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STATEMENT ON FOREMOST-LUCKY COURT ACTION

The California Department of Agriculture has filed a complaint against Foremost-McKesson, Inc., San Francisco, and Lucky Stores, Inc., San Leandro. The complaint was filed Monday, July 15, in Superior Court, San Francisco.

The complaint calls for an injunction and civil penalties. The civil penalties sought amount to $1,02#,000 against each defendant. The injunction is for violations of the California Milk Stabilization Act involving sales of milk below established minimum prices.

The complaint alleges that Foremost and Lucky entered into an illegal agreement in October, 1965, under which Foremost gave rebates to Lucky on sales of milk. The sales were made at established legal prices but the rebates resulted in reducing these prices below the established minimums, in violation of the California Agricultural Code. The rebates amounted to a total of about $4,400,000 to approximately 175 Lucky stores in California.

The Agricultural Code provides for civil penalties of $500 for each violation. The $1,02#,000 in penalties sought from each defendant cover violations alleged to have been committed in the period from July, 1967, to date. If the courts award these penalties to the Department, the money will go into the milk fund, which is used to administer and enforce California's milk laws.

BACKGROUND

Although this complaint is of much greater magnitude than other legal actions taken against violators of California milk laws, it is by no means an isolated case. Rather, it is part of the Department's continuing program of enforcing California's milk laws.

For example, the Department closed 33 civil actions against milk law transgressors in the period July 1, 1967, through June 30, 1968.

As of July 1, 1968, we have ten actions pending for alleged violations of milk laws. Four more legal actions are in the process of being filed.

In addition, the Department is presently in the process of transmitting 28 legal actions to the Attorney General for filing. All of these actions have resulted from Department investigations into practices within the milk industry in violation of the California Milk Stabilization Act.

Excerpts from "A Summary of the Imperial Valley 160-Acre Limitation Case" issued by Research 2/67

Imperial growers feel that the Valley's economic future is threatened by a lawsuit filed against the IID in the United States District Court in San Diego by U.S. Attorney Edwin L. Miller, Jr., on Jan. 11, 1966, on behalf of Acting Attorney General Ramsey Clark.

The suit seeks to enforce the 160-acre limitation (160AL) written into the 1902 Reclamation Act. The average holding in the Imperial reportedly runs around 1,000 acres. Accordingly, many growers would be forced to sell holdings in excess of 160-acres--and (if the letter of the law is followed) at pre-irrigation land values.

As a result of the suit, Imperial real estate brokers claim they cannot sell land, values are depressed and the assessor has difficulty assessing value. Representatives of Valley growers contend that the 160 AL is utterly uneconomic in this day of factories-on-the-farm, and that the Imperial could revert back to wasteland if the 160 AL is enforced--at great loss to the nation's food producing capacity. (page 2)

Representatives of Imperial farmers claim that the 160 AL does not apply for the following reasons: (1) Perfected vested water rights existed before the 1902 Act was passed, (2) The Imperial was never designated a Reclamation Project under the 1902 Act, (3) the 1928 Boulder Act did not specifically apply the 160 AL to any but government-owned lands in the area, (4) the 1932 contract between IID and the government did not include the 160 AL, and (5)

a letter from Secretary of the Interior Ray Lyman Wilbur, dated Feb. 24, 1933, notified the IID of his opinion, that the 160 AL did not apply to privately owned land in the IID. (page 5)

In summation, it would appear that the IID's legal case is based upon a 1933 letter from the Secretary of the Interior (not a formal legal opinion) which they promoted in emergency circumstances; that the Secretary relied heavily upon exclusion of the 160 AL from the Boulder Canyon Act (repeal by exclusion, which may not legally follow); that the IID has consistently opposed the 160 AL, did not want it included in the Act or its contract; and that the IID and its allies have sought to color the Act, its contract and Wilbur's letter in accordance with their own wishes rather than any objective analysis of the facts and the legal ground.

The moral case is another matter. Imperial growers have built up an agricultural empire of great value to the state and to the country; surely, their productive contribution deserves consideration. If their feeling of insulation from the provisions of the 160 AL was at least in part wishful thinking (encouraged, at least on occasion, by the government), some allowance must be made for the time which passed before the government finally got around to busting their dream.

In conclusion, the question has been raised: Why now? How are the nation's interests to be served by the current Federal suit against the IID?

Assistant Secretary of the Interior Kenneth Holum reportedly explained the government's action as dedicated entirely to the proposition of enforcing the letter of the law. No specific advantage was claimed in carrying out "the intent of the reclamation law" nor any specific gain for "the government's interest" (quoting the language of the government's complaint).

The suggestion has been raised among California farmers that the suit is an attempt by Secretary of Interior Udall to divert Colorado River water from the Imperial to Arizona. While clamping down on the Imperial, Udall is reportedly entering into 25-year leases of government land in Arizona and exempting the leaseholders from the 160 AL.

According to reports, more than 42,000 acres on the Colorado River Indian Reservation near Parker, Ariz. have been leased, and the total is expected to be 107,000 acres eventually. The leaseholders received a guarantee of "irrigation water in the amount of not less than five (5) acre-feet per acre." Some are allowed eight-acre-feet per acre.

The case of Bruce Church is cited. He reportedly owns considerable Imperial property which he would be forced to sell under the 160 AL. However, he has leased 6,400 acres of Arizona land and received guarantee of water. (page 11)