



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

RICHARD M. HELGESON
SENIOR ASSISTANT CITY ATTORNEY
FOR WATER AND POWER

DEPARTMENT OF WATER AND POWER
LEGAL DIVISION
P.O. BOX 51111 • SUITE 340
LOS ANGELES, CALIFORNIA 90051-0100

TELEPHONE (213) 367-4500
FAX (213) 367-4588

February 20, 2004

Homeowner
40 Acres Homeowners' Water Association
Bishop CA 93514

Re: Water Rights

Dear Homeowner:

In the past year the Los Angeles Department of Water and Power (LADWP), has received correspondence from Thaddeus W. Taylor III, President of the Board of Trustees for the 40 Acres Homeowners' Water Association, questioning the water rights held by LADWP and asserting that 40 Acres is entitled to more than its current water allotment, based on historic uses, flows and customary practices. This letter is to inform you of the legal position of LADWP regarding the water rights held by you and the other property owners in Round Valley and the water rights held in Round Valley by the City of Los Angeles.

According to documents on file with the Inyo County Clerk, the water rights held by both LADWP and the residents of 40 Acres originate from an appropriation of water from Pine Creek by Jack Wright in 1910. Since this appropriation occurred prior to 1914, the State Water Resource Control Board has no jurisdiction over the water rights created by the appropriation; disputes over those rights must be resolved by the courts. In 1910, all that was necessary to acquire a valid water right through appropriation was to make a claim to a stated amount of water to be used for a beneficial purpose at a specific site and then use the water on the site for the stated purpose.

Mr. Wright's claim was for 50 inches of water from Pine Creek to be used for irrigation on an 80 acre parcel he had owned since 1904. "Fifty inches of water" in modern terms is 1.25 cubic feet per second (cfs). At some time after his appropriation, the 80 acre site was divided into two 40-acre parcels. LADWP acquired one of those parcels, and the second parcel became today's Forty Acres.

LADWP, as a successor in interest to Mr. Wright's original 80-acre site, has a pro-rata share of his appropriative right. Forty Acres, either as an entity or through individual homeowners, is also a successor in interest to Mr. Wright and presumably also has a pro-rata share of that right. Therefore, each is entitled to take

Homeowner
February 20, 2004
Page 2

0.625 cfs from Pine Creek as Mr. Wright's successor. LADWP, based on its ownership of other property, has the right to all of the remaining Pine Creek flow, except for the 10 cfs diverted into Mill Creek by a private property owner.

There is no evidence that any other claim exists to the waters of Pine Creek. LADWP has not located any other pre-1914 claim on file with the Inyo County Clerk, and there is no application or license on file with the State Water Resources Control Board reflecting a claim after 1914. Therefore, the surface water right held by the 40 Acres property owners is derived only from the 1910 claim. In the past, 40 Acres property owners may have taken more water than they were entitled to under Mr. Wright's claim. Although this might have given the 40 Acres owners a prescriptive right to the water against a private person, public policy in California prohibits anyone from obtaining by prescription any title, interest or right in water or water rights owned by a public entity such as the City of Los Angeles.

As mentioned above, LADWP owns the right to all the waters of Pine Creek except for that owned by 40 Acres and the upstream private owner. In order to assure that it obtains all the water to which it is entitled, and to assure that its water is delivered to the appropriate lands, LADWP controls the diversion structure on the ditch which carries water from Pine Creek to both 40 Acres and to LADWP's property. LADWP has been and wants to remain a good neighbor with the residents of 40 Acres. LADWP has cooperated with your representatives when there have been requests for temporary increases in the Pine Creek flow for fire protection services, and LADWP is willing to make seasonal adjustments to the flow so that the residents of 40 Acres receive water at appropriate times. However, no LADWP employee, nor any City of Los Angeles officer or employee, no matter how high-ranking he or she may be, may allow anyone to take water that belongs to the City of Los Angeles. The Los Angeles City Charter forbids any sale or transfer of water or water rights owned or controlled by the City without the assent of two-thirds of the registered voters of the City. Therefore, the LADWP, its employees in Bishop, and my Office have an obligation to protect the City's water rights from Pine Creek.

In response to Mr. Taylor's request that LADWP change the chain on the wooden weir on the Pine Creek diversion, it is unwilling to do. In the past year it has been the victim of several incidents of vandalism and trespassing at the diversion structure upstream of 40 Acres. The water flows were manipulated, resulting in a loss of water delivered to LADWP and an increase of water delivered to Wright's 40 Acres. Such activity does not promote a spirit of cooperation in the region and only serves to move this misunderstanding towards litigation. LADWP is willing to work with the residents of 40 Acres to create a water delivery schedule that is consistent with each party's water right, but it must maintain control of the diversion in order to protect its interests.

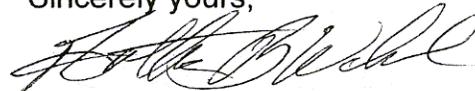
LADWP hopes to work with you to assure the success of mutual interests. It invites you to review the records upon which it bases its understanding of Round

Homeowner
February 20, 2004
Page 3

Valley water rights and it would be happy to accept any additional information you may have about the water and other property rights in the vicinity. At this time, LADWP intends to forgo filing suit over the repeated trespasses to its water rights at the diversion structure upstream of Wright's 40 Acres; however, it reserves its right to do so if a mutually-agreeable solution is not reached.

If you wish to discuss this further, please contact Mr. Denis Tillemans at LADWP's Bishop offices. His telephone number is 760-873-0258.

Sincerely yours,



ARTHUR B. WALSH
Assistant City Attorney

ABW:cw
(213) 367-4505

cc: Gene Coufal
Dennis Tillemans