

40 Acres Homeowners' Water Association
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July 24, 2004

Mr. William Dunkelberger
United States Bureau of Land Management
Bishop, CA Field Office
Hand Delivered

Dear Mr. Dunkelberger,

We provide the following in response to your letter of 24 May 2004.

The current situation finds us with inadequate water flows due to the control gate constructed on BLM land. Ownership of the gate is claimed by the City of Los Angeles Department of Water and Power (LADWP), although it is on a site that has been historically used and maintained by the residents of 40 Acres and the LADWP.

We will show our historic rights to access the gate area on BLM land which were granted in the original land patent dated 1904 and that there had been a custom of control of the flow to 40 Acres by the residents. Prior to 2001 there had been cooperation between users of the gate and maintenance of the gate and ditch by 40 Acres residents. We will also show that we have water rights from the State of California that are "pre-1914" in nature and are still in effect. The uses provided for in our water right are for domestic, livestock, irrigation and fire protection.

It is our objective to restore full rights to the diversion gate and to control the flow of water to 40 Acres as required by the property owners. This is no more than we had prior to LADWP's weir being built in 2001.

It is important to note, that in spite of LADWP's claim that their water rights are in jeopardy, all the unused water that goes through 40 Acres returns to LA land and that a significant amount of the water that is used on 40 Acres also returns to the surface on LA lands east of 40 Acres.

If it is the view of the Federal authorities that our access is to be unimpeded then LADWP should remove their lock and chain from the control that serves 40 Acres immediately and that we be allowed to re-open the side ditch at the site that LADWP filled if we should need to do so. Also, LADWP should remove any chain and lock from our wooden control gate upstream from the cement control weir.

Historical Evidence:

1904: Jack Wright files a land patent application (exhibit A) that grants him access and control of all ditches and water conveyance on Federal Land. The patent was perfected in 1904.

1915: There is a map in possession of the US Forest Service (exhibit B 1-3) showing "North Fork of Pine Creek" going to 40 Acres. This would indicate a flow to the area prior to 1915.

1915: Presented here is a panoramic photo of Round Valley looking west from the Mustang Mesa area (exhibit C) that shows mature trees along the North Fork of Pine Creek indicating this channel had been in place for a very long time prior to the 1915 photo.

1920-1940: There are maps showing that the southern fork of Pine Creek, perhaps what is now known as Mill Creek and the North Fork that goes to 40 Acres would consume all of the water of Pine Creek and that the portion of the creek that flows under North Round Valley Road was usually dry. The underground flows from 40 Acres most likely rejoined the creek as they do now (Exhibits D & E).

1960's: 40 Acres began filing a statement of water use (Exhibit F) with the State of California Department of Water Resources (DWR). The state believes that 40 Acres has a right to 2.5 cubic second feet (cfs) and a flow regime based upon what the ditch will hold. The ditch, or the North Fork of Pine Creek can hold and has held, substantially more than 2.5 cfs.

1960-2000: Residents have stated that during this time the flow was significantly greater than now. We have several notarized statements from former and current residents that state that fact clearly. The residents also organized and conducted work days to improve and maintain the ditch or stream channel that served their neighborhood. (Exhibits G 1-25)

1972: Mr. Clyde Hiatt, 40 Acres resident, and some of his neighbors put in a wooden control gate with a wheel that regulated the flow to 40 Acres and to the "Y" diversion located where the control gate in question is now located. They also improved the "Y" diversion with a wooden structure. (Exhibit H 1 & 2) Please note that only the right or south side, known as gate 49 was capable of being blocked at the "Y". This, presumably, was for seasonal flows for irrigation of ranch lands to the east. If it were opened, the slide gate with wheel upstream would be opened more to allow for increased flow and to keep 40 Acres fully supplied.

1972-2000: The gate built by Mr. Hiatt had a key kept under the crossbar and could be accessed by anyone who knew where it was. Former residents Roland Enfield and Norm Weller (now both deceased) showed me the key and explained its use in 1980.

1983: A brush fire destroyed a bridge built (according to Mr. Weller) by the LADWP, which was accessed by driving west from North Round Valley Road along the south side of Pine Creek. From that time until 2001, a significant amount of water would be routed through 40 Acres to serve the LADWP leases to the north and east of 40 Acres. This was, presumably, because of the increased difficulty in reaching the side on the jeep trail that went on the north side of Pine Creek from North Round Valley Road.

2001: LADWP crews used heavy equipment to significantly improve a jeep trail on the north side of Pine Creek on land belonging to LA and BLM, creating an access road to the diversion site.

2001: A concrete and steel diversion/control gate is installed. LADWP has provided no documentation as to the construction of this facility, but their crews serve it and their locks are on it. Subsequent work by crews at the behest of LADWP filled in a side ditch that had been in place for at least 20 years, damaged trees, destroyed one tree completely and created an over-flow ditch that did not previously exist (Exhibits I 1-5). In prior years, the over-flow back to Pine Creek was at the wooden gate, with wheel built by Mr. Hiatt (Exhibit J 1-4).

2002: Letters were written on behalf of the 40 Acres Homeowners' Water Association to Mr. Gene Coufal explaining that they had no right to lower our flows and that they should have notified us of their plans in advance (Exhibit K 1-5). A series of correspondence followed LADWAP provides no

justification for their actions, but in a newspaper article, Mr. Coufal was quoted as saying that if an organization were to be formed and "a viable person" could be found, then 40 Acres could get a key and presumably, control (Exhibit L).

2002: A letter of complaint is sent to the DWR complaint division, and 40 Acres is advised that the DRW does not rule in such matters and has no authority to do so (Exhibit M).

2002: The 40 Acres Homeowners' Water Association begins reorganization.

2003: A reorganized 40 Acres Homeowners' Water Association is formed, officers elected and a water master is appointed. 40 Acres places their lock on the chain that controls the wheel on our side of the diversion. That chain is removed, along with 40 Acres' lock. We are including a copy of our bylaws showing our organizational structure and mission. (Exhibit N)

2003 to Present: Acting on the direction of the board of trustees for 40 Acres, the gate is opened daily for increased flow. Acting, presumably at the direction of LADWP management, LADWP personnel reduce the flow.

2003: More correspondence, as LADWP refuses to allow 40 Acres to establish its own flow regime.

2003: Thaddeus Taylor, president of the 40 Acres' board, meets with BLM officials in an attempt to resolve the issue.

Conclusion: The 40 Acres Homeowners' Water Association desires to be good neighbors and is willing to cooperate with other land owners; however, the current situation is unacceptable. The Association is especially concerned with the fire hazard in our area and believe most strongly that we are best protected by an adequate water flow regulated by us.

Submitted At The Direction of the Board

Thaddeus W. Taylor, III
Board President
