

*File 124*  
Form 250

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THEO. N. YAIL, PRESIDENT

BELVIERE BROOKS, GENERAL MANAGER

RECEIVER'S NO.	TIME FILED	CHECK
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**SEND** the following message subject to the terms on back hereof, which are hereby agreed to

528 Federal Bldg.,  
Los Angeles, Cal., July 31, 1913.

John F. Truesdell,  
Arlington Hotel, Carson City, Nevada.

Following wire received by U. S. Attorney, Los Angeles:

Suit filed and papers served on defendants by power company asking for injunction restraining defendants from using waters from Rush Barker and Leevining Creeks in Mono County papers served July twenty eight giving ten days to answer am not sure if this is in your district have not seen or heard from Indians information from Swallow attorney for part of defendants suggest conference with Olberg, and detail of lawyer to attend rights of Indians understand Olberg and Truesdale of Department Justice anticipate early trip here immediate action necessary eight Indians involved probably riparian rights.

Signed Spalsbury Supt.

Above territory not in jurisdiction U. S. Attorney Los Angeles. He directs wiring you. Have wired Spalsbury at Bishop to wire you particulars and for instructions. Have engineer at Bishop who is at your service, or can meet you myself if necessary. Please wire your wishes.

OFFICIAL BUSINESS PAID

Olberg.

ADDRESS REPLY TO  
"THE ATTORNEY GENERAL"  
AND REFER TO  
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE  
WASHINGTON, D. C.

RECEIVED  
JULY 31 1913  
U. S. DEPT. OF JUSTICE  
174

Carson Nev. July 31, 1913.

Mr. S. R. Olberg, Supt. Indian Irrigation,  
Federal Building, Los Angeles, Cal.

My dear Mr. Olberg:

I have just received your telegram telling me of the suit to restrain the use of certain waters in Owens Valley, or in Mono county by the Indians, and have wired you as follows:

"Telegram received. Unless suit materially affects general water situation I am to investigate with you. I ought not in justice to other work be concerned in it. If situation is serious however, I can assist United States Attorney, but he would have to take burden of litigation. Suggest you wire him and have Spalsbury send him copy of complaint and advise how serious it would be if Indians prevented from using this water this year. Writing".

My other work does not permit me to undertake to look after minor litigation that comes up from time to time. Suits of that sort are too engrossing and of course must be attended to by the United States Attorney.

If this suit would affect the general situation that I am to study with you I should of course like to be in touch with it and to know what the United States Attorney was going to do and to give him the benefit of any ideas I might have as to what should be done to prevent this matter from interfering with your general plan. Furthermore even if this is not connected vitally with your general plan, I should be glad to aid the United States Attorney in any way in my power. If you consider the matter of sufficient importance and if he cares for my assistance in this connection I could go to Bishop with him and could give him my views of what ought to be done, or I could consult with him in San Francisco after he has made such investigation as he thinks necessary.

Find out from Spalsbury and send to the district attorney these facts. How important this water is to the Indians this year so that he can judge how necessary it is for him to prevent the issuance of a temporary restraining order. Have Spalsbury send the United States Attorney a copy of the complaint also have him find out from the attorney for the plaintiff whether he expects to ask for a temporary restraining order or whether he is willing to give the government sufficient time to look into the matter.

C R O P 2:

I am very busy but could devote four or five days or perhaps a little longer to this if necessary. I could on no account undertake to do the court work myself as that would involve my staying too long away from other work.

Yours very truly,

*John F. Russell*

Special Assistant to the  
Attorney General.

*R.*

*Have Spalsberg tell the U.S. Attorney  
the name of the Power Company  
and the name of its attorney.*

*Perhaps the U.S. Attorney could see  
the Power Co's attorney in  
San Francisco*

*J. F. R.*

Rel. work  
in Owens  
Valley, etc.

, July 31, 1913.

Mr. Ross L. Spalbury,  
Supt. Bishop Indian School,  
Bishop, Calif.

Dear Sir:-

On entering the office this morning I found a message from Mr. Archbald, U. S. Attorney, requesting that I call at his office. Mr. Archbald showed me your telegram of July 30th and stated that Mono County was outside the jurisdiction of his district and lies within the district of the U. S. Attorney whose headquarters are in San Francisco. I explained to Mr. Archbald that I had been in receipt of a communication from Mr. Truesdell, Special Assistant to the Attorney General, stating that he had been instructed to look into the conditions affecting the water rights of the Indians under your jurisdiction, and Mr. Archbald thought that it would be proper for me to wire Mr. Truesdell the contents of your telegram. For this reason I have sent the following wire to Mr. Truesdell:

"Suit filed and papers served on defendants by power company asking for injunction restraining defendants from using waters from Rush Parker and Leevining Creeks in Mono County papers served July twenty eight giving ten days to

answer am not sure if this is in your district have not seen or heard from Indians information from Swallow attorney for part of defendants suggest conference with Olberg, and detail of lawyer to attend rights of Indians understand Olberg and Truesdale of Department Justice anticipate early trip here immediate action necessary eight Indians involved probably riparian rights.

Signed Spalsbury Supt.

Above territory not in jurisdiction U. S. Attorney Los Angeles. He directs wiring you. Have wired Spalsbury at Bishop to wire you particulars and for instructions. Have engineer at Bishop who is at your service, or can meet you myself if necessary. Please wire your wishes."

and also wired you, as follows:

"Your wire July thirty. Not in jurisdiction U. S. Attorney Los Angeles. Have transmitted your wire to John F. Truesdell, Arlington Hotel, Carson City, Nevada. Wire him particulars, and for instructions. Use Bauer and party if necessary. Will meet Truesdell if necessary."

I enclose a copy of the letter received from Mr. Truesdell, and with it a copy of my reply. I do not only wish to defer Mr. Truesdell's visit for the reasons stated in my letter, but desire to have the surveys now in course of preparation by Mr. Bauer sufficiently advanced so that we can tell Mr. Truesdell exactly what we have in prospect. For these reasons I forwarded the letter as above. I am in receipt of a personal note from Mr. Truesdell, stating that he would prefer to make his visit in the early part of September.

I am now preparing my estimates for the fiscal year 1915, including therein an apportionment of \$20,000.00 for the Indians residing on Pine Creek. It is necessary to justify these estimates, and I would greatly prefer to prepare them personally, in order that they may have a better show of nec

ing the approval of the Chief Engineer. For this reason, as well as the other reasons stated in my letter, I would be glad to defer my visit to Owens Valley until the latter part of August or early in September.

If, however, Mr. Truesdell thinks it necessary that I meet him before that time, I am of course at his orders, but I hope that yourself and Mr. Bauer will be able to give him all the information that he may require.

I am forwarding to you, under separate cover, a map of the territory near Bishop, and also a topographic sheet of the country near Mono Lake, at present under discussion.

Please keep me informed as to the status of the case and, if you think it necessary, I will visit you at once if you will wire me to that effect.

Very respectfully yours,

*L. R. Olney*

Superintendent of Irrigation.

CRO/AR

Encis.

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SEP 1 1918	
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Bishop, California.

Mono County  
water cases.

August 4th, 1918.

The United States Attorney,  
San Francisco, California.

Sir:

This morning I telegraphed you that ~~there~~ <sup>there</sup> had been filed in the superior court for the county of Mono several suits for the purpose of getting an injunction against the water users of Rush, Barker and Los Vining creeks. I advised you that the papers were being served on Friday and Saturday, August 1st and 2nd and that the defendants part of whom were <sup>Indians</sup> ~~Indians~~ had ten days in which to answer or judgment would be entered against them. My information came from A. H. Swallow, an attorney in the town of Bishop who is appearing for others of the defendants. You were requested to detail a man to take charge of the case for the Indians and protect their rights.

Your reply in which you asked me to communicate with our department in Washington and get them to have the Department of Justice instruct you to appear in the case was received this afternoon. I have complied with your telegram and advised the

Indian Office the I would send you all the information that I had as well as copies of the complaints.

These cases were first called to my attention by Attorney A. H. Swallow on Wednesday July 20th, with whom I had some conversation at the depot in Las Vegas just before he started for that section to investigate the case for his clients. I advised the United States Attorney at Los Angeles, thinking that this county was also in his district but he informed me that it was not. He referred the matter to Mr. C. R. Olberg, Superintendent of Irrigation who is doing work in this section for the Indians and with whom I suggested that the attorney consult.

Mr. Olberg took the matter up by telegraph with Mr. John F. Truesdale a special investigator for the department of Justice and who is at present at Carson City. Mr. Truesdale advised us to communicate with you and send you the copies of the complaints and such other information as could be obtained. He also stated that he would cooperate with you if desired in the investigation and preparation of the case. I delayed communicating with you until I could again see Mr. Swallow and get more definite information than he could furnish at the time of our first conversation. I again saw him today and have secured from him copies of the complaints which I am sending you herewith.



In complaint No. 2089 filed July 8th, 1913 by the Mono County Irrigation Company against various defendants you will note that the complainant asserts that it owns between 425 and 450 acres of land along Lee Vining creek; that Lee Vining creek has a maximum flow of 15,000 inches under a four inch head; that complainant now holds a right to the undisputed usufructory right to 9,000 inches; and they ask for an injunction restraining all the defendants from using any of the water in any form whatsoever. The claim of 9,000 inches for the irrigation of less than 450 acres of ground is of course more or less of a joke. The Indian that is one of the defendants in this case is Henry Jameson, and according to the information furnished by Mr. Swallow he was served on Friday August 1st, 1913.

In complaint No. 2090 filed July 16th, 1913 by Archibald Farrington as plaintiff against sundry and diverse persons who are joined as defendants, the complainant asserts that he is the owner of 1040 acres of land the descriptions of which are given; That this land lays along and bordering on Parker creek or its tributaries; that the maximum flow of Parker creek is 5,000 inches; that plaintiff has used and still uses and will continue to use the entire flow of said creek; that his rights are prior to all the rights of the defendants; That plaintiff has the right to an undisputed usufructory right to so use the waters of this creek and he asks that the court adjudge him owner of said 5,000 inches and restrain all the defendants

from diverting any or all of the waters for any purpose and that he be adjudged such other relief as may seem meet and be awarded all his costs. This claim amounts to 5 inches of water to the acre. The former complaint claims 20 inches of water to the acre. The Indians who are defendants in this case are Fee Foster, John Cluette, Louis B. Murphy and John Doe (Joe) McLaughlin. According to Mr. Swallow papers were served on them either Friday or Saturday, August 1 or 2, 1913.

Complaint No. 2091 filed by Archibald Farrington against various people who are joined as defendants asserts that the plaintiff is the owner of the identical lands that he claims in the proceeding, that said lands are along the course of Rush creek that the maximum flow of Rush creek is 40,000 inches, that plaintiff is now putting to beneficial use in the irrigation of the described lands the entire flow of the said creek; that none of the defendants have any claim or right in the creek; that he now holds the right to the undisputed usufructory right to divert and use 40,000 inches of the waters of Rush creek; that his use of the water has been continuous and economical; that his rights are superior to all others; and he asks that the defendants be enjoined from diverting any of said waters; that court grant such other relief as may be right and award the plaintiff the costs of the action. The defendants in this case who are Indians are Fee Foster, John Cluette, Louis B. Murphy and John Doe (Joe) McLaughlin who were served with the papers on

August 1st or 2nd, 1915. This claim amounts to 40 inches of water to the acre and in connection with the claims set forth in the preceding complaint the total amount claimed by Farrington is 45 inches of water to the acre. And he asserts that this is an economical use of the water.

Mr. Smallow informed me that action was to be commenced on another creek in that section, to wit; Walker creek. I have not been informed yet if such action has been started but we are interested in the case anyway as there are three Indian men on the said creek being owned by Indian George, Bridgeport Tom and Lucy Barker. Your attorney when he comes here had better look into this situation also and be prepared to take action to defend their rights even though no suit has been filed prior to that time.

The use of this water to part of those Indians at least is extremely important at this time of the year and during this season as they have crops of various sorts growing on their places which would all die if not irrigated and for the irrigation of which they must necessarily depend on the waters of this creek. The prevention of a temporary restraining order is very necessary to safe guard the rights and interests of the Indians.

It is the general impression that this litigation is backed by the Nevada California Power Company and its affiliated companies the Bishop Light and Power Company, the Southern

Sierras Power Company, and the Silver Lake Power Company. The Silver Lake Power Company is probably the branch that will fight the case as they are planning to put power plants along Silver Lake and Rush Creek. The Attorney for the Southern Sierras Power Company is the firm of Better and Potter of Los Angeles. I do not know if they have an attorney in San Francisco, but assume that they have not as officials of the company from Los Angeles have recently made trips to take up matters with the District Forester.

I have not made a personal investigation of this case, as the lands are situated 75 miles north west of Bishop, and time has not permitted me to do so. I have also waited with the thought that the representative of the attorney's office might want help in looking up the matter with the Indians and I desired to make one trip do for the whole case.

Mr. Olberg has a party of engineers in this valley at present working on irrigation matters and he has advised me that we can use them as needed in preparing the case.

Indian lands on Rush and Parker creeks amount to 600 acres, on Miller Creek 440 acres on Lee Vining creek 160 acres

I will be glad to help you in any manner that you may desire and the aid of the government at this school will be placed at your disposal in preparing the case. I sincerely hope that you may be able to amply protect the rights of the Indians

- 7 -

and secure them the possible possession of their lands and water.

Very Respectfully;

*R. S. Hatfield*

Superintendent.

3 enclosures.

Carbons to

Commissioner of Indian Affairs,  
Washington, D. C.

C. R. Olberg, Supt. of Irrigation,  
Federal Building, Los Angeles, Calif.