

40 Acres Homeowners' Water Association  
1417 Birchim Lane  
Bishop CA, 93514

March 3, 2006

Mr. Bill Dunkelberger  
Bishop Field Office  
Bureau of Land Management  
351 Pacu Lane, Suite 100  
Bishop CA 93514

Subject: Wright's Diversion Structure Ownership

Dear Mr. Dunkelberger,

We are submitting additional evidence pertaining to the ownership of our water rights and the Wright's Diversion structure on Pine Creek. Please consider all enclosed documents in this correspondence including this letter to be proprietary in nature.

The sudden first-time taking by the Los Angeles Department of Water and Power (LADWP) of our diversion structure in 2001 and your subsequent letter of May 24, 2004 asking us for "any and all evidence" has inspired our community members to seek out the history of Wright's 40 Acres.

Since our last submission of evidence to your office, historic documents have been gathered from many corners of the nation that further define and add clarity to our water right. These documents are enclosed for your review. These documents will clearly show we have strong pre-1914 appropriate rights with a priority date of 1891. We will also provide evidence proving that the basis claimed by the LADWP as to the nature of Wrights 40 Acres' water rights are flawed and thus, misleading.

To properly express our findings, we believe it necessary to tell the story of Wright's 40 Acres as it unfolded from the beginning. The story really starts prior to the year 1840, before statehood and the arrival of the first white settlers to the Owens Valley. We're going to introduce this historical history portion later under separate cover to keep this letter short and to the point. We start our story in the year of 1890.

On July 19, 1890, Jack Wright, a Paiute Indian born and raised in Round Valley, signed an affidavit formally abandoning relations with the Paiute Indian Tribe and committing himself to adopting the habits and pursuits of civilized life. This occurred at the Independence Land Office and immediately gave Indian Jack the right, under the Indian Homestead Act of March 3rd, 1875, to lay claim to a parcel of land where he already had built a home and resided in Round Valley. Indian Jack filed that land claim that very day on 80 acres of land and was assigned application H.E. 658.

Indian Jack was required by the Indian Homestead Act to reside on his land, make improvements and cultivate crops for a minimum of 5 years after which time he'd be entitled to receive a Patent Deed from the US Government. This accomplished, Indian Jack received his Patent Deed on August 15, 1901. He was now the proud owner of an 80 acre ranch.

Enclosed and marked exhibit "O" is a copy of the homestead land entry records that were submitted by Indian Jack Wright to the Independence Land Office to gain his homestead. They were found in the National Archives Bldg in Washington DC. As you look through these documents, you will find evidence that Indian Jack was living on his land, cultivating his land and growing crops like alfalfa, fruit trees and pasture as early as 1891. He fenced the entire tract, including his pasture. This indicates that Indian Jack had livestock on his land. People, livestock, pasture and crops need water, lots of it, especially with the sandy nature of the land and the need for a continuous flow for thirsty livestock in a dry climate.

Since no other water source was available nearby, Indian Jack most certainly received his water via a channel he dug from Pine Creek (the closest water to his ranch). This evidence establishes 1891 as the date of priority for the first beneficial use of water on Indian Jack's 80 acre parcel, a requirement to gain and preserve a pre-1914 appropriative water right as per the Water Act of 1872.

Fast forward to 1904 and Indian Jack's life takes a turn. It is rumored that Indian Jack Wright lost 40 acres of his ranch in a poker game. We have yet to find solid evidence on this rumor, but we do know that Indian Jack Wright deeded the north 40 Acres of his spread to a fellow named Alfred Counts in 1904 who then deeded the land two years later in 1906 to another fellow named Jim Wright (Deeds enclosed and marked exhibit "P"). Jim Wright was a Paiute Indian and was Indian Jack's younger brother. Indian Jim Wright becomes the new owner of the north 40 acres, which is now the present day Wright's 40 Acres subdivision that bears his name.

According to state water law, water rights are automatically transferred with land when conveyed to new owners. In our case, we inherited the 1891 priority date when pre-1914 water rights were first established and we have maintained our right ever since as we have continued to put water to beneficial use on our 40 acres. This is consistent with California Water Code Section 1202(b) which requires "...the subsequent maintenance of the right by continuous and diligent application of water to beneficial use."

The "Beneficial Uses" that we have maintained include a) Municipal and Domestic Supply; b) Agricultural Supply; c) Industrial Service Supply/fire protection; d) Ground Water Recharge; e) Freshwater Replenishment; f) Non Contact Water Recreation; g) Cold Freshwater Habitat. (See Exhibit "Q" Summary of Beneficial Use Designations, California Regional Water Quality Control Board). This is Wright's 40 Acres water right which dates back to 1891. We have made this determination due to the new evidence that we recently gathered.

The LADWP has and is still claiming that our water right is half of a water claim filed by Indian Jack Wright in 1910. While it is true that Indian Jack Wright filed a water appropriation notice at the County Recorder's office in 1910, he only owned the south 40 acres at that time. Our north 40 acres no longer belonged to Indian Jack Wright in 1910. Our subdivision and its corresponding water right are not connected in any way with the 1910 water filing. The water right that was established by the 1910 filing pertained only to the "south 40" acres

In your letter of May 24, 2004 you asked for clarification on "whether the diverted channel is constructed or a flowing creek/tributary used as a conveyance device". We believe with utmost certainty that the water channel to Wright's 40 Acres was constructed by Indian Jack Wright prior to 1891 in order for him to carry on the agriculture described in Exhibit "O". We also believe it is not a natural channel. The physical characteristics of the landscape indicate that this ditch was man-made because the course of the channel is on high ground atop ridges in the land and traverses dry washes. When Indian Jack Wright dug his ditch to send water to his land, he had to install a diversion structure of some sort at that time to control the flow of water to his land.

In contrast, the channel for LADWP's Diversion 49 water is low lying, avoids crossing ridges and is in a natural creek bed. The direction of this channel also looks natural because it is in line with and an extension of Pine Creek's natural down gradient course. The location where Pine Creek forks above Wright's Diversion and LADWP Div. 49 is relatively flat and appears to be a natural fork.

If you examine the 1909 USGS Mt Goddard 30' Topo Map, you will see a north fork in Pine Creek that starts above where both Wright's Diversion and LADWP Div. 49 are today located. On the map, this wet creek extends down gradient from Pine Creek and then splits prior to dying out on what was then an 80 acre Indian Homestead owned by Joe Wright, another brother of Indian Jack Wright (more on this in our detached historical letter). One of these splits is today's Diversion 49 water channel. See enclosed 1909 map edited with parcel lines included and marked exhibit "R".

We see no evidence on the 1909 map that USGS mapmakers drew in natural, dry washes, even though many existed in the valley. Nor do we see evidence that the USGS mapmakers drew in man-made irrigation ditches. Doing so would have filled the map with countless lines as there were numerous wet water ditches in the ground due to the heavy agricultural use of the valley during the 1900 to 1910 period. That is why the diversion ditch that Indian Jack Wright dug is not shown on the 1909 USGS map.

Due to the natural lay of the land and due to the USGS map, we believe that in 1909 the Diversion 49 water channel was then a wet riparian creek where water flowed freely. We believe that had USGS mapmakers seen a diversion structure installed in the creek as it is today, they would have never shown the creek on the map because they would have recognized it as a man made ditch/diversion. We therefore believe that LADWP's Diversion 49 structure was installed after the USGS map of 1909 was printed.

Enclosed exhibit marked "S", a 1944 aerial photo from the Fairchild Collection, is evidence that LADWP's Diversion 49 structure may not have existed prior to the year 1944. The aerial photo shows a wet riparian creek flowing in the water channel that is today's LADWP's Diversion 49 irrigation ditch. The photo also shows that 100% of Pine Creek's water flows in this water channel. In the photo, you can see that Pine Creek is devoid of trees and greenery as if it had been dry for many, many years. This leads to the conclusion that all Pine Creek waters flowed through the north fork and there was no need for LADWP's Diversion 49 structure at that time. A further conclusion would be that LADWP's Diversion 49 structure was installed at a later date when seasonal irrigation was first initiated by LADWP, or when water was again returned to Pine Creek's current channel.

LADWP has claimed they have an 1867 priority date of water use at their Diversion 49 structure. They cite "water diversion filings" with the State Water Resources Control Board (SWRCB) as their proof. However, according to the SWRCB, "Merely filing a statement does not by itself generate a basis of right. Statements merely report the diversion and use of water under a presumed right. The responsibility of documenting and defending claimed rights rest with each diverter." (See 'footnote 1' on enclosed SWRCB letter exhibit marked "M2" in our Prior submission) To date, we have not yet seen documentation from LADWP that proves their water right or their priority date.

There are two separate diversion structures located adjacent to each other, Wright's Diversion and LADWP Div. 49. Approximately 100 ft. upstream of these two diversions is the Main Diversion (wooden structure). We continue to claim the following facts:

1. The concrete gate structure built by LADWP at Div. 49 does not belong to the Wright's 40 Acres subdivision. It is located on BLM land and was built without a permit from the BLM.
2. A permit to construct the concrete gate structure was submitted to BLM by the LADWP 2 years subsequent to construction.
3. No permit to construct the concrete gate structure has yet been approved by the BLM.
4. No complaint has been filed with the State Water Resources Control Board by the LADWP pertaining to this issue.
5. Our water right was first established by Indian Jack Wright in 1891. It was transferred to Alfred Counts through the sale of the north 40 acres of his ranch in

1904. Two years later in 1906 the "north 40" transferred to Indian Jim Wright. The current residents of 40 acres are successors in interest to Jim Wright

6. Wright's Diversion has belonged to the Wright's 40 Acres subdivision for 115 years. Wright's diversion was constructed, and has been maintained and controlled solely by representatives of the Wright's 40 Acres subdivision.
7. The Main Diversion has belonged to the Wright's 40 Acres subdivision for 34 years. The Main Diversion was constructed, and has been maintained and controlled solely by representatives of the Wright's 40 Acres subdivision.
8. Prior to the year 2001, Wright's Diversion was a slide board gate that was periodically adjusted solely by representatives of the Wright's 40 Acres subdivision to maintain proper water flow.
9. In the year 2001, LADWP without notice or permission, destroyed Wright's Diversion, rebuilt it and then padlocked it. At that time, LADWP also padlocked the Main Diversion without notice or permission. Prior to 2001, LADWP never once constructed, maintained, padlocked or claimed ownership of Wright's Diversion or the Main Diversion.
10. Prior to their 2001 malicious assault upon our diversion structures, LADWP never once attempted to write us a letter, call us on the telephone or visit us to discuss our diversion structures or dispute our water rights.
11. Wright's 40 Acres has used legally appropriated water for 110 years without dispute or interruption prior to LADWP's assault upon our diversion structures. After their assault on our diversion structures, LADWP used their water rights analysis of Wright's 40 Acres, which is fundamentally flawed, as justification for their action.

We hope you have found this presentation to be helpful. You gave us a challenge asking for more and we have labored arduously to get it for you. We thank you for granting us an extension of time to gather more information concerning this issue. We will be submitting additional written depositions which we will present to you soon. We will forward another correspondence shortly detailing the pre-1890 story of the Wright Family in Round Valley.

If you need anything at all, please don't hesitate to call me.

Respectfully submitted,



Frank Stewart  
Association President

## LIST OF EXHIBITS

Exhibit "O"  
Homestead Land Entry File

Exhibit "P"  
Grant Deeds

Exhibit "Q"  
"Summary of Beneficial Use Designations"

Exhibit "R"  
1090 USGS Map

Exhibit "S"  
1944 Aerial Photo