

Saving Malheur For The Birds

Famous Sanctuaries for Natural Water Fowl and Breeding Ground of Wild Geese May Be Spared



Young sandhill crane.—Photo by Alex Walker.

BY HERBERT S. LAMPMAN.

WHEN you watch the wild geese swing over you in their matchless echelon of flight—when the wind-borne melody of their voices makes something within you struggle like a fettered thing—when your eyes sting with the bite of something akin to tears and you are not ashamed, only filled with a great wonder and the wish of all mankind—to be going where they go—you are only human.

Lean and hungry, his feet buried in the black mud, his hands trembling on the tules, his heart bursting with something which made him forget his empty belly and the cold gray rain which swept his upturned face—the first man watched them go. He marked their steady flight, his ears caught their voices as yours do, and he wished himself with them as you have.

These things, from time immemorial, have been more precious than gold to man and he has cherished them in his blundering way. The first man, the redman and you and I.

They were many when the first man saw them. They were fewer when the redman watched them, and they are fewer still now. The snare of the first, the arrow of the second and the powder and shot of the third have combined to thin their squadrons and still their voices and they, the geese, are but representatives of all water fowl which man has found good.

It is emotions such as these and thoughts such as these which have combined to reopen the Malheur and Harney lake controversy with a resolve which, from all indications, bids fair to save for America the largest and greatest of all natural waterfowl sanctuaries and the breeding ground of the wild geese of the North American continent.

But the setting aside of these lands and these lakes for the purpose of establishing once and for all a bird sanctuary gives birth to a problem which is not without its complexities. It involves much legal discourse and conjecture, and it is probable, according to those who are engaged in laying the foundations for the task, that the case will not be finally settled before June 1932. A brief review of the history of this 45,000-acre tract, which has been the subject of much official and private controversy for the past eight or ten years has been prepared by W. F. Staley, assistant to the solicitor and legal head who will assist in representing the government.

The area was first designated as a reservation under federal supervision on August 18, 1908, by order of President Theodore Roosevelt. At that time the government surveyed the lake shore and established the meander line. Because the lake was construed by the government to be of a non-navigable nature, title to the lake bed automatically passed into the hands of the government.

Some time after the lands had been set aside Malheur lake commenced one of its periodic phenomenal stages of drying out. As a matter of fact, the process of drying was not phenomenal, since it was readily explained by the preceding seasons of drought. Irrigation companies taxed the supply of water with their ditches and flumes, and sportsmen and biologists became alarmed at the loss of bird life which was caused by the water shortage. Pleas entered with the irrigation concerns were of little avail.

On June 6, 1930, President Hoover vetoed a house bill which had been introduced to allow the state of Oregon to institute a suit against the United States government for the purpose of establishing the right of ownership to the lake beds before any definite steps could be taken to save the water. News of the president's action was received with regret by Oregon state executives.

An Associated Press dispatch announcing the vetoing of the bill quoted President Hoover as follows: "The effect of the institution of the suit by the attorney-general of Oregon would be to waive the sovereign immunity of the state to suits by intervenor. My attention has not been called to any statute of the state of Oregon which clearly authorizes the attorney-general of that state on behalf of the state to waive its sovereign immunity in this way, and the question exists whether state legislation may not be necessary to make this act effective." Request for the government to enact a law which would allow the state to institute a suit was made by the Oregon legislature in a memorial directed to congress in 1927.

The law, however, and fortunately so, is an elastic element, and it was found possible to reverse the procedure. Accordingly a suit was filed against the state of Oregon by the United States supreme court through the attorney-general, William D. Mitchell, and the solicitor-general, Thomas D. Thatcher, during the October term of the court of 1930. The suit was formally filed on November 24, 1930, when the bill of complaint was entered. Oregon has until February 24, 1931, to file an answer.

Wrapped in a nutshell, the complaint is



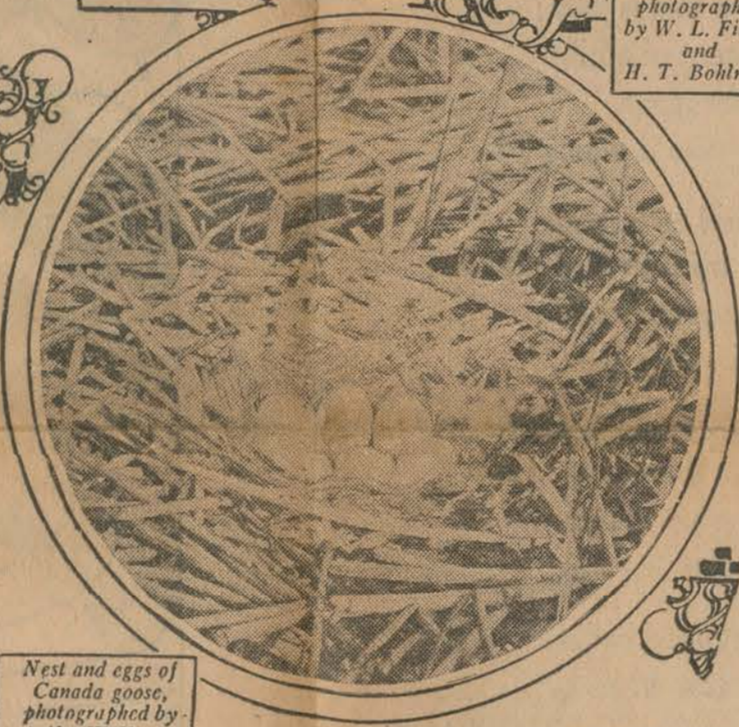
Fine specimen of the great Canada goose.—Photo by William L. Finley and H. T. Bohlman.



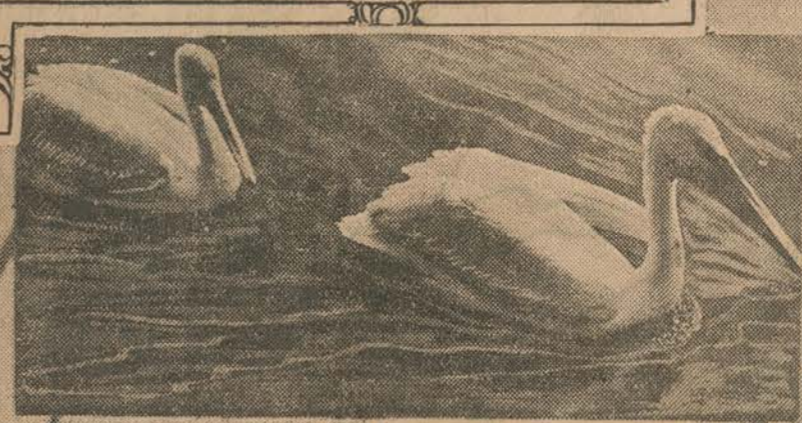
Specimen of western swan grebe.—Photo by W. L. Finley and H. T. Bohlman.



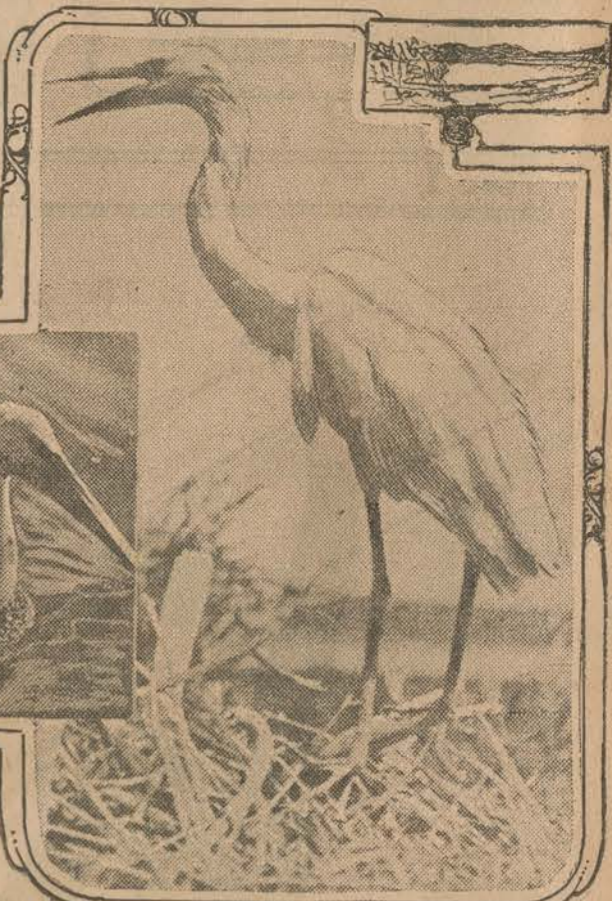
An unusual photograph of a glossy ibis, first cousin to the sacred Egyptian ibis of the Nile, photographed by W. L. Finley and H. T. Bohlman.



Nest and eggs of Canada goose, photographed by Alex Walker.



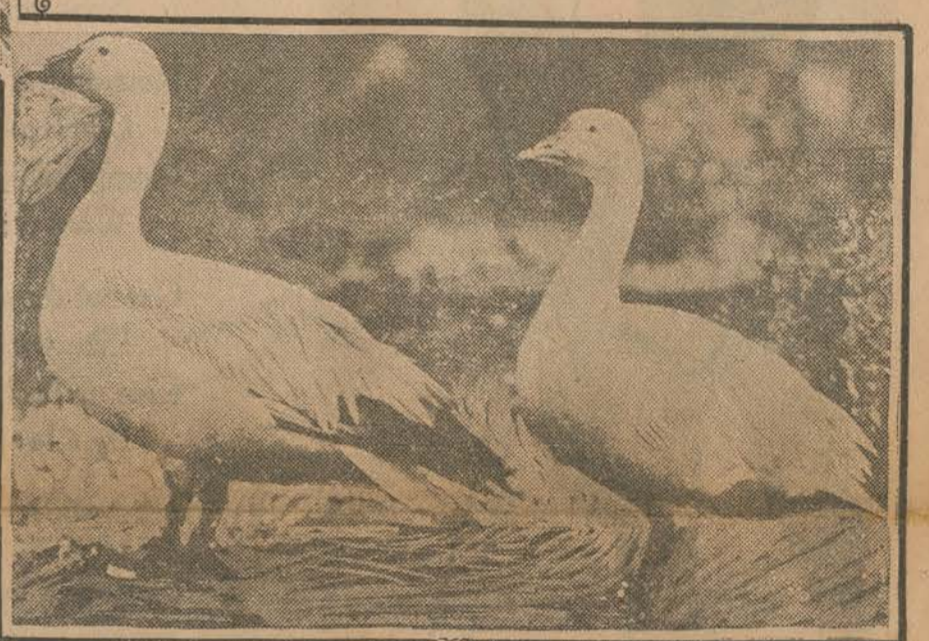
Two exceptionally comely pelicans. Photo by Miller.



Egret, whose plumes have always been in demand.—Photo by W. L. Finley.



Sandhill crane nest and eggs, photographed by Alex Walker.



Snow geese posed obligingly for this photo by W. L. Finley.

filed to "quiet title in the United States to the beds of Malheur, Harney and Mud lakes against the state of Oregon."

And here is the skeleton of the whole suit: The United States claims title to these lake beds on the theory that the lakes are non-navigable, and the state asserts title on the theory that the lakes are navigable.

At the present time, however, the average depth of water in what remains of Malheur lake is something like five inches, according to Stanley G. Jewett, leader of predatory animal and rodent control for the United States biological survey.

L. A. Liljeqvist, Marshfield attorney, has been appointed by the state of Oregon to defend this state in the suit, and a survey of the case as outlined by him for publication brings out the cardinal points. The position of the United States government, as understood by state executives who are to be participants in the suit, may be summed up in two points:

First—That Malheur lake was not correctly meandered, and that the lines run through marsh land instead of along the border of the lake or near the lake, and, therefore, everything inside the meander line is retained by the government, since it has not parted title.

Second—That Malheur lake always has been a non-navigable lake and the title of such a lake, where lands within the meander lines have not been conveyed by the government, still remains within governmental jurisdiction.

The state's position, however, embodies four points, which follow:

First—That Malheur lake was correctly meandered and the second meander line ran approximately along the mean high-water line, and accordingly the law applicable to a correctly meandered lake applies to that lake. The state claims that the title to the beds remains within state jurisdiction, whether the lake is navigable or not.

Second—That Malheur lake was a navigable body of water at the time when Oregon was admitted to the union, and that the depth of the water at that time was sufficient to permit the navigation of the lake with rowboats, gasoline-driven boats and vessels requiring a comparatively shallow depth to accommodate their draught. The depth of the water at that time, the state contends, varied from a few inches at the margin to more than 15 feet in the deepest portions in the center. This being true, the title to the bed remained in the state under existing laws.

Third—Under the law, if the courts should hold Malheur lake to be of a non-navigable nature, that yet under the decisions of the supreme court, where the government did not dispose of the lake bed title before statehood, and its conveyances of the lands bordering on the meander line were unrestricted, that the United States has contended that the title shall be governed according to the laws of the state. The Oregon supreme court has held that the question of the title of a non-navigable lake shall be decided by the state.

The Oregon legislature in 1921 passed a law which stipulated that all meandered lakes lying within state boundaries of Oregon should become public waters. This act provided a preference for Malheur lake in that it granted all riparian owners permission to fill out their governmental subdivisions and to purchase 160 acres within the meander line.

Fourth—The meander line owners claim that they own the lake bed. This, however, is a third-party claim, and may not be settled in the present litigation.

It is granted that the difficulties attending the readability of such legal entanglements are many when the casual reader attempts to grasp the full meaning of such a suit. He may turn from the presentation of such verbiage with a sigh and a mental reservation of "that sounds silly." It is not silly—it is law, and law must be served.

This much he will be interested in. If the government wins the suit and proves that it has full title to the beds of Malheur, Harney and Mud lakes, then the biological survey may be able to step in and restore the lakes to their former glory as a truly great wild water fowl breeding ground and bird sanctuary. Dikes will be built. Irrigation companies will be forced to desist from drawing millions of acre-feet of water from the already depleted supply and the lakes will assume their former status and value.

Funds for this work are already available under an act passed by congress February 18, 1929, which provides a sum of \$8,000,000 to be expended over a period of ten years. The money was made available to allow the United States to uphold its end of the migratory bird treaty with Great Britain by lessening

the dangers which contribute to their extinction by drainage and other causes.

The sportsman, then, and the bird lover will root like a Rutgers student at a football game for the winning of the case by the government. In the event that the government loses its claim to the title it will not be able to spend any of the appropriation for the work, and Malheur lake will continue to dry up and to disintegrate until it is no longer the bird sanctuary of the western United States.

Foremost among the agencies interested in the passing of the title to the government is the state game department, the commission executives of which realize all too well the value of the area to Oregon and to the entire west. Not only does this department lend its sympathies to the government of the United States, but it will ask the state legislature at the present session to pass what is known as an "enabling act." This act will allow the government to purchase additional lands around the lake, or at any other point in the state where such lands may be deemed proper for sanctuary purposes and can be purchased satisfactorily.

Such an act, members of the game department point out, would contribute greatly to the wealth of the state, inasmuch as state funds for such purposes are very limited and the direct benefits of such developments would be enjoyed by the state as well as by the entire western seaboard, including British Columbia, since geese tagged at this particular sanctuary, Malheur lake, have been killed from Mexico to British Columbia.

Commenting upon the proposed development of Malheur lake, J. E. Cullison, chairman of the state game commission, said: "The development of the Malheur lake bird reservation into a permanent nesting, breeding and feeding ground for water fowl and the myriads of song and insectivorous birds which migrate through that part of Oregon will rank this refuge as one of the three major game refuges in the United States, and the resultant national recognition for Oregon is an asset to our state in the way of recreational and commercial return to the Oregon public of which true sportsmen and good citizens should take full advantage.

"On various occasions the Oregon state game commission has endorsed the idea of necessary action for the successful culmination of this project, and to this has offered unqualified co-operation to the bureau of biological survey in any contemplated development work. However, this is not sufficient—the bureau must also have the co-operation and support of the Oregon public, which is absolutely necessary before available funds can be expended by the federal government for that purpose."

The casual observer on inspecting Malheur lake will see but a vast expanse of desolate water and tules. If he visits the lake when the geese are flying and when the ducks are laying their irregular waves of flight down on the lake he will find a veritable paradise of waterfowl.

Here are other birds. He may be of a discerning nature and he will find the glossy ibis, the first cousin of the sacred ibis of Egypt. Mayhap he will see the sandhill crane, now all but gone from the world, building his nest with his equally long-legged mate. It is

Setting the World Right

BY BRUCE BARTON,

Author of "The Man Nobody Knows," Etc.



CHARLE CONWAY, head of the Continental Can company, has a customer in Massachusetts who makes cranberry sauce. One day Wall street was thinking that the world was going to the dogs, Carle dropped in on this Yankee manufacturer and found him very serene.

They dined together, and after dinner the talk turned to world business conditions, which, says Carle, "seem to have eliminated prohibition from conversation, so that there is that much to be said in favor of depression at least."

The cranberry man said: "During the war I was making cranberry sauce and we were not able to get sugar except at an exorbitant price. Everyone in the industry said we had better go out of business because we had to have sugar to make cranberry sauce and sugar at 30 cents a pound would stop sales."

"I went into a huddle with myself that night and came to the conclusion that I would let the customers decide whether they would buy cranberry sauce made with 30-cent sugar; that I had just one job in the world and that was to run my business, and I was going to let the world take care of itself and everyone else take care of himself, and I was going to figure how I could take care of my business and solve the problems each day as they came along."

"I did not think I was big enough to help or harm the world's progress, but I

did think I could help or harm my own business."

One thing which makes this depression seem more discouraging than others is the fact that all countries have been so closely knit together. In other periods of slow business we in the United States did not worry because the coffee market was had in Brazil or the corn plaster industry had collapsed in Timbuctoo. We had our own troubles to fight.

This year our newspapers, through their truly wonderful news-gathering forces, have brought us all the bad things from everywhere. The result is that the average American business man is going around trying to carry the troubles of the whole big world.

I may be all wrong, but my idea about the other countries is that they are all having serious difficulties, just as we are, but in every one of them there is a solid backbone of people just like you and me—hard-working, sensible men and women who have their homes and families, who do not want to see the social order overthrown, and who are doing their individual best to solve their own problems.

Ultimately, I believe, this silent majority will win.

In the meantime, when anybody comes into my office to discuss world conditions I courteously ask to be excused. I am trying hard to work out my own salvation.

If everybody in the world does that the world will be saved.

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