

Report No. 1926
United States Congress House of Representatives

March 1942

Carr China and damage to ware produced
during the construction of the Tygart River Dam

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On the last page, see remarks made by
FDR at the dam's opening

CARR CHINA CO.

MARCH 19, 1942.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. WEISS, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 5625]

The Committee on Claims, to whom was referred the bill (H. R. 5625) to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of the Carr China Co., having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Starting with the word "event" on page 2, line 1, strike out all the language down to and including the word "circumstances" in line 7, and insert in lieu thereof "determination of such claim the United States shall be held liable only to the extent to which a private person would be liable under like circumstances."

The purpose of the proposed legislation is to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of the Carr China Co., of Grafton, W. Va., for losses from damage to its products and trade, alleged to have resulted during the construction of the Tygart River Reservoir Dam in the years 1935 and 1936.

In the first session of this Congress, there was reported by this committee a bill (H. R. 2431) to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of the Carr China Co. This bill was passed by the House and Senate and vetoed by the President, on August 25, 1941, for the reason:

The terms of the bill are very broad and would comprise losses from damage to the company's products and trade. It will be observed that the claimant is not in the position of a riparian owner who has been directly injured by the pollution of the stream by another riparian owner. The position of the claimant is far more remote and indirect.

There is grave doubt whether under such circumstances the Government as a matter of equity and fair dealing should accept liability for damages so consequential as those presented in this instance. A different question would perhaps be presented if the bill contained an express provision, such as is at times included in private jurisdictional acts, to the effect that the Government should be held liable only to the extent to which a private individual would be liable under like circumstances. It is conceivable that the broad and somewhat indefinite phraseology of the bill under consideration might result in imposing on the Government a liability far greater than that which would devolve on a private individual in parallel circumstances.

After the veto, there was introduced H. R. 5625, the language of which was designed to overcome the objections of the President.

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This bill was submitted to the Attorney General of the United States for report and recommendations, which he concluded:

The bill under consideration apparently attempts to meet the President's objections. The language employed, however, is somewhat broad and indefinite, and in the event the bill receives favorable consideration, it is suggested that it be amended by striking out the second sentence and inserting in lieu thereof the following sentence:

In the determination of such claim the United States shall be held liable only to the extent to which a private person would be liable under like circumstances.

Your committee has amended the legislation to conform to the wishes of the Attorney General, which it is felt will meet the objections of the President.

Appended hereto is House Report No. 680, Seventy-Seventh Congress, first session, House Document No. 364, Seventy-Seventh Congress, first session, together with report dated September 6, 1941, from the Attorney General of the United States, reporting on the pending legislation.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., September 6, 1941.

HON. DAN R. MCGEEHEE,
Chairman, Committee on Claims, House of Representatives,
Washington, D. C.

MY DEAR MR. CHAIRMAN: This acknowledges your letter of September 3, 1941, requesting my views relative to a bill (H. R. 5625) to confer jurisdiction on the Court of Claims to hear, determine, and render judgment on the claim of the Carr China Co. of Grafton, W. Va., for damages to its products and trade, alleged to have resulted during the construction of the Tygart River Reservoir Dam, due to the excess amount of lime in the river, said to have been caused by

cement used in the construction of the dam.

The files of this Department do not disclose sufficient facts concerning the merits of the bill to enable me to make any recommendation concerning it.

It should be observed, however, that the President, on August 25, 1941, vetoed a somewhat similar bill for the relief of this claimant (H. R. 2341, 77th Cong.). In his veto message the President stated (Congressional Record, vol. 87, p. 7403):

"A different question would perhaps be presented if the bill contained an express provision, such as is at times included in private jurisdictional acts, to the effect that the Government should be held liable only to the extent to which a private individual would be liable under like circumstances."

The bill under consideration apparently attempts to meet the President's objection. The language employed, however, is somewhat broad and indefinite, and in the event the bill receives favorable consideration, it is suggested that it be amended by striking out the second sentence and inserting in lieu thereof the following sentence:

"In the determination of such claim the United States shall be held liable only to the extent to which a private person would be liable under like circumstances."

Sincerely yours,

FRANCIS BIDDLE,
Attorney General.

[H. Rept. No. 680, 77th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 2431) to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon, the claim of the Carr China Co., having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Line 3, strike out all the language after the enacting clause and insert in lieu thereof—

"That jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render judgment upon the claim of the Carr China Company, of Grafton, West Virginia, for compensation for losses from damage to its products and trade, alleged to have resulted during the construction of the Tygart River

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Reservoir Dam in the years 1935 and 1936, due to the excess amount of lime in the Tygart River coming from cement used in the construction of such dam. Such suit shall be brought within one year from the date of the enactment of this Act."

Amend title so as to read: "A bill to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of the Carr China Company."

The purpose of the proposed legislation is to confer jurisdiction upon the court of claims to hear, determine, and render judgment on the claim of the Carr China Co. of Grafton, W. Va., for the alleged losses resulting from damage to its products and trade during the construction of the Tygart River Reservoir Dam.

During the years 1935 and 1936 the United States Corps of Engineers let the contracts for the construction of the Tygart River Reservoir Dam, Grafton, W. Va.; that in the process of building this dam the procedure was to build cofferdams and then to build the rather regular construction up until it reached the ordinary high water level. The construction is built up by pouring sections

of concrete about 8 feet deep, allowing this to dry, and then pouring other sections over it; that after these pourings were made, water from a hose under high pressure was played on the surface of the newly poured concrete. The purpose of this was to assist in the curing process as the concrete settled and the other was to get a clean surface to take care of the next pouring above that so as to make a good joint there. In playing that water on the concrete all of the loose portions of the cement and lime were washed off the concrete and down into the cofferdam. There it accumulated until the structure reached high water level.

The saturated water caused by the cement washings was removed from the cofferdam by a centrifugal pump and passed out in large volume into the bed of the stream just below the cofferdam, and at this point there was located the intake pipe of the city water system, therefore, allowing the lime water to enter the city water system, which water was used by the Carr China Co. in the manufacture of their products. The water was not observed by the pottery people, and they did not discover any difference in their product until it was sent out in the channels of trade. Upon use, the pottery glazed and cracked and therefore was returned to said company. The Carr China Co. was forced to replace all damaged pottery, together with the expense of shipping to and from their customers.

The Carr China Co., after first discovering the damage to its products, notified the War Department of this condition, and Captain Potter, an Army engineer, after hearing the complaint of the Carr China Co., had water brought from above the dam directly to the plant, thereby further eliminating damages to the products of the Carr China Co. It may be noted that the Carr China Co. has never, either before or since the building of the dam, experienced a loss of this nature.

Your committee, after carefully considering the evidence presented, and holding long hearings, was of the opinion that the bill as originally introduced could not be considered by it because of the chemical and other technicalities which should be brought into consideration. Also, that with the number of bills submitted to this committee for its consideration, it was found impossible in fairness to other claims, to hold a number of hearings on this one and thereby not act upon the others. For these reasons it was adopted by unanimous consent of the full committee to amend this bill giving the Carr China Co. the right to have its case considered by the Court of Claims where it will be given the consideration that is justly due it.

Appended hereto is the report of the War Department, together with other pertinent papers.

WAR DEPARTMENT,
Washington, April 10, 1941.

HON. DAN R. McGEHEE,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. McGEHEE: Reference is made to your letter of March 10, 1941, transmitting for report H. R. 2431, Seventy-seventh Congress, first session, a bill for the relief of the Carr China Co.

On July 10, 1939, report on a similar measure, S. 774, introduced during the first session of the Seventy-sixth Congress, was forwarded to the chairman, Committee on Claims, United States Senate. The report on that measure is equally applicable to the bill now under consideration and is quoted as follows for the information of your committee:

"Further reference is made to letter of May 4, 1939, received from your committee, transmitting communication of April 27, 1939, directed to Hon. Allen J. Ellender by Mr. W. Merle Watkins, attorney, Grafton, W. Va., together with affidavits and resolution, in relation to S. 774, Seventy-sixth Congress, first session, a bill for the relief of the Carr China Co., concerning which report was submitted to the committee on May 11, 1939. The report follows:

"Under the terms of the bill it is proposed to authorize payment in the sum of \$48,142.80 to the Carr China Co. of Grafton, W. Va., in full satisfaction of its claim against the United States for damage alleged to have been sustained in the manufacture of china products during the years 1935 and 1936 as a result of increased lime content in the water supply due to the placement of concrete in connection with the construction of the Tygart Dam, Grafton, W. Va.

"An investigation conducted by this Department disclosed that the Carr China Co. is located on the right bank of the river approximately three-fourths of a mile below the Tygart Dam. The water used in preparing the glaze on the china-ware was obtained from the city of Grafton filtration plant, which secured its water supply direct from the river about 500 feet downstream from the dam. During the construction of the dam an undetermined amount of cement washed into the river. Following the completion of each pour of concrete the surface was washed down with a high pressure hose to remove laitance. This laitance, which was washed into the river, contained a considerable amount of cement and possibly resulted in an increased lime content in the water.

"In previously filing claim with this Department in an amount estimated at \$35,000 to \$40,000, the claimant submitted no data in substantiation of the alleged losses. The Department, therefore, has no means of checking the extent of the damage claimed.

"The Tygart Reservoir Dam was constructed in the aid of navigation under authorization contained in the River and Harbor Act approved August 30, 1935. There has been no permanent taking or physical invasion of the claimant's property rights, and since any damage resulting was indirect or consequential and incident to the legitimate and proper exercise of governmental powers for the improvement of navigation, the Department recommends that the proposed measure be not enacted into law."

"The affidavits set forth three methods by which the procedure of washing laitance into the river allegedly could have been avoided. These methods, none of which are practicable, are discussed as follows:

"(1) One method proposed in the affidavits was to extend the intake pipe of the waterworks to a point upstream of the dam, and thus obtain water free from cement washings. This would have necessitated extending the intake pipe 800 to 900 feet upstream, through the heart of the construction area of the dam. This pipe line would have had to be moved from location to location as the work progressed, would have interfered considerably with construction operations, and would have been exposed to probable destruction by floods on a number of occasions.

"(2) A pumping station located above the dam, with a pipe line leading downstream through the construction area to the city water plant, would have been subject to the same limitations as discussed above for the extension to the intake pipe. In addition, the pumping plant would probably have been expensive to install, and difficult to maintain in continuous operation.

"(3) To have cased the water, carrying cement washings, to a point downstream of the intake of the water works, would have been wholly impracticable. During a normal day's operations, for the major part of the construction period,

cement washings were discharged into the river at a number of locations, principally on the upstream side of the dam. To have attempted to provide for casing all of these washings would have constituted an insuperable construction difficulty. Also, the sand and gravel carried in the washings would have been a continuous source of trouble due to their tendency to dam or clog the casings.

"In addition to the general conditions discussed above, the affidavits are considered individually as follows:

"The affidavit of Mr. E. O. Waugh outlines the following:

"(1) That the dam was constructed within a cofferdam, and that copious washings from the concrete collected therein.

"(2) That the water, saturated with concrete washings, was cast into the river just below the cofferdam and immediately above the intake pipe for the city water plant.

"(3) That the city of Grafton was put to very heavy additional expense in the purchase of chemicals which were used in the filtration operations within the city water plant.

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"(4) That the Government agencies made an effort to take care of the city's water supply as it was to exist after the completion of the dam.

"(5) That an extension to the intake could have utilized existing openings through the dam designed to take care of the flow of the river.

"The district engineer reports the following findings in regard to Mr. Waugh's contentions:

"(1) (a) That the dam foundation was constructed in two cofferdams, the first enclosing the right half of the river, and the second, constructed after the removal of the first, enclosing the left half. The cofferdams were removed when the dam reached such height that the cofferdams were no longer required.

"(b) That the quantity of water used in washing concrete surfaces could hardly be termed 'copious.' A large part of the water which was continuously being pumped from the cofferdam entered it as leakage.

"(2) That all concrete for the major portion of the dam was poured so that the surfaces were sloping on a 10 percent grade, sloping up from upstream to downstream. When these surfaces were washed, the water ran off to the upstream side of the dam. If the work was, at the time, progressing in a cofferdam, the washings would, to a large degree, be picked up by pumps located along the upstream arm of the cofferdam, which pumps discharged into the river several hundred feet above the city water intake. If work was progressing outside of a cofferdam, the washings would be discharged directly into the river above the dam. The water which Mr. Waugh observed being discharged into the stream on the downstream side of the cofferdam consisted primarily of leakage water, with a minor quantity of washings, at times derived from small, auxiliary structures.

(3) That an analysis made of the extra expense to the city for chemicals purchased for water treatment during the construction period reveals that the maximum probable increase in cost for the 3-year construction period was \$786.

(4) That the water supply provisions made in the dam were for use after construction was complete, and were not available for use before that time. The desirability of such intakes was dictated by a knowledge of conditions which would obtain after construction was complete and the reservoir was partially filled.

(5) That two diversion tunnels were maintained through the dam until construction was complete. These tunnels were not formed and ready for use until

approximately 6 months after concrete placement had been started, by which time much of the damage to the product of the Carr China Co. had allegedly been incurred. Even after the tunnels were placed in use, Mr. Waugh's retrospectively suggested plan of using the tunnels as a location for a temporary water supply line would not have been feasible. During high water stages, water discharged through these tunnels at high velocity, carrying with it a considerable quantity of heavy debris. The water from the tunnels discharged into the basin below the dam with such force that a considerable quantity of bedrock was torn out in the stilling basin area. It is believed that it would have been necessary to make a very expensive pipe installation to withstand such forces.

"The affidavit of Mr. James E. Reed submits no facts not already considered above, except to state that as a result of the construction, there was a noticeable taste, odor, and sometimes color in the water. Prior to the submission of the instant affidavits, no complaints regarding the taste, odor, or color of the water were submitted to the office of the district engineer.

"The only point brought out in the affidavit of Mr. Harold Weekly not already considered consists of a statement that two to three times the normal quantity of alum had to be used during the construction of the dam in treating the water supply. This allegation is not supported by the city's records. The following summary is of interest in this regard:

Material	Pounds added per million gallons of water treated (average)	
	Before construction	During construction
Lime.....	154.72	106.39
Alum.....	99.35	162.89
Chlorine.....	2.26	2.73

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"The affidavits of Mr. Frank B. Cather and Mr. P. F. Gillispie offer no new facts for consideration.

"The affidavit of Mr. Charles M. Franzheim deals with the deleterious effect of lime in pottery manufacture. The statements contained therein tend to imply that laitance in cement washings means calcium carbonate. This is not necessarily true as laitance is for the most part calcium hydroxide, which on decomposing does not release carbon dioxide, the allegedly injurious agent.

"The additional evidence submitted does not indicate that the construction of Tygart Dam directly caused injury to the Carr China Co.

"The enclosures accompanying your letter are returned herewith as requested." In view of the foregoing, it is recommended that the measure be not enacted.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

CARR CHINA Co.,
Grafton, W. Va.

STATEMENT OF CLAIM IN SUPPORT OF HOUSE BILL No. 2431

The Carr China Co. is engaged in the manufacture of chinaware at a plant which has been operated for 25 years. The location of the plant is on the Tygarts Valley River a short distance south of Grafton, W. Va., approximately three-quarters of a mile below the Tygarts Valley Dam recently constructed for flood prevention. This dam is said to be one of the largest structures of its kind east of the Mississippi River and was built during the calendar years of 1935, 1936, and 1937. The products manufactured by the Carr China Co. are what is known as glazed ware, both plain white and decorated. This ware is sold all over the country and has a recognized and established market.

In the manufacture of chinaware, the character of water used in mixing the clay is of vital importance. The Tygarts Valley River was originally practically a mountain stream and the natural quality of this water was especially good and had a large influence in the original establishment of this plant at Grafton. The water has been obtained through the Grafton City water system, whose water plant and intake pipe are located directly below the present location of the Federal dam. The intake pipe for this water plant extends well out into the bed of the stream and is about 500 feet below the dam proper. The water is filtered by the city of Grafton before being pumped into its mains.

During the construction of this dam the pottery of the Carr China Co. was operated regularly and a large amount of its products was placed upon the market through its regular channels to old customers and naturally certain new customers. Toward the end of the year 1935 and thereafter complaints were received as to the quality of the ware, and upon investigation, it developed that the glazing upon this ware was extremely defective. Investigation developed that this was the direct result of the chemical content of the water used in the manufacture of the ware. Different ceramic engineers recognized as expert authorities were separately brought to the plant to ascertain the cause of the trouble and to correct it, if possible, and it was absolutely agreed by these various experts that the chemical composition of the water supplied from the Tygarts Valley River was the direct cause of the damage to this company's product. It was further developed that the origin of this injurious chemical condition was the washing from the concrete surfaces of the pourings into the dam structure. After each pouring of concrete the surface was washed down with a high pressure hose to remove what is called the "laitance." In a structure of the enormous size of this dam the applying of the water through the high pressure hose at various points resulted in a very high saturation of the river water. As this was done immediately above the intake pipe to the city water plant, the river water was thus drawn into the city water system at a place where it was most highly saturated.

There is absolutely no question as to the cause of this damage to the ware produced by the Carr China Co. No such condition existed before the construction of the dam and no similar condition has existed since the completion of the dam. The opinion of the ceramic engineers was conclusive also as to this point. In spite of every effort made by the Carr China Co. to improve this condition, it was impossible to prevent it. The matter was called to the attention of the United States engineers in charge of the erection of the dam. Complaint was also made to the contractor who was erecting the dam. No remedy was obtained

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from either source. The results of this very unusual damage to the chinaware naturally did not fully develop until long after the ware had been manufactured, shipped to jobbers, transferred from the jobbers to the retailers, and finally came

into the hands of the ultimate consumers. It was the actual use of the ware that showed the damage. The resulting losses to this manufacturer consequently did not develop at once but were revealed through the course of the subsequent months and after a year or more of time.

Large shipments of this ware were returned to the Carr China Co. Some thought was given to trying to market this damaged ware as "thirds," that is third quality. But this was found altogether impracticable and the effort resulted most unfavorably and reacted against the reputation of this manufacturer.

ITEMS OF DAMAGE

From the records of this company the damaged ware which resulted in a total loss amounts to 37,320 dozens. The sale price of all this ware has been averaged and is \$1.29 per dozen. The total monetary loss actually sustained by the Carr China Co. therefore as shown by its books and records is the sum of \$48,142.80. There is absolutely no recoupment against this loss.

The above figure is the amount we claim the United States Government should reimburse this company for, as a direct result of the erection of the Tygarts Valley Dam. There is a large additional loss, the exact amount of which cannot be definitely determined now because it will extend into the future, and we must fairly say that some of it might have been due to other causes, in the fact that firms, both old customers and new customers, have received this inferior quality of damaged ware and refused it, have been lost to us as customers. The injury to our reputation and standing as a manufacturer is difficult to calculate but is nevertheless a serious and large damage. We can conservatively place this item of damage between \$10,000 and \$15,000. The proposed bill does not cover this item in any way and we are perfectly willing to bear this damage as an incident to our business, if we are relieved from the direct record loss of \$48,142.80.

We have samples of the damaged ware in our possession that were returned to us by customers.

The damage to our ware extended generally through the years 1935 and 1936. In a business of our size, under generally unfortunate conditions in the country, this loss is a very material one and it is felt that we should not be required to bear it since it occurred through no fault of our own.

Respectfully submitted.

W. J. FREY,
Vice President Carr China Co., Grafton, W. Va.

STATE OF WEST VIRGINIA,
County of Taylor, to wit:

W. J. Frey, being duly sworn, says that the facts and allegations contained in the foregoing statement of claims are true and correct to the best of his knowledge and belief.

W. J. FREY, Vice President.

Subscribed and sworn to before me this 28th day of February 1941.

[SEAL]

W. MERLE WATKINS, Notary Public.

My commission expires April 24, 1941.

STATE OF WEST VIRGINIA,
County of Taylor, to wit:

E. O. Waugh, being duly sworn, says that he was mayor of the city of Grafton in said Taylor County, for the 3-year term beginning April 1, 1935, and ending March 31, 1938. This term of office covered practically the entire period during which the Tygart Dam was constructed. This dam was built immediately above

the municipal water plant of the city of Grafton and part of the dam and the construction work was upon city property. The intake pipe of the city water plant extends a considerable distance out in the Tygarts Valley River immediately below where the cofferdam was located. The dam was constructed within this cofferdam. During the construction of the concrete dam streams of water were constantly played upon the new concrete surfaces and copious washings from the concrete collected inside the cofferdam. These washings were saturated with a

chemical matter, principally alkaline, which naturally arises in concrete construction. Pumps of large capacity were placed on the walls of the cofferdam and the water within the cofferdam saturated with the concrete washings were cast into the river just below the cofferdam and immediately above the intake pipe for the city water plant. The water drawn into the city water plant was thus heavily charged with the concrete washings. The city of Grafton was put to very heavy additional expense in the purchase of chemicals which were used in the filtration operations within the city water plant. By this large increase in the use of chemicals in the filtration operations, the water was brought to a condition to satisfy the requirements of the State Health Department as the purity of the water for domestic consumption. This large additional amount of chemicals in the water, however, remained, and the character of the water—that is, its taste and odor—were much different during the dam construction work.

During the year 1936, when the heaviest construction work was being done upon the dam, the natural flow of the water in the Tygarts Valley River was noticeably decreased because of a very dry season. The reduced amount of water flowing in the river, combined with the increased amount of cement washings developed in the heavier construction of the dam, caused a very heavy saturation with chemical washings of the water drawn into the city water system. The representatives of the Federal Government in charge of the construction work of the dam were well acquainted with the location of the city water plant and its intake pipe. Extensive explorations had been made of the entire river system in the vicinity of the dam location before any construction work had been done, and all of the natural features of the location, as well as developments made by man were ascertained. The attention of the authorities in charge of the dam construction was frequently called to the condition of the city's water supply referred to herein but no serious change was developed by those parties who were constructing the dam. The Government agencies did make an effort to take care of the city's water supply as it was to exist after the completion of the dam, by constructing within the dam itself a new water main which is now in operation. This intake main draws water from above the dam and can be operated from three different elevations. These facts convince the undersigned that the agencies of the Federal Government knew at all times the location of the city water intake pipe and the effect of the chemical washings out of the concrete during the dam's construction must have been at all times within the notice of the officials of the Federal Government.

The injurious effects to the water system of the city of Grafton could have been avoided at no great expense in two ways. First: The intake pipe could be connected to the pure water above the dam by running an extension through openings in the dam. Such openings were in existence throughout the dam construction to take care of the flow of the river and to avoid flooding the Government workings. Second: The pumps which were used to drain the accumulated and saturated washings from the concrete within the cofferdam could have been connected to drains which would carry the cement washings to a point in the river

below where the intake pipe was located. In the opinion of the undersigned either of these methods would have avoided practically all of the injurious effects on the city water supply, but neither of these simple precautions were taken by the Government agencies.

In the opinion of the undersigned the construction of the dam should have included at least one of these reasonable and prudent precautions. It was also within the knowledge of the officials of the Federal Government in charge of the dam construction that the Carr China Co. received its water supply from the city of Grafton. The only approach to the location of the dam was by a road which passed the plant of the Carr China Co. This pottery is located in a settled community, just outside of the city of Grafton, just below the dam. All of the buildings erected by the Federal Government in connection with this dam construction, including a hotel, offices for the engineers and contractors, dwelling houses for Government officials, and numerous other buildings used in connection with the dam construction, were all supplied with city water. The officials of the Federal Government in charge of the dam construction, must have known all of the facts herein stated.

As mayor of the city of Grafton during the period mentioned herein, the undersigned had it within his official duties to deal with the city water system and negotiate various matters with the representatives of the Federal Government which arose during the construction of the dam. The undersigned personally called the attention of various officials of the Federal Government, identified

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with the construction of the dam, to the effects herein referred to of the cement washings upon the city water supply.

E. O. WAUGH.

Subscribed and sworn to before me this 25th day of February 1941.

[SEAL]

JOHNSON SWINBURN, *Notary Public.*

My commission expires April 13, 1949.

STATE OF WEST VIRGINIA,
County of Ohio, to wit:

Charles M. Franzheim, being duly sworn, says that he has been associated with the pottery industry for 40 years, and is the executive head of the Chas. M. Franzheim Co., located at Wheeling, W. Va., with a ceramic education in two ceramic schools, and frequently consults with potteries on questions involving the ceramic industry, that it is the business of affiant to know the composition of clays and other ingredients which are used in the production of pottery products, and affiant is familiar with the chemical problems involved in pottery manufacture.

Lime in both body and glaze of pottery products will start to evolve gas at temperatures between 1085° and 1706° F. When lime breaks down it is split up into 44 percent carbon dioxide gas and 56 percent calcium oxide. Thus it is the gas so involved which does the damage to body and glaze, and can cause blisters, specking, boiling, and other ill effects. It is a very insidious product to deal with unless under thorough control.

While lime is introduced into both body and glaze, this lime is known as paris white, and is the most impalpable material used in body and glaze, and it is used there in order to give better melting and better vitrification to the product.

The amounts used in ordinary manufacture are the maximum amounts in order to give desired results. Now when you add to this other lime in a coarse form, much damage can be done to the product, not only because of the excess quantity of lime in the ware, but because of the uncertain quantities, which means uncontrolled quantities, so that a manufacturer would have no knowledge of how much lime he is actually getting in a particular batch. Affiant recalls seeing some of the ware made at the Carr China Co. during the time the Federal Dam just above the plant was being constructed, and recalls that the officials of the Carr China Co. were very much distressed about the large losses they were having at that time, and were unable to trace the origin of these losses, but eventually the cause of the damage was determined to be the pouring of cement at the dam, especially during the low stages of the river. Naturally the water which would drain from this work would be highly contaminated with lime, and when this water was used in the body and in the glaze of the product of the plant, large quantities of lime were introduced into the ware and would naturally have ill effects on the product.

Lime is one of the most treacherous things that has to be dealt with in the pottery trade, and any raw materials which contain variable quantities of lime even in small amounts can prove very disastrous to the product because lime in itself increases vitrification very rapidly with the use of increased quantities and has other injurious effects disastrous to a pottery such as referred to above.

The water conditions which affected the Carr China Co. operations during the period when the cement washings were deposited in the river and large quantities of them pumped into the city water mains make affiant conclude that it was difficult to have any good ware produced at all, and there is no doubt but that these causes produced much imperfect ware and there would inevitably be small blibs and bubbles and other small imperfections all through the product, not always conspicuously noticeable.

In the opinion of affiant, once it is established that quantities of cement washings came into the water supply used in the manufacture of pottery at the Carr China Co., it necessarily follows that the chemical proportion of the ingredients entering into the manufacture of ware became out of balance, and a damaged product necessarily resulted.

C. MERK FRANZHEIM.

Taken, subscribed and sworn to before me this 4th day of March 1941.

[SEAL]

H. W. CUNNINGHAM,

Notary Public of, in and for Ohio County, W. Va.

My commission expires November 10, 1944.

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STATE OF WEST VIRGINIA,

County of Taylor, to wit:

Harold Weekly, being duly sworn, says that he is now and has been for the past 7 years superintendent of the filtration plant operated by the city of Grafton in connection with its waterworks, that in the process of filtration there is added to the water certain quantities of lime and alum, and during the construction of the Tygart Dam immediately above the city waterplant the natural quality of the water in the Tygarts Valley River was greatly changed because the cement used in the dam construction was constantly washed down by streams of water played upon its surface and the cement washings therefrom were deposited in the river just above the intake pipe of the water plant. As a result of this condi-

tion, particularly in the lower stages of the river, the water supplied the city of Grafton was strongly saturated by these cement washings and from two to three times the quantity of alum had to be used during the construction of the dam as was normally used before. This materially altered the chemical qualities of the water used by consumers supplied by the Grafton water system.

The attention of the Government authorities was called to this situation at different times by this affiant as well as by other city officials but nothing was done about it. Before the dam was constructed representatives of the contractors as well as the Government visited the city water plant and examined its situation with respect to the water supply, location of the intake pipe, and other features. The intake pipe extends about one-third of the way across the river and is just below where the flood control dam is erected.

During the dam construction the contractors procured water for their own purposes, and especially to supply their cement mixers from a point above the dam by locating their own pumps on the river bank. In the opinion of affiant, the injury to the city water supply could have been prevented by the installation of a pump of moderate size a short distance above the dam and a water line from 8 to 12 inches in diameter connected from such a pump to the city water system. About 1½ million gallons of water are pumped at the city water plant daily and the installation of the equipment suggested would not have been of very great expense as compared with the effect on the city water supply. The effect could largely have been avoided also by carrying the cement washings from the cofferdams to a point down river below the intake pipe of the city.

HAROLD WEEKLY.

Subscribed and sworn to before me this 25th day of February 1941.

[SEAL]

W. MERLE WATKINS,
Notary Public.

My commission expires April 24, 1941.

STATE OF WEST VIRGINIA,

County of Taylor, to wit:

Frank B. Cather, being duly sworn, says that he was superintendent of the water department of the city of Grafton for years and has held the office of city commissioner of said city in charge of public works, including the water department, that he was superintendent of the waterworks department at the time the present city pumping system was constructed and is familiar with said water plant and all of its features, that he was present at the installation of the intake pipe to said water plant, and the operation of said plant was under his supervision for many years, and he is now familiar with said plant. For a number of years past, and at the present time, the undersigned has been the owner and operator of a coal mine near the city of Grafton and has furnished the coal used by the city in its water plant and delivered said coal at this plant and furnished such coal during the time the said flood-control dam was being constructed immediately above the city water plant. The undersigned has installed many water lines, including mains and extensions, in connection with the water system of the city of Grafton and is familiar with the proper methods of installing such water pipes and mains. The undersigned is also familiar with the Tygarts Valley River and particularly with that portion where the flood-control dam has been constructed and where the city water intake is located.

The undersigned observed that during the construction of the said dam, it was the practice to wash down the concrete while it was curing and that large quantities of such washings accumulated in the cofferdams, and that such washings were pumped out of the cofferdams immediately above the city intake pipe. It was quite apparent that the water that came into the city pumping station was

saturated to quite a high degree with the chemicals which had been washed off the concrete which went into the dam. The entrance of these washings into the city water system through its intake pipe could have been avoided with no very great expense by connecting the city's intake pipe to the uncontaminated water in the river above the dam. Another method could have readily been employed also. If the pumps which drew the cement washings out of the cofferdams had been connected to pipes extending at a point down the river below the intake of the city water plant, there would have been no very great expense and the mixing of these concrete washings with the city water supply could have been avoided.

The city's intake pipe is easily seen from the banks of the stream, from the site of the cofferdam, or from most any point where the dam was constructed. At low-water stage portions of the intake pipe are very close to the surface of the river and could be seen by anyone in the vicinity.

The undersigned has lived for many years in the city of Grafton and lived there during the period of the dam construction. The presence of additional chemical elements in the water supply was very apparent to all domestic consumers at that time. The taste, odor, and sometimes the color disclosed an unusual condition in the water supply.

FRANK B. CATHER.

Subscribed and sworn to before me this 24th day of February 1941.

[NOTARIAL SEAL]

MARGARET C. MORAN,
Notary Public.

My commission expires April 3, 1949.

STATE OF WEST VIRGINIA,
County of Taylor, to wit:

P. F. Gillispie, being duly sworn, says he is now mayor of the city of Grafton in said Taylor County, having succeeded E. O. Waugh on April 1, 1938; that the Carr China Co. is one of the most valuable industrial plants in the city and has employed large numbers of skilled workers as well as semiskilled and unskilled workers during the entire period of the present depression. Its pay roll has been of material assistance in this community in supply employment to large numbers of persons and has been a marked factor in lessening the effects of the industrial depression in this city. This company has recently made large improvements in its plant and we are informed that it contemplates still larger improvements. It has a fine reputation for producing ware of high quality and for its honorable dealings in the trade. We are informed that the injury to its product due to the change in the quality of the city water during the construction of the dam and caused by cement washings being carried from the dam into the city watersupply has caused a serious loss to this concern.

As a matter of justice, and particularly as a matter of encouragement to the Carr China Co. in expanding its plant and continuing to give work to a large number of persons in this community, the undersigned feels that this concern should be fairly compensated for the damage to its business occasioned by the water supply of this city being injured by reason of the construction of the Tygart Dam.

P. F. GILLISPIE, Mayor.

Subscribed and sworn to before me this 25th day of February, 1941.

[NOTARIAL SEAL]

W. MERLE WATKINS,
Notary Public.

My commission expires April 24, 1941.

STATE OF WEST VIRGINIA,

County of Taylor, to wit:

James E. Reed, being duly sworn, says he was city commissioner of the city of Grafton from April 1, 1935, to March 31, 1938, and was in charge of the department of public works, including the city water system during that period. Prior to serving as such city commissioner the undersigned had been employed by the city in a similar capacity and since his term as such city commissioner has been likewise employed. The undersigned knows that during the construction of the Federal flood-control dam immediately above the city water plant, the washings from the curing cement, in very large quantitted accumulatee in the cofferdam used

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CARR CHINA CO.

in the dam construction and were pumped out of the cofferdam and thrown in very large volume into the river immediately above the intake pipe to the city water plant. After the dam was built above water level and the cofferdams were removed, the washings of the cement continued until the dam was completed, and these washings likewise entered the river immediately above the city's intake pipe. During much of the period of the heavy construction of the dam, the water in the river was at a low stage and the saturation of the river water was the cement washings was increased to a very large degree. The presence of this large portion of chemical matters washed from the curing concrete seriously affected the quality of the city's water and in the filtration process the city had to add large quantities of other chemicals in an effort to neutralize the alkaline additions coming from the cement washings in order to render the water suitable for filtration and domestic consumption. But the quality of the water was entirely changed due to these causes, and there was a noticeable taste, odor, and some times color in the water.

This matter was called to the attention of the Government officials in charge of the dam construction at different times, but the effects continued. The undersigned has installed water mains and connections for the city of Grafton and is familiar with the entire water system. The Federal Government could have avoided this addition of chemical matter to the city's water supply by extending the water main to the clear water above the dam, or by carrying the cement washings to a point in the river below the intake pipe. This was not done.

JAMES E. REED.

Subscribed and sworn to before me this 25th day of February, 1941.

[NOTARIAL SEAL]

W. MERLE WATKINS,
Notary Public.

My commission expires April 24, 1941.

RESOLUTION OF THE TAYLOR COUNTY BOARD OF TRADE

Whereas the Taylor County Board of Trade desires the encouragement of industries in Taylor County, including the city of Grafton, where about one-half of the population of said county is located, and is especially concerned as to the well-being and prosperity of all business concerns which give employment to the citizens of the community, including Carr China Co. which has been operating for years a successful pottery just outside the corporate limits of the city of Grafton and just below the Tygart Dam; and

Whereas it has come to the attention of the board of directors of this board of

trade that incident to the construction of the Tygart Dam a very serious injury has been done to this pottery by the injurious effect cement washings produced at said dam has had upon the city water supply during the dam construction, and large quantities of ware manufactured by this pottery have been faulty and were returned after delivery to the customers of the Carr China Co. when defects in the manufacture due to these causes were discovered, and this has resulted in large financial losses to the Carr China Co. and serious injury to the reputation of this company and its product; and especially since the board of directors is vitally concerned with all agencies which furnish employment and produce jobs in this community, such as the Carr China Co. has done; therefore, be it

Resolved by the board of directors of the Taylor County Board of Trade, That the Congress of the United States be requested to compensate fully and adequately the Carr China Co. for any losses which this company has sustained by reason of the construction of the Tygart Dam, and especially those losses that have been occasioned to this concern by reason of any injurious substances which entered the water supply of the city of Grafton from the cement washings produced in the dam construction; and be it further

Resolved, That duly certified copies of this resolution be sent to our representative in the Senate and House of Representatives of the United States and to such committees thereof as may have such matters in their proper consideration.

The foregoing is a true copy of the resolution adopted by the board of directors of the Taylor County Board of Trade on the 9th day of April 1939.

HUGH R. McPHAIL,
Secretary of the Taylor County Board of Trade.

CARR CHINA CO.

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[Document No. 364, 77th Cong., 1st sess.]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RETURNING WITHOUT APPROVAL THE BILL (H. R. 2431) TO CONFER JURISDICTION UPON THE COURT OF CLAIMS TO HEAR, DETERMINE, AND RENDER JUDGMENT UPON THE CLAIM OF THE Carr China Co.

To the House of Representatives:

I return herewith, without my approval, a bill (H. R. 2431) to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of the Carr China Co.

It appears that during the construction by the War Department of the Tygart Valley Dam near the city of Grafton, W. Va., surplus concrete was from time to time washed into the river, thereby resulting in an increased lime content of the water.

The city of Grafton used the river water for its water-supply system. The Carr China Co. maintained a plant for the manufacture of chinaware near Grafton and drew its water from the city water supply. It is claimed that because of the increased chemical content of the water the glazing on the chinaware manufactured by the claimant became extremely defective and the claimant was constrained to accept returns of a considerable amount of merchandise sold by it to its customers.

The bill proposes to permit the company to bring suit against the United States in the Court of Claims for damages alleged to have been so sustained.

The terms of the bill are very broad and would comprise losses from damage to the company's products and trade.

It will be observed that the claimant is not in the position of a riparian owner who has been directly injured by the pollution of the stream.

The city of Grafton used the river water for its water-supply system. The Carr China Co. maintained a plant for the manufacture of chinaware near Grafton and drew its water from the city water supply. It is claimed that because of the increased chemical content of the water the glazing on the chinaware manufactured by the claimant became extremely defective and the claimant was constrained to accept returns of a considerable amount of merchandise sold by it to its customers.

The bill proposes to permit the company to bring suit against the United States in the Court of Claims for damages alleged to have been so sustained.

The terms of the bill are very broad and would comprise losses from damage to the company's products and trade.

It will be observed that the claimant is not in the position of a riparian owner who has been directly injured by the pollution of the stream by another riparian owner. The position of the claimant is far more remote and indirect. There is grave doubt whether under such circumstances the Government as a matter of equity and fair dealing should accept liability for damages so consequential as those presented in this instance.

A different question would perhaps be presented if the bill contained an express provision, such as is at times included in private jurisdictional acts, to the effect that the Government should be held liable only to the extent to which a private individual would be liable under like circumstances. It is conceivable that the broad and somewhat indefinite phraseology of the bill under consideration might result in imposing on the Government a liability far greater than that which would devolve on a private individual in parallel circumstances.

No reason appears discernible why the Government should assume a liability of this kind.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, August 25, 1941.

H. R. 2431

SEVENTY-SEVENTH CONGRESS OF THE UNITED STATES OF AMERICA; AT THE FIRST SESSION, BEGUN AND HELD AT THE CITY OF WASHINGTON ON FRIDAY, THE THIRD DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND FORTY-ONE

AN ACT To confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of the Carr China Company

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render judgment upon the claim of the

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CARR CHINA CO.

Carr China Company, of Grafton, West Virginia, for compensation for losses from damage to its products and trade, alleged to have resulted during the construction of the Tygart River Reservoir Dam in the years 1935 and 1936, due to the excess amount of lime in the Tygart River coming from cement used in the construction of such dam. Such suit shall be brought within one year from the date of the enactment of this Act.

SAM RAYBURN,

Speaker of the House of Representatives.

H. A. WALLACE,

Vice President of the United States and President of the Senate.

[Endorsement on back of bill:]

I certify that this act originated in the House of Representatives.

SOUTH TRIMBLE, *Clerk.*

INFORMAL. EXTEMPORANEOUS REMARKS OF THE PRESIDENT
GRAFTON, WEST VIRGINIA
October 1, 1936, 2:55 P.M.

I am glad to come back here. The last time I came through, there was no such thing as the Tigrett Valley Dam and I am glad to see it.

I am not talking politics but I am calling your attention to the fact that this Dam up here is a pretty good boondoggling idea. (Applause)

I am told by the engineer in charge that here in Grafton there are no people who want work who cannot get work. (Applause) And so, as it has been well said on a number of occasions this morning on the train, we are not here to defend the New Deal, we are here to proclaim it. (Applause)

This is a very different sight from what I saw in West Virginia in 1932 and I believe the country is well on the way, not only towards a recovery but to the kind of a recovery that is going to stay. (Applause)