more detailed look at DeWitt Garrison's homestead. The three boxes on the left-hand side were his 160 acres.²²⁵

225. *Id.*

BROWN V. UNITED STATES: THE GREATER GOOD
BE DAMNED

Bruce Music Company
PHONOS
FLAT DISCS
FOLDING MACHINES
RECORDS
GREET MESSAGES

123 North Main Phone 123 Pocatello, Idaho

R. L. POLK & CO.'S

YOU
Should
Have Had
This
SPACE
—
DON'T
Overlook
Subscribing
to the
Directory
No
Business
Can Be
Successfully
Run
Without
It

Philadelphia Underwriters (Phila.), The Tenth Street Bldg., Philadelphia, Pa.
Phoenix Assurance Co. (London), 20 White Horse Lane, London, E. C. 4, England
Phoenix Assurance Co. (London), 178, Broad Street, London, E. C. 2, England
Phoenix Assurance Co. (New York), 111 N. Wall St., New York, N. Y.
Phoenix Assurance Co. (San Francisco), 100 Market St., San Francisco, Calif.
Phoenix Assurance Co. (Seattle), 100 First St., Seattle, Wash.
Phoenix Assurance Co. (Toronto), 100 King St. W., Toronto, Ont., Canada

INTERPRETERS.
The Vancouver, N. A. (British), 100 N. Main, Pocatello, Idaho, Tel. 252-101.

JEWELERS AND WATCHMAKERS.
J. H. Harrison, 308 W. Center, Pocatello, Idaho, Tel. 252-101.

JUNK DEALERS.
W. H. H. Co., 100 N. Main, Pocatello, Idaho, Tel. 252-101.

LABORATORIES.
Pocatello Chemical Laboratory, 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAND AND MINING ATTORNEYS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAUNDRIES.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAWYERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LEADERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LABORERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAND AND MINING ATTORNEYS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAUNDRIES.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAWYERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LEADERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.


LABORERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

MILLER AUTO PAINTING CO.
E. S. MILLER, Proprietor
FIRST CLASS AUTOMOBILE PAINTING
255 N. 4th Ave. Pocatello, Idaho

CLASSIFIED BUSINESS DIRECTORY—1321

RUDMAN & GOTTBERG
Leading Jewelers

MANUFACTURING
JEWELERS
AND
ENGRAVERS



DIAMONDS
WATCHES
SILVERWARE
CUT GLASS

308 W. CENTER TEL. 1212

JUSTICES OF THE PEACE.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LABORERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAND AND MINING ATTORNEYS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAUNDRIES.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LAWYERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LEADERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

LABORERS.
H. H. H. Co., 308 W. Center, Pocatello, Idaho, Tel. 252-101.

FLORIST
414 West Center

Flowers
Telegraph
Delivery
Service
Pocatello, Idaho

The Pocatello Tribune
The Daily With a Punch
Reaches All the People
DELIVERED EVERY EVENING at 75¢ Per Month

Figure [10] – A city directory listing Mr. Coffin, locating his office at 8 Hub Building in Pocatello, Idaho.²²⁶

226. ANCESTRY.COM (last accessed Nov. 7, 2019).

Idaho Dye Works **EXPERT DYERS AND CLEANERS**
Evening Gowns a Specialty **Repairing and Alterations**
ALL WORK GUARANTEED **PHONE 684** **POCATELLO, IDAHO**

R. L. POLK & CO.'S

SALT LAKE CITY

WE CAN FURNISH YOU ANY DIRECTORY, PUBLISHED OR DAILY.

R. L. POLK & CO.

Pocatello Security Trust Co.
L. H. LATHROP, President **POCATELLO, IDAHO**

Idaho Lumber Company
Successors to LOUX, MCCONNELL & CO.
Dealers in
LUMBER, COAL AND WOOD, CEMENT, LIME AND PLASTER
LATH AND SHINGLES, BUILDERS HARDWARE
AND SUPPLIES
PHONE 656
560 South First Ave., cor. Halliday Pocatello, Idaho

Chas. Peterson **METAL AND GLASS SIGNS**
20 Richards St. Salt Lake City

RUDMAN & GOTTBERG
LEADING JEWELERS
308 W. Center Tel. 1213 Pocatello, Idaho

Figure [11] – A city directory listing Mr. Peterson, locating his office at 8-9 Hub Building in Pocatello, Idaho.²²⁷

227. *Id.* (last accessed Nov. 7, 2019).



Figure [12] – A Washington, D.C., city directory listing Mr. Dyar. It shows his occupation as special assistant to the attorney general, locating his office at room 219, Holly Avenue Northwest, Department of Justice.²²⁸

228. *Id.*

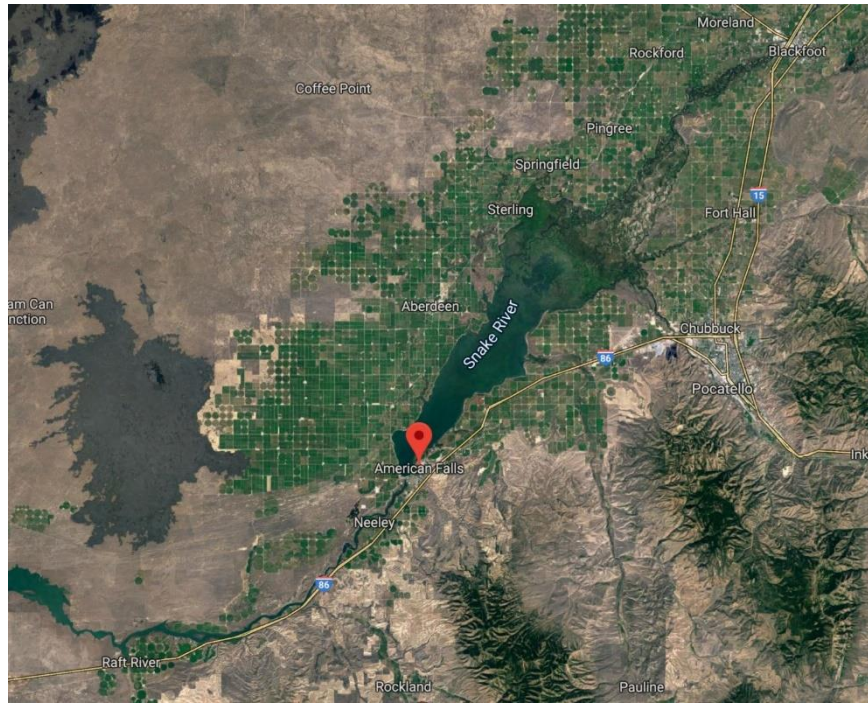


Figure [13] – A satellite view of American Falls, Idaho. Easily seen in this view is the arid earth, the reservoir, and the green irrigated farms.²²⁹

229. Satellite image of American Falls, GOOGLE MAPS, <https://www.google.com/maps/place/American+Falls,+ID+83211/@42.8564197,-113.3115714,101438m/> (navigate to maps.google.com, search for “American Falls, ID,” and click on the satellite image option).



Figure [14] – DeWitt and Roosa’s unassuming markers at Cloverdale Memorial Park in Boise, Idaho.²³⁰

230. The author had a friend in Boise that went and discovered the family’s plots and sent the photo. Paul Lewis, November 12, 2019.