

District Court of the United States

Northern District of California

Northern Division

United States of America

vs.

State of California

No. 4068

NOTICE

TO John Parks Davis  
425 Crocker Bldg., SF  
  
Brobeck, Phleger & Harrison  
111 Sutter Street, SF  
  
Attorney General  
600 State Bldg., SF  
  
Neal Chalmers  
327 Porter Bldg.  
Woodland, Calif

YOU ARE HEREBY NOTIFIED that on July 14, 1947,  
JUDGE DAL M. LEMMON Ordered that this case be and the same is hereby  
continued to August 18, 1947, for a further hearing on the pre-  
trial conference.

(No further continuance will be made in this matter)

Sacramento, California

C. W. Calbreath  
Clerk, U. S. District Court

July 15, 1947

194

# District Court of the United States

Northern District of California

Northern Division

United States

vs.

State of California

No. 4058

NOTICE

TO U. S. Attorney  
Sacramento, Calif.

John Parks Davis  
425 Crocker Bldg., SF

Brobeck, Phleger & Harrison  
111 Sutter St., SF

Attorney General  
600 State Bldg., SF

Neal Chalmers  
327 Porter Bldg.,  
Woodland, Calif.

YOU ARE HEREBY NOTIFIED that on June 11, 1947,  
JUDGE DAL M. LEMMON Ordered that this case, which is on the calendar  
for June 19, 1947, for a pre-trial conference, be and the same  
is hereby continued to July 7, 1947.

Sacramento, California

C. W. Calbreath  
Clerk, U. S. District Court

June 12, 1947 194

# District Court of the United States

Northern District of California

Northern Division

United States

vs.

State of California

No. 4068

## NOTICE

TO U. S. Attorney  
Sacramento, Calif.

John Parks Davis  
425 Crocker Bldg.  
San Francisco

Brobeck, Phleger & Harrison  
111 Sutter St.  
San Francisco.

Attorney General  
State of Calif.  
Sacramento, Calif.

Neal Chalmers  
327 Porter Bldg.  
Woodland, Calif.

YOU ARE HEREBY NOTIFIED that on February 24, 1947,  
JUDGE DAL M. LEMMON Ordered that this case be and the same is hereby  
placed on the pre-trial calendar for March 18, 1947.

Sacramento, California

C. W. Calbreath  
Clerk, U. S. District Court

Feb. 26, 1947 194

JOHN PARKS DAVIS  
ATTORNEY AT LAW  
CROCKER BUILDING  
SAN FRANCISCO

January 14, 1947

Mr. C. W. Calbreath,  
Clerk, U. S. District Court,  
Sacramento, California.

Dear Mr. Calbreath:

Re: United States vs. State of California,  
et al. - No. ~~4085~~ 41068

I will appreciate your changing my address  
in connection with notices in the above entitled  
action to 425 Crocker Bldg., San Francisco 4,  
California (rather than 705 Standard Oil Bldg.).

, Very truly yours,

  
John Parks Davis

# District Court of the United States

Northern District of California

Northern Division

United States

vs.

State of California

No. <sup>68</sup>4036

NOTICE

TO U. S. Attorney  
Sacramento, Calif.

John Farks Davis <sup>425 Crocker Bldg</sup>  
~~705 Standard Oil Bldg.~~  
San Francisco

Brobeck, Phleger & Harrison  
111 Sutter St.  
San Francisco

Attorney General  
State of California  
Sacramento, Calif.

Neal Chalmers  
327 Porter Bldg.  
Woodland, Calif.

YOU ARE HEREBY NOTIFIED that on January 6, 1947,  
JUDGE Roger T. Foley Ordered that this case be and the same is hereby  
continued to February 17, 1947, to be set for trial

Sacramento, California

C. W. Calbreath  
Clerk, U. S. District Court

January 8, 1946 194

# District Court of the United States

Northern District of California

Northern Division

United States

vs.

State of California, etc., et  
al

No. 4068

NOTICE

TO Frank J. Hennessy,  
P. O. Building  
San Francisco, Calif.

John Parks Davis  
705 Standard Oil Bldg.  
San Francisco, Calif.

Brobeck, Phleger & Harrison  
111 Sutter St.  
San Francisco.

Robert W. Kenny  
Attorney General,  
State of California  
Sacramento, Calif.

Neal Chalmers,  
327 Porter Bldg.  
Woodland, Calif.

YOU ARE HEREBY NOTIFIED that on the above case will appear  
**JUDGE** on the calendar January 6, 1947, to be set for trial.

Sacramento, California

C. W. Calbreath  
Clerk, U. S. District Court

Dec. 26, 1946 194

# District Court of the United States

Northern District of California

Northern Division

United States,

vs.

State of California, etc., et al.

No. 4068

NOTICE

TO Frank J. Hennessy, Esq.,  
United States Attorney,  
Post Office Building,  
San Francisco, Calif.,

John Parks Davis, Esq.,  
Attorney at Law,  
705 Standard Oil Building,  
San Francisco, Calif.,

Messrs. Brobeck, Phleger  
& Harrison,  
Attorneys at Law,  
111 Sutter Street,  
San Francisco, Calif.,

Robert W. Kenny, Esq.,  
Attorney General of the  
State of California,  
Sacramento, Calif.,

Neal Chalmers, Esq.,  
Attorney at Law,  
327 Porter Building,  
Woodland, California

YOU ARE HEREBY NOTIFIED that on Tuesday, July 6th, 1943,  
JUDGE Martin I. Welsh Ordered this case set for November 2nd, 1943,  
for trial before a jury.

---oOo---

Sacramento, California

JUL 9 - 1943

C. W. CALBREATH

Clerk, U. S. District Court

# District Court of the United States

Northern District of California

Northern Division

United States of America,

State of California, <sup>vs</sup> et al.,

No. 4068

NOTICE

TO

*Frank J. Kennedy*  
~~N. Mitchell Bourquin, Esq.,  
Special Assistant to the  
Attorney General,  
710 Crocker Building,  
620 Market Street,  
San Francisco, Calif.,~~

John Parks Davis, Esq.,  
Attorney at Law,  
705 Standard Oil Building,  
San Francisco, California

Messrs. Brobeck, Phleger  
& Harrison,  
Attorneys at Law,  
111 Sutter Street,  
San Francisco, Calif.,

Robert W. Kenny, Esq.,  
Attorney General of the  
State of California,  
Sacramento, California

Neal Chalmers, Esq.,  
Attorney at Law,  
327 Porter Building,  
Woodland, California

YOU ARE HEREBY NOTIFIED that on Thursday, May 13th, 1943,  
JUDGE Martin I. Welsh Ordered this case continued to June 21st,  
1943, to be reset for trial.

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Sacramento, California

WALTER B. MALING,  
Clerk, U. S. District Court

May 14th, 1943.

CCE



# District Court of the United States

Northern District of California

NORTHERN Division

UNITED STATES OF AMERICA,

vs.

STATE OF CALIFORNIA, et al.,

No. 4068

NOTICE

TO Frank J. Hennessey, Esq.,  
United States Attorney,  
Post Office Building,  
Sacramento, Calif.,

John Parks Davis, Esq.,  
Attorney at Law,  
705 Standard Oil Building,  
San Francisco, Calif.,

Messrs. Brobeck, Phleger &  
Harrison,  
Attorneys at Law,  
111 Sutter Street,  
San Francisco, Calif.,

~~Eric W. Kenny, Esq.,~~  
Robert W. Kenny, Esq.,  
Attorney General of the  
State of California,  
Sacramento, Calif.,

Neal Chalmers, Esq.,  
Attorney at Law,  
327 Porter Building,  
Woodland, Calif.,

YOU ARE HEREBY NOTIFIED that on Tuesday, March 16th, 1943,  
JUDGE MARTIN I. WELSH Ordered that this case be continued to May 18,  
1943, for trial before a jury.

---o0o---

Sacramento  
California

WALTER B. MALING  
Clerk, U. S. District Court

March 17th 1943.

# District Court of the United States

Northern District of California

Northern Division

United States of America

vs.

State of California, et al.,

No. 4068

NOTICE

TO John Parks Davis, Esq.,  
Attorney at Law,  
705 Standard Oil Bldg.,  
San Francisco, Calif.

Neal Chalmers, Esq.,  
Attorney at Law,  
327 Porter Bldg.,  
Woodland, Calif.

Messrs. Brobeck, Phleger & Harrison,  
Attorneys at Law,  
Crocker Bldg.,  
San Francisco, Calif.

Frank J. Hennessy, Esq.,  
United States Attorney,  
Post Office Bldg.,  
Sacramento, Calif.

Earl Warren, Esq.,  
Attorney General of the  
State of California,  
Sacramento, Calif.

YOU ARE HEREBY NOTIFIED that on Thursday, January 14th, 1943,  
JUDGE MARTIN I. WELSH Ordered this case be continued to March 16, 1943,  
for trial before a jury.

Sacramento, California

WALTER B. MALING

Clerk, U. S. District Court

January 14

194 3

# District Court of the United States

Northern District of California

NORTHERN Division

UNITED STATES OF AMERICA,

vs.

STATE OF CALIFORNIA, et al.,

No. 4068

NOTICE

TO ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
Special Assistant to the  
Attorney General,  
Crocker Building,  
San Francisco, Calif.,

John Parks Davis, Esq.,  
Attorney at Law,  
705 Standard Oil Building,  
San Francisco, Calif.,

Messrs. Brobeck, Phleger & Harrison,  
Attorneys at Law,  
Crocker Building,  
San Francisco, California

Earl Warren, Esq.,  
Attorney General of the  
State of California,  
Sacramento, California

Neal Chalmers, Esq.,  
Attorney at Law,  
327 Porter Building,  
Woodland, California

Frank J. Hennessy, Esq.,  
United States Attorney,  
Post Office Building,  
Sacramento, California

YOU ARE HEREBY NOTIFIED that on Monday, October 26th, 1942,  
JUDGE Martin I. Welsh Ordered this case set for trial for January  
19th, 1943, for trial before a jury.

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Sacramento  
California

WALTER B. MALING,  
Clerk, U. S. District Court

October 26th, 1942.

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FILED

OCT 13 1942

WALTER B. MALING,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

-----  
UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

STATE OF CALIFORNIA, ET AL. )

Defendants. )

NO. 4068-L

PLAINTIFF'S REQUEST TO  
CLERK, SUPPORTED BY  
AFFIDAVIT, FOR ENTRY  
OF DEFAULT. (Rule 55(a).  
Rules of Civil Procedure.

To the Clerk of the above entitled Court:

It appears from the record of this Court that the de-  
fendants, CALIFORNIA TRUST AND SAVINGS COMPANY, a corpora-  
tion, PACIFIC GAS and ELECTRIC COMPANY, a corporation,  
HOMESTAKE MINING COMPANY, a corporation, GOLDEN STATE GOLD  
MINING COMPANY, a corporation, and POWER and IRRIGATION  
COMPANY OF CLEAR LAKE, a corporation, have been personally  
served with process, but have failed to plead or otherwise  
defend, as provided by the Rules of Civil Procedure.

You are hereby requested, said request being supported  
by the attached affidavit, to enter the above named defendants'  
default.

Dated: This 13<sup>th</sup> day of  
October, 1942.

By:

FRANK J. HENNESSY,  
United States Attorney,

*Thomas O'Hara*  
THOMAS O'HARA,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff  
United States of America.

certain

In this cause the/defendant<sup>s</sup> \_\_\_\_\_

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having been regularly served with process, as appears from the record and papers on file herein, and having failed to appear and plead, answer or demur to plaintiff's complaint, within the time allowed by law, and the time for appearing and pleading, answering and demurring having expired;

Now, upon application of Thomas O'Hara, Asst. U.S. Attorney,

\_\_\_\_\_, Attorney for plaintiff ,

the default of the defendant<sup>s</sup> California Trust and Savings Company, a corporation, Pacific Gas and Electric Company, a corporation, Homestake Mining Company, a corporation, Golden State Gold Mining Company, a corporation, and Power and Irrigation Company of Clear Lake, a corporation,

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is hereby entered herein, according to law.

In Testimony Whereof, I have hereunto set my hand and

seal of the District Court of the  
United States for the Northern District  
of California, this 13th day of  
October A. D. 1942

WALTER B. MALING, CLERK,

BY *T. M. [Signature]*

DEPUTY CLERK.

OCT 13 1942

1 UNITED STATES OF AMERICA, ) WALTER B. MALING,  
 2 State and Northern District of California, ) SS. CLERK  
 3 County of Sacramento. )

4 THOMAS O'HARA, being first duly sworn, deposes and says:

5 He is an Assistant United States Attorney and as such  
 6 is one of the Attorneys for the Plaintiff. Plaintiff's com-  
 7 plaint was filed on February 10, 1939. On February 10, 1939  
 8 summons was duly issued, and thereafter a copy of said  
 9 summons, or alias summons, together with a copy of said com-  
 10 plaint, was personally served upon the hereinafter named  
 11 defendants on the dates hereinafter set forth opposite their  
 12 respective names:

<u>DEPENDANT</u>	<u>SUMMONS SERVED</u>
California Trust and Savings Company, a corporation	February 27, 1939
Pacific Gas and Electric Company, a corporation	February 16, 1939
Homestake Mining Company, a corporation	February 16, 1939
Golden State Gold Mining Company, a corporation	February 16, 1939
Power and Irrigation Company of Clear Lake, a corporation	February 3, 1940.

13 The defendants, and each of them, against whom a judg-  
 14 ment for affirmative relief is sought, have, and each of  
 15 them has, failed to plead or otherwise defend, as provided  
 16 by the Rules of Civil Procedure.

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Thomas O'Hara

Subscribed and sworn to  
 before me this 13<sup>th</sup>  
 day of October, 1942.

M. B. Brown  
 Deputy Clerk, U. S. District Court  
 Northern District of California

FILED<sup>69</sup>

OCT 13 1942

WALTER B. MALING,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 vs. )  
 STATE OF CALIFORNIA, et al. )  
 Defendants. )

No. 4068-L  
AFFIDAVIT TO OBTAIN DEFAULT  
JUDGMENT AS REQUIRED BY THE  
PROVISIONS OF THE SOLDIERS  
AND SAILORS RELIEF ACT OF 1940

UNITED STATES OF AMERICA, )  
 State and Northern District of California, ) SS.  
 County of Sacramento. )

THOMAS O'HARA, being first duly sworn, deposes and says:  
He is an Assistant United States Attorney, and as such  
is one of the attorneys for the Plaintiff.

This affidavit setting forth the following facts is made  
pursuant to Section 200(1) of the Soldiers and Sailors Civil  
Relief Act of 1940.

The following named defendants are corporations and are  
not in military service within the meaning of the Soldiers and  
Sailors Civil Relief Act of 1940, approved October 17, 1940:  
CALIFORNIA TRUST and SAVINGS COMPANY, a corporation; PACIFIC  
GAS and ELECTRIC COMPANY, a corporation; HOMESTAKE MINING  
COMPANY, a corporation; GOLDEN STATE GOLD MINING COMPANY, a  
corporation, and POWER AND IRRIGATION COMPANY OF CLEAR LAKE, a  
corporation.

*Thomas O'Hara*

Subscribed and sworn to before me  
this 13<sup>th</sup> day of October, 1942.

*W. B. Brown*  
Deputy Clerk, U. S. District Court  
Northern District of California

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<sup>63</sup>  
**FILED**

OCT 13 1942

WALTER B. MALING,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

-----

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STATE OF CALIFORNIA, et al. )  
 )  
Defendants. )

NO. 4068-L

NOTICE OF MOTION

TO: ESTELLE R. DAVIS, RUTH DE FREMERY, BRADLEY MINING CO., a corporation, and JOHN PARKS DAVIS, 705 Standard Oil Building, San Francisco, California, Attorney for said Defendants;

TO: JOAN MACDONOUGH, a minor, MARY MACDONOUGH, a minor, by WILLIAM O. B. MACDONOUGH, their next friend, WILLIAM O.B. MACDONOUGH, individually and WILLIAM O. B. MACDONOUGH, as Administrator c.t.a., of the Estate of Joseph M. Macdonough, deceased, and HOWARD J. FINN and BROBECK, PHLEGER and HARRISON, Crocker Building, San Francisco, California, Attorneys for said Defendants;

TO: STATE OF CALIFORNIA, and EARL WARREN, Attorney General of the State of California, and ALBERT F. ZANGERLE, Deputy Attorney General of the State of California, Sacramento, California, Attorneys for said Defendant;

TO: CLEAR LAKE WATER COMPANY, a corporation, and NEAL CHALMERS, 327 Porter Building, Woodland, California, Attorney for said Defendant;

You and each of you will please take notice that on Monday, October 26, 1942, at 10 o'clock A.M., or as soon thereafter as the matter can be heard, plaintiff will move the Court

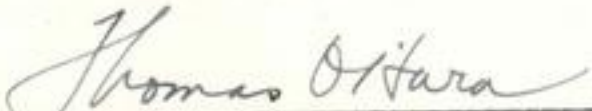


1 to set the above entitled action for a day certain for trial.

2 Dated: Sacramento, California,

3 October 13<sup>th</sup> 1942.

4  
5 FRANK J. HENNESSY,  
6 United States Attorney,

7   
8 Assistant United States Attorney

AFFIDAVIT OF SERVICE BY MAIL (C. S. P. 1013A)

(Must be attached to original or a true copy of paper served)

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
NORTHERN DISTRICT  
COUNTY OF SACRAMENTO

SS.

NO. 4068-L

HELEN WILLIAMS, being sworn, says that She is a citizen of the United States, over 18 years of age, a resident of Sacramento County, and not a party to the within action.

That affiant's ~~residence~~ (business) address is Room 404, Post Office Building Sacramento, California

That affiant served a copy of the attached NOTICE OF MOTION

by placing said copy in an envelope addressed to JOHN PARKS DAVIS, ESQ., Attorney at Law at his office ~~residence~~ address 705 Standard Oil Building San Francisco, California

which envelope was then sealed and postage fully prepaid thereon, and thereafter was on October 13 19 42, deposited in the United States mail at Sacramento, California

That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

Subscribed and sworn to before me on October 13, 1942

*Thomas O'Hara*  
Notary Public in and for said county and state.

*Helen Williams*

1 HOWARD J. FINN, and  
2 BROBECK, PHLEGER & HARRISON,  
3 Crocker Building,  
San Francisco, California,  
Telephone: Sutter 0666.

4 Attorneys for Defendants  
5 William O. B. Macdonough, William  
6 O. B. Macdonough, as administrator,  
etc., Joan Macdonough, a minor,  
and Mary Macdonough, a minor.

67

FILED

.....O'clock and.....Min.....

OCT 19 1940

WALTER B. MALING,  
CLERK.

14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION.

17 UNITED STATES OF AMERICA,

Plaintiff,

-vs-

20 THE STATE OF CALIFORNIA, et al.,

Defendants.

No. 4068-L.

Civil.

23 NOTICE OF FILING DEPOSITION

24 To the Plaintiff above-named, and to  
FRANK J. HENNESSY, Esq., its attorney;

25 To the Defendants Estelle R. Davis, Ruth de Fremery, and  
26 Bradley Mining Co., and to  
JOHN PARKS DAVIS, Esq., their attorney:

28 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE, hereby  
29 given, that the deposition of C. M. CRAWFORD has been filed  
30

1 with the Clerk of the above-entitled Court.

2

3 Dated: October 15, 1940.

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Howard J. Davis

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Brooks Phelps Harrison

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Attorneys for Defendants  
William O. B. Macdonough, William  
O. B. Macdonough as administrator,  
etc., Joan Macdonough, a minor,  
and Mary Macdonough, a minor.

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17th October 1940  
Assistant U.S. Attorney  
Plaintiff

15th October 1940  
After James Jones  
15th October 1940  
the party being

with the clerk of the above-entitled Court.

Dated: October 18, 1940.

*Attorney for Plaintiff*

*Attorney for Defendant*

Attorneys for Defendants  
William O. B. Macdonough, William  
O. E. Macdonough as administrator,  
etc., John Macdonough, a minor,  
and Mary Macdonough, a minor.

Due service and receipt of a copy of the within is hereby  
admitted this 17th day of October 1940  
*Ernest J. Seaud*  
Assistant U.S. Attorney  
Attorney for Plaintiff

Due service and receipt of a copy of the within is hereby  
admitted this 15th day of October 1940  
*John Paul Davis*  
Attorney for Estelle R. Davis, Kate de Fremery  
and Pradley Mining Co.

1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone Douglas 1510  
6 Attorney for certain defendants

65  
**FILED**

O'clock and Min.

JUL 1 - 1940

**WALTER B. MALING,**  
CLERK.

10 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,  
13 Plaintiff,  
14 vs.  
15 THE STATE OF CALIFORNIA, et al.,  
16 Defendants.  
17

No. 4068-L

18  
19 STIPULATION EXTENDING TIME

20 IT IS HEREBY ATIPULATED by and between the plaintiff  
21 and Bradley Mining Company, Estelle R. Davis and Ruth de Fremery,  
22 certain of the defendants herein, that said defendants may have  
23 to and including the 26th day of July, 1940, within which to file  
24 an answer to plaintiff's complaint.

25 DATED: June 29, 1940.

26  
27 *Conrad A. Seawell*  
28 Attorney for Plaintiff.

29 *John Parks Davis*  
30 Attorney for said Defendants.  
31  
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1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510  
6 Attorney for certain defendants

63  
**FILED**  
.....O'clock and.....Min.....  
JUN 15 1940  
**WALTER B. MALING,**  
CLERK.

9 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14 vs.  
15 THE STATE OF CALIFORNIA, et al.,  
16 Defendants.

No. 4068-L

17  
18 STIPULATION EXTENDING TIME

19  
20 IT IS HEREBY STIPULATED by and between the plaintiff  
21 and Bradley Mining Company, P. R. Bradley, Estelle R. Davis and  
22 Ruth de Fremery, certain of the defendants herein, that said  
23 defendants may have to and including the 29th day of June, 1940,  
24 within which to file an answer to plaintiff's complaint.

25 DATED: June 14, 1940.

26  
27 Emmett L. Seawell  
28 Attorney for Plaintiff  
29 John Parks Davis  
30 Attorney for said Defendants  
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1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone Douglas 1510  
6 Attorney for certain defendants

62

**FILED**  
.....O'clock and.....Min.....  
JUN 3 - 1940  
**WALTER B. MALING,**  
CLERK.

9 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14  
15 vs.  
16 THE STATE OF CALIFORNIA, et al.,  
17 Defendants.

NO. 4068-L

18 STIPULATION EXPENDING TIME

19 IT IS HEREBY STIPULATED by and between the plaintiff  
20 and Bradley Mining Company, P. R. Bradley, Estelle R. Davis and  
21 Ruth de Fremery, certain of the defendants herein, that said  
22 defendants may have to and including the 15th day of June, 1940,  
23 within which to file an answer to plaintiff's complaint.  
24

25 DATED: June 3, 1940.

26 Emmet J. Shull  
27 Attorney for Plaintiff

28 John Parks Davis  
29 Attorney for said Defendants  
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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

U.S.  
\_\_\_\_\_  
\_\_\_\_\_  
-vs-  
\_\_\_\_\_  
State of Calif., et al  
\_\_\_\_\_  
\_\_\_\_\_

NO. 4068

NOTICE

TO U.S. Attorney, Sacramento  
John Parke Davis, Standard Oil Bldg., SF  
Brobeck, Phleger & Harrison, Crocker Bldg., SF

YOU ARE HEREBY NOTIFIED that on May 21 1940  
Judge MARTIN I. WELSH directed that

motions to dismiss complaint, for a more definite statement,  
for a bill of particulars and to strike be and the same are denied  
in the above entitled case.

-oOo-

YOU ARE HEREBY NOTIFIED that on \_\_\_\_\_ 19\_\_\_\_  
a Final Judgment / Decree was entered by this office in the above  
entitled case.

-oOo-

YOU ARE HEREBY NOTIFIED that on \_\_\_\_\_ 19\_\_\_\_  
a NOTICE OF APPEAL was filed by \_\_\_\_\_  
in the above entitled case.

Walter B. Maling  
WALTER B. MALING,  
CLERK.

Sacramento, California,  
May 22nd, 1940.

# District Court of the United States

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 21st day of May, in the year of our Lord one thousand nine hundred and Forty.

PRESENT: the Honorable MARTIN I. WELSH, District Judge

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
STATE OF CALIFORNIA, et al.,  
Defendant.

No. 4068

The motions of the defendants, William O. B. MacDonough, William O. B. MacDonough as administrator with the will annexed of the estate of Joseph M. MacDonough, deceased, Estelle R. Davis, Ruth de Fremery and Bradley Mining Company to dismiss the complaint, for a more definite statement, for a bill of particulars and to strike having been heretofore heard and submitted, being now fully considered, it is Ordered that the motions to dismiss the complaint, for a more definite statement, for a bill of particulars and to strike be and the same are hereby DENIED.

---oCo---

Flint:

There are several memos. in the file which I have filed as of today. They should be docketed first. I am also enclosing the file. Mrs. Morgan, after a conference with the Judge, advises me that my minute order advancing the session in Sacto should be amended by striking therefrom any reference to the advancement of cases. Will you please strike from my order all that appears subsequent to "June 3rd, 1940". Thanks.

Chris

1 JOHN PARKS DAVIS  
2 705 Standard Oil Building  
3 San Francisco, California  
4 Telephone: DOuglas 1510  
5 Attorney for Defendants,  
6 Estelle R. Davis, Ruth de  
7 Fremery, and Bradley Mining Co.

59  
FILED

MAY 21 1940

WALTER B. MALING, CLERK

by \_\_\_\_\_  
Deputy Clerk

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT,  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11  
12 Plaintiff,  
13 vs.  
14 STATE OF CALIFORNIA, et al.,  
15 Defendants

Civil No. 4068-L

16  
17  
18 SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES OF  
19 DEFENDANTS ESTELIE R. DAVIS, RUTH DE FREMERY, AND  
20 BRADLEY MINING CO., IN ANSWER TO AUTHORITIES SUBMITTED  
21 WITH LETTER OF UNITED STATES ATTORNEY, DATED APRIL 20, 1940

22 The government has recently filed an additional  
23 memorandum of authorities to support its contention that the  
24 defense of laches is not applicable to the sovereign. In no  
25 case cited by the government is the situation similar to that  
26 at bar. The complaint alleges that the patent involved here  
27 was applied for in 1859 and granted early in 1860 to defendants'  
28 predecessor, Billings, - approximately eighty years prior to the  
29 filing of this suit. No such lapse of time appears in any of the  
30 cases cited by the government.

31 Nor can the sweeping generalization that laches may not  
32 be imputed to the sovereign, be supported. The Supreme Court of  
the United States has held to the contrary in the case of United

States vs. Diamond Coal & Coke Co., 255 U.S. 323, 333, 65 L.Ed.660,  
1 663, in which an equitable action by the government was brought to  
2 cancel patents on the ground of fraud in order to avoid the bar of  
3 limitations of the Act of March 3, 1891 - limiting the government  
4 to six years in actions to annul patents. The government argued  
5 in that case that the patent had been granted fraudulently. The  
6 defendants raised the defense of laches in discovering fraud and  
7 the government insisted that laches could not be imputed to it. On  
8 this particular point of law the Supreme Court stated, at page 663:

9 "Before testing the accuracy of the deductions  
10 from the averred facts upon which these conclusions  
11 are necessarily based, we dispose of a legal con-  
12 tention of the United States, that, in any event,  
13 the propositions were wrongfully applied because,  
14 under the statute, laches in discovering the fraud  
15 could not be imputed to the United States. As the  
16 statute in express terms deals with the rights of  
17 the United States, and bars them by the limitation  
18 which it prescribes, and as that bar would be  
19 effective unless the equitable principle arising  
20 from the fraud and its discovery be applied, it  
21 must follow, since the doctrine of laches is an  
22 inherent ingredient of the equitable principle in  
23 question, that the proposition is wholly without  
24 merit, because, on the one hand, it seeks to avoid  
25 the bar of the statute by invoking the equitable  
26 principle suspending its operation, and, on the  
27 other, rejects the fundamental principle upon  
28 which the equitable doctrine invoked can alone rest."

29 The above rule was expressly approved in our Ninth Cir-  
30 cuit - United States vs. Smith (C.C.A. 9 1926) 14 F. (2nd) 391.

31 Where government seeks equitable relief, it  
32 is subject to every principle and rule of  
33 equity applicable to the rights of private  
34 citizens under like circumstances

35 Independent of the question of whether the defense of  
36 laches may be raised against the government in this case, it cannot  
37 be denied that the equitable principle of abhorrence of stale  
38 demands and the equitable defense of a bona fide purchaser  
39 may be raised against the government where, as here, it appeals to  
40 a court of equity for relief. The fact that the government may be  
41 suing on behalf of Indians makes no difference in this respect.  
42 See Folk vs. United States (C.C.A. - 8) - 233 Fed. 177, where  
the United States sued, on behalf of the Creek Tribe of Indians

1 to avoid the enrollment, allotment and patent under which the  
2 defendants were in possession of certain lands. The court held  
3 that the United States and the Creek tribe were governed by  
4 rules and principles of equity jurisprudence applicable to like  
5 rights and claims of individuals in similar circumstances. While  
6 a mere delay, without more, may not be a sufficient defense,  
7 the court holds that the equitable defense of stale demands is  
8 proper where the time elapsed is so great that witnesses must  
9 necessarily have died or disappeared and that memory of others  
10 have become dim with the passage of time.

11 "This is a suit in equity. In such a suit the claims  
12 of the United States, or of the Creek Tribe, appeal  
13 to the conscience of the chancellor with the same,  
14 but with no greater or less, force than would those  
15 of a private citizen, and, barring the effect of  
16 mere delay, they are judicable in a court of chan-  
17 cery, to whose jurisdiction the state or nation or  
18 tribe submits them by every principle and rule of  
19 equity applicable to the rights of private citizens  
20 under like circumstances. State of Iowa v. Carr,  
21 191 Fed. 257, 266, 112 C.C.A. 477, 486; United  
22 States v. Stinson, 197 U. S. 200, 204, 205,  
23 25 Sup. Ct. 426, 49 L. Ed. 724; United States v.  
24 Detroit Timber & Lumber Co., 67 C.C.A. 1, 10, 131  
25 Fed. 668, 677; United States v. Chicago, M. & St.  
26 P. Ry. Co. (C.C.) 172 Fed. 271, 276; United States  
27 v. Chandler-Dunbar Water Power Co., 152 Fed. 25,  
28 26, 27, 37, 38, 40, 41, 81 C.C.A. 221, 222, 223,  
29 233, 234, 236, 237; United States v. Stinson, 125  
30 Fed. 907, 910, 60 C.C.A. 615, 616; Herman on  
31 Estoppel, pp. 676, 677; State of Michigan v.  
32 Jackson, etc. 16 C.C.A. 345, 351, 69 Fed. 116,  
122; United States v. California & Oregon Land  
Co., 148 U.S. 31, 41, 13 Sup. Ct. 458, 37 L. Ed.  
354; Carr v. United States, 98 U. S. 433, 438,  
25 L.Ed. 209; Walker v. United States (C.C.)  
139 Fed. 409, 411, 412, 413.

33 "The United States has no pecuniary interest  
34 in this litigation. The only pecuniary or prop-  
35 erty interest or equity in the plaintiffs is that  
36 of the Creek Tribe, and as the stream cannot rise  
37 higher than its source the equities of the United  
38 States are no greater and no less than those of  
39 the tribe. United States v. Beebe, 127 U.S. 338,  
40 346, 8 Sup. Ct. 1083, 32 L. Ed. 121; French  
41 Republic v. Saratoga Vichy Co., 191 U.S. 427,  
42 438, 24 Sup. Ct. 145, 48 L. Ed. 247; State of  
43 Iowa v. Carr, 191 Fed. 257, 265, 266, 112 C.C.A.  
44 477, 485, 486; United States v. Detroit Timber  
45 & Lbr. Co., 131 Fed. 668, 678, 67 C.C.A. 1, 11;  
46 La Clair v. United States (C. C.) 184 Fed. 128,  
47 135, 136; Mountain Copper Co. v. United States,

1 142 Fed. 625, 629, 73 C.C.A. 621, 625; Chesapeake  
2 & Delaware Canal Co. v. United States, 223 Fed.  
3 926, 929, 930, 139 C.C.A. 406, 409, 410, L.R.A.  
4 1916B, 734. Even where equities are equal the  
5 defendant prevails. It is only when the case of  
6 the complainant appeals to the conscience of the  
7 chancellor with the greater force that he will  
8 interfere to grant relief, and in equity no one  
9 may successfully deny to the damage of another  
10 the truth of statements by which he has purpose-  
11 ly or carelessly induced another to so change  
12 his situation that the assertion of the truth  
13 will irreparably or seriously injure him. Hemmer  
14 v. United States, 204 Fed. 898, 902, 123 C.C.A.  
15 194, 198; Town of St. Johnsbury v. Morrill, 55  
16 Vt. 165, 169; 2 Pomeroy's Equity Juris. p. 739;  
17 Illinois Trust & Sav. Bank v. City of Arkansas  
18 City, 76 Fed. 271, 293, 22 C.C.A. 171, 193,  
19 34 L.R.A. 518; Paxson v. Brown, 61 Fed. 874, 881,  
20 10 C.C.A. 135, 142; Union Pac. Ry. Co. v.  
21 Chicago, R. I. & P. Ry. Co., 51 Fed. 309, 326,  
22 327, 2 C.C.A. 174, 191, 192."

.....

23 "Between the making of these rolls from 1890  
24 to 1902 and the commencement of this suit a  
25 great change in the value of the land, from a  
26 few dollars to many thousands of dollars, has  
27 occurred, witnesses who knew the facts 16 to  
28 20 years ago must necessarily have died or  
29 disappeared, the memory of others has been  
30 dimmed with the passage of time, and this tribe  
31 first presents its claim that its rolls were  
32 fraudulent after all these events, more than  
33 19 years after its last roll was made, and more  
34 than 12 years after the final roll of the Dawes  
35 Commission became a public record. The equities  
36 of the complainants fail to appeal to the con-  
37 science of this court with sufficient force to  
38 induce it to appoint a receiver for the property  
39 in the possession of the defendants, or to  
40 sustain the appointment or the unjunction al-  
41 ready made. The proof in this case is neither  
42 clear nor convincing, nor satisfactory that it  
43 is probable that the plaintiffs will ultimately  
44 recover."

45 Defense that equity abhors stale claims  
46 may be raised in bar against government  
47 when it seeks equitable relief

48 Irrespective of laches or the statute of limitations  
49 there is a well-defined equitable rule that a court of equity  
50 will not entertain a claim so stale as to be not capable of  
51 satisfactory proof and this equitable doctrine applies to all  
52 suitors, including the government.

1 See United States vs. Beebe, (C.C. E.D. Ark)  
2 17 Fed. 36 (affirmed U.S. vs. Beebe,  
127 U.S. 338, 32 L. Ed. 121, 125)

3 The above case is so clearly determinative of the case at bar  
4 and so apt in its opinion as applied to the facts of the instant  
5 case, which are disclosed in the complaint, that the opinion is  
6 set out at some length: (17 Fed. at p. 37)

7 "The demurrer raises, for the first time in a  
8 federal court, the important question whether any  
9 lapse of time will constitute a bar, or a sufficient  
defense, to a suit in equity, brought in the name  
of the United States.

10 "This suit is brought to cancel and set aside  
11 certain land patents executed by the United States,  
on the ground that the same were obtained by fraud.  
12 The patents attacked as fraudulent were issued  
about 43 years before the filing of the bill, and  
13 many of the alleged matters of fact, concerning  
which it would be necessary to take proofs, in  
14 order to determine the question of fraud, trans-  
pired more than 60 years before the filing of the  
15 bill, as appears from its allegations."

16 \*\*\*\*\*

17 "A court of equity cannot contemplate with any  
18 degree of favor the proposition that this land  
shall, at this late day, be declared a part of  
19 the public domain, or granted to claimants who  
have so long slept upon their rights. It must,  
20 however, be conceded that, as a general rule,  
the United States is not bound by any statute  
of limitations not imposed by congress, or  
chargeable with laches.

21 "The following cases, cited by counsel for  
22 plaintiff, abundantly support this general doc-  
trine: U. S. v. Kirkpatrick, 9 Wheat. 720;  
23 Gibson v. Chouteau, 13 Wall. 92; Gausson v.  
U.S. 97 U. S. 584; U. S. v. Thompson, 98 U. S.  
24 486.

25 "These are all, it is true, actions at  
26 common law, but the same doctrine must, no  
doubt, prevail in equity, where the statute  
27 of limitation is sought to be interposed in  
analogy to a like limitation at law. Unless,  
28 therefore, this defense can be supported upon  
some principle of <sup>equity</sup> jurisprudence, separate and  
distinct from any state statute of limitations,  
29 and from any considerations based alone upon  
the laches of the public agents of the govern-  
30 ment, it must fail, however disastrous to the  
rights of innocent parties, and however  
31 inequitable the consequences may be.

32

1            "We are thus brought to the consideration of  
2 the question whether a lapse of time so great as  
3 to afford a clear presumption that all the witnesses  
4 to the transaction in controversy are dead, and all  
5 proof lost or destroyed, will of itself constitute  
6 a bar to a suit in equity, independently of any  
7 statute of limitations, and without regard to any  
8 question of laches; or, in other words, should a  
9 court of equity refuse to entertain a bill in  
10 equity upon the sole ground that the lapse of  
11 time has been so great as to make it impossible  
12 to ascertain the facts and apply the remedy, by  
13 reason of the death of the witnesses and the loss  
14 or destruction of proofs? In my judgment, the  
15 doctrine that a court of equity will not entertain  
16 a claim so stale as to be not capable of satis-  
17 factory proof, must stand as one applicable alike  
18 to all suitors; it rests not upon any statute of  
19 limitations, nor upon any doctrine of laches alone,  
20 although the fact of laches may always appear; it  
21 rests rather upon the sound rule that no court  
22 should ever entertain a controversy after the  
23 ravages of time have destroyed the evidence concern-  
24 ing it. A party called upon to answer to a charge  
25 of fraud committed by his ancestors, or those through  
26 or under whom he claims, more than 40 years before  
27 the commencement of the suit, need not plead the  
28 technical bar of the statute of limitations or the  
29 laches of the complainant; it is enough if he  
30 alleges that the claim is stale, and insists that  
31 by reason of the long delay in bringing suit the  
32 witnesses by whom he might have explained the  
transaction are dead. To compel him to submit  
his rights to adjudication under such circumstances  
would be abhorrent to the principles of equity,  
not because of any statutory bar or any laches  
merely, but because the great lapse of time is  
evidence against the complainant and in favor of  
the defendant, and because it is contrary to  
equity and good conscience that any person should  
be brought into court to answer for a fraud  
alleged to have been committed by others before  
he was born, and so long ago as to make it  
impossible for him to find living witnesses who  
have personal knowledge of the facts. Under such  
circumstances a court of equity ought to presume  
that the persons who were cognizant of the facts  
could, if living, explain them so as to disprove  
the charge of fraud.

26            "It is well settled that possession of land  
27 for a long period of time will raise a presumption  
28 of a grant which will be enforced as against the  
29 government, (Mayor v. Horner, Cowp. 102; Jackson v.  
30 McCall, 10 Johns. 380; Lewis v. San Antonio, 7 Tex.  
31 304; 3 Starkie, 1221; 2 Whart. Ev. pp. 1348; Roe v.  
32 Ireland, 11 East, 280;) and if a grant is to be  
presumed by reason of the lapse of time, when there  
is no other evidence of a grant except that afforded  
by long possession, it would seem that, upon similar  
grounds, the validity of a grant which is shown to  
have been actually executed, and under which possess-  
ion has been held for an equally long period of time,



1 should be presumed. The authorities support the  
2 proposition that lapse of time may be a good  
3 defense in equity, independently of any statute  
4 of limitations, and they show that the doctrine  
5 rests not alone upon laches; it is often put  
6 upon one or all of the following grounds, namely:  
7 First, that courts of equity must, for the peace  
8 of society and upon grounds of public policy,  
9 discourage stale demands by refusing to entertain  
10 them; second, that lapse of time will, if long  
11 enough, be regarded as evidence against the stale  
12 claim equal to that of credible witnesses, and  
13 which, being disregarded, would in a majority of  
14 cases lead to unjust judgments; third, that, after  
15 the witnesses who had personal knowledge of the  
16 facts have all passed away; it is impossible to  
17 ascertain the facts, and courts of equity will,  
18 on this ground, refuse to undertake such a task.

11 "Thus Mr. Justice Story says:

12 "'A defense peculiar to courts of equity is  
13 founded on the mere lapse of time and the stale-  
14 ness of the claim, in cases where no statute of  
15 limitations directly covers the case. In such  
16 cases courts of equity act sometimes by analogy  
17 to the law, and sometimes act upon their own  
18 inherent doctrine of discouraging, for the peace  
19 of society, antiquated demands, by refusing to  
20 interfere when there has been gross laches in  
21 prosecuting rights, or long and unreasonable  
22 acquiescence in the assertion of adverse rights.'  
23 2 Story, Eq. 1520."

18 At page 40, it is said:

19 "In Brown v. Co. of Buena Vista, 95 U.S. 161,  
20 the same doctrine is expressed in these words:

21 "'The lapse of time carries with it the  
22 memory and life of witnesses, the muniments of  
23 evidence, and other means of proof. The rule  
24 which gives it the effect prescribed is necessary  
25 to the peace, repose, and welfare of society.  
26 A departure from it would open an inlet to the  
27 evils intended to be excluded.'

25 -- \*\*\*\* --

26 "In Wilson v. Anthony, 19 Ark. 16, cited with  
27 approval by the supreme court of the United States  
28 in Sullivan v. Railroad Co. 94 U.S. 811, the  
29 doctrine is well stated thus:

30 "'The chancellor refuses to interfere, after  
31 an unreasonable lapse of time, from considerations  
32 of public policy, and from the difficulty of doing  
33 entire justice when the original transactions have  
34 become obscured by time, and the evidence may be  
35 lost.'

32 \*\*\*\*\*Numerous other authorities might be  
33 cited to the same effect, but these are sufficient.

1 In view of these authorities, and upon reason, I  
2 hold it to be a general principle of equity that  
3 lapse of time may constitute a sufficient defense,  
4 even in the absence of any statute of limitations,  
5 and without necessary reference to any question  
6 of laches. Such being the law, it is clear that  
7 lapse of time may be a sufficient defense to a  
8 suit instituted in the name of the government.

9 "It is well settled that when the United  
10 States becomes a party to a suit in the courts,  
11 and voluntarily submits its rights to judicial  
12 determination, it is bound by the same principles  
13 that govern individuals. When the United States  
14 voluntarily appears in a court of justice, it at  
15 the same time voluntarily submits to the law, and  
16 places itself upon an equality with other litigants.  
17 U.S. v. Fossatt, 21 How. 450; The Floyd Acceptances,  
18 7 Wall. 675; U.S. v. Barker, 12 Wheat. 559."

19 On page 41, it is said:

20 "See, also, *Burgank v. Fay*, 65 N. Y. 62;  
21 *Osborne v. Bank of U. S.* 9 Wheat. 870; *U. S. v.*  
22 *Macdaniel*, 7 Pet. 1; *Brent v. Bank of Washington*,  
23 10 Pet. 615. In the latter case the court  
24 declares that there is no reason why the United  
25 States should be exempted from a fundamental  
26 rule of equity subject to which its courts ad-  
27 minister their remedy, and it is said: 'Thus  
28 compelled to come into equity for a remedy to  
29 enforce a legal right, the United States must  
30 come as other suitors, seeking, in the adminis-  
31 tration of the law of equity, relief,' etc.

32 "The same doctrine was laid down in strong  
33 language by Attorney General Black in *Reside's*  
34 *Case*, 9 Op. Atty. Gen. 204, and also in the case  
35 of *People v. Clarke*, 10 Barb. 120. In the  
36 latter case, which was a bill instituted by the  
37 attorney general of New York to cancel certain  
38 patents granted before the revolution, the court  
39 said:

40 "'If the questions in this case may be deemed  
41 to belong to a court of equity, I cannot persuade  
42 myself that they are, therefore, never to be put  
43 at rest by lapse of time. It would be an alarm-  
44 ing doctrine to hold that every man in the state  
45 who holds any land under a grant before the revol-  
46 ution may be turned out of possession by the  
47 plaintiffs, if a king was cheated who, one or  
48 two hundred years since, made the grant."

49 \* \* \* \* \*

50 It is said on page 42:

51 "The demurrer to the bill is sustained; and,  
52 unless the complainant asks leave to amend, there  
53 will be a decree for respondents, dismissing the  
54 bill."

1           In affirming the decision of the lower court sustaining  
2 the demurrer to the complaint of the government, the Supreme Court  
3 of the United States stated at page 125 (32L. Ed.):

4           "These principles, so far as they relate to  
5 general Statutes of Limitation, the laches of a  
6 party, and the lapse of time, have been rendered  
7 familiar to the legal mind by the oft-repeated  
8 enunciation and enforcement of them in the decis-  
9 ions of this court. According to these decisions,  
10 courts of equity in general recognize and give  
11 effect to the Statute of Limitations as a defense  
12 to an equitable right, when at law it would have  
13 been properly pleaded as a bar to a legal right.  
14 They refuse to interfere to give relief when there  
15 has been gross negligence in prosecuting a claim,  
16 or where the lapse of time has been so long as to  
17 afford a clear presumption that the witnesses to  
18 the original transaction are dead, and the other  
19 means of proof have disappeared.

20           The case of United States vs. Flint (1876, C.C.Cal.) Fed.  
21 Cas. No. 15121, involved suits in equity by the United States to  
22 vacate patents issued upon confirmed Mexican land grants upon the  
23 ground that such patents were fraudulently obtained. In sustaining  
24 the demurrer to the bills, the court said (25 Fed. Cas. No. 1113):

25           "But if we admit that the attorney-general is  
26 authorized to direct the institution of a suit like  
27 the present, in the name of the United States, and  
28 that the district attorney has been thus directed,  
29 his power in this respect must be exercised, in  
30 subordination to those rules of procedure and those  
31 principles of equity which govern private litigants  
32 seeking to avoid a previous judgment against them.  
33 The United States, by virtue of their sovereign  
34 character, may claim exemption from legal proceedings;  
35 but when they enter the courts of the country as a  
36 litigant they waive this exemption, and stand on  
37 the same footing with private individuals. Unless  
38 otherwise provided by statute, the same rules as  
39 to the admissibility of evidence are then applied  
40 to them; the same strictness as to motions and ap-  
41 peals is enforced; they must move for a new trial  
42 or take an appeal within the same time and in like  
43 manner, and they are equally bound to act upon  
44 evidence within their reach. And, when they go  
45 into a court of equity, they must equally present  
46 a case by allegation and proof entitling them to  
47 equitable relief.

48           "Although, on grounds of wise public policy,  
49 no statute of limitations runs against the United  
50 States, and no laches in bringing a suit can be  
51 imputed to them, yet the facility with which the  
52 truth could originally have been shown by them if  
53 different from the finding made; the changed

1 condition of the parties and of the property from  
2 lapse of time, the difficulty, from this cause,  
3 of meeting objections which might, perhaps, at  
4 the time, have been readily explained; and the  
5 acquisition of interests by third parties upon  
6 faith of the decree, are elements which will always  
7 be considered by the court in determining whether  
8 it be equitable to grant the relief prayed. All  
9 the attendant circumstances of each case will be  
10 weighed, that no wrong be done to the citizen,  
11 though the government be the suitor against him."

12 See an analogous situation when the State, as a sover-  
13 eign, was barred from equitable relief, in State of Iowa vs. Carr,  
14 (1911 C.C.A. 8), 191 Fed. 257, where an action was brought to quiet  
15 title to land formed by avulsion in the bed of the Missouri River.  
16 The state of Iowa intervened in the action. Under the facts of  
17 the case the State's rights to the land, if any, would have  
18 accrued in 1877, but it did nothing to assert such right until  
19 1904. The court held, therefore, that the State was equitably  
20 estopped from maintaining its claims, and stated at page 265:

21 "On March 2, 1907, upon the application of the  
22 Attorney General of the state, the court permitted  
23 it to intervene, and thereupon it voluntarily  
24 filed its petition of intervention in which  
25 it alleged that it was the owner of the land here  
26 in controversy by virtue of its ownership of the  
27 alleged island and of its part of the abandoned  
28 river bed. It was then almost 30 years after its  
29 claim to any of this land first arose, and if it  
30 had been a private party its silence, acquiescence,  
31 and laches would undoubtedly have estopped it from  
32 asserting any claim to this land against these  
33 plaintiffs. Counsel for the appellants, however,  
34 invoke the general rule that neither by the statute  
35 of limitations, nor by laches, does mere delay bar  
36 the sovereignty from maintaining its rights or  
37 from sustaining a suit to enforce them. United  
38 States v. Insley, 130 U. S. 263, 266, 9 Sup. Ct.  
39 485, 32 L. Ed. 968; United States v. Beebe, 127  
40 U. S. 338, 344, 8 Sup. Ct. 1083, 32 L. Ed. 121;  
41 United States v. Winona & St. P. R. R. Co., 67 Fed.  
42 969, 971, 15 C. C. A. 117, 119; United States v.  
43 Dalles Military Road Co., 140 U. S. 599, 632,  
44 11 Sup. Ct. 988, 35 L. Ed. 560; City of Pella v.  
45 Scholte, 24 Iowa, 283, 95 Am. Dec. 729; Davies v.  
46 Huebner, 45 Iowa, 574, 577; Manatt v. Starr, 72  
47 Iowa, 677, 34 N. W. 784. They also contend that  
48 every sovereignty is exempted from the rule of  
49 equitable estoppel.

50 "But the great weight of authority, the strong-  
51 er reasons and the settled rule upon this subject  
52 in the courts of the United States, is that, while  
53 mere delay does not, either by limitation or laches,

1 of itself constitute a bar to suits and claims of a  
2 state or of the United States, yet, when a sover-  
3 eignty submits itself to the jurisdiction of a court  
4 of equity and prays its aid, its claims and rights  
are judicable by every other principle and rule of  
equity applicable to the claims and rights of  
private parties under similar circumstances.

5 "The equitable claims of a state or of the  
6 United States appeal to the conscience of a  
7 chancellor with the same, but with no greater  
8 or less force than would those of an individual  
9 under like circumstances. United States v. Stinson,  
10 197 U. S. 200, 204, 205, 25 Sup. Ct. 426, 49 L. Ed.  
11 724; United States v. Detroit Timber & Lumber Co.,  
12 67 C. C. A. 1, 10, 131 Fed. 668, 677; United  
13 States v. Chicago, M. & St. P. Ry. Co. (C. C.)  
14 172 Fed. 271, 276; United States v. Chandler-  
15 Dunbar Water Power Co., 152 Fed. 25, 26, 27, 37,  
16 38, 40, 41, 81 C. C. A. 221, 222, 223, 233, 234,  
17 236, 237; United States v. Stinson, 125 Fed.  
18 907, 910, 60 C. C. A. 615, 616; Herman on Estop-  
19 pel, pp. 676, 677; State of Michigan v. Jackson,  
20 L. & S. R. Co., 16 C. C. A. 345, 351, 69 Fed. 116,  
21 122; State v. Flint & P. M. R. Co., 89 Mich. 481,  
22 51 N. W. 103, 106; United States v. California &  
23 Oregon Land Co., 148 U. S. 31, 41, 13 Sup. Ct.  
24 458, 37 L. Ed. 354; Carr v. United States, 98  
25 U. S. 433, 438, 25 L. Ed. 209; United States v.  
26 Walker (C. C.) 139 Fed. 409, 411, 412, 413;  
27 United States v. Willamette Valley & C. M. Wagon  
28 Road Co. (C. C.) 55 Fed. 711, 717; Attorney  
29 General v. Central Railway Co., 68 N. J. Eq. 198,  
30 59 Atl. 348."

31 It is obvious that after a lapse of approximately eighty  
32 years - over three quarters of a century - there are no living  
witnesses who can testify with any degree of certainty as to the  
facts surrounding the issuance of the patent in 1860. In fact,  
from the above cases, it may be presumed that all such witnesses  
are dead, and that pertinent evidence has been lost or destroyed.  
Furthermore, the record in the case at bar shows that Billings,  
who obtained the patent, is dead, as the government had an  
administrator of his estate appointed for service of complaint  
and for the purpose of taking a default. The Court may take  
judicial notice of the record in that respect. Under the cir-  
cumstances, it is submitted, irrespective of the defenses of  
limitations and laches, that the government in seeking through this  
court of equity to cancel a patent issued approximately eighty  
years ago, is barred in good conscience from relief.

1 Bill in equity, even when brought by  
2 government, is subject to equitable  
3 defense that title has passed to bona  
4 fide purchasers for value, without  
5 Notice.

6           The complaint shows on its face the issuance of a  
7 patent to Billings, one of the defendants' predecessors, in  
8 February, 1860. Furthermore, the complaint in detail sets out  
9 numerous conveyances of the patented property subsequent to that  
10 date. Ruddock, of whom two of these defendants are the heirs,  
11 is shown to have acquired--subsequent to various conveyances--a  
12 deed to the property in December, 1919, approximately sixty  
13 years after the patent was issued to Billings. The complaint  
14 does not show that there was any defined Indian Reservation or  
15 any land set aside by Treaty with any Indians. Ruddock, in 1919,  
16 cannot possibly be considered to have had knowledge sixty years  
17 later as to whether Indians, if any, were occupying any portion  
18 of the land in 1860, at the time the patent was issued.

19           It is therefore submitted that under the doctrine of  
20 the Beebe case and other authorities herein cited, that the fore-  
21 going conveyances were bona fide and for value, without notice of  
22 any matters that would affect their title.

23           Under such circumstances it is submitted that in all  
24 good conscience, no equitable relief should be granted herein,  
25 even though the suit is filed in the name of the United States.

26           See - United States vs. Stinson (1904) 197 U. S. 200,  
27           49 L. Ed. 724, (affirming a decision of  
28           the Seventh Circuit (125 Fed. 907)).

29 Here the United States sued to cancel patents of land issued to  
30 preempts on the ground that the entries were fraudulent. Final  
31 proof had been made forty years prior to the commencement of the  
32 suit. The court dismissed the bill to set aside the patent.

The court stated:

"While the government, like an individual, may  
maintain any appropriate action to set aside its  
grants and recover property of which it has been

1 defrauded, and while laches or limitation do not  
2 of themselves constitute a distinct defense as  
3 against it, yet certain propositions in respect  
4 to such an action have been fully established.  
5 First, the respect due to a patent,--the presump-  
6 tion that all the preceding steps required by  
7 law have been observed before its issue. The  
8 immense importance and necessity of the stability  
9 of titles depending upon these official instru-  
10 ments demand that suits to set aside and annul  
11 them should be sustained only when the allegations  
12 on which this is attempted are clearly stated and  
13 fully sustained by proof. Maxwell Land-Grant  
Case (United States v. Maxwell Land-Grant Co.),  
121 U. S. 325, 30 L. Ed. 949, 7 Sup. Ct. Rep. 1015;  
Colorado Coal & I. Co. v. United States, 123 U. S.  
307, 31 L. Ed. 182, 8 Sup. Ct. Rep. 131; United  
States v. San Jacinto Tin Co. 125 U. S. 273, 31  
L. Ed. 747, 8 Sup. Ct. Rep. 850; United States v.  
Des Moines Nav. & R. Co. 142 U. S. 510, 35 L. Ed.  
1099, 12 Sup. Ct. Rep. 308; United States v. Budd,  
144 U. S. 154, 36 L. Ed. 384, 12 Sup. Ct. Rep.  
575; United States v. American Bell Teleph. Co.  
167 U. S. 224, 42 L. Ed. 144, 17 Sup. Ct. Rep. 809.

14 "Second. The government is subjected to  
15 the same rules respecting the burden of proof,  
16 the quantity and character of evidence, the presump-  
17 tions of law and fact, that attend the prosecution  
18 of a like action by an individual. 'It should be  
19 well understood that only that class of evidence  
20 which commands respect, and that amount of it  
21 which produces conviction, shall make such an  
22 attempt successful.' Maxwell Land Grant Case  
23 (United States v. Maxwell Land-Grant Co.), 121 U.S.  
24 325, 381, 30 L. Ed. 949, 959, 7 Sup. Ct. Rep. 1015;  
25 United States v. Iron Silver Mining Co. 128 U. S.  
26 673, 677, 32 L. Ed. 571, 573, 9 Sup. Ct. Rep. 195;  
27 United States v. Des Moines Nav. & R. Co. 142 U.S.  
28 510, 541, 35 L. Ed. 1099, 1108, 12 Sup. Ct. Rep.  
29 308.

30 "Third. It is a good defense to an action  
31 to set aside a patent that the title has passed  
32 to a bona fide purchaser, for value, without  
33 notice. And, generally speaking, equity will not  
34 simply consider the question whether the title  
35 has been fraudulently obtained from the govern-  
36 ment, but also will protect the rights and  
37 interests of innocent parties. United States v.  
38 Burlington & M. River R. Co. 98 U. S. 334, 342,  
39 25 L. Ed. 198, 200. Colorado Coal & I. Co. v.  
40 United States, 123 U. S. 307, 313, 31 L. Ed. 182,  
41 185, 8 Sup. Ct. Rep. 131,--a case in which, as  
42 here, suit was brought to set aside land patents  
43 on the ground that they had been obtained by  
44 fraud, and in which we said:

45 "But it is not such a fraud as prevents  
46 the passing of the legal title by the patents.  
47 It follows that, to a bill in equity to cancel  
48 the patents upon these grounds alone, the defense

1 of a bona fide purchaser for value, without notice  
is perfect." United States v. Marshall Silver Min.  
2 Co. 129 U. S. 579, 589, 32 L. Ed. 734, 738, 9 Sup.  
Ct. Rep. 343; United States v. California & O. Land  
3 Co., 148 U. S. 31, 41, 37 L. Ed. 354, 359, 13 Sup.  
Ct. Rep. 458; United States v. Winona & St. P. R.  
4 Co. 165 U. S. 463, 479, 41 L. Ed. 789, 796, 17  
Sup. Ct. Rep. 368."

5 See also - United States vs. Detroit Timber & Lumber  
6 Co. (1904 C.C.A. 8) 131 Fed. 668

7 This is a suit in equity to avoid certain taxes on the ground of  
8 fraud. In holding that the United States was not entitled to  
9 relief the court said (Sanborn, J.) at page 677:

10 "Finally, this is a suit in equity. The  
equitable claims of the United States appeal to  
11 the conscience of a chancellor with the same, but  
with no greater or less, force than would those  
12 of an individual in like circumstances. Bona  
fide purchasers are the especial favorites of  
13 courts of equity. In Boone v. Chiles, 10 Pet.  
177, 209, 9 L. Ed. 388, Mr. Justice Baldwin, in  
14 delivering the opinion of the Supreme Court, said:

15 "A court of equity can act only on the  
conscience of a party. If he has done nothing  
16 that taints it, no demand can attach upon it so  
as to give any jurisdiction. Sugd. Vend. 722.  
17 Strong as a plaintiff's equity may be, it can in  
no case be stronger than that of a purchaser who  
18 has put himself in peril by purchasing a title  
and paying a valuable consideration without notice  
19 of any defect in it or adverse claim to it; and  
when, in addition, he shows a legal title from  
20 one seized and possessed of the property purchased,  
he has a right to demand protection and relief  
21 (9 Ves. 30--34), which a court of equity imparts  
liberally."

22 The above case was affirmed in United States vs.  
23 Detroit Timber & Lumber Co. (1906) 200 U. S. 321, 50 L. Ed. 499

24 The foregoing doctrine has been approved in our own  
25 Ninth Circuit.

26 See - United States vs. Clark (1905 C.C.A. 9) 138 Fed.  
27 294. This was a suit by the United States for a decree annulling  
28 for fraud eighty-two timber lands patents in Montana and the  
29 defense of innocent purchaser for value was sustained. The  
30 court stated at page 299:

31 "The numerous cases which hold that the receiver's  
32 final receipt is but prima facie evidence of the



1 right of the entryman to a patent, and that until  
2 the patent is issued the power is vested in the  
3 Land Department to set aside the receipt and  
4 cancel the entry it evidences, for fraud or error,  
5 after notice to the parties in interest, and in  
6 this way take away even from an innocent purchaser  
7 for value this prima facie evidence of title, do  
8 not at all support the proposition that this may  
9 be done by a court of equity, as against such  
10 innocent purchaser for value, after the Land Depart-  
11 ment, instead of avoiding, has confirmed the prima  
12 facie evidence of title by issuing the government  
13 patent, and thus vesting the innocent holder of  
14 the equitable title with the legal title as well.  
15 In the first place, it would not be equitable to do  
16 so. An innocent purchaser for value of an equitable  
17 title may always fortify that title by acquiring  
18 the legal title, and, when he does so, it is a  
19 complete answer in a court of equity to one who  
20 asserts only a prior equity."

21 \* \* \* \* \*

22 "As a matter of course, when the government comes  
23 as a suitor into a court of equity, its claims  
24 appeal to the chancellor with no greater force  
25 than do those of an individual under like circum-  
26 stances. No case has been cited which sustains  
27 the proposition of the complainant now under  
28 discussion, and we will not be the first to  
29 announce it. On the contrary, the precise point  
30 here made was presented to the Circuit Court of  
31 Appeals for the Eighth Circuit, in the case of  
32 United States v. Detroit Timber & Lumber Company,  
131 Fed. 668, and, in a well-considered opinion,  
was there decided against the contention of the  
government."

#### 33 Consideration of Government's Position

34 The complaint in the case at bar does not allege that  
35 any of the Indians purportedly occupying a portion of the land  
36 involved at the time this suit was filed were occupying the land  
37 at the time the patent was issued. If they are the original  
38 occupants, or if they are heirs or successors in interest of the  
39 original occupants (assuming an original occupancy) and assuming  
40 that mere occupancy could create transmittable rights, the case  
41 would necessarily be one where the Government was suing on behalf  
42 of third parties and therefore, as we have seen, all equitable  
43 defenses, including laches and limitations, would apply to it.  
44 On the other hand, if the Indians named in the complaint are

1 neither original occupants, or their heirs or successors in  
2 interest but are simply ones whose occupancy commenced subsequent  
3 to the patent and after abandonment or termination of the  
4 possession and rights of the occupants at the time of patent,  
5 their rights must fundamentally be based upon a contention that  
6 the land was open public land of the United States (because of a  
7 reversion of title) at the time their occupancy commenced.  
8 Therefore, as against the patentee in this case, the Government  
9 would necessarily be suing in its sovereign capacity to restore  
10 the land to the public domain. In its complaint the Government  
11 prays that "it be declared and adjudged that this plaintiff is  
12 the owner of all of said premises in fee simple subject to the  
13 rights of said Indians \* \* \*," so that it is obviously a suit to  
14 establish the Government's right in the land. If the Government  
15 is successful the lands will be restored to the public domain  
16 even though possibly subject to Indian occupancy, and if the  
17 Indians subsequently abandon the land the Government would then  
18 be free to dispose of the land to others. The Act of Congress  
19 of March 3, 1891 (Chap. 561, p. 8; 26 Stats. at Large, 1095 at  
20 1099; U.S.C.A., Title 43, pp. 1166), provides that the Government  
21 must sue within five years after the effective date of the Act  
22 to annul patents theretofore granted, otherwise its right to do so  
23 is barred.

24           Considering the facts of this case, it is obvious that  
25 if the Government is suing in its sovereign and governmental  
26 capacity, its right to annul this patent is barred by the provis-  
27 ions of the Act of March 3, 1891 (U. S. v. Cramer, *infra*) and has  
28 been barred for the last forty-four years. If the Government is  
29 suing on behalf of third persons and not in its governmental  
30 capacity the action is barred by laches and the statutes of  
31 limitations of the State of California, which are applicable in  
32 such case. We have, of course, shown that no matter in what

1 capacity the Government is suing, both the lapse of time of  
2 eighty years which has occurred since the patent was issued and  
3 the equitable defense of bona fide purchaser without notice for  
4 value constitute perfect defenses as far as these defendants are  
5 concerned. The Government, in order to avoid the horns of this  
6 dilemma, argues that it is suing "in the public interest in behalf  
7 of its wards the Indians" and for that reason it is neither suing  
8 in a governmental capacity so as to be subject to the limitations  
9 of the Act of March 3, 1891, nor suing on behalf of third persons  
10 so as to be subject to the doctrine of laches and State statutes  
11 of limitations.

12           It is submitted that the Government cannot "have its  
13 cake and eat it too"--it cannot shed its governmental character  
14 to avoid the Federal statute of limitations and at the same time  
15 be permitted to retain sufficient sovereign character to avoid  
16 the application of the equitable defense of laches or the pro-  
17 visions of the California statutes of limitations which would  
18 otherwise be applicable.

19           The Government relies heavily on the case of United  
20 States vs. Cramer, 261 U. S. 219, 67 L. Ed. 622. It must be noted  
21 that in the Cramer case the question of laches does not appear  
22 nor was it raised as a defense. Therefore, neither the Cramer case  
23 nor any other case cited by the Government stands for the proposi-  
24 tion that the Government may maintain an action such as this by  
25 disclaiming just enough sovereign character to avoid the Federal  
26 statute of limitations and at the same time retaining just  
27 enough sovereign character to relieve it from the effects of the  
28 laches of itself and wards.

29           It should also be noted that neither the defense of  
30 stale demands nor the defense of bona fide purchaser, both of  
31 which are applicable in the present case, were raised or considered  
32 in United States vs. Cramer. Also, in the Cramer case, the

1 identical Indians, on behalf of whom the Government was suing,  
2 were occupying land at the time the patent was issued and were  
3 also alive and occupying the land at the time the suit was  
4 instituted. There were, therefore, living witnesses who could  
5 testify as to the situation at the time the patent was issued.  
6 In the case at bar, it appears from the record that the patentee,  
7 Billings, is dead and it does not appear from the complaint that  
8 the Government is suing on behalf of the same Indians whom it  
9 alleges were occupying the land at the time the patent was issued.  
10 It is a fair presumption in the case at bar that there are no  
11 living witnesses capable of testifying to the situation as it  
12 existed eighty-one years ago.

13           Other cases cited in the Government's supplemental  
14 memorandum dealing with laches, have, in the main, to do with  
15 situations where land was allotted to Indians and held in trust  
16 by the United States for a period of twenty-five years during  
17 which time taxes were illegally assessed, etc. None of these  
18 cases involved the Federal statute of limitations and merely held  
19 that as the Government was suing in a sovereign capacity as  
20 trustee, laches did not apply. These decisions obviously have no  
21 application to the case at bar. In none of them does the lapse  
22 of time approach even remotely the lapse of eighty years in the  
23 present case, giving rise to presumptions as to loss of evidence,  
24 death of witnesses, etc.

25           As we have shown, irrespective of the defense of laches,  
26 lapse of time itself may be an equitable defense under the doctrine  
27 that equity abhors stale demands, and this defense may be raised  
28 against the Government in an equity case, no matter in what  
29 capacity it sues. Similarly as to the defense of bona fide  
30 purchaser. No better case could be conceived for the application  
31 of the time honored equitable doctrine that equity abhors stale  
32 demands. A period of more than three-quarters of a century has

1 elapsed since the patent was issued. To sustain the Government's  
2 contentions would permit it, in principle, to attack its own  
3 solemnly given grants even though centuries had elapsed since  
4 the patent was issued. Irrespective of the facts, this is a  
5 situation where, in the words of People vs. Clarke, 10 Barb. 120,  
6 as quoted in United States vs. Beebee, 17 Fed. 36 (aff'd. 127  
7 U.S. 338), where on page 41, 17 Federal, it is said:

8 "If the questions in this case may be deemed to  
9 belong to a court of equity, I cannot persuade  
10 myself that they are, therefore, never to be put at  
11 rest by lapse of time. It would be an alarming  
12 doctrine to hold that every man in the state who  
13 holds any land under a grant before the revolution  
may be turned out of possession by the plaintiffs,  
if a king was cheated who, one or two hundred  
years since, made the grant."

13 The inequity of permitting the Government to force the  
14 defendants to trial in the case at bar--approximately eighty  
15 years after the issuance of the patent--is readily apparent.

16 It is respectfully submitted that the motion to dismiss  
17 be granted.

18 *Abner Parks Davis*  
19 \_\_\_\_\_  
20 Attorney for said defendants, State  
21 of California, et al.  
22  
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32

1 HOWARD J. FINN,  
2 BROBECK, PHLEGER & HARRISON,  
3 Crocker Building,  
4 San Francisco, California,  
5 Telephone: Sutter 0666,  
6 Attorneys for Defendant  
7 William O.B.Macdonough, etc.

60  
FILED

MAY 21 1940

WALTER B. MALING, CLERK

by \_\_\_\_\_  
Deputy Clerk

14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION.

17 UNITED STATES OF AMERICA, )  
18 Plaintiff, )  
19 -vs- ) No. 4068 L.  
20 THE STATE OF CALIFORNIA, et al., ) Civil.  
21 Defendants. )

22  
23 FURTHER MEMORANDUM IN SUPPORT  
24 OF MOTION TO DISMISS

25 We have just been served by the Government with a  
26 further memorandum of Points and Authorities upon the ques-  
27 tion of laches. As in its original memorandum, the Govern-  
28 ment fails to meet the issue.

29 It is quite true that the Government, when suing  
30 to assert its own rights, is not subject to the defense of

1 laches. It was to remedy this situation with respect to  
2 land patents that Section 1166 of Title 43 of the U. S.  
3 Code, requiring suit to set aside a patent to be brought  
4 within six years, was enacted. The foregoing section  
5 applies to suits brought by the Government to assert its  
6 own rights. Where the suit is not to assert the Govern-  
7 ment's own rights, but to assert the rights of individuals,  
8 the section does not apply (Cramer v. United States, 261 U.S.  
9 219), but, by the same token, the doctrine of laches does  
10 apply, (United States v. Des Moines Navigation & Railway Co.  
11 142 U. S. 510; United States v. Beebe, 127 U. S. 338).  
12 In Cramer v. United States, supra, the Court held that Sec-  
13 tion 1166 was not applicable to a suit to vacate a patent to  
14 alleged Indian lands, for the reason that the suit was not  
15 one to enforce the Government's own rights, but was one to  
16 enforce the claims and rights of third persons, namely,  
17 the Indians. It said:

18 "The suit is not barred by the Act  
19 of March 3, 1891, c. 561, § 8, 26 Stat. 1095,  
20 1099, limiting the time within which suits  
may be brought by the United States to annul  
patents.

21 "The object of that statute is to ex-  
22 tinguish any right the Government may have  
23 in the land which is the subject of the  
24 patent, not to foreclose claims of third  
25 parties. Here the purpose of the annulment  
26 was not to establish the right of the United  
27 States to the lands, but to remove a cloud  
28 upon the possessory rights of its wards. As  
29 stated by this Court in United States v.  
30 Winona & St. Peter R.R.Co., 165 U.S.463, 475,  
the statute was passed in recognition of 'the  
fact that when there are no adverse individual  
rights, and only the claims of the Government  
and of the present holder of the title to be  
considered, it is fitting that a time should  
come when no mere errors or irregularities on  
the part of the officers of the land department  
should be open for consideration'. After the  
lapse of the statutory period, the patent

1 becomes conclusive against the Government, but  
2 not as against claims and rights of others,  
3 merely because the relation of the Government  
4 to them is such as to justify or require its  
5 affirmative intervention."

6 Cramer v. United States, 261 U.S. 219, 233-4.

7 The holding in the foregoing case that a suit to  
8 vacate a patent to alleged Indian lands is a suit to assert  
9 "the claims and rights of others" and "not to establish the  
10 right of the United States" is tantamount to a holding  
11 that the doctrine of laches is applicable.

12 "While it is undoubtedly true that when the  
13 government is the real party in interest,  
14 and is proceeding simply to assert its own  
15 rights and recover its own property, there  
16 can be no defense on the ground of laches  
17 or limitation (United States v. Nashville,  
18 Chattanooga, etc., Railway, 118 U.S. 120,  
19 125 (6 Sup. Ct. 1006, 30 L. Ed. 81); United  
20 States v. Insley, 130 U.S. 263 (9 Sup.Ct.  
21 485, 32 L.Ed.968),), yet it has also been  
22 decided that where the United States is  
23 only a formal party, and the suit is brought  
24 in its name to enforce the rights of indivi-  
25 duals, and no interest of the government is  
26 involved, the defense of laches and limita-  
27 tion will be sustained as though the govern-  
28 ment was out of the case, and the litigation  
29 was carried on in name, as in fact, for the  
30 benefit of private parties."

21 United States v. Des Moines Navigation  
22 & Ry. Co., 142 U.S. 510, 12 Sup.  
23 Ct. 308, 35 L.Ed.1099.

24 The code section above cited was enacted to take  
25 care of all suits to vacate patents which were not subject  
26 to the defense of laches by reason of their being brought  
27 by the sovereign for its own benefit. The result is that  
28 suits by the Government to vacate patents are subject  
29 either to the defense of limitations or to the defense of  
30 laches. If the suit is one to assert the Government's own



1 rights, it is subject to the defense of limitations. If  
2 the suit is one to assert the rights of others, then it is  
3 subject to the defense of laches. Cramer v. United States,  
4 supra, holds that a suit by the United States to vacate a  
5 patent to alleged Indian lands is not subject to the defense  
6 of limitations for the reason that it is a suit to assert  
7 "claims and rights of others". We submit that it follows  
8 that such a suit is subject to the defense of laches.  
9

10 Dated: April 12, 1940.

11 Respectfully submitted,

12  
13 Howard J. Finn  
14

15 Beckwith, Phleger & Harrison  
16

17 Attorneys for defendants  
18 William O. B. Macdonough, and  
19 William O. B. Macdonough as  
20 administrator, etc., sued here-  
21 in as John Doe One.  
22  
23  
24  
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26  
27  
28  
29  
30

United States of America

Plaintiff,

No. 4068

-vs-

The State of California, et al.

-----

Motions of defendants, William O.B. Macdonough, William O.B. Macdonough as administrator with the will annexed of the estate of Joseph M. Macdonough, deceased, Estelle R. Favis, Ruth de Fremery and Bradley Mining Co. to dismiss complaint, for more definite statement, for bill of particulars, and to strike DENIED.

Dated: May 21, 1940.

JOHN PARKS DAVIS  
ATTORNEY AT LAW  
STANDARD OIL BUILDING  
SAN FRANCISCO

May 8, 1940

Honorable Martin I. Welsh  
Post Office Building  
Seventh & Mission,  
San Francisco, California

Dear Judge Welsh:            Re - United States of America, vs.  
  State of California, et al.,  
  No. Civ-4068-L

Pursuant to our correspondence, I am enclosing herewith Supplemental Memorandum in the above matter in support of the motion to dismiss on behalf of defendants Estelle R. Davis, Ruth deFremery and Bradley Mining Co.

I am sending a copy of this letter and a copy of the authorities to Mr. Emmett J. Seawell, Assistant United States Attorney, Sacramento.

I regret that I have been delayed a little longer than I expected when I wrote you on April 26, 1940, but it was impossible to complete the memorandum until today.

Respectfully,



JPD:EB  
Enclosures

JOHN PARKS DAVIS  
ATTORNEY AT LAW  
STANDARD OIL BUILDING  
SAN FRANCISCO

April 26, 1940

Honorable Martin I. Welsh  
United States District Judge  
Post Office Building  
LOS ANGELES, CALIFORNIA

Dear Judge Welsh:            Re United States vs. State of  
   California, et al.,  
   Civ. 4068-L

In connection with the letter written to you under date of April 20, 1940, by Mr. Emmet J. Seawell, Assistant United States Attorney, I wish to say that I have been delayed in answering the additional memorandum filed with the foregoing letter because of out-of-town litigation. I am preparing a reply at the present time in support of my motion to dismiss and will get it into your hands as early as possible next week. I trust that there will be no objection to my filing the reply at that time.

Respectfully,



JPD:EB

cc: Emmet J. Seawell, Esq.  
Assistant U. S. Attorney

DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY

NORTHERN DISTRICT OF CALIFORNIA  
SACRAMENTO

April 20, 1940.

YOUR REFERENCE:

ZGD - Civ-4068-L.  
United States vs. The  
State of California, et  
al. (Sulphur Bank Group  
of Indians)

Honorable Martin I. Welsh,  
United States District Judge,  
San Francisco, California.

My dear Judge Welsh:

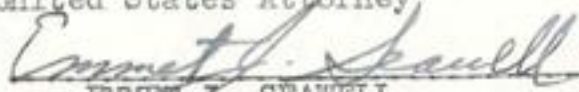
The Attorney General has requested that we submit to you for your further consideration, in connection with the defendants' motions to dismiss in the above entitled case, the enclosed further memorandum quoted from the Attorney General's letter of April 2, 1940.

Before Mr. Hjelm left the office he wrote to the attorneys for the defendants, enclosing a copy of said further memorandum, and requested to be advised if there was any objection to his causing the same to be submitted to you. Messrs. Brobeck, Phleger & Harrison replied stating that they had no objection to our filing our memorandum, and enclosed a further memorandum in reply thereto and asked that it be given you at the time we file ours. Accordingly, we herewith enclose the further memorandum in support of motion to dismiss which said attorneys forwarded to this office. Mr. John Parks Davis, the attorney for the defendants, Estelle R. Davis, Ruth de Fremery and Bradley Mining Co., replied to our letter on April 15, 1940, and stated that he had not as yet had a chance to completely check the authorities enclosed in our letter of April 10, but would do so as quickly as possible and communicate with us. To date we have not heard further from him.

Inasmuch as the Attorney General instructed us to submit said authorities we want to get them to you before you finally pass upon said motions.

Thanking you, and with kind personal regards,  
we remain

Respectfully,  
FRANK J. HENNESSY  
United States Attorney

By:   
EMMET J. SEAWELL  
Assistant U. S. Attorney

c.c. - Messrs. Brobeck, Phleger &  
Harrison;  
John Parks Davis, Esq.

?

"The following is submitted for your consideration in connection with the plaintiff's motion to dismiss on the ground that the Government is barred by laches and statutes of limitations.

"The Supreme Court has repeatedly announced the principle that the United States is not bound or estopped by the acts of its officers or agents in committing unauthorized or unlawful acts or entering into agreements to cause to be done what the law does not sanction or permit. Lee v. Monroe, 7 Cranch 366; Filor v. United States, 9 Wall. 45; Hart v. United States, 95 U.S. 316; Metropolitan Railroad Company v. District of Columbia, 132 U.S. 1, 11; Pine River Lumber Co. v. United States, 186 U.S. 279, 291; Utah Power & Light Co. v. United States, 243 U.S. 389, 409; Jeems Bayou Club v. United States, 260 U.S. 561; Wilson v. United States 245 U.S. 24, and the United States is not bound by the laches or neglect of duty of its agents. United States v. Kilpatrick, 9 Wheat. 720, 735; United States v. Insley, 130 U.S. 263, 265-266; Steele v. United States, 113 U.S. 128, 134; United States v. Dalles Road Co., 140 U.S. 599, 632; United States v. New Orleans Railroad, 248 U.S. 507, 518; United States v. Michigan, 190 U.S. 379; Utah Power & Light Co. v. United States, supra, 409; especially when it would deprive the Indian of his rights, Cramer v. United States, 261 U.S. 219, 235.

There are instances in which laches may be imputed to the United States, as where the Government is 'a mere formal complainant in a suit not for the purpose of asserting any public right or protecting any public interest, title or property, but merely to form a conduit through which one private person can conduct litigation against another private person.' United States v. Beebe, 127 U.S. 338, 347; United States v. New Orleans Ry. Co., 248 U.S. 507, 518; United States v. Michigan, 190 U.S. 379, 405. But where, as here, the action is essential to the United States to permit it to fulfill a governmental obligation, laches is not imputable to the sovereign. Compare, United States v. Chehalis County (D.C. W.D. Wash. S.D. 1914), 217 Fed. 281, 284; United States v. Dewey County (D.C.S.D. 1926), 14 F. 2d 784, 791; Caddo County v. United States, 87 F. 2d 55, 57 (C.C.A. 10, 1936); United States v. Nez Perce County, 16 F. Supp. 267, 269, reversed on other grounds 95 F. 2d 232, 236.

"Whether or not the doctrine of laches and estoppel may be invoked against the United States depends on whether or not the United States is a mere conduit or the real party in interest. The fact that hardship may result cannot stay the application of the rule, United States v. Insley, supra, p. 266; Crespin v. United States, 168 U.S. 208, 218; Hayes v. United States, 170 U.S. 637, 655, on the theory that the interest of the public at large transcends that of the individual, Lee v. Monroe, supra."

1 FRANK J. HENNESSY,  
2 United States Attorney,  
3 G. B. HJELM,  
4 Assistant U. S. Attorney,  
5 Attorneys for Plaintiff.

57  
FILED

.....O'clock and.....Min.....

MAR 18 1940

WALTER B. MALING,  
CLERK.

6  
7  
8  
9  
10 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA,

12  
13 UNITED STATES OF AMERICA, : CIVIL  
14 Plaintiff, : NO. 4068-L  
15 vs. :  
16 THE STATE OF CALIFORNIA, et al, :  
17 Defendants. :  
18

19 PLAINTIFF'S BRIEF IN OPPOSITION TO  
20 MOTIONS TO DISMISS, FOR A MORE  
21 DEFINITE STATEMENT OF CERTAIN  
22 ALLEGED MATTERS IN THE COMPLAINT,  
23 AND FOR A BILL OF PARTICULARS.

24 Comes now the plaintiff in the above entitled action  
25 and opposes the motion of the defendants, Estelle R. Davis,  
26 Ruth de Fremery, and Bradley Mining Co. to dismiss the com-  
27 plaint on file herein, and said defendants' motion for a  
28 more definite statement of certain matters alleged in  
29 plaintiff's complaint, and said defendants' motion for a  
30 bill of particulars.

31 The said defendants' motion to dismiss the complaint  
32 is based upon two general grounds, to-wit:

- (1) That the complaint fails to state a claim upon which relief can be granted;



1  
2 (2) That the cause of action is barred by the  
3 statute of limitations, laches and estoppel.

4 AS TO SUFFICIENCY OF ALLEGATIONS IN THE COMPLAINT.

5 The allegations of the complaint must be considered  
6 as a whole and no by the defendant selected isolated alle-  
7 gations are at all determinative. All the allegations of  
8 the complaint must be considered in arriving at whether or  
9 not the complaint alleges facts sufficient to constitute  
10 the cause of action. So far as the above point made by the  
11 defendants is concerned the complaint alleges as follows:

12 1. That for at least 50 years prior to February 18,  
13 1859, and from time immemorial, the lands in question were  
14 Indian lands, occupied, used, enjoyed, and claimed by the  
15 Pomo Indian tribe. (See paragraph I of complaint.)

16 2. That at no time have such right of occupancy, use,  
17 enjoyment and claim been extinguished. (See paragraph I of  
18 complaint.)

19 3. That, on February 18, 1958, the defendant,  
20 Frederick Billings, made and filed in the United States  
21 Land Office an application for homestead patent to the lands  
22 in question and in connection therewith filed in the United  
23 States Land Office an affidavit setting forth therein that  
24 said lands were unoccupied and constituted public domain and  
25 were subject to entry and were not otherwise disposed of or  
26 appropriated. (See paragraph II of complaint, page 4, line  
27 28 to end of page and first three lines on page 5.)

28 4. That the lands in question are now and have been  
29 for over 125 years last past, occupied and possessed by Jim  
30 Brown, Mrs. Grace Barnes, Mr. Belton Barnes, Mr. Tom Maranda,  
31 Mrs. Eva Maranda, Mr. Thomas Leon, Mrs. Lena Brown, Mrs.  
32 Sara Morando, Mr. Fred A. Bogus, Mrs. Ethel Burgus, Mrs.

1 Josie Gonzalls, Steve Kelsey, Mr. Houghton Brown, Mrs.  
2 Houghton Brown, Mr. Little Thomas, Mrs. Little Thomas, Mr.  
3 Johnnie Kelsey, Mrs. Effie Kelsey, Cecil Thomas, Albert  
4 Thomas, and George Luzintos, and each their progenitors  
5 and ancestors, members of the Pomo Indian Tribe, and have  
6 been and are wards of the Government. (See paragraph III  
7 of complaint.)

8 5. That on August 13, 1874, and prior thereto, when  
9 said defendant, State of California, received from the  
10 United States of America, List #32, indemnity school selec-  
11 tions, and at time when said defendant, State of California,  
12 granted to said R. S. Floyd the patent recorded in Vol. 2  
13 of Patents, at page 250, Lake County Records, in the office  
14 of the County Recorder of said County of Lake, the lands  
15 described in this complaint were reserved and appropriated  
16 for, and subject to the claims and rights of said Indians,  
17 and no right, title or interest whatsoever therein passed  
18 to the State of California and/or to the purported paten-  
19 tees. (See paragraph IV of complaint.)

20 6. That at the time, to-wit, February 15, 1860, when  
21 defendant, Frederick Billings had issued to him the patent  
22 of the United States of America covering said land, the  
23 said land was "otherwise appropriated." (See paragraphs V  
24 and VI of complaint.)

25 7. That on about August 13, 1874, said real property  
26 in question was by "mistake and inadvertence" listed to the  
27 State of California by the United States of America in List  
28 #32 of indemnity school selections. (See first six lines  
29 of paragraph II of complaint.)

30 8. That on February 15, 1860, the United States of  
31 America, in pursuance of said application, by "mistake and  
32 inadvertence" issued to Frederick Billings its patent cover-  
ing said lands described in said Parcel Two (and other pro-

1 perty) which patent is recorded in the office of the County  
2 Recorder of said Lake County in Vol. 1 of Patents, at pages  
3 261 to 274, Lake County Records. (See lines 4 to 9, page  
4 5, Paragraph II of complaint.)

5 It is quite clear that by the allegations "by mistake  
6 and inadvertence" and "without authority at law", reference  
7 is made to the fact that the land was in fact "otherwise  
8 appropriated" and that had the officers of the United  
9 States Land Office had knowledge of the fact that the said  
10 Indians were in occupancy and possession of the land the  
11 patent and listing would not and could not legally have  
12 been made. Therefore the patents and listings were made by  
13 mistake and inadvertence and without authority at law. We  
14 do not claim mistake and inadvertence and/or without author-  
15 ity at law, other than upon ultimate facts pleaded in the  
16 complaint. And said allegations may be said to be conclu-  
17 sions of fact and law, but nevertheless, proper under the  
18 new Rules. However, our action is not founded upon mistake  
19 and inadvertence. It is founded upon the proposition that  
20 the land in question was unpatentable and unlistable at the  
21 time when the patents and listings were made, and therefore  
22 void.

23 The defendants contend that we allege that the United  
24 States of America issued listings and patents and therefore  
25 the United States cannot now come in and say the listings  
26 and patents are void; and they base their argument upon the  
27 basis that the United States had the power to issue and list  
28 and therefore the listings and patent cannot have been made  
29 without authority at law. In other words their claim is that  
30 the pleader having employed the language "by the United  
31 States of America" we are now foreclosed from attempting to  
32 establish that the patent and listings are void. This argu-

1 ment may quickly be disposed of by referring to the Cramer  
2 vs. United States case, 261 U.S. at page 224, where Justice  
3 Sutherland in his opinion employs the following language:  
4 "This appeal brings up for review a decree of the Circuit  
5 Court of Appeals directing the cancellation of a land  
6 patent issued in 1904 by the United States." The patent in  
7 that case was issued by the United States. It was so al-  
8 leged in the complaint and the Justice so stated as afore-  
9 said, and the Supreme Court directed the cancellation of  
10 the patent so issued by the United States and held the same  
11 null and void ab initio.

12 It therefore appears that the complaint does set  
13 forth what is meant by "mistake and inadvertence" and no  
14 further allegations in regard thereto are necessary or  
15 required.

16 We submit that the complaint very fully discloses why  
17 the listings #32 of indemnity school selections were not  
18 available to the State of California, to-wit, that said  
19 lands were already and prior thereto otherwise disposed of  
20 to the Indians and therefore it is not incumbent upon the  
21 plaintiff to show which lands the lands described in the  
22 complaint were to replace. We take the position that it is  
23 irrelevant and immaterial which lands they replaced. If  
24 the defendants claim otherwise then it is for them to so  
25 plead and is a matter of defense.

26 We further submit that the complaint is replete with  
27 allegations upon which we rely that the United States was  
28 without authority to make said patents and listings validly.  
29

30 AS TO THE MATTER OF STATUTE OF LIMITATIONS,  
31 LACHES AND ESTOPPEL.

32 May we for the convenience of the Court quote from

1 Corpus Juris, Volume 21, at page 217, Section 216, as  
2 follows:

3 "While the contrary has been held, yet by  
4 the weight of authority the defense of laches  
5 is not available against the government, state  
6 or national, in a suit by it to enforce a public  
7 right or to protect a public interest, or, as the  
8 rule is sometimes expressed, the laches of its  
9 officers and agents will not be imputed to the  
10 government. This rule applies, however, only to  
11 suits brought by the government in its sovereign  
12 capacity to enforce or to protect a public or  
13 governmental right."

14 It is our position that the instant action is one to  
15 enforce a public right and to protect a public right and  
16 to protect a public interest. We allege in our complaint  
17 that certain land has been occupied and possessed by Indians,  
18 wards of the government, for over a century, and that during  
19 that time such Indians have made use thereof in their com-  
20 munal life; that while the Indians were in such occupancy  
21 and possession land patent thereto was issued by the govern-  
22 ment to one Frederick Billings, a defendant in the case,  
23 and listings were issued to the defendant, State of Calif-  
24 ornia; that said defendants deraign their claim of title to  
25 said land through and by virtue of said patent and listing;  
26 and that no title to said land ever did vest in the State  
27 of California, or in said Frederick Billings, or in said  
28 defendants, for the reason that said patent and said listing  
29 were void from the beginning, and that for the reason that  
30 at the time when said patent and said listing issued the  
31 land was in fact occupied and possessed by such Indians and  
32 was in fact "otherwise appropriated" and could not be the  
subject of patent or listing. We take the position that  
the government has at all times, during the history of the  
United States, had a duty to perform to the Indians, and  
had adopted and carried out a policy of guardianship to the  
Indians to perform such duty; that the government had a

1 public duty to perform in that regard; that wherein the  
2 government has a duty to perform it has the right to perform  
3 the duty; and that in this case the sovereign has the right  
4 to enforce and protect its rights and duties with reference  
5 to the Indians. That, therefore, the defense of laches is  
6 not available to the defendants in this case in that the  
7 government is the real party in interest.

8 In re Cramer v. U.S. 261 U.S. 219.

9 This is the case upon which the government relies to  
10 sustain the case at bar. May we not for the convenience of  
11 the court quote from the opinion in that case as follows:

12 "This appeal brings up for review a decree  
13 of the Circuit Court of Appeals, directing the  
14 cancellation of a land patent issued in 1904 by  
15 the United States to the defendant, Central  
16 Pacific Railway Company, \* \* \* \* \*"

17 "The Act of July 25, 1866, c. 242, 14 Stat.  
18 239, granted to the predecessor of the defendant  
19 company a series of odd numbered sections of land,  
20 including those named, but excepted from the grant  
21 such lands as 'shall be found to have been granted,  
22 sold, reserved, occupied by homestead settlers,  
23 preempted, or otherwise disposed of.' \* \* \* \* \*  
24 patents conveying the sections mentioned above, with  
25 others, was issued to the defendant company, as  
26 successor in interest of the legislative grantee."

27 " \* \* \* \*. The court found that as early as  
28 1859 the Indians named lived with their parents  
29 upon the land described and had resided there ever  
30 since; that they had under fence between 150 and  
31 175 acres in irregularly shaped tract, running  
32 diagonally through the two sections, portions of  
33 which they had irrigated and cultivated; that they  
34 had constructed and maintained dwelling houses and  
35 divers outbuildings, and had actually resided upon  
36 the lands and improved them for the purpose of  
37 making for themselves homes."

38 \* \* \* \* \*

39 "A reversal of this decree is now sought  
40 upon several grounds.

41 "1. It is urged that the occupancy of land  
42 by individual Indians does not come within the  
43 exceptive provisions of the grant.

44 "Until the Act of March 3, 1875, c. 131, 18  
45 Stat. 402, 420, extending the homestead privilege  
46 to Indians, the right of an individual Indian to

1 acquire title to public lands by entry was not  
2 recognized. It cannot, therefore, be said that  
3 these lands were occupied by homestead settlers  
4 nor were they granted, sold or preempted, but  
5 the question remains, were they 'reserved .....  
6 or otherwise disposed of?' Unquestionably it  
7 has been the policy of the Federal Government  
8 from the beginning to respect the Indian right  
9 of occupancy, which could only be interfered  
10 with or determined by the United States. Beecher  
11 v. Wetherby, 95 U.S. 517, 525; Minnesota v. Hitch-  
12 cock, 185 U.S. 373, 385."

13 \* \* \* \* \*

14 "In Poisal v. Fitzgerald, 15 L.D. 19,  
15 the right of occupancy of an individual Indian  
16 was upheld as against an attempted homestead  
17 entry by a white man.

18 "In State of Wisconsin, 19 L.D. 518, there  
19 had been granted to the State certain swamp lands  
20 within an Indian reservation, but the right of  
21 Indian occupancy was upheld, although the grant  
22 in terms was not subject thereto.

23 "In Ma-Gee-See v. Johnson, 30 L.D. 125,  
24 Johnson had made an entry under section 2289,  
25 Rev. Stats., which applied to 'unappropriated  
26 public lands'. It appeared that at the time of  
27 the entry and for some time thereafter the land  
28 had been in the possession and use of the plain-  
29 tiff, an Indian. It was held that under the  
30 circumstances the land was not unappropriated  
31 within the meaning of the statute, and there-  
32 fore not open to entry.

33 "In Schumacher v. State of Washington, 33  
34 L.D. 454, 465, certain lands claimed by the State  
35 under a school grant, were occupied and had been  
36 improved by an Indian living apart from his tribe  
37 \* \* \* \* \*". It was held that the grant to the  
38 State did not attach under the provision excepting  
39 lands 'otherwise disposed of by or under authority  
40 of Congress.' \* \* \* \* \*"

41 \* \* \* \* \*

42 "The action of these individual Indians in  
43 abandoning their nomadic life and habits and  
44 attaching themselves to a definite locality, re-  
45 claiming, cultivating and improving the soil and  
46 establishing fixed homes thereon was in harmony  
47 with the well understood desire of the government  
48 which we have mentioned. To hold that by so doing  
49 they acquired no possessory rights to which the  
50 Government would accord protection, would be con-  
51 trary to the whole spirit of the traditional  
52 American policy toward these dependent wards of  
53 the nation."

54 (Underscoring ours)

1           So we point out that this action is one asserting a  
2 right of the sovereign to protect its wards and therefore,  
3 though the Indians derive a benefit from the benevolent  
4 attitude of the sovereign, nevertheless the real party in  
5 interest is the United States of America, and as has been  
6 shown, the defense of laches is not available to the defen-  
7 dants as against the government.

8  
9           AS TO NECESSITY FOR MORE DEFINITE STATEMENT OF  
10 CERTAIN ALLEGATIONS CONTAINED IN PLAINTIFF'S  
11 COMPLAINT, AND AS TO NECESSITY FOR A BILL OF  
12 PARTICULARS.

13           (a). The complaint in the above entitled action was  
14 prepared in conformity with the complaint in the case of  
15 Cramer v. U.S., 261 U.S. 219. This is the leading case upon  
16 the issues attempted to be raised by the complaint, and we  
17 submit that a consideration of the objections to the com-  
18 plaint made by said defendants in the light of the said  
19 Cramer case will show that the defendants' point in that  
20 regard is not well taken and that the complaint conforms to  
21 the requirements of the New Rules and is sufficient in every  
22 respect.

23           (b). We have alleged in our complaint that the lands  
24 involved have been occupied and possessed by Indians from  
25 about the beginning of the 19th century; that on August 13,  
26 1874, the real property described as Parcel 2 was listed to  
27 the State of California in List #32 of indemnity school  
28 selections; that thereafter certain transfers of the record  
29 title thereto were made and had; that on February 18, 1859,  
30 application was made by the defendant Frederick Billings for  
31 a homestead patent as to said Parcel 2; that thereafter a  
32 homestead patent was issued by the United States to said



1 Frederick Billings; that thereafter the record title to said  
2 property vested in certain defendants; that said Parcels 1  
3 and 2, being the lands involved, have been for over 125 years  
4 last past occupied and possessed by certain described Indians  
5 and by each their progenitors and ancestors; that such  
6 Indians have continuously occupied, used, cultivated, im-  
7 proved, enjoyed, claimed, and been in possession of said  
8 lands from a time prior to that of any claim thereto by any  
9 of the defendants herein, and ever since have used, occupied,  
10 possessed and claimed said lands; that all said lands were  
11 disposed of by the government at a time prior to the origin  
12 of any record title of any of the said defendants, and there-  
13 fore said lands were not subject-matter for entry and/or  
14 issuance of patent therein or thereto, either by way of home-  
15 stead or by way of listing to the State of California, and  
16 that the defendants, and each of them, have no right, title  
17 or interest in and to said lands.

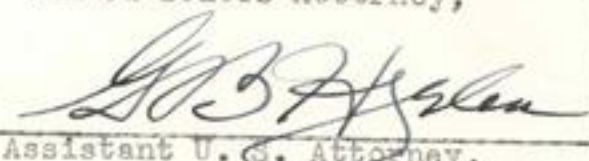
18 (c). The said defendants state that they do not under-  
19 stand what is meant by the issuance of homestead patent through  
20 inadvertence or mistake and without authority in law. A  
21 reading of the complaint shows clearly that the pleader alleg-  
22 ed that inasmuch as the lands in question could not be the  
23 subject-matter of a homestead patent, and/or listing to the  
24 State of California, such issuance of a homestead patent and  
25 such issuance of a listing to the State of California were  
26 made inadvertently and by mistake for the reason that the  
27 officers and agents of the government who actually did issue  
28 such patent and such listing could not have been advised of the  
29 fact that said lands were actually occupied and were already  
30 disposed of and could not be the subject-matter of patent or  
31 listing. The points made by the defendants are merely techni-  
32 cal and for all practical purposes the complaint is full and  
complete.

1 (d). The said defendants in the affidavit annexed  
2 to their motion allege that they are unable to locate cer-  
3 tain government records. If the records are not in exist-  
4 ence then plaintiff will be unable to make proof with re-  
5 gard thereto. If the records are in existence, then the  
6 defendants have equal access to them with plaintiff.

7 (e). We submit that the real issue in this case is  
8 whether or not the lands in question actually were occupied  
9 and possessed as we have alleged in our complaint, at the  
10 time of the origin of said defendants' record title, and  
11 secondly, as to whether or not the law announced in said  
12 Cramer case is the law in this case.

13 We respectfully submit that the defendants' said  
14 motions be denied.

15  
16 FRANK J. HENNESSY,  
17 United States Attorney,

18  
19 By   
20 Assistant U. S. Attorney,  
21 Attorneys for Plaintiff.  
22  
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26  
27  
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29  
30  
31  
32

In the District Court of the United States

NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

UNITED STATES OF AMERICA

vs.

THE STATE OF CALIFORNIA, et al.

Civil -

No. 4068-L

54

FILED

O'clock and Min.

MAR 12 1940

WALTER B. MALING, CLERK.

Praecipe

To the Clerk of Said Court:

Sir:

Please issue alias summons for service upon

H. VINCENT KEELING, as Administrator of the

Estate of Frederick Billings, deceased, to be served

as RICHARD ROWE FIVE.

I. Bejelma  
Assistant U. S. Attorney  
Attorney for Plaintiff

1. IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
2. FOR THE NORTHERN DISTRICT OF CALIFORNIA

3.  
4. UNITED STATES OF AMERICA,  
5. Plaintiff,

6. vs.

7. THE STATE OF CALIFORNIA, et al.,

11. Defendants.

56  
**FILED**

O'clock and Min.

MAR 12 1940

**WALTER B. MALING,**  
CLERK.

Civil -

No. 4068-L.

14. NOTICE OF MOTION

16. To: WILLIAM O.B.MACDONOUGH, and WILLIAM O.B.MACDONOUGH, as  
17. Administrator, etc., Defendant; and  
18. TO: MESSRS BROBECK, PHLEGER & HARRISON, Attorneys for said  
19. Defendant:  
20. YOU WILL PLEASE TAKE NOTICE that on the 18th day  
21. of March, 1940, at the hour of ten o'clock  
22. A.M., or as soon thereafter as the matter can be heard,  
23. the plaintiff will move the Court to call up and overrule  
24. etc.,  
25. the motion to dismiss/by said defendant on file in said  
26. action.

27. Dated: this 12th day of March, 1940

28. FRANK J. HENNESSY

United States Attorney

29. *G. E. Hjelm*  
30. G. E. HJELM  
31. Assistant U. S. Attorney.

1 FRANK J. HENNESSY,  
2 United States Attorney,  
3 G. B. HJELM,  
4 Assistant U. S. Attorney,  
5 Attorneys for Plaintiff.

FILED 53

.....O'clock and.....Min.....

MAR 12 1940

WALTER B. MALING,  
CLERK,

WALTER B. MALING,  
CLERK,

MAR 12 1940

.....O'clock and.....Min.....

FILED

10 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12

13 -----  
14 UNITED STATES OF AMERICA, )  
15 Plaintiff, )  
16 vs. )  
17 THE STATE OF CALIFORNIA, et al, )  
18 Defendants. )

No. 4068-L

19  
20 PLAINTIFF'S BRIEF IN OPPOSITION TO MOTIONS  
21 TO DISMISS, FOR A MORE DEFINITE STATEMENT,  
22 AND TO STRIKE

23 Comes now the plaintiff in the above entitled action  
24 and opposes the motion of the defendants, William O. B. Mac-  
25 donough, and William O. B. Macdonough as Administrator with  
26 the will annexed, of the Estate of Joseph M. Macdonough, de-  
27 ceased, sued herein as John Doe One as Administrator of the  
28 Estate of Joseph M. Macdonough, deceased, to dismiss the  
29 complaint on file herein, which motion is based upon the  
30 ground

31 That the complaint fails to state a claim  
32 upon which relief can be granted;  
and opposes said defendants' motion for a more definite state-

1 ment, in the event that the motion to dismiss is not granted,  
2 which motion for a more definite statement is based upon the  
3 ground

4 That certain matters in said motion set  
5 forth are not averred with sufficient  
6 definiteness or particularity to enable  
7 said defendants properly to prepare  
8 their responsive pleading or to prepare  
9 for trial;

10 And opposes said defendants' motion to strike from the  
11 said complaint paragraphs IV, V, and that portion of para-  
12 graph VI beginning with the word "That" on line 10 of page  
13 11, and ending with the word "lists" on line 15 of page 11,  
14 which motion to strike is based on the ground

15 That said allegations sought to be stricken  
16 are redundant, immaterial and impertinent  
17 matter and more particularly that said alle-  
18 gations are conclusions of law.

19 The said defendants also raise the point that the suit  
20 is barred by laches and it is to be assumed that such defense  
21 is intended to be raised under their claim that the complaint  
22 fails to state a claim upon which relief can be granted, but,  
23 however that may be we do not believe that point is well  
24 taken.

25 We shall consider the respective motions in the order  
26 presented by the moving papers and the points and authorities  
27 presented by said defendants in support of their motion.

#### 28 IS THE SUIT BARRED BY LACHES?

29 May we for the convenience of the court quote from  
30 Corpus Juris, Volume 21, at page 217, Section 216, as follows:

31 "While the contrary has been held, yet by  
32 the weight of authority the defense of  
laches is not available against the govern-  
ment, state or national, in a suit by it  
to enforce a public right or to protect  
a public interest, or, as the rule is  
sometimes expressed, the laches of its  
officers and agents will not be imputed  
to the government. This rule applies,  
however, only to suits brought by the  
government in its sovereign capacity  
to enforce or to protect a public or  
governmental right."

1 It is our position that the instant action is one to  
2 enforce a public right and to protect a public right and to  
3 protect a public interest. We allege in our complaint that  
4 certain land has been occupied and possessed by Indians,  
5 wards of the government, for over a century, and that during  
6 that time such Indians have made use thereof in their com-  
7 munal life; that while the Indians were in such occupancy  
8 and possession land patent thereto was issued by the govern-  
9 ment to one Frederick Billings, a defendant in the case, and  
10 listings were issued to the defendant, State of California;  
11 that said defendants deraign their claim of title to said  
12 land through and by virtue of said patent and listing; and  
13 that no title to said land ever did vest in the State of  
14 California, or in said Frederick Billings, or in said de-  
15 fendants, for the reason that said patent and said listing  
16 were void from the beginning, and that for the reason that  
17 at the time when said patent and said listing issued the  
18 land was in fact occupied and possessed by such Indians and  
19 were in fact "otherwise appropriated" and could not be the  
20 subject of patent or listing. We take the position that the  
21 government has at all times, during the history of the  
22 United States, had a duty to perform to the Indians, and  
23 had adopted and carried out a policy of guardianship to the  
24 Indians to perform such duty; that the government had a  
25 public duty to perform in that regard; that wherein the  
26 government has a duty to perform it has the right to per-  
27 form the duty; and that in this case the sovereign has the  
28 right to enforce and protect its rights and duties with  
29 reference to the Indians. That, therefore, the defense of  
30 laches is not available to the defendants in this case in  
31 that the government is the real party in interest.

1                    In re Cramer v. U.S. 261 U.S. 219.

2                    This is the case upon which the government relies to sustain  
3                    the case at bar. May we not for the convenience of the court  
4                    quote from the opinion in that case as follows:

5                    "This appeal brings up for review a decree  
6                    of the Circuit Court of Appeals, directing the  
7                    cancellation of a land patent issued in 1904 by  
8                    the United States to the defendant, Central Pacific  
9                    Railway Company, \* \* \* \* \*."

10                    "The Act of July 25, 1866, c. 242, 14 Stat.  
11                    239, granted to the predecessor of the defendant  
12                    company a series of odd numbered sections of land,  
13                    including those named, but excepted from the grant  
14                    such lands as 'shall be found to have been granted,  
15                    sold, reserved, occupied by homestead settlers, pre-  
16                    empted, or otherwise disposed of.' \* \* \* \* \* patent  
17                    conveying the sections mentioned above, with others,  
18                    was issued to the defendant company, as successor in  
19                    interest of the legislative grantee. "

20                    " \* \* \* \* \*. The court found that as early as  
21                    1859 the Indians named lived with their parents  
22                    upon the land described and had resided there ever  
23                    since; that they had under fence between 150 and  
24                    175 acres in irregularly shaped tract, running  
25                    diagonally through the two sections, portions of  
26                    which they had irrigated and cultivated; that they  
27                    had constructed and maintained dwelling houses and  
28                    divers outbuildings, and had actually resided upon  
29                    the lands and improved them for the purpose of  
30                    making for themselves homes."

31                    \* \* \* \* \*

32                    "A reversal of this decree is now sought  
33                    upon several grounds.

34                    "1. It is urged that the occupancy of land  
35                    by individual Indians does not come within the  
36                    exceptive provision of the grant.

37                    "Until the Act of March 3, 1875, c.131,  
38                    18 Stat. 402,420, extending the homestead privi-  
39                    lege to Indians, the right of an individual Indian  
40                    to acquire title to public lands by entry was not  
41                    recognized. It cannot, therefore, be said that  
42                    these lands were occupied by homestead settlers  
43                    nor were they granted, sold or pre-empted, but the  
44                    question remains, were they 'reserved . . . . or  
45                    otherwise disposed of?' Unquestionably it has  
46                    been the policy of the Federal Government from the  
47                    beginning to respect the Indian right of occupancy,  
48                    which could only be interfered with or determined  
49                    by the United States. Beecher v. Wetherby, 95 U.S.  
50                    517,525; Minnesota v. Hitchcock, 185 U.S. 373, 385."

51                    (Underscoring ours)



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"In Poisal v. Fitzgerald, 15 L.D. 19, the right of occupancy of an individual Indian was upheld as against an attempted homestead entry by a white man.

"In State of Wisconsin, 19 L. D. 518, there had been granted to the State certain swamp lands within an Indian reservation, but the right of Indian occupancy was upheld, although the grant in terms was not subject thereto.

"In Ma-Gee-See v. Johnson, 30 L.D. 125, Johnson had made an entry under section 2289, Rev. Stats., which applied to 'unappropriated public lands'. It appeared that at the time of the entry and for some time thereafter the land had been in the possession and use of the plaintiff, an Indian. It was held that under the circumstances the land was not unappropriated within the meaning of the statute, and therefore not open to entry.

"In Schumacher v. State of Washington, 33 L.D. 454,456, certain lands claimed by the State under a school grant, were occupied and had been improved by an Indian living apart from his tribe \*\*\*\*\*." It was held that the grant to the State did not attach under the provision excepting lands 'otherwise disposed of by or under authority of Congress.' \*\*."

\*\*\*\*\*

"The action of these individual Indians in abandoning their nomadic life and habits and attaching themselves to a definite locality, reclaiming, cultivating and improving the soil and establishing fixed homes thereon was in harmony with the well understood desire of the government which we have mentioned. To hold that by so doing they acquired no possessory rights to which the Government would accord protection, would be contrary to the whole spirit of the traditional American policy toward these dependent wards of the nation."

(Underscoring ours)

So we point out that this action is one asserting a right of the sovereign to protect its wards and therefore, though the Indians derive a benefit from the benevolent attitude of the sovereign, nevertheless the real party in interest is the United States of America, and as has been shown, the defense of laches is not available to the defendants as against the government.

1                    DOES THE COMPLAINT FAIL TO STATE A CLAIM UPON WHICH  
2                    RELIEF CAN BE GRANTED.

3                    The allegations of the complaint must be considered as  
4 a whole and no, by the defendant selected isolated allegations  
5 are at all determinative. All the allegations of the com-  
6 plaint must be considered in arriving at whether or not the  
7 complaint alleges facts sufficient to constitute the cause  
8 of action. So far as the above point made by the defendants  
9 is concerned the complaint alleges as follows:

10                   1. That for at least 50 years prior to February 18,  
11 1859, and from time immemorial, the lands in question were  
12 Indian lands occupied, used, enjoyed and claimed by the Pomo  
13 Indian tribe. (See paragraph I of complaint).

14                   2. That at no time have such right of occupancy, use,  
15 enjoyment and claim been extinguished. (See paragraph I of  
16 complaint).

17                   3. That, on February 18, 1859, the defendant, Frederick  
18 Billings, made and filed in the United States Land Office an  
19 application for homestead patent to the lands in question and  
20 in connection therewith filed in the United States Land  
21 Office an affidavit setting forth therein that said lands  
22 were unoccupied and constituted public domain and was sub-  
23 ject to entry and was not otherwise disposed of or appro-  
24 priated. (See paragraph II of complaint, page 4, line 28  
25 to end of page and first three lines on page 5).

26                   4. That the lands in question are now and have been for  
27 over 125 years last passed, occupied and possessed by Jim  
28 Brown, Mrs. Grace Barnes, Mr. Belton Barnes, Mr. Tom Maranda,  
29 Mrs. Eva Maranda, Mr. Thomas Leon, Mrs. Lena Brown, Mrs. Sara  
30 Morando, Mr. Fred A. Bogus, Mrs. Ethel Bargas, Mrs. Josie  
31 Gonzalls, Steve Kelsey, Mr. Houghton Brown, Mrs. Houghton  
32 Brown, Mr. Little Thomas, Mrs. Little Thomas, Mr. Johnnie

1 Kelsey, Mrs. Effie Kelsey, Cecil Thomas, Albert Thomas and  
2 George Luzintos, and each their progenitors and ancestors,  
3 members of the Pomo Indian Tribe, and have been and are wards  
4 of the Government. (See paragraph III of complaint).

5 5. That on August 13, 1874, and prior thereto, when  
6 said defendant, State of California, received from the United  
7 States of America, List #32, indemnity school selections,  
8 and at time when said defendant, State of California, granted  
9 to said R. S. Floyd the patent recorded in Vol. 2 of Patents  
10 at page 250, Lake County Records, in the office of the  
11 County Recorder of said County of Lake, the lands described  
12 in this complaint were reserved and appropriated for, and  
13 subject to the claims and rights of said Indians, and no  
14 right, title or interest whatsoever therein passed to the  
15 State of California and/or to the purported patentees. (See  
16 paragraph IV of complaint).

17 6. That at the time, to-wit, February 15, 1860, when  
18 defendant, Frederick Billings, had issued to him the patent  
19 of the United States of America covering said land, the said  
20 land was "otherwise appropriated." (See paragraphs V and VI  
21 of complaint).

22 7. That on about August 13, 1874, said real property  
23 in question was by "mistake and inadvertence" listed to the  
24 State of California by the United States of America in List  
25 #32 of indemnity school selections. (See first six lines of  
26 paragraph II of complaint).

27 8. That on February 15, 1860, the United States of  
28 America, in pursuance of said application, by "mistake and  
29 inadvertence" issued to Frederick Billings its patent cover-  
30 ing said lands described in said Parcel Two (and other pro-  
31 perty) which patent is recorded in the office of the County  
32 recorder of said Lake County in Vol. 1 of Patents, at pages

1 261 to 274, Lake County Records. (See lines 4 to 9, page 5,  
2 Paragraph II of complaint).

3 It is quite clear that by the allegations "by mistake  
4 and inadvertence" and "without authority at law", reference  
5 is made to the fact that the land was in fact "otherwise  
6 appropriated" and that had the officers of the United States  
7 Land Office had knowledge of the fact that the said Indians  
8 were in occupancy and possession of the land the patent and  
9 listing would not and could not legally have been made.  
10 Therefore the patents and listings were made by mistake and  
11 inadvertence and without authority at law. We do not claim  
12 mistake and inadvertence and/or without authority at law  
13 other than upon ultimate facts pleaded in the complaint.  
14 And said allegations may be said to be conclusions of fact  
15 and law, but nevertheless, proper under the new Rules.  
16 However, our action is not founded upon mistake and inad-  
17 vertence. It is founded upon the proposition that the land  
18 in question was unpatentable and unlistable at the time  
19 when the patents and listings were made, and therefore void.

20 The defendants contend that we allege that the United  
21 States of America issued listings and patents and therefore  
22 the United States cannot now come in and say the listings  
23 and patents are void; and they base their argument upon the  
24 basis that the United States had the power to issue and list  
25 and therefore the listings and patent cannot have been made  
26 without authority at law. In other words their claim is  
27 that the pleader having employed the language "by the  
28 United States of America" we are now foreclosed from attempt-  
29 ing to establish that the patent and listings are void.  
30 This argument may quickly be disposed of by referring to  
31 the Cramer vs. U. S. case, 261 U.S. at page 224, where  
32 Justice Sutherland in his opinion employs the following

1 language: "This appeal brings up for review a decree of the  
2 Circuit Court of Appeals directing the cancellation of a  
3 land patent issued in 1904 by the United States." The  
4 patent in that case was issued by the United States. It was  
5 so alleged in the complaint and the Justice so stated as  
6 aforesaid, and the Supreme Court directed the cancellation  
7 of the patent so issued by the United States and held the  
8 same null and void ab initio.

9 It therefore appears that the complaint does set forth  
10 what is meant by "mistake and inadvertence" and no further  
11 allegations in regard thereto are necessary or required.

12 We submit that the complaint very fully discloses why  
13 the listings #32 of indemnity school selection were not avail-  
14 able to the State of California, to-wit, that said lands  
15 were already and prior thereto otherwise disposed of to the  
16 Indians and therefore it is not incumbent upon the plaintiff  
17 to show which lands the lands described in the complaint were  
18 to replace. We take the position that it is irrelevant and  
19 immaterial which lands it replaced. If the defendants claim  
20 otherwise then it is for them to so plead and is a matter of  
21 defense.

22 We further submit that the complaint is replete with  
23 allegations upon which we rely that the United States was  
24 without authority to make said patents and listings validly.

25 As to the defendants' motion to strike we submit that  
26 to grant their motion would be to deprive the plaintiff to  
27 state its cause of action in manner as provided by Rule 8,  
28 subsections (e) and (f), and particularly the provision of  
29 said subsection (f) which reads: "All pleadings shall be so  
30 construed as to do substantial justice."

31 In lines 6 to 13, both inclusive, page 4 of defendants'  
32 points and authorities, defendants state that provision for

1 grants to the States of indemnity school lands was made in  
2 section 7 of the Act of March 31, 1853, and in the Act of  
3 February 26, 1859; and that the only condition contained in  
4 either Act as to the nature of the lands which might be  
5 granted was one incorporated by reference to the Act of May  
6 20, 1826, which latter Act provided for selection of land  
7 from unappropriated public land.

8 That is enough - that is what we rely upon. The patents  
9 and listings were void because made from already appropriated  
10 public land, to-wit, land already appropriated for the In-  
11 dians who were in occupancy and possession thereof. Defen-  
12 dants state: "The United States owns the fee even of lands  
13 in an Indian Reservation, and a grant of lands not thereto-  
14 fore 'sold or otherwise disposed of' to a state for school  
15 purposes operates to convey Indian lands subject only to the  
16 Indians' right of possession." Defendants then go on further  
17 to say: "Legislation of Congress designed to aid the common  
18 schools of the States is to be construed liberally rather  
19 than restrictively."

20 The foregoing argument was likewise made in the Cramer  
21 case, but in deciding the controversy in favor of the govern-  
22 ment the following language appears in the body of the opin-  
23 ion at page 229 at bottom of the page:

24 "We have had occasion to construe a very common  
25 clause of reservation in grants to other railroad  
26 companies, and in aid of other works of internal  
27 improvements, and in all of them we have done so in  
28 the light of the general principle that Congress,  
29 in the act of making these donations, could not be  
30 supposed to exercise its liberality at the expense  
31 of pre-existing rights, which, though imperfect,  
32 were still meritorious, and had just claims to  
legislative protection."

We respectfully submit that the defendants' said motions  
be denied.

FRANK J. HENNESSY,  
United States Attorney,

By G. B. Hjelm  
G. B. HJELM,  
Assistant United States Attorney.

1 HOWARD J. FINN, and  
2 BROBECK, PHLEGER & HARRISON,  
3 Crocker Building,  
4 San Francisco, California,  
5 Telephone: SUTter 0666,  
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7 Attorneys for Defendants  
8 William O. B. Macdonough and  
9 William O. B. Macdonough, etc.  
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FILED  
O'clock and Min.  
FEB 29 1940  
WALTER B. MALING,  
CLERK.

14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION.  
16

17 UNITED STATES OF AMERICA,	}	No. 4068 L	
18 Plaintiff,			Civil.
19 -vs-			
20 THE STATE OF CALIFORNIA, et al.,			
21 Defendants.			

22  
23 AFFIDAVIT OF SERVICE BY MAIL  
24

25 State of California, )  
26 City and County of San Francisco. ) ss.  
27

28 GEORGE A. HELMER, being first duly sworn, deposes  
29 and says:

30 My name is George A. Helmer; I am now, and I was at :

1 all times herein mentioned, a citizen of the United States,  
2 over the age of 21 years, and not a party to nor interested  
3 in the above-entitled action, and am employed by Messrs.  
4 Brobeck, Phleger & Harrison, attorneys for defendants  
5 William O. B. Macdonough and William O. B. Macdonough as  
6 administrator with the will annexed of the estate of Joseph  
7 M. Macdonough, Deceased, sued herein as John Doe One.

8 That Messrs. Brobeck, Phleger & Harrison reside  
9 and have their offices in the City and County of San Francisco,  
10 State of California; that G. B. Hjelm, Esq., Assistant United  
11 States Attorney and attorney for the plaintiff in the above-  
12 entitled action, resides and has his offices in the City of  
13 Sacramento, County of Sacramento, State of California, and  
14 that there is a regular daily communication by mail between  
15 San Francisco, California, and Sacramento, California.

16 I did, on the 27th day of February, 1940, on behalf  
17 of the above-named defendants and their said attorneys, de-  
18 posit in the United States Post Office at San Francisco,  
19 California, enclosed in a sealed envelope, fully prepaid,  
20 addressed to said attorney for the plaintiff, a copy of each  
21 of the following-named documents in the above-entitled action,  
22 to-wit:

23 Motion of said defendants William  
24 O. B. Macdonough and William O. B.  
25 Macdonough as administrator with the  
26 will annexed of the estate of Joseph M.  
27 Macdonough, deceased, sued herein as  
John Doe One, to dismiss said action  
and in the alternative for a more  
definite statement, and to strike;

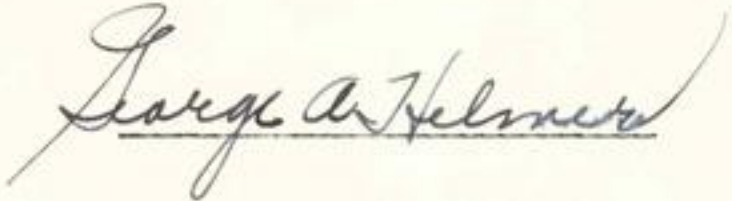
28 Points and authorities in support  
29 of said motion.

30 That said stamped envelope enclosing a copy of each  
of the above-named documents, was addressed to said attorney

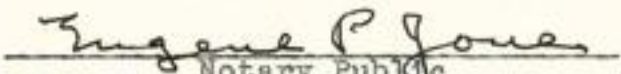


1 for plaintiff, as follows:

2 "G. B. Hjelm, Esq.,  
3 Assistant United States Attorney,  
4 Sacramento, California."

5  
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8

9 Subscribed and sworn to before me  
10 this 25<sup>th</sup> day of February, 1940.

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13 Notary Public  
14 in and for the City and County of  
15 San Francisco, State of California.

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1 HOWARD J. FINN, and  
2 BROBECK, PHLEGER & HARRISON,  
3 Crocker Building,  
4 San Francisco, California,  
5 Telephone: SUTTER 0666,  
6 Attorneys for Defendants  
7 William O. B. Macdonough and  
8 William O. B. Macdonough, etc.

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FILED

.....O'clock and.....Min.....

FEB 29 1940

WALTER B. MALING,  
CLERK.

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14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION.

16  
17 UNITED STATES OF AMERICA, )  
18 Plaintiff, )  
19 -vs- )  
20 THE STATE OF CALIFORNIA, et al., )  
21 Defendants. )

No. 4068 L  
Civil.

22  
23 POINTS AND AUTHORITIES IN SUPPORT OF MOTION  
24 TO DISMISS, MOTION FOR A MORE DEFINITE  
25 STATEMENT, AND MOTION TO STRIKE, OF DEFEND-  
26 ANTS WILLIAM O. B. MACDONOUGH AND WILLIAM  
27 O. B. MACDONOUGH AS ADMINISTRATOR WITH WILL  
28 ANNEXED OF THE ESTATE OF JOSEPH M. MACDONOUGH,  
29 DECEASED, SUED HEREIN AS JOHN DOE ONE.

30  
I. The suit is barred by laches.

The suit is not one to establish the right of the  
United States, but to remove a cloud upon the possessory

1 rights of its wards (Cramer v. United States, 261 U.S. 219,  
2 233-234). The suit being one to enforce and protect the  
3 rights of third persons, the limitations applicable to  
4 suits of the United States to annul patents (U.S.Code, Title  
5 43, sec. 1166) do not apply (Cramer v. United States, supra),  
6 but by the same token, the doctrine of laches does apply  
7 (United States v. Beebe, 127 U.S. 338). The patent to  
8 Billings was issued by the United States eighty years ago  
9 and the listing to the State of California and the issuance  
10 of its patent to Floyd and Billings occurred over sixty  
11 years ago. There having been an unreasonably long delay  
12 in filing suit, it is incumbent upon the plaintiff to ac-  
13 count for and excuse the delay by specific averment (Mackall  
14 v. Casilear, 137 U. S. 556.)

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18 II. The complaint does not state facts showing  
19 either that the listing or the patents  
20 were unauthorized or that they were  
issued through mistake or inadvertence.

21 The complaint alleges that the listing to the  
22 State of California and the patents were issued through  
23 "mistake and inadvertence" and "without authority of law".  
24 These, of course, are pure conclusions, and if unsupported  
25 by any facts pleaded, are insufficient to make out a cause  
26 of action (United States v. Atherton, 102 U.S. 372; Isbrand-  
27 sten - Moller Co. v. United States, 300 U.S. 139).

28 The complaint does not attempt to allege facts  
29 showing either that the listing and patents were issued  
30 through mistake or inadvertence, or that they were without

1 authority of law. The claim of mistake and inadvertence  
2 is absolutely unsupported by any allegations of fact, and  
3 the complaint therefore fails to state a cause for relief  
4 on that ground (United States v. Atherton, 102 U.S. 372).  
5 The claim that the listing and patents were unauthorized  
6 not only is unsupported, but is at variance with the facts  
7 alleged. It is alleged in paragraph II that the listing  
8 to the State of California was "by the United States of  
9 America", and, similarly, that the patent to Billings was  
10 issued by "the United States of America". These are  
11 tantamount to allegations that the listing and the issuance  
12 of the patents were the acts of the United States. The  
13 United States may dispose of its public lands, including  
14 so-called Indian lands, as it sees fit. Thus, if it so  
15 desires, it may convey Indian lands subject to a right in  
16 the Indians to possession (Beecher v. Wetherby, 95 U.S. 517),  
17 or it may convey them entirely free from any claim on the  
18 part of the Indians (Spalding v. Chandler, 160 U.S. 394).  
19 The United States therefore had the power and authority to  
20 do what it is alleged to have done, and the claim that the  
21 listing and issuance of the patent were without authority  
22 is unsupported.

23

24

25 III. The listing of the indemnity school  
26 lands to the State of California  
27 and the issuance of the patent by  
the State were authorized.

28

29 If the complaint alleged that the lands listed  
30 to the State of California were so listed, not by the United  
States, but certain identified persons acting without authority

1 from the United States, then the question would be presented  
2 whether the complaint stated facts showing that the listing  
3 was without authority of law. Assuming that the complaint  
4 was so phrased, it still would not state facts entitling  
5 plaintiff to the relief prayed for.

6 Provision for grants to the states of indemnity  
7 school lands was made in section 7 of the Act March 3, 1853  
8 (10 Stat. 247) and in the Act of February 26, 1859 (11 Stat.  
9 385). The only qualification contained in either Act as  
10 to the nature of the lands which might be granted was one  
11 incorporated by reference to the Act of May 20, 1826 (4  
12 Stat. 179). The latter Act provided simply for selection  
13 from "unappropriated" public land. The United States owns  
14 the fee even of lands in an Indian reservation, and a grant  
15 of lands not theretofore "sold or otherwise disposed of" to  
16 a state for school purposes operates to convey Indian lands  
17 subject only to the Indians' right of possession (Beecher v.  
18 Wetherby, 95 U.S. 517; see Northern Pacific R. R. Co.,  
19 119 U.S. 55; Nadeau v. Union Pacific Railroad Company, 253  
20 U.S. 442; Shore v. Shell Petroleum Corporation, 55 F. (2d)  
21 696). Legislation of Congress designed to aid the common  
22 schools of the states is to be construed liberally rather  
23 than restrictively (Wyoming v. United States, 255 U.S. 489).  
24 The present case is not one where land may be said to have  
25 been "appropriated" because set aside by treaty with the  
26 Indians or by statute (compare Wisconsin v. Lane, 245 U.S.  
27 427), nor is the statute to be given the restrictive con-  
28 struction accorded grants to railroads (compare Cramer v.  
29 United States, 261 U.S. 219).

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IV. The complaint does not allege facts  
avoiding the confirmatory Act  
of March 1, 1877.

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An Act of March 1, 1877, confirmed the title to all indemnity school selections certified to the State of California in lieu of lands within Mexican grants (19 Stat. 267). The complaint does not show why the lands in lieu of which the property described in the complaint was certified were unavailable to the State. It may well be that those lands were within a Mexican grant and that the listing was confirmed by the Act of March 1, 1877.

Respectfully submitted,

Howard Fin

Berbeck Alger Harrison

Attorneys for defendants  
William O. B. Macdonough, and  
William O. B. Macdonough as  
admr., etc., sued herein as  
John Doe One.

DEPARTMENT OF JUSTICE  
UNITED STATES MARSHAL  
NORTHERN DISTRICT OF CALIFORNIA

MARSHALS RETURN OF SERVICE

I, George Vice, United States Marshal for the Northern District of California do certify and return that I received a Summons and copy of Complaint as per copy of Summons attached hereto, in San Francisco, California on January 27th 1940, and thereafter on 3<sup>rd</sup> day of February 1940 in Williams, California, I served the therein named Defendant Power and Irrigation Company of Clear Lake, a corporation, by handing to and leaving with CLARENCE E SHEETS a copy of the same, the said Clarence E. Sheets being served as a Trustee of the Power and Irrigation Company of Clear Lake, a corporation, which forfeited its right to do business in California March 2nd 1929, and as a Director of said corporation at the time when said corporation forfeited its right to do business in California on March 2nd ~~1929~~ 1929, and as having charge of the assets of said corporation.

Court No. 4068-L.  
Marshals No. 1935-499-5.

GEORGE VICE U S MARSHAL

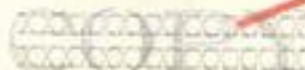
By Hayden Saunders  
Deputy.

1 FRANK J. HENNESSY,  
United States Attorney,  
2 G. B. HJELM,  
Assistant U. S. Attorney,  
3 Attorneys for Plaintiff.

1934-499-5  
M D No.          Civil  
RECEIVED  
JAN 27 1940

U.S. MARSHAL'S OFFICE  
SAN FRANCISCO, CALIF.

47



7  
8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,

14 vs.

15 THE STATE OF CALIFORNIA; S. F. BUTTERWORTH; ALFRED  
16 A. WHEELER; CROCKER FIRST NATIONAL BANK, A CORPO- )  
17 RATION; WILLIAM O. B. MACDONOUGH; JOHN DOE ONE, AS )  
18 ADMINISTRATOR OF THE ESTATE OF JOSEPH M. MAC- )  
19 DONOUGH, DECEASED; JOHN DOE TWO, AS EXECUTOR OF )  
20 THE ESTATE OF JOSEPH M. MACDONOUGH, DECEASED; JOHN )  
21 DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE, JOHN DOE )  
22 SIX, JOHN DOE SEVEN, JOHN DOE EIGHT, JOHN DOE NINE )  
23 JOHN DOE TEN, JANE DOE ONE, JANE DOE TWO, JANE DOE )  
24 THREE, JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT )  
25 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH M. )  
26 MACDONOUGH, DECEASED; FREDERICK BILLINGS, THE )  
27 CALIFORNIA BORAX COMPANY, A CORPORATION; THE )  
28 CALIFORNIA BORAX COMPANY, A CO-PARTNERSHIP; THE )  
29 SULPHUR BANK QUICKSILVER MINING COMPANY, A CORPO- )  
30 RATION; THE SULPHUR BANK CONSOLIDATED QUICKSILVER )  
31 MINING COMPANY, A CORPORATION; EMPIRE CONSOLIDATED )  
32 QUICKSILVER MINING COMPANY, A CORPORATION; WILLIAM )  
E. GERBER; RICHARD WHITE; CLEAR LAKE QUICKSILVER )  
MINING COMPANY, A CORPORATION; RAYMOND G. LAHOUE; )  
JAMES H. O'BRIEN; T. A. MORRISSEY; CLEAR LAKE )  
COMPANY, A CORPORATION; ESTELLE R. DAVIS; RUTH )  
deFREMERY; CLINTON E. DOLEBEAR; P. R. BRADLEY; )  
EDWARD A. NUTTER; A. T. HATHAWAY; HOMESTAKE GOLD )  
MINING COMPANY, A CORPORATION; GOLDEN GATE GOLD )  
MINING COMPANY, A CORPORATION; RICHARD ROWE ONE; )  
RICHARD ROWE TWO; RICHARD ROWE THREE; RICHARD ROWE )  
FOUR; RICHARD ROWE FIVE; JANE ROWE ONE; JANE ROWE )  
TWO; JANE ROWE THREE; JANE ROWE FOUR; JANE ROWE )  
FIVE; SAM BLAKE CORPORATION ONE; SAM BLAKE COR- )  
PORATION TWO; SAM BLAKE CORPORATION THREE; SAM )  
BLAKE CORPORATION FOUR; SAM BLAKE CORPORATION )  
FIVE; POWER AND IRRIGATION COMPANY OF CLEAR LAKE, )  
A CORPORATION; CLEAR LAKE WATER COMPANY, A COR- )  
PORATION; CALIFORNIA TRUST AND SAVINGS BANK, A )  
CORPORATION; PACIFIC GAS AND ELECTRIC COMPANY, A )  
CORPORATION; PACIFIC TELEPHONE AND TELEGRAPH )  
COMPANY, A CORPORATION; BRADLEY MINING COMPANY, A )  
CORPORATION,

Defendants.

40681

CIVIL NO. \_\_\_\_\_

ALIAS  
**SUMMONS**

**FILED**

O'clock and \_\_\_\_\_ Min.

FEB 7 - 1940

WALTER B. MALING,  
CLERK.



TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve (\*) upon FRANK J. HENNESSY, United States Attorney for the Northern District of California, plaintiff's attorney, whose address is Room 404, New Post Office Building, Sacramento, California, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WALTER B. MALING, Clerk

(S E A L)

By:

*F. M. Lampert*  
F. M. LAMPERT

Deputy Clerk

DATED: Sacramento, Calif.,

January 25th, 1940

(\*) Rule 5 (d) "All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter."

---oOo---

UNITED STATES MARSHAL'S OFFICE )  
Northern District of California. ) ss

I hereby certify that I received the within writ on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, and personally served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, by delivering to, and leaving with \_\_\_\_\_ one of said defendants named therein personally, at the City of \_\_\_\_\_, County of \_\_\_\_\_ in said District, a copy thereof, together with a copy of the complaint attached thereto.

GEORGE VICE, United States Marshal

By: \_\_\_\_\_

Deputy

\_\_\_\_\_, Calif.

\_\_\_\_\_, 1939.

1 JOHN PARKS DAVIS  
 Attorney at Law  
 2 705 Standard Oil Building  
 San Francisco, California  
 3 Telephone: DOUGLAS 1510  
 4 Attorney for certain Defendants

*46*  
**FILED**  
 O'clock and Min.  
**JAN 31 1940**  
**WALTER B. MALING,**  
 CLERK.

5  
 6  
 7  
 8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT,  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
 12 Plaintiff,  
 13 vs.  
 14 THE STATE OF CALIFORNIA, ET AL.,  
 15 Defendants.

No. 4068 L

16  
 17  
 18 STIPULATION EXTENDING TIME

19  
 20 IT IS HEREBY STIPULATED by and between the plaintiff  
 21 and BRADLEY MINING CO., P. R. BRADLEY, ESTELLE R. DAVIS and  
 22 RUTH deFREMERY, certain of the defendants herein, that said  
 23 defendants may have to and including the 1st day of March, 1940,  
 24 within which to file an answer to plaintiff's complaint.

25 DATED: January 29, 1940 *Frank J. Hammer*  
 26 *G. B. Kyalan*  
 27 Attorney for Plaintiff

28  
 29 *John Parks Davis*  
 30 Attorney for said Defendants

31  
 32

45

**FILED**  
.....O'clock and.....Min.....  
JAN 31 1940  
**WALTER B. MALING,**  
CLERK.

1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building  
3 San Francisco, California.  
4 Attorneys for certain defendants.  
5  
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15 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
16 OF CALIFORNIA, NORTHERN DIVISION  
17  
18

19 UNITED STATES OF AMERICA,  
20 Plaintiff,  
21 vs.  
22 THE STATE OF CALIFORNIA, et al.  
23 Defendants.  
24

No. 4068-L

25 STIPULATION EXTENDING TIME  
26

27 IT IS HERESY STIPULATED by and between the parties  
28 hereto that the defendants Dent W. Macdonough, individually,  
29 and Dent W. Macdonough, sued as John Doe I, as administrator  
30 with the will annexed of the Estate of Joseph M. Macdonough,

1 deceased, John Macdonough, a minor, and Mary Macdonough, a  
2 minor, may have to and including February 29, 1940, within  
3 which to plead or answer the complaint on file herein or  
4 make such motion with reference thereto as they may be  
5 advised.

6  
7 Dated: January 30, 1940.

8 *Frank J. Hennessy*

9  
10 United States Attorney

11 *G. B. Hill*

12 Assistant United States Attorney

13 Attorneys for Plaintiff  
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In the District Court of the United States

NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

241

UNITED STATES OF AMERICA

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vs.

THE STATE OF CALIFORNIA, et al.

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Civil -

JAN 25 1940

No. 4068-L

Praecipe

To the Clerk of Said Court:

Sir:

Please issue alias summons for service upon the defendant

POWER AND IRRIGATION COMPANY OF CLEAR LAKE, a corporation

G. B. Johnson  
Assistant U.S. Attorney (GBH)  
Attorney for Plaintiff.

1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building  
3 San Francisco, California.  
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**FILED**  
O'clock and Min.  
**DEC 28 1939**  
**WALTER B. MALING,**  
CLERK.

14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION

18 UNITED STATES OF AMERICA,  
19 Plaintiff,  
20 vs.  
21 THE STATE OF CALIFORNIA, et al.  
22 Defendants.

No. 4068 L

24 STIPULATION EXTENDING TIME

26 IT IS HEREBY STIPULATED by and between the parties  
27 hereto that the defendants Dent W. Macdonough, individually,  
28 and Dent W. Macdonough, sued as John Doe I, as administrator  
29 with the will annexed of the Estate of Joseph M. Macdonough,  
30 deceased, John Macdonough, a minor, and Mary Macdonough, a

1 minor, may have to and including January 30, 1940, within  
2 which to plead or answer the complaint on file herein or  
3 make such motion with reference thereto as they may be  
4 advised.

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Dated: December 30, 1939.

*Frank J. Hennessy*  
*United States Attorney*  
*G. B. Hylton*  
United States Attorney

*G. B. Hylton*  
Assistant United States Attorney

Attorneys for Plaintiff.

412

1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510  
6  
7  
8 Attorney for certain defendants

FILED  
O'clock and Min.  
DEC 28 1939  
WALTER B. MALING,  
CLERK.

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 . . . . .

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 THE STATE OF CALIFORNIA, ET AL.,  
15 Defendants.  
16 \_\_\_\_\_

No. 4068 L

17 STIPULATION EXTENDING TIME

18  
19 IT IS HEREBY STIPULATED by and between the  
20 plaintiff and BRADLEY MINING CO., P. R. BRADLEY, ESTELLE R.  
21 DAVIS, and RUTH deFREMERY, certain of the defendants herein,  
22 that said defendants may have to and including the 1st day  
23 of February, 1940, within which to file an answer to plaintiff's  
24 complaint.

25 DATED December 26, 1939. Frank J. Jennings  
26 W.S. Atty  
27 Attorney for Plaintiff  
28  
29 John Parks Davis  
30 Attorney for said Defendants  
31  
32



41

1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510

**FILED**  
.....O'clock and.....Min.....  
NOV 29 1939  
**WALTER B. MALING,**  
CLERK.

6 Attorney for certain Defendants

7  
8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 . . . . .

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 THE STATE OF CALIFORNIA, ET AL.,  
15 Defendants.

No. 4068 L

16  
17 STIPULATION EXTENDING TIME

18  
19 IT IS HEREBY STIPULATED by and between the plaintiff  
20 and BRADLEY MINING CO., P. R. BRADLEY, ESTELLE R. DAVIS and  
21 RUTH defREMERY, certians of the defendants herein, that said  
22 defendants may have to and including the 2d day of January,  
23 1940, within which to file an answer to plaintiff's complaint.

24 DATED November 28, 1939.

25  
26 *one of the* *J.P. Davis*  
27 Attorneys for Plaintiff

28 *John Parks Davis*  
29 Attorney for said Defendants

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1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building  
3 San Francisco, California.  
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8  
9 Attorneys for certain defendants.

49

FILED  
O'clock and Min.  
NOV 29 1939  
WALTER B. MALING,  
CLERK.

10  
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14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION

16  
17  
18 UNITED STATES OF AMERICA,  
19 Plaintiff,  
20 vs.  
21 THE STATE OF CALIFORNIA, et al.  
22 Defendants.

No. 4068 L

23  
24 STIPULATION EXTENDING TIME

25 IT IS HEREBY STIPULATED by and between the parties  
26 hereto that the defendants Dent W. Macdonough, individually,  
27 and Dent W. Macdonough, sued as John Doe I, as administrator  
28 with the will annexed of the Estate of Joseph M. Macdonough,  
29 deceased, John Macdonough, a minor, and Mary Macdonough, a  
30 minor, may have to and including December 30, 1939, within

1 which to plead or answer the complaint on file herein or  
2 make such motion with reference thereto as they may be  
3 advised.

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Dated: November 30, 1939.

*Frank J. Conway*  
United States Attorney

*W. P. Ryan*  
Assistant United States Attorney

Attorneys for Plaintiff.

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JOHN PARKS DAVIS  
Attorney at Law  
705 Standard Oil Building  
San Francisco, California  
Telephone Douglas 1510

Attorney for certain Defendants

39 1/2

FILED

.....O'clock and.....Min.....

OCT 30 1939

WALTER B. MALING,  
CLERK.

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

.....  
UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
THE STATE OF CALIFORNIA, ET AL.,  
Defendants.  
.....

NO. 4068 L

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the plaintiff and  
BRADLEY MINING CO., P. R. BRADLEY, ESTELLE R. DAVIS and  
RUTH dePREMERY, certain of the defendants herein, that said  
defendants may have to and including the 1st day of December,  
1939, within which to file an answer to plaintiff's complaint.

DATED October 26<sup>th</sup>, 1939.

Frank J. [Signature]  
Attorney for Plaintiff

John Parks Davis  
Attorney for said Defendants

1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building  
3 San Francisco, California.  
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**FILED**  
.....O'clock and.....Min.....  
OCT 30 1939  
**WALTER B. MALING,**  
CLERK.

14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION

18 UNITED STATES OF AMERICA,  
19 Plaintiff,  
20 vs.  
21 THE STATE OF CALIFORNIA, et al.  
22 Defendants.

No. 4066 L

24 STIPULATION EXTENDING TIME

25  
26 IT IS HEREBY STIPULATED by and between the parties  
27 hereto that the defendants Dent W. Macdonough, individually,  
28 and Dent W. Macdonough, sued as John Doe I, as administrator  
29 with the will annexed of the Estate of Joseph M. Macdonough,  
30 deceased, Joan Macdonough, a minor, and Mary Macdonough, a

1 minor, may have to and including November 30, 1939, within  
2 which to plead or answer the complaint on file herein or  
3 make such motion with reference thereto as they may be  
4 advised.

5  
6 Dated: October 30, 1939.

7  
8 Frank J. Kennedy  
9 United States Attorney

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11 W. B. Allen  
12 Assistant United States Attorney  
13 Attorneys for Plaintiff.  
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1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building  
3 San Francisco, California.  
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FILED  
O'clock and Min.  
SEP 29 1935  
WALTER B. MALING,  
CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
THE STATE OF CALIFORNIA, et al.  
Defendants.

No. 4068 L

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the parties  
hereto that the defendants Dent W. Macdonough, individually,  
and Dent W. Macdonough, sued as John Doe I, as administrator  
with the will annexed of the Estate of Joseph H. Macdonough,  
deceased, Joan Macdonough, a minor, and Mary Macdonough, a

1 minor, may have to and including October 31, 1939, within  
2 which to plead or answer the complaint on file herein or  
3 make such motion with reference thereto as they may be  
4 advised.

5  
6 Dated: September <sup>29</sup>~~2~~, 1939.

7  
8 Frank J. Ahmussy  
9 United States Attorney

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11 G. Botjelmo  
12 Assistant United States Attorney  
13 Attorneys for Plaintiff.  
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1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510

6 Attorney for certain Defendants

37  
FILED

O'clock and Min.

SEP 28 1939

WALTER B. MALING,  
CLERK.

7  
8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 vs.

13 THE STATE OF CALIFORNIA, ET. AL.,

14 Defendants.

15 No. 4068 L

16  
17  
18 STIPULATION EXTENDING TIME

19 IT IS HEREBY STIPULATED by and between the plaintiff  
20 and BRADLEY MINING CO., P. R. BRADLEY, ESTELLE R. DAVIS and  
21 RUTH de FREMERY, certain of the defendants herein, that said  
22 defendantw may have to and including the 11st day of November,  
23 1939, within which to file an answer to plaintiff's complaint.

24  
25 DATED: September 27, 1939.

26  
27 Frank J. Kennessy  
28 ~~Attorney for Plaintiff~~

29 G. B. Johnson  
30 ~~Attorney for said Defendants~~

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JOHN PARKS DAVIS  
Attorney at Law  
705 Standard Oil Building  
San Francisco, California  
Telephone DOuglas 1510

Attorney for certain Defendants

**FILED**  
.....O'clock and.....Min.....  
**SEP 2 - 1939**  
**WALTER B. MALING,**  
CLERK.

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
THE STATE OF CALIFORNIA, ET AL.,  
  
Defendants.

No. 4068 L

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the plaintiff and BRADLEY MINING CO., P. R. BRADLEY, ESTELLE R. DAVIS and RUTH de FREMERY, certain of the defendants herein, that said defendants may have to and including the 1st day of October, 1939, within which to file an answer to plaintiff's complaint.

DATED: August 29, 1939.

*Frank J. Deussen*  
*Esq., Dist. Ct. U.S. Dist. Ct.*  
Attorneys for Plaintiff

*John Parks Davis*  
Attorney for said Defendants

1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building  
3 San Francisco, California.  
4 Telephone: SUTTER 0666.  
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FILED  
APR 29 1940  
WALTER B. MALING,  
CLERK

14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION

18 UNITED STATES OF AMERICA,  
19 Plaintiff,  
20 vs.  
21 THE STATE OF CALIFORNIA, et al.  
22 Defendants.

No. 4068 L

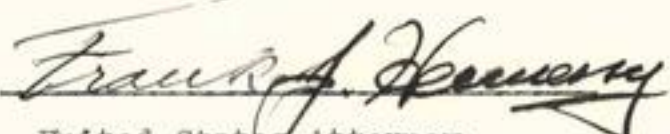
24 STIPULATION EXTENDING TIME

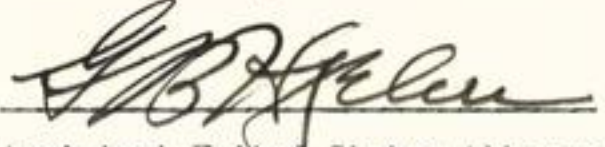
25  
26 IT IS HEREBY STIPULATED by and between the parties  
27 hereto that the defendants Dent W. Macdonough, individually,  
28 and Dent W. Macdonough, sued as John Doe I, as administrator  
29 with the will annexed of the Estate of Joseph M. Macdonough,  
30 deceased, Joan Macdonough, a minor, and Mary Macdonough, a

1 minor, may have to and including September 30, 1939, within  
2 which to plead or answer the complaint on file herein or  
3 make such motion with reference thereto as they may be  
4 advised.

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Dated: August 31, 1939.

  
United States Attorney

  
Assistant United States Attorney  
Attorneys for Plaintiff.

1 BROBECK, PHLEGER & HARRISON,  
2 Crocker Building,  
3 San Francisco, California,  
4 Telephone: SUTTER 0666.  
5 Attorneys for certain defendants.

341

FILED

\_\_\_\_ O'clock and \_\_\_\_ Min. \_\_\_\_

JUL 7 1949

WALTER B. MALING,  
CLERK.

13 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
14 OF CALIFORNIA, NORTHERN DIVISION

16 UNITED STATES OF AMERICA, )  
17 Plaintiff, )  
18 vs. )  
19 THE STATE OF CALIFORNIA, )  
20 et al, )  
21 Defendants. )

No. 4068 L

24 STIPULATION EXTENDING TIME

26 IT IS HEREBY STIPULATED by and between the parties  
27 hereto that the defendants Dent W. Macdonough, individually,  
28 and Dent W. Macdonough, sued as John Doe I, as administrator  
29 with the will annexed of the Estate of Joseph M. Macdonough,  
30 deceased, Joan Macdonough, a minor, and Mary Macdonough, a

1 minor, may have to and including August 31, 1939, within  
2 which to plead or answer the complaint on file herein or  
3 make such motion with reference thereto as they may be ad-  
4 vised.

5 DATED: July 31, 1939.

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8   
9 United States Attorney

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11   
12 Assistant United States Attorney

13 Attorneys for Plaintiff.  
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JOHN PARKS DAVIS  
Attorney at Law  
705 Standard Oil Building  
San Francisco, California  
  
Telephone DOuglas 1510  
  
Attorney for certain defendants

33

FILED  
O'clock and Min.  
JUL 21 1939  
WALTER B. MALING,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA :  
 :  
 Plaintiff, :  
 :  
 vs. : No. 4068 L  
 :  
 THE STATE OF CALIFORNIA, ET AL., :  
 :  
 Defendants, :

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the plaintiff  
and BRADLEY MINING COMPANY, P. R. BRADLEY, ESTELLE R. DAVIS and  
RUTH de FREMERY, certain of the defendants herein, that said  
defendants may have to and including the 1st day of September,  
1939, within which to file an answer to plaintiff's complaint.

DATED July 27, 1939.

*Frank J. Hennings*  
*Assistant U.S. Attorney*  
*and J.B. Fowler,*  
*Assistant U.S. Attorney*  
Attorney for Plaintiff

*John Parks Davis*  
Attorney for said Defendants

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JOHN PARKS DAVIS  
Attorney at Law  
705 Standard Oil Building  
San Francisco, California  
  
Telephone DOuglas 1510  
  
Attorney for certain defendants

32

FILED  
O'clock and Min.  
JUL 6 - 1939  
WALTER B. MALING,  
CLERK.

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
THE STATE OF CALIFORNIA,  
et al.,  
  
Defendants.

No. 4068L

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the plaintiff  
and Bradley Mining Company, P. R. Bradley, Estelle R. Davis  
and Ruth de Fremery, certain of the defendants herein, that said  
defendants may have to and including the 1st day of August, 1939,  
within which to file an answer to plaintiff's complaint.

DATED: June 29, 1939.

*Ruth de Fremery*  
*Bradley Mining Co., P. R. Bradley*  
*Estelle R. Davis*  
*and* *Ruth de Fremery*

Attorney for Plaintiff

*John Parks Davis*  
Attorney for said Defendants



1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building,  
3 San Francisco, California,  
4 Telephone: SU-0666  
5 Attorneys for certain defendants.

31

FILED  
JUL 28 1966  
WALTER R. MALING  
CLERK

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13 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
14 OF CALIFORNIA, NORTHERN DIVISION

16 UNITED STATES OF AMERICA,  
17 Plaintiff,  
18 vs.  
19  
20 THE STATE OF CALIFORNIA,  
21 et al.,  
22 Defendants.

No. 4068 L

23  
24 STIPULATION EXTENDING TIME

26 IT IS HEREBY STIPULATED by and between the parties  
27 hereto that the defendants Dent W. Macdonough, individually,  
28 and Dent W. Macdonough, sued as John Doe I, as administrator  
29 with the will annexed of the Estate of Joseph M. Macdonough,  
30 deceased, Joan Macdonough, a minor, and Mary Macdonough, a

1 minor, may have to and including July 31, 1939, within which  
2 to plead or answer the complaint on file herein or make  
3 such motion with reference thereto as they may be advised.

4 DATED: June <sup>28</sup> 30, 1939.

5  
6  
7 Frank J. Hennessy  
8 United States Attorney

9  
10 J. B. Williams  
11 Assistant United States Attorney

12 Attorneys for Plaintiff.  
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1 BROBECK, PHLEGER & HARRISON  
Crocker Building,  
2 San Francisco, California,  
Telephone: SUTTER-0666,  
3 Attorneys for certain defendants.  
4

30

FILED

Of clock and Min.

JUN 15 1939

WALTER B. MALING  
CLERK

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12  
13 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
14 OF CALIFORNIA, NORTHERN DIVISION

15 \_\_\_\_\_  
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17 UNITED STATES OF AMERICA, )  
18 Plaintiff, )  
19 vs. )  
20 THE STATE OF CALIFORNIA, )  
et al., )  
21 Defendants. )  
22 \_\_\_\_\_

No. 4068 L

23 STIPULATION EXTENDING TIME  
24

25 IT IS HEREBY STIPULATED by and between the parties  
26 hereto that the defendants Dent W. Macdonough, individually,  
27 and Dent W. Macdonough, sued as John Doe I, as administrator  
28 with the will annexed of the Estate of Joseph M. Macdonough,  
29 deceased, Joan Macdonough, a minor, and Mary Macdonough, a  
30 minor, may have to and including June 30, 1939, within which

1 to plead or answer the complaint on file herein or make  
2 such motion with reference thereto as they may be advised.

3 Dated: June 15, 1939.

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5   
6 United States Attorney

7  
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9 Assistant United States Attorney

10 Attorneys for Plaintiff.

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1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510  
6 Attorney for certain defendants

25

FILED  
O'clock and Min.  
JUN 2-1939  
WALTER B. MALING,  
CLERK.

10 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA )  
13 Plaintiff, ( )  
14 vs. ) No. 4068 L  
15 THE STATE OF CALIFORNIA, et al., ( )  
16 Defendants. )  
17 )  
18 )

19 STIPULATION EXTENDING TIME

20 IT IS HEREBY STIPULATED by and between the plaintiff  
21 and Bradley Mining Company, P. R. Bradley, Estelle R. Davis and  
22 Ruth de Fremery, certain of the defendants herein, that said  
23 defendants may have to and including the 1st day of July, 1939,  
24 within which to file an answer to plaintiff's complaint.

25 DATED: June 1 1939.

26 *Frank J. Deussen*  
27 *of State of California*  
28 *Attorney for Plaintiff*  
29 *John Parks Davis*  
30 *Attorney for said Defendants*

1 BROBECK, PHLEGER & HARRISON  
2 Crocker Building  
3 San Francisco, California.  
4 Telephone: Sutter 0666  
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Attorneys for certain defendants.

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FILED  
O'clock and Min.  
JUN 2-1939  
WALTER B. MALING,  
CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
THE STATE OF CALIFORNIA,  
et al.  
Defendants.

No. 4068 L

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the parties hereto that the defendants Dent W. Macdonough, individually, and Dent W. Macdonough, sued as John Doe I, as administrator with the will annexed of the Estate of Joseph M. Macdonough, deceased, Joan Macdonough, a minor, and Mary Macdonough, a minor, may have to and including June 15, 1939, within which to plead or answer the complaint on file herein or make such motion with

1 reference thereto as they may be advised.

2 Dated: June 1, 1939.

3

4

Frank A. Hennessy  
United States Attorney

5

6

A. B. Helmer  
Assistant United States Attorney

7

8

Attorneys for Plaintiff.

9

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1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510  
6 Attorney for certain defendants

22  
FILED

May 15 1939

WALTER B. MALING,  
CLERK

7  
8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT,  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14  
15 vs.  
16 THE STATE OF CALIFORNIA,  
17 et al.,  
18 Defendants.

No. 4068-L

19  
20 STIPULATION EXTENDING TIME

21 IT IS HEREBY STIPULATED by and between the plaintiff  
22 and Bradley Mining Co., P. R. Bradley, Estelle R. Davis and  
23 Ruth de Fremery, certain of the defendants herein, that said  
24 defendants may have to and including the 1st day of June, 1939,  
25 within which to file an answer to plaintiff's complaint.

26 DATED: MAY 10, 1939.

*Frank J. Hennessey,*  
*United States Attorney,*  
*San Francisco, Cal. U.S. ally*  
Attorney for Plaintiff

27  
28 *John Parks Davis*  
29 Attorney for said Defendants  
30  
31  
32



**In the District Court of the United States**

NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

UNITED STATES OF AMERICA  
.....  
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.....  
re.  
THE STATE OF CALIFORNIA, et al.  
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.....

Civil -

No. 4068-L

21

FILED

O'clock and Min.

MAY 9 - 1935

WALTER B. MALING,  
CLERK.

**Praecipe**

To the Clerk of Said Court:

Sir:

Please issue <sup>four</sup> alias summons and for copies for service upon  
defendants RAYMOND G. LA NOUE, JAMES M. O'BRIEN and  
T. A. MORRISSEY, and also upon defendant CLEAR LAKE COMPANY,  
a corporation, (James M. O'Brien, President)

*G. B. Johnson*  
Assistant U. S. Attorney  
Attorney for Plaintiff.

In the UNITED STATES DISTRICT Court

FOR THE NORTHERN DISTRICT OF THE State of California

FILED  
O'clock and Min.

20 MAY 8 - 1939

WALTER B. MALING  
CLERK

UNITED STATES OF AMERICA,  
  
Plaintiff  
  
vs.  
  
CROCKER FIRST NATIONAL BANK OF  
  
SAN FRANCISCO, et al,  
  
Defendants

No. 4068 L  
  
Dept. No.

It is hereby stipulated and agreed by and between the respective parties hereto that the Defendant, Crocker First National Bank of San Francisco

may have to and including the eighth day of June, 1939 within which to plead, demur to, or answer the Complaint in the above-entitled action,

or make such motion with reference thereto as it may be advised.

This stipulation ~~was~~ to be filed.

Dated, May 6th, 1939

Frank J. Heenan  
W.S. atty  
Gos Hagan and W.S. atty

Attorneys for Plaintiff

1 BROBECK, PHLEGER & HARRISON,  
2 Crocker Building,  
3 San Francisco, California.  
4 Telephone : Su-0666  
5 Attorneys for Certain Defendants.

19

FILED

O'clock and Min.

MAY 2-1939

WALTER B. MALING,  
CLERK

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13 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
14 OF CALIFORNIA, NORTHERN DIVISION

16 UNITED STATES OF AMERICA,  
17 Plaintiff,  
18 vs.  
19 THE STATE OF CALIFORNIA,  
20 et al,  
21 Defendants.

No. 4068 L

22 STIPULATION EXTENDING  
23 TIME

24 IT IS HEREBY STIPULATED by and between the parties hereto  
25 that the defendants Dent W. Macdonough, individually, and Dent W.  
26 Macdonough, sued as John Doe I, as administrator with the will an-  
27 nexed of the Estate of Joseph M. Macdonough, deceased, Joan Mac-  
28 donough, a minor, and Mary Macdonough, a minor, may have to and  
29 including June 1, 1939, within which to plead or answer the  
30 complaint on file herein or make such motion with reference

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thereto as they may be advised.

DATED: May 1, 1939.

*Fran R. Hennessy*  
United States Attorney

*G. B. H. H. H.*  
Assistant United States Attorney

Attorneys for Plaintiff.

18

1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510  
6 Attorney for certain defendants

FILED  
O'clock and.....Min.....  
APR 21 1939  
WALTER B. MALING,  
CLERK

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT,  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 THE STATE OF CALIFORNIA,  
15 et al.,  
16 Defendants.

No. 4068-L

18 STIPULATION EXTENDING TIME

20 IT IS HEREBY STIPULATED by and between the plaintiff  
21 and Bradley Mining Co., P. R. Bradley, Estelle R. Davis and  
22 Ruth de Fremery, certain of the defendants herein, that said  
23 defendants may have to and including the 10th day of May, 1939,  
24 within which to file an answer to plaintiff's complaint.

25 DATED: April 21, 1939.

26 *[Signature]*  
27 *[Signature]*  
28 Attorney for Plaintiff

29 \_\_\_\_\_  
30 Attorney for said defendants

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FILED

O'clock and Min.

APR 11 1939

WALTER B. MALING, CLERK.

1 JOHN PARKS DAVIS  
Attorney at Law  
2 705 Standard Oil Building  
San Francisco, California  
3  
4 Telephone DOuglas 1510  
5 Attorney for certain defendants  
6  
7  
8

9 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11

12 . . . . .

13 UNITED STATES OF AMERICA,  
14 Plaintiff,  
15 vs.  
16 THE STATE OF CALIFORNIA,  
17 et al.,  
18 Defendants.

No. 4068L

19 STIPULATION EXTENDING TIME  
20

21 IT IS HEREBY STIPULATED by and between the plaintiff  
22 and Bradley Mining Company, P. R. Bradley, Estelle R. Davis  
23 and Ruth de Fremery, certain of the defendants herein, that said  
24 defendants may have to and including the 26th day of April, 1939,  
25 within which to file an answer to plaintiff's complaint.  
26

27 DATED April 7, 1939.

28 G. B. Malina  
Attorney for Plaintiff

30 John Parks Davis  
31 Attorney for said Defendants  
32

In the UNITED STATES DISTRICT Court

~~10366~~ FOR THE NORTHERN ~~County of~~ DISTRICT OF THE  
State of California

FILED

D'clock and Min.

16 APR 6 1939

WALTER B. MALING,  
CLERK.

UNITED STATES OF AMERICA,

Plaintiff

vs.

CROCKER FIRST NATIONAL BANK OF

SAN FRANCISCO, et al,

Defendant

No. 4068 L

Dept. No.

It is **Hereby Stipulated** and agreed by and between the respective parties hereto that the Defendant, Crocker First National Bank of San Francisco

may have to and including the Seventh day of May, 1939  
within which to plead, demur to, or answer the Complaint in the above-entitled action,

..... or make such motion with reference thereto as it  
may be advised.

This stipulation need not be filed.

Dated, April 6th, 1939

*Frank J. Hennessy*  
*G. P. ...*  
Attorney for Plaintiff

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

UNITED STATES OF AMERICA

Plaintiff \_\_\_\_\_

vs.

CROCKER FIRST NATIONAL BANK

OF SAN FRANCISCO, et al,

Defendant<sup>s</sup>

**Stipulation Extending Time**

To

United States Attorney

Address

New Post Office Building  
Sacramento, California

**MORRISON, HOHFELD, FOERSTER,  
SHUMAN & CLARK**

ATTORNEYS AT LAW  
CROCKER BUILDING  
SAN FRANCISCO, CALIFORNIA



1 FRANK J. HENNESSY,  
2 United States Attorney,  
3 G. B. HJELM,  
4 Assistant U. S. Attorney,  
5 Attorneys for Plaintiff.

14  
**FILED**

\_\_\_\_\_ O'clock and \_\_\_\_\_ Min. \_\_\_\_\_

MAR 20 1939

WALTER B. MALING,  
CLERK.

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10 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
11 OR CALIFORNIA, NORTHERN DIVISION.

12 -----  
13 UNITED STATES OF CALIFORNIA, )  
14 Plaintiff, )  
15 vs. )  
16 THE STATE OF CALIFORNIA, et al., )  
17 Defendants. )

No. 4068-L

18  
19 STIPULATION EXTENDING TIME

20 IT IS HEREBY STIPULATED by and between the parties here-  
21 to that the defendant, Pacific Gas and Electric Company, a  
22 corporation, may have to and including May 1, 1939, within  
23 which to plead or answer the complaint on file herein or make  
24 such motion with reference thereto as they may be advised.

25 FRANK J. HENNESSY,  
26 United States Attorney

27 By G. B. Hjelm  
28 G. B. HJELM,  
29 Assistant U. S. Attorney.

13

FILED

O'clock and Min.

MAR 18 1939

WALTER B. MALING, CLERK

GARRET W. McENERNEY  
2002 Hobart Building,  
San Francisco, California,  
Attorney for The Roman Catholic  
Archbishop of San Francisco, a  
corporation sole, Defendant.

IN THE NORTHERN DIVISION OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
vs.  
THE STATE OF CALIFORNIA, etc.,  
  
Defendants.

Civil No. 4068-L

STIPULATION.

It is hereby stipulated and agreed by and between the respective parties hereto that defendant THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, a corporation sole, may have to and including April 15th, 1939, within which to plead, demur, answer, disclaim or make such motion in this action as said The Roman Catholic Archbishop of San Francisco, a corporation sole, may be advised.

This stipulation need not be filed nor need any order of court be made or had thereon.

Dated, Sacramento, California, March 14, 1939.

Frank J. Hennessy  
U.S. Atty.

G. B. ...

Asst. United States Attorney

Attorneys for Plaintiff.

In the UNITED STATES DISTRICT Court

Office NORTH DIVISION ~~COURT~~ FOR THE NORTHERN DISTRICT  
of the State of California

UNITED STATES OF AMERICA

Plaintiff

vs.

CROCKER FIRST NATIONAL BANK OF

SAN FRANCISCO, et al

Defendants

No. 4068 L

Dept. No.

57  
FILED

0'clock and Min.

MAR 8 - 1939

WALTER B. MALING,  
CLERK.

It is Hereby Stipulated and agreed by and between the respective parties hereto that the Defendant, Crocker First National Bank of San Francisco

may have to and including the Seventh day of April, 1939  
within which to plead, demur to, or answer the Complaint in the above entitled action,

or make such motion with reference thereto as it may be advised.

This stipulation need not be filed.

Dated, March 7th, 1939

Frank J. Hennessy  
attorney  
and U.S. atty

Attorney for Plaintiff

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

The foregoing time is hereby extended to and including the \_\_\_\_\_ day of \_\_\_\_\_, 193\_\_\_\_\_

Attorney \_\_\_\_\_ for \_\_\_\_\_

No. 4068 L Dept. No. \_\_\_\_\_

**UNITED STATES OF AMERICA**

*Plaintiff*

vs.

**CROCKER FIRST NATIONAL BANK**

**OF SAN FRANCISCO, et al,**

*Defendant*

**Stipulation Extending Time**

To

**United States Attorney**

Address

**New Post Office Building,  
Sacramento, California**

**MORRISON, HOHFELD, FOERSTER,  
SHUMAN & CLARK**

**ATTORNEYS AT LAW  
CROCKER BUILDING  
SAN FRANCISCO, CALIFORNIA**

1 BROBECK, PHLEGER & HARRISON,  
2 Crocker Building,  
3 San Francisco, California.  
4 Telephone: SUTTER 0666.  
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Attorneys for Certain Defendants.

11  
FILED  
O'clock and Min.  
MAR 16 1939  
WALTER B. MALING,  
CLERK.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION.

-----  
UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. ) No. 4068-L.  
THE STATE OF CALIFORNIA, et al., )  
Defendants. )

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the parties hereto that the defendants Dent W. Macdonough, individually, and Dent W. Macdonough, sued as John Doe I, as administrator with the will annexed of the Estate of Joseph M. Macdonough, deceased, Joan Macdonough, a minor, and Mary Macdonough, a minor, may have to and including May 1st, 1939, within which to plead or answer the complaint on file herein or make such motion with reference thereto as they may be advised.

Dated: March 15, 1939.

*Frank S. Henning*  
United States Attorney  
*G. B. Allen*  
Assistant United States Attorney

Attorneys for Plaintiff.

GARRET W. McENERNEY  
2002 Hobart Building,  
San Francisco, California,  
Attorney for Edward H. Nutter,  
(sued herein as Edward A. Nutter),  
Defendant.

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 vs. )  
 )  
 THE STATE OF CALIFORNIA, etc., )  
 )  
 ) Defendants. )

Civil No. 4068L

6  
FILED

O'clock and Min.

MAR 8-1939

WALTER B. MALING,  
CLERK.

STIPULATION.

It is hereby stipulated and agreed by and between the respective parties hereto that defendant EDWARD H. NUTTER (sued herein as Edward A. Nutter<sup>m</sup>) may have to and including the 25th day of March, 1939, within which to plead, demur, answer, disclaim or make such motion in this action as said Edward H. Nutter (sued herein as Edward A. Nutter) may be advised.

This stipulation need not be filed nor need any order of court be made or had thereon.

Dated, Sacramento, California, March 4, 1939.

*Frank J. Hennessy*  
*United States Attorney*  
*and* *W.B. Maling*  
Assistant United States Attorney

Attorney for Plaintiff.

1 JOHN PARKS DAVIS  
Attorney at Law  
2 705 Standard Oil Building  
San Francisco, California  
3  
4 Telephone DOuglas 1510  
Attorney for certain defendants

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FILED  
O'clock and Min.  
MAR 8-1939  
WALTER B. MALING,  
CLERK.

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

vs.

THE STATE OF CALIFORNIA,  
et al.,

Defendants.

No. 4068L

STIPULATION EXTENDING TIME

IT IS HEREBY STIPULATED by and between the plaintiff  
and Bradley Mining Company, P. R. Bradley, Estelle R. Davis  
and Ruth de Fremery, certain of the defendants herein, that said  
defendants may have to and including the 8th day of April, 1939,  
within which to file an answer to plaintiff's complaint.

DATED March 7<sup>th</sup>, 1939.

*Frank J. Henney*  
*et al.*  
*Attorneys*  
Attorney for Plaintiff

*John Parks Davis*  
Attorney for said Defendants

In the District Court of the United States

NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

UNITED STATES OF AMERICA, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

vs. \_\_\_\_\_

THE STATE OF CALIFORNIA, et al. \_\_\_\_\_

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Civil - 4068-L

No. \_\_\_\_\_

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FILED

O'clock and \_\_\_\_\_ Min.

MAR 6 - 1939

WALTER B. MALING,  
CLERK.

**Praecipe**

To the Clerk of Said Court:

Sir:

Please issue alias summons and copies for service upon \_\_\_\_\_

JESSIE T. McDONOUGH, sued as Jane Doe One

JESS W. McDONOUGH, sued as John Doe Three

JOAN McDONOUGH, sued as Jane Doe Two

MARY McDONOUGH, sued as Jane Doe Three

ARCHBISHOP OF SAN FRANCISCO, sued as John Doe Four

JOHN G. AGER, sued as Richard Rowe One

*G. B. [Signature]*

Assistant U.S. Attorney

Attorney for Plaintiff



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JAN 10 1949

C. W. CALBREATH,  
CLERK

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9 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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14 UNITED STATES OF AMERICA,  
15 Plaintiff,

16 vs.  
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18  
19 THE STATE OF CALIFORNIA; S. F. BUTTERWORTH;  
20 ALFRED A. WHEELER; CROCKER FIRST NATIONAL  
21 BANK, A CORPORATION; WILLIAM O. B. MAC-  
22 DONOUGH; JOHN DOE ONE, AS ADMINISTRATOR OF  
23 THE ESTATE OF JOSEPH M. MACDONOUGH, DE-  
24 CEASED; JOHN DOE TWO, AS EXECUTOR OF THE  
25 ESTATE OF JOSEPH M. MACDONOUGH, DECEASED;  
26 JOHN DOE THREE, JOHN DOE FOUR, JOHN DOE  
27 FIVE, JOHN DOE SIX, JOHN DOE SEVEN, JOHN  
28 DOE EIGHT, JOHN DOE NINE, JOHN DOE TEN,  
29 JANE DOE ONE, JANE DOE TWO, JANE DOE THREE,  
30 JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
31 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH  
32 M. MACDONOUGH, DECEASED; FREDERICK BILLINGS,  
THE CALIFORNIA BORAX COMPANY, A CORPORATION;  
THE CALIFORNIA BORAX COMPANY, A CO-PARTNER-  
SHIP; THE SULPHUR BANK QUICKSILVER MINING  
COMPANY, A CORPORATION; THE SULPHUR BANK  
CONSOLIDATED QUICKSILVER MINING COMPANY, A  
CORPORATION; EMPIRE CONSOLIDATED QUICKSIL-  
VER MINING COMPANY, A CORPORATION; WILLIAM  
E. GERBER; RICHARD WHITE; CLEAR LAKE QUICK-  
SILVER MINING COMPANY, A CORPORATION; RAY-  
MOND G. LANOUE; JAMES M. O'BRIEN; T. A.  
MORRISEY; CLEAR LAKE COMPANY, A CORPORATION;

CIVIL NO. 4068 L.

1 ESTELLE R. DAVIS; RUTH de FREMERY; CLINTON  
2 E. DOLBEAR; P. R. BRADLEY; EDWARD A. NUTTER;  
3 A. T. HATHAWAY; HOMESTAKE GOLD MINING COM-  
4 PANY, A CORPORATION; GOLDEN GATE GOLD MIN-  
5 ING COMPANY, A CORPORATION; RICHARD ROWE  
6 ONE; RICHARD ROWE TWO; RICHARD ROWE THREE;  
7 RICHARD ROWE FOUR; RICHARD ROWE FIVE; JANE  
8 ROWE ONE; JANE ROWE TWO; JANE ROWE THREE;  
9 JANE ROWE FOUR; JANE ROWE FIVE; SAM BLAKE  
10 CORPORATION ONE; SAM BLAKE CORPORATION TWO;  
11 SAM BLAKE CORPORATION THREE; SAM BLAKE COR-  
12 PORATION FOUR; SAM BLAKE CORPORATION FIVE;  
13 POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
14 A CORPORATION; CLEAR LAKE WATER COMPANY, A  
15 CORPORATION; CALIFORNIA TRUST AND SAVINGS  
16 BANK, A CORPORATION; PACIFIC GAS AND ELEC-  
17 TRIC COMPANY, A CORPORATION; PACIFIC TELE-  
18 PHONE AND TELEGRAPH COMPANY, A CORPORATION;  
19 BRADLEY MINING COMPANY, A CORPORATION,

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Defendants.

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The above entitled cause came on regularly for trial before the above entitled Court, the Honorable Dal M. Lemmon presiding without a jury, on the 18th of August, 1947, Frank J. Hennessy, United States Attorney, by Emmet Seawell, Assistant United States Attorney, appearing as attorney for the plaintiff, Fred N. Howser, Attorney General of the State of California, by E. G. Benard, Deputy Attorney General, appearing upon behalf of the defendant, The State of California,

1 Messrs. Brobeck, Phleger & Harrison, by Marion B. Plant,  
2 Esquire, appearing on behalf of the defendant Dent W. Mac-  
3 Donough, individually and as Administrator With the Will  
4 Annexed of the Estate of Joseph M. MacDonough, deceased, sued  
5 herein as John Doe One, as Administrator of the Estate of  
6 Joseph M. MacDonough, deceased, and on behalf of the defend-  
7 ants Joan MacDonough, a minor, and Mary MacDonough, a minor,  
8 sued herein respectively as Jane Doe One and Jane Doe Two,  
9 as heirs at law and/or devisees of the estate of Joseph M.  
10 MacDonough, deceased, Neal Chalmers, Esquire, appearing on  
11 behalf of the defendant Clear Lake Water Company, a corpora-  
12 tion, and John Parks Davis, Esquire, appearing on behalf of  
13 the defendant Bradley Mining Co., a corporation, sued herein  
14 as Bradley Mining Company;

15           And it appearing to the Court that the defendants  
16 Edward A. Nutter, Pacific Telephone and Telegraph Company,  
17 Archbishop of San Francisco (John Doe Four), Crocker First  
18 National Bank, T. A. Morrissey, Clear Lake Company, James M.  
19 O'Brien, George J. O'Brien and P. R. Bradley have each  
20 appeared and filed answers disclaiming any interest in the  
21 real property described in the complaint on file herein;

22           And it appearing that defendants Estelle R. Davis  
23 and Ruth deFremery have appeared and filed answers in the  
24 above entitled action but that Bradley Mining Co. has suc-  
25 ceeded to all right, title and interest of said defendants  
26 Estelle R. Davis and Ruth deFremery;

27           And it further appearing to the Court that defendants  
28 California Trust and Savings Bank, Pacific Gas and Electric  
29 Company, Homestake Gold Mining Company, Golden Gate Gold  
30 Mining Company, Raymond G. LaNoue, Power and Irrigation Company  
31 of Clear Lake, and H. Vincent Keeling (Richard Rowe Five)  
32

1 have each been duly and regularly served with a copy of summons  
2 and complaint but have failed to appear and answer or other-  
3 wise plead within the time required by law, and that their  
4 defaults have been duly and regularly entered;

5 Plaintiff having moved for dismissal of the action  
6 as to the defendants Empire Consolidated Quicksilver Mining  
7 Company, Clinton E. Dolbear, and A. T. Hathaway, and also as  
8 to all fictitious defendants designated by the names Doe,  
9 Rowe and Sam Blake (save as hereinabove identified as actual  
10 defendants), and the attorney for the plaintiff having  
11 stipulated in open court for the dismissal of the action as  
12 to defendants S. F. Butterworth, Alfred A. Wheeler, Frederick  
13 Billings, The California Borax Company, a corporation, The  
14 California Borax Company, a co-partnership, The Sulphur Bank  
15 Quicksilver Mining Company, a corporation, The Sulphur Bank  
16 Consolidated Quicksilver Mining Company, a corporation,  
17 William E. Gerber, Richard White, and Clear Lake Quicksilver  
18 Mining Company, a corporation, and the action thereupon having  
19 been dismissed as to said defendants, and evidence having been  
20 introduced and the Court having considered the same, and it  
21 further appearing and being duly proved and the parties appear-  
22 ing upon the trial having stipulated hereto, and the Court  
23 being fully advised in the premises, and having filed herein  
24 its findings of fact and conclusions of law, and having  
25 directed that judgment be entered in accordance therewith;  
26 now, therefore, by reason of the law and findings aforesaid:  
27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED

28  
29 1. That the defendant Dent W. MacDonough, as Adminis-  
30 trator With the Will Annexed of the Estate of Joseph M. MacDonough,  
31 deceased, was at the time of the commencement of this action and  
32

1 ever since has been and now is the owner and seized in fee of  
2 that certain parcel of real property located and lying situate in  
3 the County of Lake, State of California, and more particularly  
4 described as follows:

5           Island number one situate in the North West  
6           quarter of Section 6 Township 13 North Range 7 West  
7           Mount Diablo Base Meridian and the South West quarter  
8           of Section 31 Township 14 North Range 7 West Mount  
9           Diablo Base and Meridian according to the government  
10          survey thereof.

11 That neither plaintiff nor its Indian wards has any right, title,  
12 estate or interest in, to or upon said premises or any part or  
13 parcel thereof; that excepting for such interest or interests as  
14 the defendants Joan MacDonough, a minor, and Mary MacDonough, a  
15 minor, may have in the estate of said Joseph M. MacDonough, de-  
16 ceased, and excepting for such right, if any, as the Clear Lake  
17 Water Company may have to overflow said parcel of real property,  
18 or any part thereof, by raising the level of Clear Lake, none of  
19 the defendants other than the defendant Dent W. MacDonough as  
20 Administrator With the Will Annexed of the Estate of Joseph M.  
21 MacDonough, deceased, has any right, title, estate or interest in,  
22 to or upon said premises, or any part or parcel thereof.

23           2. The defendant Bradley Mining Co., a corporation, was  
24 at the time of the commencement of this action, and ever since  
25 has been and now is the owner and seized in fee of that certain  
26 parcel of real property located and lying situate in the County of  
27 Lake, State of California, and more particularly described as  
28 follows:

29           All lands located within the North East quarter  
30           of Section 6 Township 13 North of Range 7 West Mount  
31           Diablo Meridian with the exception of a triangular  
32           shaped piece of land lying to the south of a line run-  
33           ning South 68 degrees and 40 minutes West from a point  
34           452.7 feet north of the quarter corner common to  
35           Sections 5 and 6 of Township 13 North of Range 7 West  
36           Mount Diablo Meridian;

37           All lands within the North West quarter of Sec-  
38           tion 5 Township 13 North of Range 7 West Mount Diablo

1 Base Meridian lying to the west of a line commencing at  
2 a point 2319.1 feet north and 167.5 feet east of the  
3 quarter corner common to Sections 5 and 6 of Township 13  
4 North of Range 7 West Mount Diablo Meridian, thence run-  
5 ning South 0 degrees and 10 minutes East a distance of  
6 1762.8 feet, thence running South 68 degrees and 40 min-  
7 utes West to a point where such line intersects the Sec-  
8 tion line running North between Sections 5 and 6 of  
9 Township 13 North of Range 7 West Mount Diablo Meridian.  
10 This point of intersection is a point 452.7 feet north  
11 of the quarter corner common to Sections 5 and 6 of Town-  
12 ship 13 North of Range 7 West of Mount Diablo Meridian;

13 EXCEPTING, HOWEVER, those certain lands situate in  
14 the County of Lake, State of California, lying partly in  
15 the NW 1/4 of Section 5 and partly in the NE 1/4 of Sec-  
16 tion 6, T. 13 N., R. 7 W., M.D.M., more particularly  
17 described as follows:

18 BEGINNING at a point which bears North 0° 10' West  
19 400.78 feet from a point that bears North 76° 10' West,  
20 distant 2559.3 feet from the center of Section 5, Town-  
21 ship 13 North, Range 7 West, M.D.M.; thence from the  
22 point of beginning, along the South side of the existing  
23 road, North 89° 53' West, 657.9 feet, and South 86° 22'  
24 30" West, 271.92 feet to a pipe monument set distant 15.0  
feet East from the existing rock fence which encloses the  
buildings of the Indians living within this area; thence,  
along a line running parallel and 15.0 feet distant from  
said rock fence, as follows: South 16° 46' 30" West,  
132.58 feet; thence South 16° 24' 30" West, 242.6 feet;  
thence South 31° 26' 30" West, 158.6 feet; thence South  
61° 35' 30" West, 335.0 feet, more or less, to the low  
water line of Clear Lake; thence Northerly, along said  
low water line, 1200.0 feet, more or less, to a point  
thereon that is situated South 20° 55' West, from a point  
that is North 68° 42' West 1965.79 feet from the point  
of beginning of this description; thence, leaving said  
low water line, North 20° 55' East, 500.0 feet, more or  
less, to said point situated North 68° 42' West from the  
point of beginning; thence North 75° 12' East, 307.67  
feet; thence South 81° 04' East, 864.97 feet; thence  
North 27° 33' 30" East, 370.9 feet; thence North 31° 57'  
30" West, 207.69 feet; thence North 54° 44' East, 259.11  
feet; thence North 82° 52' East, 405.3 feet to a pipe  
monument, and thence South 0° 10' East, 1362.02 feet to  
the point of beginning, containing approximately 50.0 acres.

25 That neither the plaintiff nor any of its Indian wards has any  
26 right, title, estate or interest in, to or upon said premises, or  
27 any part or parcel thereof; that excepting for such right, if any,  
28 as the Clear Lake Water Company may have to overflow said parcel of  
29 real property, or any part thereof, by raising the level of Clear  
30 Lake, none of the defendants other than the defendant Bradley Min-  
31 ing Co., a corporation, has any right, title, estate or interest  
32 in, to or upon said premises, or any part or parcel thereof.

33 3. The plaintiff was at the time of the commencement of

1 this action, and ever since has been and now is the owner and  
2 seized in fee, subject only to the rights of its Indian wards of  
3 that certain parcel of real property located and lying situate  
4 in the County of Lake, State of California, and more particularly  
5 described as follows:

6 Those certain lands situate in the County of Lake,  
7 State of California, lying partly in the NW 1/4 of Sec-  
8 tion 5 and partly in the NE 1/4 of Section 6, T. 13 N.,  
9 R. 7 W., M.D.M., more particularly described as follows:

10 BEGINNING at a point which bears North 0° 10' West  
11 400.78 feet from a point that bears North 76° 10' West,  
12 distant 2559.3 feet from the center of Section 5, Town-  
13 ship 13 North, Range 7 West, M.D.M.; thence from the  
14 point of beginning, along the South side of the existing  
15 road, North 89° 53' West, 657.9 feet, and South 86° 22'  
16 30" West, 271.92 feet to a pipe monument set distant 15.0  
17 feet East from the existing rock fence which encloses the  
18 buildings of the Indians living within this area; thence,  
19 along a line running parallel and 15.0 feet distant from  
20 said rock fence, as follows: South 16° 46' 30" West,  
21 132.58 feet; thence South 16° 24' 30" West, 242.6 feet;  
22 thence South 31° 26' 30" West, 158.6 feet; thence South  
23 61° 35' 30" West, 335.0 feet, more or less, to the low  
24 water line of Clear Lake; thence Northerly, along said  
25 low water line, 1200.0 feet, more or less, to a point  
26 thereon that is situated South 20° 55' West, from a point  
27 that is North 68° 42' West 1965.79 feet from the point  
28 of beginning of this description; thence, leaving said  
29 low water line, North 20° 55' East, 500.0 feet, more or  
30 less, to said point situated North 68° 42' West from the  
31 point of beginning; thence North 75° 12' East, 307.67  
32 feet; thence South 81° 04' East, 864.97 feet; thence North  
27° 33' 30" East, 370.9 feet; thence North 31° 57' 30"  
West, 207.69 feet; thence North 54° 44' East, 259.11  
feet; thence North 82° 52' East, 405.3 feet to a pipe  
monument, and thence South 0° 10' East, 1362.02 feet to  
the point of beginning, containing approximately 50.0 acres.

That, excepting for such right, if any, as the Clear Lake Water  
Company may have to overflow said parcel of real property or any  
part thereof, by raising the level of Clear Lake, none of the  
defendants has any right, title, estate or interest in, to or  
upon said premises or any part or parcel thereof.

4. That plaintiff have judgment against the defendants  
for its costs herein taxed at  
Dollars.

Dated this 10<sup>th</sup> day of January, 1949.

32  
FILED IN CIVIL DOCKET March 10 1949  
330 W. CALBREATH, Clerk  
By F.M. Lampert  
Deputy Clerk

Walter H. Johnson  
United States District Judge

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JAN 10 1949

C. W. CALBREATH,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

- - - - -

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.

THE STATE OF CALIFORNIA; S. F. BUTTERWORTH;  
ALFRED A. WHEELER; CROCKER FIRST NATIONAL  
BANK, A CORPORATION; WILLIAM O. B. MAC-  
DONOUGH; JOHN DOE ONE, AS ADMINISTRATOR OF  
THE ESTATE OF JOSEPH M. MACDONOUGH, DE-  
CEASED; JOHN DOE TWO, AS EXECUTOR OF THE  
ESTATE OF JOSEPH M. MACDONOUGH, DECEASED;  
JOHN DOE THREE, JOHN DOE FOUR, JOHN DOE  
FIVE, JOHN DOE SIX, JOHN DOE SEVEN, JOHN  
DOE EIGHT, JOHN DOE NINE, JOHN DOE TEN,  
JANE DOE ONE, JANE DOE TWO, JANE DOE THREE,  
JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH  
M. MACDONOUGH, DECEASED; FREDERICK BILLINGS,  
THE CALIFORNIA BORAX COMPANY, A CORPORATION;  
THE CALIFORNIA BORAX COMPANY, A CO-PARTNER-  
SHIP; THE SULPHUR BANK QUICKSILVER MINING  
COMPANY, A CORPORATION; THE SULPHUR BANK  
CONSOLIDATED QUICKSILVER MINING COMPANY, A  
CORPORATION; EMPIRE CONSOLIDATED QUICKSIL-  
VER MINING COMPANY, A CORPORATION; WILLIAM  
E. GERBER; RICHARD WHITE; CLEAR LAKE QUICK-  
SILVER MINING COMPANY, A CORPORATION; RAY-  
MOND G. LANOUE; JAMES M. O'BRIEN; T. A.  
MORRISEY; CLEAR LAKE COMPANY, A CORPORATION;

CIVIL NO. 4068 L.



1 ESTELLE R. DAVIS; RUTH deFREMERY; CLINTON  
2 E. DOLBEAR; P. R. BRADLEY; EDWARD A. NUTTER;  
3 A. T. HATHAWAY; HOMESTAKE GOLD MINING COM-  
4 PANY, A CORPORATION; GOLDEN GATE GOLD MIN-  
5 ING COMPANY, A CORPORATION; RICHARD ROWE  
6 ONE; RICHARD ROWE TWO; RICHARD ROWE THREE;  
7 RICHARD ROWE FOUR; RICHARD ROWE FIVE; JANE  
8 ROWE ONE; JANE ROWE TWO; JANE ROWE THREE;  
9 JANE ROWE FOUR; JANE ROWE FIVE; SAM BLAKE  
10 CORPORATION ONE; SAM BLAKE CORPORATION TWO;  
11 SAM BLAKE CORPORATION THREE; SAM BLAKE COR-  
12 PORATION FOUR; SAM BLAKE CORPORATION FIVE;  
13 POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
14 A CORPORATION; CLEAR LAKE WATER COMPANY, A  
15 CORPORATION; CALIFORNIA TRUST AND SAVINGS  
16 BANK, A CORPORATION; PACIFIC GAS AND ELEC-  
17 TRIC COMPANY, A CORPORATION; PACIFIC TELE-  
18 PHONE AND TELEGRAPH COMPANY, A CORPORATION;  
19 BRADLEY MINING COMPANY, A CORPORATION,

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Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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The above entitled cause came on regularly for trial before the above entitled Court, the Honorable Dal M. Lemmon presiding without a jury, on the 18th of August, 1947, Frank J. Hennessy, United States Attorney, by Emmet Seawell, Assistant United States Attorney, appearing as attorney for the plaintiff, Fred N. Howser, Attorney General of the State of California, by E. G. Benard, Deputy Attorney General, appearing upon behalf of the defendant, The State of California,

1 Messrs. Brobeck, Phleger & Harrison, by Marion B. Plant,  
2 Esquire, appearing on behalf of the defendant Dent W. Mac-  
3 Donough, individually and as Administrator With the Will  
4 Annexed of the Estate of Joseph M. MacDonough, deceased, sued  
5 herein as John Doe One, as Administrator of the Estate of  
6 Joseph M. MacDonough, deceased, and on behalf of the defend-  
7 ants Joan MacDonough, a minor, and Mary MacDonough, a minor,  
8 sued herein respectively as Jane Doe One and Jane Doe Two,  
9 as heirs at law and/or devisees of the estate of Joseph M.  
10 MacDonough, deceased, Neal Chalmers, Esquire, appearing on  
11 behalf of the defendant Clear Lake Water Company, a corpora-  
12 tion, and John Parks Davis, Esquire, appearing on behalf of  
13 the defendant Bradley Mining Co., a corporation, sued herein  
14 as Bradley Mining Company;

15           And it appearing to the Court that the defendants  
16 Edward A. Nutter, Pacific Telephone and Telegraph Company,  
17 Archbishop of San Francisco (John Doe Four), Crocker First  
18 National Bank, T. A. Morrissey, Clear Lake Company, James M.  
19 O'Brien, George J. O'Brien, and P. R. Bradley have each  
20 appeared and filed answers disclaiming any interest in the  
21 real property described in the complaint on file herein;

22           And it appearing that defendants Estelle R. Davis  
23 and Ruth deFremery have appeared and filed answers in the  
24 above entitled action but that Bradley Mining Co. has suc-  
25 ceeded to all right, title and interest of said defendants  
26 Estelle R. Davis and Ruth deFremery;

27           And it further appearing to the Court that defendants  
28 California Trust and Savings Bank, Pacific Gas and Electric  
29 Company, Homestake Gold Mining Company, Golden Gate Gold  
30 Mining Company, Raymond G. LaNoue, Power and Irrigation Company  
31 of Clear Lake, and H. Vincent Keeling (Richard Rowe Five)  
32

1 have each been duly and regularly served with a copy of summons  
2 and complaint but have failed to appear and answer or other-  
3 wise plead within the time required by law, and that their  
4 defaults have been duly and regularly entered;

5 Plaintiff having moved for dismissal of the action  
6 as to the defendants Empire Consolidated Quicksilver Mining  
7 Company, Clinton E. Dolbear, and A. T. Hathaway, and also as  
8 to all fictitious defendants designated by the names Doe,  
9 Rowe and Sam Blake (save as hereinabove identified as actual  
10 defendants), and the attorney for the plaintiff having  
11 stipulated in open court for the dismissal of the action as  
12 to defendants S. F. Butterworth, Alfred A. Wheeler, Frederick  
13 Billings, The California Borax Company, a corporation, The  
14 California Borax Company, a co-partnership, The Sulphur Bank  
15 Quicksilver Mining Company, a corporation, The Sulphur Bank  
16 Consolidated Quicksilver Mining Company, a corporation,  
17 William E. Gerber, Richard White, and Clear Lake Quicksilver  
18 Mining Company, a corporation, and the action thereupon having  
19 been dismissed as to said defendants, and evidence having been  
20 introduced and the Court having considered the same, and it  
21 further appearing and being duly proved and the parties appear-  
22 ing upon the trial having stipulated hereto, the Court makes  
23 its FINDINGS OF FACT as follows:

24  
25 (1) The defendant Dent W. MacDonough as Administrator  
26 With the Will Annexed of the Estate of Joseph M. MacDonough,  
27 deceased, was at the time of the commencement of this action,  
28 and ever since has been and now is the owner and seized in fee  
29 of that certain parcel of real property located and lying  
30 situate in the County of Lake, State of California, and more  
31 particularly described as follows:

32

1           Island number one situate in the North West  
2 quarter of Section 6 Township 13 North Range 7 West  
3 Mount Diablo Base Meridian and the South West quarter  
4 of Section 31 Township 14 North Range 7 West Mount  
5 Diablo Base and Meridian according to the government  
6 survey thereof.

7 It is true that on or about August 13, 1874, said parcel of real  
8 property was listed to the State of California by the United  
9 States of America in List No. 32 of Indemnity School Selections,  
10 but it is untrue that said parcel of real property was so listed  
11 by mistake or inadvertence. The said parcel was so listed with  
12 full authority of law and the said listing was good and valid.  
13 On or about October 10, 1877, the defendant The State of Califor-  
14 nia issued its patent of said parcel of real property to R. S.  
15 Floyd, also known as Richard S. Floyd, and to defendant Thomas P.  
16 Madden, which said patent was recorded in the office of the County  
17 Recorder in and for the County of Lake on October 20, 1877, in  
18 Volume Two of Patents at Page 250, Lake County Records. There-  
19 after the title to said parcel of real property passed by mesne  
20 conveyances to Joseph M. MacDonough. Joseph M. MacDonough died  
21 on March 14, 1931, and he was at the time of his death the owner  
22 and seized in fee of said parcel of real property. Pursuant to  
23 proceedings duly had and taken in the Superior Court, State of  
24 California, in and for the County of San Mateo, Dent W. MacDonough  
25 was on August 8, 1931 appointed Administrator With the Will  
26 Annexed of the Estate of the said Joseph M. MacDonough, deceased;  
27 Letters of Administration were duly and regularly issued to said  
28 Dent W. MacDonough on or about August 13, 1931, and said Dent W.  
29 MacDonough ever since has been and now is the duly and regularly  
30 appointed and acting Administrator With the Will Annexed of the  
31 Estate of the said Joseph M. MacDonough, deceased. Neither the  
32 plaintiff nor any of its Indian wards has any right, title,  
estate or interest in, to or upon said premises or any part or  
parcel thereof. Excepting for such interest or interests as the

1 defendants Joan MacDonough, a minor, and Mary MacDonough, a minor,  
2 may have in the estate of said Joseph M. MacDonough, deceased,  
3 and excepting for such right, if any, as the defendant Clear Lake  
4 Water Company may have, to overflow said parcel of real property,  
5 or any part thereof, by raising the level of Clear Lake, none of  
6 the defendants other than the defendant Dent W. MacDonough as  
7 Administrator With the Will Annexed of the Estate of the said  
8 Joseph M. MacDonough, deceased, has any right, title, estate or  
9 interest in, to or upon said premises, or any part or parcel  
10 thereof.

11 (2) The defendant Bradley Mining Co., a corporation,  
12 was at the time of the commencement of this action, and ever  
13 since has been and now is the owner and seized in fee of that  
14 certain parcel of real property located and lying situate in the  
15 County of Lake, State of California, more particularly described  
16 as follows:

17 All lands located within the North East quarter  
18 of Section 6 Township 13 North of Range 7 West Mount  
19 Diablo Meridian with the exception of a triangular  
20 shaped piece of land lying to the south of a line run-  
21 ning South 68 degrees and 40 minutes West from a point  
452.7 feet north of the quarter corner common to  
Sections 5 and 6 of Township 13 North of Range 7 West  
Mount Diablo Meridian;

22 All lands within the North West quarter of Sec-  
23 tion 5 Township 13 North of Range 7 West Mount Diablo  
24 Base Meridian lying to the west of a line commencing  
25 at a point 2319.1 feet north and 167.5 feet east of  
26 the quarter corner common to Sections 5 and 6 of Town-  
27 ship 13 North of Range 7 West Mount Diablo Meridian,  
28 thence running South 0 degrees and 10 minutes East a  
29 distance of 1762.8 feet, thence running South 68  
degrees and 40 minutes West to a point where such line  
intersects the Section line running North between  
Sections 5 and 6 of Township 13 North of Range 7  
West Mount Diablo Meridian. This point of inter-  
section is a point 452.7 feet north of the quarter  
corner common to Sections 5 and 6 of Township 13  
North of Range 7 West of Mount Diablo Meridian;

30 EXCEPTING, HOWEVER, those certain lands situate  
31 in the County of Lake, State of California, lying  
32 partly in the NW 1/4 of Section 5 and partly in the  
NE 1/4 of Section 6, T. 13 N., R. 7 W., M.D.M., more  
particularly described as follows:

1 BEGINNING at a point which bears North 0° 10' West  
2 400.78 feet from a point that bears North 76° 10' West,  
3 distant 2559.3 feet from the center of Section 5, Town-  
4 ship 13 North, Range 7 West, M.D.M.; thence from the  
5 point of beginning, along the South side of the existing  
6 road, North 89° 53' West, 657.9 feet, and South 86° 22'  
7 30" West, 271.92 feet to a pipe monument set distant 15.0  
8 feet East from the existing rock fence which encloses the  
9 buildings of the Indians living within this area; thence,  
10 along a line running parallel and 15.0 feet distant from  
11 said rock fence, as follows: South 16° 46' 30" West,  
12 132.58 feet; thence South 16° 24' 30" West, 242.6 feet;  
13 thence South 31° 26' 30" West, 158.6 feet; thence South  
14 61° 35' 30" West, 335.0 feet, more or less, to the low  
water line of Clear Lake; thence Northerly, along said  
low water line, 1200.0 feet, more or less, to a point  
thereon that is situated South 20° 55' West, from a point  
that is North 68° 42' West 1965.79 feet from the point  
of beginning of this description; thence, leaving said  
low water line, North 20° 55' East, 500.0 feet, more or  
less, to said point situated North 68° 42' West from the  
point of beginning; thence North 75° 12' East, 307.67  
feet; thence South 81° 04' East, 864.97 feet; thence  
North 27° 33' 30" East, 370.9 feet; thence North 31° 57'  
30" West, 207.69 feet; thence North 54° 44' East, 259.11  
feet; thence North 82° 52' East, 405.3 feet to a pipe  
monument, and thence South 0° 10' East, 1362.02 feet to  
the point of beginning, containing approximately 50.0 acres.

15 It is true that on or about February 15, 1860, the United States  
16 of America, in pursuance of an application for Homestead Patent by  
17 the defendant Frederick Billings, issued its patent to said Fred-  
18 erick Billings covering said parcel of real property, which patent  
19 is recorded in the office of the County Recorder of said County of  
20 Lake in Volume One of Patents at Pages 261-274, Lake County Records,  
21 but it is untrue that said parcel of real property was so patented  
22 to said defendant Frederick Billings by mistake or inadvertence.  
23 The said parcel of real property was so patented with full authority  
24 of law and the said patent thereon was good and valid. Title to  
25 said parcel of real property passed by mesne conveyances from said  
26 defendant Frederick Billings to the defendant Bradley Mining Co.,  
27 a corporation, and the defendant Bradley Mining Co., a corporation,  
28 is the owner and seized in fee thereof. Neither the plaintiff nor  
29 any of its Indian wards has any right, title, estate or interest  
30 in, to or upon said premises, or any part or parcel thereof. Ex-  
31 cepting for such right, if any, as the defendant Clear Lake Water  
32 Company may have to overflow said parcel of real property, or any  
33 part thereof, by raising the level of Clear Lake, none of the

1 defendants other than the defendant Bradley Mining Co., a corpora-  
2 tion, has any right, title, estate or interest in, to or upon said  
3 premises, or any part or parcel thereof.

4 (3) Neither of the parcels of real property described  
5 in paragraphs (1) and (2) hereof, nor any part of either of them -  
6 save for the property excepted from the description in paragraph  
7 (2) hereof, said excepted property being the same real property as  
8 described in the next paragraph, is or ever has been occupied, used  
9 cultivated, improved, enjoyed, claimed or possessed by Indians of  
10 the Como Indian Tribe, or by Indians of other tribes, or by any  
11 Indians whomsoever. It is untrue that Indians of the Como Tribe or  
12 of other tribes, or any other Indians, or the ancestors and progeni-  
13 tors of any Indians have ever cleared either of the said parcels of  
14 real property, or any part of either thereof, or have ever built  
15 fences, barns, lodges, houses, ceremonial halls, or other improve-  
16 ments thereon, or have ever used the said parcels of real property,  
17 or any part of either thereof, as a burying place for their dead.

18 (4) The plaintiff was at the time of the commencement of  
19 this action, and ever since has been and now is the owner and seized in  
20 fee, subject only to the rights of its Indian wards, of that certain  
21 parcel of real property located and lying situate in the County of  
22 Lake, State of California, particularly described as follows:

23 Those certain lands situate in the County of Lake,  
24 State of California, lying partly in the NW 1/4 of Section  
25 5 and partly in the NE 1/4 of Section 6, T. 13 N., R. 7 W.,  
M.D.M., more particularly described as follows:

26 BEGINNING at a point which bears North 0° 10' West  
27 400.78 feet from a point that bears North 76° 10' West,  
28 distant 2559.3 feet from the center of Section 5, Town-  
29 ship 13 North, Range 7 West, M.D.M.; thence from the  
30 point of beginning, along the South side of the exist-  
31 ing road, North 89° 53' West, 657.9 feet, and South 86°  
32 22' 30" West, 271.92 feet to a pipe monument set distant  
15.0 feet East from the existing rock fence which en-  
closes the buildings of the Indians living within this  
area; thence, along a line running parallel and 15.0 feet  
distant from said rock fence, as follows: South 16°  
46' 30" West, 132.58 feet; thence South 16° 24' 30" West,  
242.6 feet; thence South 31° 26' 30" West, 158.6 feet;  
thence South 61° 35' 30" West, 335.0 feet, more or less,  
to the low water line of Clear Lake; thence Northerly,

1 along said low water line, 1200.0 feet, more or less, to  
2 a point thereon that is situated South 20° 55' West, from  
3 a point that is North 68° 42' West 1965.79 feet from the  
4 point of beginning of this description; thence, leaving  
5 said low water line, North 20° 55' East, 500.0 feet, more  
6 or less, to said point situated North 68° 42' West from  
7 the point of beginning; thence North 75° 12' East, 307.67  
feet; thence South 81° 04' East, 864.97 feet; thence North  
27° 33' 30" East, 370.9 feet; thence North 31° 57' 30"  
West, 207.69 feet; thence North 54° 44' East, 259.11 feet;  
thence North 82° 52' East, 405.3 feet to a pipe monument,  
and thence South 0° 10' East, 1362.02 feet to the point  
of beginning, containing approximately 50.0 acres.

8 It is true that on or about February 15, 1860, the United States  
9 of America, in pursuance of an application by the defendant Fred-  
10 erick Billings for Homestead Patent, issued its patent to said  
11 defendant Frederick Billings covering said parcel of real property,  
12 which patent is recorded in the office of the County Recorder of  
13 said Lake County in Volume One of Patents at Pages 261-274, Lake  
14 County Records. It is true that said parcel of real property was  
15 so patented to said defendant Frederick Billings by mistake and  
16 inadvertence. At the time said patent was so issued, said parcel  
17 of real property was occupied, used, enjoyed and claimed and ever  
18 since has been and now is occupied, used, enjoyed and claimed by  
19 Indians of the Como Indian Tribe, and at the time that said patent  
20 was issued, as aforesaid, the said parcel of real property was  
21 Indian land. Excepting for such right, if any, as the Clear Lake  
22 Water Company may have to overflow said parcel of real property,  
23 or any part thereof, by raising the level of Clear Lake, none of  
24 the defendants has any right, title, estate or interest to, in or  
25 upon said premises, or any part or parcel thereof.

#### 26 27 CONCLUSIONS OF LAW

28 As its conclusions of law from the foregoing findings of fact,  
29 the Court decides as follows:

30 1. That the defendant Dent W. MacDonough, as Adminis-  
31 trator With the Will Annexed of the Estate of Joseph M. MacDonough,  
32 deceased, was at the time of the commencement of this action and  
33 ever since has been and now is the owner and seized in fee of



1 that certain parcel of real property located and lying situate in  
2 the County of Lake, State of California, and more particularly  
3 described as follows:

4           Island number one situate in the North West  
5           quarter of Section 6 Township 13 North Range 7 West  
6           Mount Diablo Base Meridian and the South West quarter  
7           of Section 31 Township 14 North Range 7 West Mount  
8           Diablo Base and Meridian according to the government  
9           survey thereof.

10 That neither plaintiff nor its Indian wards has any right, title,  
11 estate or interest in, to or upon said premises or any part or  
12 parcel thereof; that excepting for such interest or interests as  
13 the defendants Joan MacDonough, a minor, and Mary MacDonough, a  
14 minor, may have in the estate of said Joseph M. MacDonough, de-  
15 ceased, and excepting for such right, if any, as the Clear Lake  
16 Water Company may have to overflow said parcel of real property,  
17 or any part thereof, by raising the level of Clear Lake, none of  
18 the defendants other than the defendant Dent W. MacDonough as  
19 Administrator with the Will Annexed of the Estate of Joseph M.  
20 MacDonough, deceased, has any right, title, estate or interest in,  
21 to or upon said premises, or any part or parcel thereof.

22           2. The defendant Bradley Mining Co., a corporation, was  
23 at the time of the commencement of this action, and ever since  
24 has been and now is the owner and seized in fee of that certain  
25 parcel of real property located and lying situate in the County of  
26 Lake, State of California, and more particularly described as  
27 follows:

28           All lands located within the North East quarter  
29           of Section 6 Township 13 North of Range 7 West Mount  
30           Diablo Meridian with the exception of a triangular  
31           shaped piece of land lying to the south of a line run-  
32           ning South 68 degrees and 40 minutes West from a point  
33           452.7 feet north of the quarter corner common to  
34           Sections 5 and 6 of Township 13 North of Range 7 West  
35           Mount Diablo Meridian;

36           All lands within the North West quarter of Sec-  
37           tion 5 Township 13 North of Range 7 West Mount Diablo  
38           Base Meridian lying to the west of a line commencing  
39           at a point 2319.1 feet north and 167.5 feet east of

1 the quarter corner common to Sections 5 and 6 of Township  
2 13 North of Range 7 West Mount Diablo Meridian, thence  
3 running South 0 degrees and 10 minutes East a distance of  
4 1762.8 feet, thence running South 68 degrees and 40 minutes  
5 West to a point where such line intersects the Section  
6 line running North between Sections 5 and 6 of Township  
7 13 North of Range 7 West Mount Diablo Meridian. This  
8 point of intersection is a point 452.7 feet north of the  
9 quarter corner common to Sections 5 and 6 of Township 13  
10 North of Range 7 West of Mount Diablo Meridian;

11 EXCEPTING HOWEVER, those certain lands situate in the  
12 County of Lake, State of California, lying partly in the  
13 NW 1/4 of Section 5 and partly in the NE 1/4 of Section 6,  
14 T. 13 N., R. 7 W., M.D.M., more particularly described as  
15 follows:

16 BEGINNING at a point which bears North 0° 10' West  
17 400.78 feet from a point that bears North 76° 10' West,  
18 distant 2559.3 feet from the center of Section 5, Town-  
19 ship 13 North, Range 7 West, M.D.M.; thence from the  
20 point of beginning, along the South side of the existing  
21 road, North 89° 53' West, 657.9 feet, and South 86° 22'  
22 30" West, 271.92 feet to a pipe monument set distant 15.0  
23 feet East from the existing rock fence which encloses the  
24 buildings of the Indians living within this area; thence,  
25 along a line running parallel and 15.0 feet distant from  
26 said rock fence, as follows: South 16° 46' 30" West,  
27 132.58 feet; thence South 16° 24' 30" West, 242.6 feet;  
28 thence South 31° 26' 30" West, 158.6 feet; thence South  
29 61° 35' 30" West, 335.0 feet, more or less, to the low  
30 water line of Clear Lake; thence Northerly, along said  
31 low water line, 1200.0 feet, more or less, to a point  
32 thereon that is situated South 20° 55' West, from a point  
33 that is North 68° 42' West 1965.79 feet from the point  
of beginning of this description; thence, leaving said  
low water line, North 20° 55' East, 500.0 feet, more or  
less, to said point situated North 68° 42' West from the  
point of beginning; thence North 75° 12' East, 307.67  
feet; thence South 81° 04' East, 864.97 feet; thence  
North 27° 33' 30" East, 370.9 feet; thence North 31° 57'  
30" West, 207.69 feet; thence North 54° 44' East, 259.11  
feet; thence North 82° 52' East, 405.3 feet to a pipe  
monument, and thence South 0° 10' East, 1362.02 feet to  
the point of beginning, containing approximately 50.0 acres.

That neither the plaintiff nor any of its Indian wards has any  
right, title, estate or interest in, to or upon said premises, or  
any part or parcel thereof; that excepting for such right, if any,  
as the Clear Lake Water Company may have to overflow said parcel  
of real property, or any part thereof, by raising the level of  
Clear Lake, none of the defendants other than the defendant Bradley  
Mining Co., a corporation, has any right, title, estate or interest  
in, to or upon said premises, or any part or parcel thereof.

3. The plaintiff was at the time of the commencement of  
this action, and ever since has been and now is the owner and

1 seized in fee, subject only to the rights of its Indian wards of  
2 that certain parcel of real property located and lying situate  
3 in the County of Lake, State of California, and more particularly  
4 described as follows:

5 Those certain lands situate in the County of Lake,  
6 State of California, lying partly in the NW 1/4 of Sec-  
7 tion 5 and partly in the NE 1/4 of Section 6, T. 13 N.,  
8 R. 7 W., M.D.M., more particularly described as follows:

9 BEGINNING at a point which bears North 0° 10' West  
10 400.78 feet from a point that bears North 76° 10' West,  
11 distant 2559.3 feet from the center of Section 5, Town-  
12 ship 13 North, Range 7 West, M.D.M.; thence from the  
13 point of beginning, along the South side of the existing  
14 road, North 89° 53' West, 657.9 feet, and South 86° 22'  
15 30" West, 271.92 feet to a pipe monument set distant 15.0  
16 feet East from the existing rock fence which encloses the  
17 buildings of the Indians living within this area; thence,  
18 along a line running parallel and 15.0 feet distant from  
19 said rock fence, as follows: South 16° 46' 30" West,  
20 132.58 feet; thence South 16° 24' 30" West, 242.6 feet;  
21 thence South 31° 26' 30" West, 158.6 feet; thence South  
22 61° 35' 30" West, 335.0 feet, more or less, to the low  
23 water line of Clear Lake; thence Northerly, along said  
24 low water line, 1200.0 feet, more or less, to a point  
25 thereon that is situated South 20° 55' West, from a point  
26 that is North 68° 42' West 1965.79 feet from the point  
27 of beginning of this description; thence, leaving said  
28 low water line, North 20° 55' East, 500.0 feet, more or  
29 less, to said point situated North 68° 42' West from the  
30 point of beginning; thence North 75° 12' East, 307.67  
31 feet; thence South 81° 04' East, 864.97 feet; thence  
32 North 27° 33' 30" East, 370.9 feet; thence North 31° 57'  
30" West, 207.69 feet; thence North 54° 44' East, 259.11  
feet; thence North 82° 52' East, 405.3 feet to a pipe  
monument, and thence South 0° 10' East, 1362.02 feet to  
the point of beginning, containing approximately 50.0 acres.

That, excepting for such right, if any, as the Clear Lake Water  
Company may have to overflow said parcel of real property, or any  
part thereof, by raising the level of Clear Lake, none of the  
defendants has any right, title, estate or interest in, to or  
upon said premises or any part or parcel thereof.

4. That the plaintiff is entitled to have and recover  
its costs of suit herein incurred.

Let the judgment be entered accordingly.

Dated this 10<sup>th</sup> day of January, 1949.

  
United States District Judge

1/27/49

CIVIL NO. 4068 L. - FINDINGS OF FACT

pp. 1, 2, 3, 3a.

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FILED

JAN 10 1949

C. W. CALBREATH,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

- - - - -

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE STATE OF CALIFORNIA; S. F. BUTTERWORTH;  
ALFRED A. WHEELER; CROCKER FIRST NATIONAL  
BANK, A CORPORATION; WILLIAM O. B. MAC-  
DONOUGH; JOHN DOE ONE, AS ADMINISTRATOR OF  
THE ESTATE OF JOSEPH M. MACDONOUGH, DE-  
CEASED; JOHN DOE TWO, AS EXECUTOR OF THE  
ESTATE OF JOSEPH M. MACDONOUGH, DECEASED;  
JOHN DOE THREE, JOHN DOE FOUR, JOHN DOE  
FIVE, JOHN DOE SIX, JOHN DOE SEVEN, JOHN  
DOE EIGHT, JOHN DOE NINE, JOHN DOE TEN,  
JANE DOE ONE, JANE DOE TWO, JANE DOE THREE,  
JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH  
M. MACDONOUGH, DECEASED; FREDERICK BILLINGS,  
THE CALIFORNIA BORAX COMPANY, A CORPORATION;  
THE CALIFORNIA BORAX COMPANY, A CO-PARTNER-  
SHIP; THE SULPHUR BANK QUICKSILVER MINING  
COMPANY, A CORPORATION; THE SULPHUR BANK  
CONSOLIDATED QUICKSILVER MINING COMPANY, A  
CORPORATION; EMPIRE CONSOLIDATED QUICKSIL-  
VER MINING COMPANY, A CORPORATION; WILLIAM  
E. GERBER; RICHARD WHITE; CLEAR LAKE QUICK-  
SILVER MINING COMPANY, A CORPORATION; RAY-  
MOND G. LANOUE; JAMES M. O'BRIEN; T. A.  
MORRISEY; CLEAR LAKE COMPANY, A CORPORATION;  
ESTELLE R. DAVIS; RUTH defREMERY; CLINTON  
E. DOLBEAR; P. R. BRADLEY; EDWARD A. NUTTER;  
A. T. HATHAWAY; HOMESTAKE GOLD MINING COM-  
PANY, A CORPORATION; GOLDEN GATE GOLD MIN-  
ING COMPANY, A CORPORATION; RICHARD ROWE  
ONE; RICHARD ROWE TWO; RICHARD ROWE THREE;  
RICHARD ROWE FOUR; RICHARD ROWE FIVE; JANE  
ROWE ONE; JANE ROWE TWO; JANE ROWE THREE;  
JANE ROWE FOUR; JANE ROWE FIVE; SAM BLAKE  
CORPORATION ONE; SAM BLAKE CORPORATION TWO;  
SAM BLAKE CORPORATION THREE; SAM BLAKE COR-  
PORATION FOUR; SAM BLAKE CORPORATION FIVE;  
POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
A CORPORATION; CLEAR LAKE WATER COMPANY, A )

CIVIL NO. 4068 L.

1 CORPORATION; CALIFORNIA TRUST AND SAVINGS  
2 BANK, A CORPORATION; PACIFIC GAS AND ELEC-  
3 TRIC COMPANY, A CORPORATION; PACIFIC TELE-  
4 PHONE AND TELEGRAPH COMPANY, A CORPORATION;  
5 BRADLEY MINING COMPANY, A CORPORATION,

6 Defendants.

7 FINDINGS OF FACT AND CONCLUSIONS OF LAW

8 The above entitled cause came on regularly for trial before  
9 the above entitled Court, the Honorable Dal. M. Lemmon presiding  
10 without a jury, on the <sup>18</sup> ~~18th~~ of <sup>January</sup> ~~August~~, 194<sup>9</sup>, Frank J. Hennessy,  
11 United States Attorney, by Emmet Seawell, Assistant United States  
12 Attorney, appearing as attorney for the plaintiff, Fred N. Howser,  
13 Attorney General of the State of California, by E. G. Benard,  
14 Deputy Attorney General, appearing upon behalf of the defendant,  
15 The State of California, Messrs. Brobeck, Phleger & Harrison, by  
16 Marion B. Plant, Esquire, appearing on behalf of the defendant  
17 Dent W. MacDonough, individually and as Administrator With the  
18 Will Annexed of the Estate of Joseph M. MacDonough, deceased,  
19 sued herein as John Doe One, as Administrator of the Estate of  
20 Joseph M. MacDonough, deceased, and on behalf of the defendants  
21 Joan MacDonough, a minor, and Mary MacDonough, a minor, sued  
22 herein respectively as Jane Doe One and Jane Doe Two, as heirs at  
23 law and/or devisees of the estate of Joseph M. MacDonough, de-  
24 ceased, Neal Chalmers, Esquire, appearing on behalf of the defend-  
25 ant Clear Lake Water Company, a corporation, and John Parks Davis,  
26 Esquire, appearing on behalf of the defendant Bradley Mining Co.,  
27 a corporation, sued herein as Bradley Mining Company;

28 And it appearing to the Court that the defendants Edward A.  
29 Nutter, Pacific Telephone and Telegraph Company, Archbishop of San  
30 Francisco (John Doe Four), Crocker First National Bank, T. A.  
31 Morrisey, Clear Lake Company, James M. O'Brien, George J. O'Brien,  
32 and P. R. Bradley have each appeared and filed answers disclaiming  
any interest in the real property described in the complaint on

1 file herein;

2 And it appearing that defendants Estelle R. Davis and Ruth  
3 deFremery have appeared and filed answers in the above entitled  
4 action but that Bradley Mining Co. has succeeded to all right,  
5 title and interest of said defendants Estelle R. Davis and Ruth  
6 deFremery;

7 And it further appearing to the Court that defendants  
8 California Trust and Savings Bank, Pacific Gas and Electric Com-  
9 pany, Homestake Gold Mining Company, Golden Gate Gold Mining Com-  
10 pany, Raymond G. LaNoue, Power and Irrigation Company of Clear  
11 Lake, and H. Vincent Keeling (Richard Rowe Five) have each been  
12 duly and regularly served with a copy of summons and complaint  
13 but have failed to appear and answer or otherwise plead within  
14 the time required by law, and that their defaults have been duly  
15 and regularly entered;

16 Plaintiff having moved for dismissal of the action as to the  
17 defendants Empire Consolidated Quicksilver Mining Company, Clinton  
18 E. Dolbear, and A. T. Hathaway, and also as to all fictitious  
19 defendants designated by the names Doe, Rowe and Sam Blake (save  
20 as hereinabove identified as actual defendants), and the action  
21 thereupon having been dismissed as to said defendants, and evi-  
22 dence having been introduced and the Court having considered the  
23 same, and it further appearing and being duly proved and the  
24 parties appearing upon the trial having stipulated hereto, the  
25 Court makes its FINDINGS OF FACT as follows:

26 (1) The defendant Dent W. MacDonough as Administrator  
27 With the Will Annexed of the Estate of Joseph M. MacDonough,  
28 deceased, was at the time of the commencement of this action, and  
29 ever since has been and now is the owner and seized in fee of  
30 that certain parcel of real property located and lying situate in  
31 the County of Lake, State of California, and more particularly  
32 described as follows:

1/21/49

CIVIL NO. 4068 L. - JUDGMENT

pp. 1, 2, 3, 3a.

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FILED

JAN 10 1949

C. W. CALBREATH,  
CLERK

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IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

8

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10

UNITED STATES OF AMERICA,

11

Plaintiff,

12

vs.

13

THE STATE OF CALIFORNIA; S. F. BUTTERWORTH;  
ALFRED A. WHEELER; CROCKER FIRST NATIONAL  
14 BANK, A CORPORATION; WILLIAM O. B. MAC-  
DONOUGH; JOHN DOE ONE, AS ADMINISTRATOR OF  
15 THE ESTATE OF JOSEPH M. MACDONOUGH, DE-  
CEASED; JOHN DOE TWO, AS EXECUTOR OF THE  
16 ESTATE OF JOSEPH M. MACDONOUGH, DECEASED;  
JOHN DOE THREE, JOHN DOE FOUR, JOHN DOE  
17 FIVE, JOHN DOE SIX, JOHN DOE SEVEN, JOHN  
DOE EIGHT, JOHN DOE NINE, JOHN DOE TEN,  
18 JANE DOE ONE, JANE DOE TWO, JANE DOE THREE,  
JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
19 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH  
M. MACDONOUGH, DECEASED; FREDERICK BILLINGS,  
20 THE CALIFORNIA BORAX COMPANY, A CORPORATION;  
THE CALIFORNIA BORAX COMPANY, A CO-PARTNER-  
21 SHIP; THE SULPHUR BANK QUICKSILVER MINING  
COMPANY, A CORPORATION; THE SULPHUR BANK  
22 CONSOLIDATED QUICKSILVER MINING COMPANY, A  
CORPORATION; EMPIRE CONSOLIDATED QUICKSIL-  
23 VER MINING COMPANY, A CORPORATION; WILLIAM  
E. GERBER; RICHARD WHITE; CLEAR LAKE QUICK-  
24 SILVER MINING COMPANY, A CORPORATION; RAY-  
MOND G. LANOUE; JAMES M. O'BRIEN; T. A.  
25 MORRISEY; CLEAR LAKE COMPANY, A CORPORATION;  
ESTELLE R. DAVIS; RUTH de FREMERY; CLINTON  
26 E. DOLBEAR; P. R. BRADLEY; EDWARD A. NUTTER;  
A. T. HATHAWAY; HOMESTAKE GOLD MINING COM-  
27 PANY, A CORPORATION; GOLDEN GATE GOLD MIN-  
ING COMPANY, A CORPORATION; RICHARD ROWE  
28 ONE; RICHARD ROWE TWO; RICHARD ROWE THREE;  
RICHARD ROWE FOUR; RICHARD ROWE FIVE; JANE  
29 ROWE ONE; JANE ROWE TWO; JANE ROWE THREE;  
JANE ROWE FOUR; JANE ROWE FIVE; SAM BLAKE  
30 CORPORATION ONE; SAM BLAKE CORPORATION TWO;  
SAM BLAKE CORPORATION THREE; SAM BLAKE COR-  
31 PORATION FOUR; SAM BLAKE CORPORATION FIVE;  
POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
32 A CORPORATION; CLEAR LAKE WATER COMPANY, A

CIVIL NO. 4068 L.

1 CORPORATION; CALIFORNIA TRUST AND SAVINGS  
2 BANK, A CORPORATION; PACIFIC GAS AND ELEC-  
3 TRIC COMPANY, A CORPORATION; PACIFIC TELE-  
4 PHONE AND TELEGRAPH COMPANY, A CORPORATION;  
5 BRADLEY MINING COMPANY, A CORPORATION,

6 Defendants.

7 J U D G M E N T

8 The above entitled cause came on regularly for trial before  
9 the above entitled Court, the Honorable Dal M. Lemmon presiding  
10 without a jury, on the <sup>10</sup>18th of ~~August~~ <sup>January</sup>, 1947, Frank J. Hennessy,  
11 United States Attorney, by Emmet Seawell, Assistant United States  
12 Attorney, appearing as attorney for the plaintiff, Fred N. Howser,  
13 Attorney General of the State of California, by E. G. Benard,  
14 Deputy Attorney General, appearing upon behalf of the defendant,  
15 The State of California, Messrs. Brobeck, Phleger & Harrison, by  
16 Marion B. Plant, Esquire, appearing on behalf of the defendant  
17 Dent W. MacDonough, individually and as Administrator With the  
18 Will Annexed of the Estate of Joseph M. MacDonough, deceased,  
19 sued herein as John Doe One, as Administrator of the Estate of  
20 Joseph M. MacDonough, deceased, and on behalf of the defendants  
21 Joan MacDonough, a minor, and Mary MacDonough, a minor, sued  
22 herein respectively as Jane Doe One and Jane Doe Two, as heirs at  
23 law and/or devisees of the estate of Joseph M. MacDonough, de-  
24 ceased, Neal Chalmers, Esquire, appearing on behalf of the defend-  
25 ant Clear Lake Water Company, a corporation, and John Parks Davis,  
26 Esquire, appearing on behalf of the defendant Bradley Mining Co.,  
27 a corporation, sued herein as Bradley Mining Company;

28 And it appearing to the Court that the defendants Edward A.  
29 Nutter, Pacific Telephone and Telegraph Company, Archbishop of San  
30 Francisco (John Doe Four), Crocker First National Bank, T. A.  
31 Morrisey, Clear Lake Company, James M. O'Brien, George J. O'Brien  
32 and P. R. Bradley have each appeared and filed answers disclaiming  
any interest in the real property described in the complaint on



1 file herein;

2 And it appearing that defendants Estelle R. Davis and Ruth  
3 deFremery have appeared and filed answers in the above entitled  
4 action but that Bradley Mining Co. has succeeded to all right,  
5 title and interest of said defendants Estelle R. Davis and Ruth  
6 deFremery;

7 And it further appearing to the Court that defendants  
8 California Trust and Savings Bank, Pacific Gas and Electric Com-  
9 pany, Homestake Gold Mining Company, Golden Gate Gold Mining Com-  
10 pany, Raymond G. LaNoue, Power and Irrigation Company of Clear  
11 Lake, and H. Vincent Keeling (Richard Rowe Five) have each been  
12 duly and regularly served with a copy of summons and complaint  
13 but have failed to appear and answer or otherwise plead within  
14 the time required by law, and that their defaults have been duly  
15 and regularly entered;

16 Plaintiff having moved for dismissal of the action as to the  
17 defendants Empire Consolidated Quicksilver Mining Company, Clinton  
18 E. Dolbear, and A. T. Hathaway, and also as to all fictitious  
19 defendants designated by the names Doe, Rowe and Sam Blake (save  
20 as hereinabove identified as actual defendants), and the action  
21 thereupon having been dismissed as to said defendants, and evi-  
22 dence having been introduced and the Court having considered the  
23 same, and it further appearing and being duly proved and the  
24 parties appearing upon the trial having stipulated hereto, and  
25 the Court being fully advised in the premises, and having filed  
26 herein its findings of fact and conclusions of law, and having  
27 directed that judgment be entered in accordance therewith; now,  
28 therefore, by reason of the law and findings aforesaid:

29 IT IS HEREBY ORDERED, ADJUDGED AND DECREED

30 1. That the defendant Dent W. MacDonough, as Adminis-  
31 trator With the Will Annexed of the Estate of Joseph M. MacDonough,  
32 deceased, was at the time of the commencement of this action and

District Court of the United States  
NORTHERN DISTRICT OF CALIFORNIA

FILED

FEB 25 1949

C. W. CALBREATH,  
CLERK

UNITED STATES OF AMERICA

Plaintiff.

vs.

Civil No. 4068-L

THE STATE OF CALIFORNIA, et al

Defendent.

DISBURSEMENTS

Marshal's Fees .....	\$ 75.14
Clerk's Fees .....	15.00
Reporter's Fees .....	
Docket Fee .....	10.00
Examiner's Fees .....	
Witness Fees .....	
	<hr/>
	100.14

*Total allowed  
I AM  
[Signature]*

UNITED STATES OF AMERICA }  
NORTHERN DISTRICT OF CALIFORNIA } ss:

HARLAN M. THOMPSON, Assistant U. S. Attorney,

being duly sworn, deposes and says: That he is the attorney for the Plaintiff,

in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements. That the items in the above memorandum contained are correct; that the said disbursements have been necessarily incurred in the said cause, and that the services charged therein have been actually and necessarily performed as therein stated.

Subscribed and sworn to before me this 25<sup>th</sup> day of February, A. D. 1949

*F M Lampert*  
Deputy Clerk, United States District Court,  
Northern District of California.

*Harlan M. Thompson*

To John Parks Davis

Crocker Building, San Francisco, California.

You will please take notice that on Monday the 7th day of March, A. D. 1949, at the hour of 10:00 o'clock, A. M., Plaintiff will apply to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

FRANK J. HENNESSY, U.S. Attorney,  
*Harlan M. Thompson*  
By: HARLAN M. THOMPSON, Ass't U S Attorney  
Attorney for Plaintiff

Service of within memorandum of costs and disbursements and receipt of a copy thereof acknowledged, this                      day of February, A. D. 1949

Attorney for Defendant

No. ....	United States District Court NORTHERN DISTRICT OF CALIFORNIA	Plaintiff.	vs.	Defendant.	MEMORANDUM OF COSTS AND DISBURSEMENTS	Attorneys for
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FILED

JAN 10 1949

C. W. CALBREATH,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

- - - - -

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
THE STATE OF CALIFORNIA, et al.,  
Defendants.

CIVIL NO. 4068 L.

STIPULATION

It is hereby stipulated that the foregoing findings of fact and conclusions of law may be signed and filed, and that the foregoing judgment may be entered in the above entitled action.

*Brobeck, Phleger & Harrison*  
\_\_\_\_\_  
Brobeck, Phleger & Harrison

*Howard J. Finn*  
\_\_\_\_\_  
Howard J. Finn

*Marion B. Plant*  
\_\_\_\_\_  
Marion B. Plant

Attorneys for defendant DENT W. MACDONOUGH individually and as Administrator With the Will Annexed of the Estate of Joseph M. MacDonough, Deceased, sued herein as John Doe One, as Administrator of the Estate of Joseph M. MacDonough, Deceased, and defendants JOAN MACDONOUGH, a minor, and MARY MACDONOUGH, a minor, sued herein respectively as Jane Doe One and Jane Doe Two, as heirs at law and/or devisees of the Estate of Joseph M. MacDonough, Deceased.

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*Mad N. Houser*

Attorney General for defendant THE STATE OF CALIFORNIA.

By *E. B. Seward*

*Neal Chalmers*

Neal Chalmers

Attorney for defendant CLEAR LAKE WATER COMPANY, a corporation.

*John Parks Davis*

John Parks Davis

Attorney for defendant BRADLEY MINING CO., a corporation.

DATED August 27, 1948.

1 HOWARD J. FINN and  
2 BROBECK, PHLEGER & HARRISON,  
3 111 Sutter Street,  
4 San Francisco, California.  
5 Attorneys for certain defendants.

FILED

FEB 21 1944

C. W. CALBREATH,  
CLERK

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,  
Plaintiff,  
-vs-  
THE STATE OF CALIFORNIA,  
et al.,  
Defendants.

No. 4068 L.

STIPULATION FOR AMENDMENT OF ANSWERS

23  
24  
25 It appearing that, through inadvertence of counsel,  
26 the answer of the defendant Dent W. Macdonough, individually  
27 and as administrator with the will annexed of the estate of  
28 Joseph M. Macdonough, Deceased, and the answer of the de-  
29 fendants Joan Macdonough and Mary Macdonough, employed the  
30 name of William O. B. Macdonough (who has long since been

1 dead), instead of the name of said Dent W. Macdonough, and  
2 that wherever the name "William O. B. Macdonough" appears  
3 in either of said answers, said name should properly read  
4 Dent W. Macdonough;

5 NOW, THEREFORE, the plaintiff above-named, and the  
6 defendants Dent W. Macdonough, individually and as adminis-  
7 trator with the will annexed of the estate of Joseph M.  
8 Macdonough, deceased, and Joan Macdonough and Mary Macdonough,  
9 through their respective attorneys, do hereby stipulate as  
10 follows:

11 (1) That the answer of the defendant Dent W.  
12 Macdonough, individually and as administrator, etc., which  
13 said answer is erroneously entitled: "Answer of defendant  
14 William O. B. Macdonough and of defendant William O. B.  
15 Macdonough as administrator with the will annexed of the  
16 estate of Joseph M. Macdonough, Deceased, sued herein as  
17 John Doe One, to complaint", may be amended on its face by  
18 substituting the name Dent W. Macdonough for the name  
19 William O. B. Macdonough in the title of said answer and  
20 wherever else in said answer the latter name appears;

21 (2) That the answer of the defendants Joan  
22 Macdonough, a minor, and Mary Macdonough, a minor, may be  
23 amended on its face by substituting the name Dent W.  
24 Macdonough for the name William O. B. Macdonough wherever  
25 the latter name appears in said answer.

26 (3) That the Clerk of the above-entitled court  
27 may make said amendments forthwith, by interlineation upon  
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1 the face of said answers.

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Feb 21 1944  
DATED: ~~March~~ 1943.

Thomas O'Hara  
Attorneys for Plaintiff.

Howard L. Finn  
Brobeck, Phleger + Harrison  
Attorneys for defendants Dent W. Macdonough, and Dent W. Macdonough as administrator with the will annexed of the estate of Joseph M. Macdonough, deceased, Joan Macdonough and Mary Macdonough.

IT IS SO ORDERED  
Feb 21, 1944  
Dated: ~~March~~ 1943,

Martin J. Heisk  
District Judge.



# District Court of the United States

Northern District of California

Northern Division

United States

vs.

State of California, etc., et  
al.

No. 4068

NOTICE

TO Frank J. Hennessy, Esq.,  
United States Attorney,  
Post Office Building,  
San Francisco, Calif.

John Parks Davis, Esq.,  
Attorney at Law,  
705 Standard Oil Building,  
San Francisco, Calif.

Messrs. Brobeck, Phleger  
& Harrison  
Attorneys at Law,  
111 Sutter Street,  
San Francisco, Calif.

Robert W. Kenny, Esq.,  
Attorney General of the  
State of California,  
Sacramento, Calif.

Neal Chalmers, Esq.,  
Attorney at Law,  
327 Porter Building,  
Woodland, California

YOU ARE HEREBY NOTIFIED that on Tuesday, November 2nd, 1943  
JUDGE MARTIN I. WALSH Ordered that this case be and the same is hereby  
continued to February 18th, ~~1944~~ 1944, for trial. (J)

1 FRANK J. HENNESSY,  
United States Attorney,  
2 G. B. HJELM,  
Assistant U. S. Attorney,  
3 Attorneys for Plaintiff.

FILED

U'clock and Min.

FEB 16 1939

WALTER B. MALING,  
CLERK.

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7 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9

10  
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 THE STATE OF CALIFORNIA; S. F. BUTTERWORTH; ALFRED  
15 A. WHEELER; CROCKER FIRST NATIONAL BANK, A CORPO-  
16 RATION; WILLIAM O. B. MACDONOUGH; JOHN DOE ONE, AS  
17 ADMINISTRATOR OF THE ESTATE OF JOSEPH M. MAC-  
18 DONOUGH, DECEASED; JOHN DOE TWO, AS EXECUTOR OF  
19 THE ESTATE OF JOSEPH M. MACDONOUGH, DECEASED; JOHN  
20 DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE, JOHN DOE  
21 SIX, JOHN DOE SEVEN, JOHN DOE EIGHT, JOHN DOE NINE  
22 JOHN DOE TEN, JANE DOE ONE, JANE DOE TWO, JANE DOE  
23 THREE, JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
24 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH M.  
25 MACDONOUGH, DECEASED; FREDERICK BILLINGS, THE  
26 CALIFORNIA BORAX COMPANY, A CORPORATION; THE  
27 CALIFORNIA BORAX COMPANY, A CO-PARTNERSHIP; THE  
28 SULPHUR BANK QUICKSILVER MINING COMPANY, A CORPO-  
29 RATTON; THE SULPHUR BANK CONSOLIDATED QUICKSILVER  
30 MINING COMPANY, A CORPORATION; EMPIRE CONSOLIDATED  
31 QUICKSILVER MINING COMPANY, A CORPORATION; WILLIAM  
32 E. GERBER; RICHARD WHITE; CLEAR LAKE QUICKSILVER  
MINING COMPANY, A CORPORATION; RAYMOND G. LANOUÉ;  
JAMES M. O'BRIEN; T. A. MORRISSEY; CLEAR LAKE  
COMPANY, A CORPORATION; ESTELLE R. DAVIS; RUTH  
deFREMERY; CLINTON E. DOLBEAR; P. R. BRADLEY;  
EDWARD A. NUTTER; A. T. HATHAWAY; HOMESTAKE GOLD  
MINING COMPANY, A CORPORATION; GOLDEN GATE GOLD  
MINING COMPANY, A CORPORATION; RICHARD ROWE ONE;  
RICHARD ROWE TWO; RICHARD ROWE THREE; RICHARD ROWE  
FOUR; RICHARD ROWE FIVE; JANE ROWE ONE; JANE ROWE  
TWO; JANE ROWE THREE; JANE ROWE FOUR; JANE ROWE  
FIVE; SAM BLAKE CORPORATION ONE; SAM BLAKE COR-  
PORATION TWO; SAM BLAKE CORPORATION THREE; SAM  
BLAKE CORPORATION FOUR; SAM BLAKE CORPORATION  
FIVE; POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
A CORPORATION; CLEAR LAKE WATER COMPANY, A COR-  
PORATION; CALIFORNIA TRUST AND SAVINGS BANK, A  
CORPORATION; PACIFIC GAS AND ELECTRIC COMPANY, A  
CORPORATION; PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, A CORPORATION; BRADLEY MINING COMPANY, A  
CORPORATION,

Defendants.

40681

CIVIL NO. \_\_\_\_\_

C O M P L A I N T

COMPLAINT

1 Comes now the United States of America, by Frank J. Hennesy,  
 2 United States Attorney for the Northern District of California, and G. B.  
 3 Hjelm, Assistant United States Attorney, acting by and under the direc-  
 4 tion of the Attorney General of the United States, and brings this ac-  
 5 tion against the above named defendants, by virtue of its guardianship  
 6 of certain Indians hereinafter named and referred to, and for cause of  
 7 action complains and shows as follows:

## I.

9 That for at least fifty years prior to February 18, 1859, and  
 10 from time immemorial, the following described lands were Indian lands,  
 11 occupied, used, enjoyed and claimed by Indians of the Pomo Indian tribe  
 12 and Indians of other tribes, and at no time from time immemorial to  
 13 the present time has any of the rights and claims of said Indians in  
 14 and to said lands and premises been extinguished;

15 That said lands are situate in the County of Lake, State of  
 16 California, and more particularly described as follows, to wit:

17 PARCEL ONE. Island number one situate in the  
 18 North West quarter of Section 6 Township 13 North Range  
 19 7 West Mount Diablo Base Meridian and the South West  
 20 quarter of Section 31 Township 14 North Range 7 West  
 21 Mount Diablo Base and Meridian according to the govern-  
 22 ment survey thereof.

23 PARCEL TWO. All lands located within the North  
 24 East quarter of Section 6 Township 13 North of Range 7  
 25 West Mount Diablo Meridian with the exception of a  
 26 triangular shaped piece of land lying to the south of  
 27 a line running South 68 degrees and 40 minutes West from  
 28 a point 452.7 feet north of the quarter corner common to  
 29 Sections 5 and 6 of Township 13 North of Range 7 West  
 30 Mount Diablo Meridian.

31 All lands within the North West quarter of Sec-  
 32 tion 5 Township 13 North of Range 7 West Mount Diablo Base  
 Meridian lying to the west of a line commencing at a  
 point 2319.1 feet north and 167.5 feet east of the quarter  
 corner common to Sections 5 and 6 of Township 13 North  
 of Range 7 West Mount Diablo Meridian, thence running  
 South 0 degrees and 10 minutes East a distance of 1762.8  
 feet, thence running South 68 degrees and 40 minutes West  
 to a point where such line intersects the Section line  
 running North between Sections 5 and 6 of Township 13  
 North of Range 7 West Mount Diablo Meridian. This point  
 of intersection is a point 452.7 feet north of the quarter  
 corner common to Sections 5 and 6 of Township 13 North of  
 Range 7 West of Mount Diablo Meridian.

## II.

1           That on about August 13, 1874, said real property herein above  
2 described as PARCEL ONE and part of said real property herein described  
3 as PARCEL TWO was by mistake and inadvertance listed to the State of  
4 California by the United States of America in List #32 of indemnity  
5 school selections;

6           That on about September 15, 1874, said defendant, State of  
7 California, issued its certificate of purchase of said lands to the de-  
8 fendant, S. F. Butterworth;

9           That said defendant S. F. Butterworth thereafter assigned his  
10 said certificate of purchase to one R. S. Floyd, also known as Richard  
11 S. Floyd, and said defendant Thomas P. Madden;

12           That on about October 10, 1877, the said defendant, State of  
13 California, issued its patent to said lands to said R. S. Floyd, also  
14 known as Richard S. Floyd, and to said defendant Thomas P. Madden,  
15 which said patent was recorded in the office of the County Recorder  
16 in and for the said County of Lake on October 20, 1877, in Vol. 2 of  
17 Patents at page 250, Lake County Records;

18           That on August 25, 1892, the said defendant Thomas P. Madden  
19 executed and delivered to said defendant Alfred A. Wheeler a deed of  
20 conveyance covering said lands herein described as PARCEL ONE and  
21 part of PARCEL TWO, which deed was recorded on November 26, 1892, in  
22 the office of the County Recorder in and for the said County of Lake  
23 in Vol. 26 of Deeds, at page 241, Lake County Records;

24           That on November 18, 1892, a deed of conveyance was made, exe-  
25 cuted and delivered by the representative of the estate of said  
26 R. S. Floyd, also known as Richard S. Floyd, covering said PARCEL ONE  
27 and part of PARCEL TWO, to said defendant Alfred A. Wheeler, which  
28 deed of conveyance was recorded on January 18, 1893, in the office of  
29 the County Recorder in and for the said County of Lake in Vol. 26 of  
30 Deeds, at page 310, Lake County Records;

31           That within about a year prior to June 29, 1901, foreclosure  
32

1 proceedings were had in the matter of a mortgage theretofore given by  
2 said defendant Alfred A. Wheeler to said defendant Crocker First  
3 National Bank covering said PARCEL ONE and part of said PARCEL TWO, and  
4 on June 29, 1901, a commissioner's deed issued in favor of said de-  
5 fendant William O. B. Macdonough, which commissioner's deed was re-  
6 corded on July 15, 1901, in the office of the County Recorder in and  
7 for the said County of Lake, in Vol. 35 of Deeds, at page 80, Lake  
8 County Records;

9 That on May 27, 1902, the said defendant William O. B. Macdonough  
10 made, executed and delivered a deed of conveyance covering said PARCEL  
11 ONE and part of said PARCEL TWO to one Joseph M. Macdonough, which deed  
12 of conveyance was recorded July 12, 1903, in the office of the County  
13 Recorder in and for the said County of Lake, in Vol. 32 of Deeds, at  
14 page 398, Lake County Records;

15 That said Joseph M. Macdonough is dead and the estate of said  
16 Joseph M. Macdonough, deceased, is presently in process of administra-  
17 tion in the Superior Court in and for the County of San Mateo,  
18 California;

19 That said defendant John Doe One is the administrator of the  
20 estate of said Joseph M. Macdonough, deceased, and said defendant John  
21 Doe Two is the executor of the estate of said Joseph M. Macdonough,  
22 deceased;

23 That said defendants John Doe Three, John Doe Four, John Doe  
24 Five, John Doe Six, John Doe Seven, John Doe Eight, John Doe Nine, John  
25 Doe Ten, Jane Doe One, Jane Doe Two, Jane Doe Three, Jane Doe Four and  
26 Jane Doe Five are the heirs at law and devisees of said Joseph M.  
27 Macdonough, deceased;

28 That on about February 18, 1859, the defendant Frederick Billings  
29 made and filed in the United States Land Office an application for home-  
30 stead patent to the lands herein above described as PARCEL TWO (inclusive  
31 of other property) and in connection therewith filed in said United  
32

1 States Land Office an affidavit setting forth therein that all said  
2 lands were unoccupied and constitute public domain and was subject to  
3 entry and was not otherwise disposed of or appropriated;

4 That on about February 15, 1860, the United States of America,  
5 in pursuance of said application, by mistake and inadvertently issued  
6 its patent to said defendant Frederick Billings covering said lands  
7 described in said PARCEL TWO (and other property) which patent is re-  
8 corded in the office of the County Recorder of said Lake County in  
9 Vol. 1 of Patents, at pages 261 to 274, Lake County Records;

10 That on January 3, 1876, the said defendant, The California  
11 Borax Company, made, executed and delivered to said defendant, The  
12 Sulphur Bank Quicksilver Mining Company, its deed of conveyance cover-  
13 ing the lands described herein as PARCEL TWO (and other property),  
14 which deed of conveyance was recorded January 7, 1876, in the office of  
15 the County Recorder of said Lake County in Vol. 6 of Deeds, at page 573,  
16 Lake County Records;

17 That on August 14, 1900, the said defendant, The Sulphur Bank  
18 Quicksilver Mining Company, made, executed and delivered its deed of  
19 conveyance covering said PARCEL TWO (and other property) to said de-  
20 fendant Sulphur Bank Consolidated Quicksilver Mining Company, which  
21 deed of conveyance was recorded on May 6, 1901, in the office of the  
22 County Recorder of said Lake County in Vol. 32 of Deeds, at page 202,  
23 Lake County Records;

24 That on August 10, 1900, the said defendant, Sulphur Bank Con-  
25 solidated Quicksilver Mining Company, made, executed and delivered its  
26 deed of conveyance covering said PARCEL TWO (and other property) to  
27 said defendant, Empire Consolidated Quicksilver Mining Company, which  
28 deed of conveyance was recorded May 6, 1901, in the office of the  
29 County Recorder in and for the said County of Lake in Vol. 32 of Deeds  
30 at page 206, Lake County Records;

31 That on December 22, 1905, a commissioner's deed was made, ex-  
32

1       cuted and delivered to said defendant William S. Tevis in the matter  
2       of a foreclosure of a mortgage theretofore given by said defendant  
3       Empire Consolidated Quicksilver Mining Company, which deed of conveyance  
4       covered said property described as PARCEL TWO (and other property) and  
5       was recorded on December 28, 1905, in the office of the County Recorder  
6       in and for the said County of Lake in Vol. 36 of Deeds, at page 488,  
7       Lake County Records;

8               That on July 26, 1909, a "McInerny Decree Quieting Title" was  
9       issued in favor of said defendant William S. Tevis covering said real  
10      property described as PARCEL TWO, which decree was recorded on August 20,  
11      1909, in the office of the County Recorder in and for said County of  
12      La ke, in Vol. 42 of Deeds, at page 392, Lake County Records;

13              Tha t on December 9, 1911, the said defendant William S. Tevis  
14      and his wife, made, executed and delivered to said defendant William E.  
15      Gerber, as trustee, a deed covering said property described as PARCEL  
16      TWO (and other property), which deed w as recorded January 24, 1912, in  
17      the office of the County Recorder in and for the said County of Lake  
18      in Vol. 46 of Deeds, at page 344, Lake County Records;

19              That on March 12, 1906, said defendant, State of California,  
20      issued its patent to said defendant, Richard White, covering said real  
21      property described as PARCEL TWO (and other property), which patent was  
22      recorded in the office of the County Recorder in and for the said County  
23      of Lake on March 22, 1906, in Vol. 7 of Patents, at page 454, Lake  
24      County Records;

25              That on December 2, 1919, the said defendants, William S. Tevis  
26      and Mabel P. Tevis, his wife, made, executed and delivered their deed of  
27      conveyance covering said property described as PARCEL TWO (and other  
28      property) to one George T. Ruddock, which deed of conveyance was re-  
29      corded on December 27, 1919, in the office of the County Recorder in and  
30      for the said County of Lake in Vol. 57 of Deeds, at page 573, Lake  
31      County Records;

1           That on February 5, 1920, the said defendants, William S. Tevis  
2 and Habel P. Tevis, his wife, made, executed and delivered a deed of  
3 conveyance covering said real property described as PARCEL TWO (and  
4 other property) to said George T. Ruddock, which deed of conveyance was  
5 recorded April 15, 1920, in the office of the County Recorder in and  
6 for the said County of Lake in Vol. 59, of Deeds, at page 264, Lake  
7 County Records;

8           That on April 3, 1920, the said defendant William E. Gerber,  
9 as trustee, made, executed and delivered a deed of conveyance covering  
10 said PARCEL TWO (and other property) to said George T. Ruddock, which  
11 deed of conveyance was recorded on April 15, 1920, in the office of  
12 the County Recorder in and for the said County of Lake, Vol. 59 of  
13 Deeds, at page 265, Lake County Records;

14           That on September 22, 1906, the said defendant William S. Tevis  
15 made, executed and delivered a deed of conveyance covering said real  
16 property herein described as PARCEL TWO (and other property) to said  
17 defendant Clear Lake Quicksilver Mining Company, which deed of convey-  
18 ance was recorded on October 3, 1906, in the office of the County Re-  
19 corder in and for the said County of Lake in Vol. 39 of Deeds, at page  
20 160, Lake County Records.

21           That on May 18, 1912, a commissioner's deed was made, executed  
22 and delivered to said George T. Ruddock in the matter of an action  
23 entitled, "Nightingill vs. Clear Lake Quicksilver Mining Company",  
24 which deed of conveyance covers said property herein described as  
25 PARCEL TWO (and other property) and was recorded May 27, 1912, in the  
26 office of the County Recorder in and for the said County of Lake in  
27 Vol. 49 of Deeds, at page 4, Lake County Records;

28           That on November 5, 1917, a "McInerny Decree Quieting Title" was  
29 issued covering said property herein described as PARCEL TWO and which  
30 decree was recorded on November 5, 1917, in the office of the County  
31 Recorder in and for the said County of Lake in Vol. 55 of Deeds, at  
32



1 page 314, Lake County Records:

2 That on May 29, 1922, the said George T. Ruddock made, executed  
3 and delivered a certain deed of conveyance covering said property  
4 herein described as PARCEL TWO (and other property) to said defendant  
5 Raymond G. LaNoue, which deed of conveyance was recorded June 12, 1922,  
6 in the office of the County Recorder in and for the said County of Lake  
7 in Vol. 61 of Deeds, at page 585, Lake County Records;

8 That on May 29, 1922, the said defendant Raymond G. LaNoue made,  
9 executed and delivered a deed of conveyance covering said PARCEL TWO  
10 (and other property) to said defendant James N. O'Brien, which deed of  
11 conveyance was recorded June 12, 1922, in the office of the County  
12 Recorder in and for the said County of Lake, in Vol. 61 of Deeds, at  
13 page 587, Lake County Records;

14 That on December 5, 1922, the said defendant James N. O'Brien  
15 made, executed and delivered a deed of conveyance covering said property  
16 herein described as PARCEL TWO (and other property) to said defendant  
17 T. A. Morrissey, which deed of conveyance was recorded on July 10, 1922,  
18 in the office of the County Recorder in and for the said County of Lake  
19 in Vol. 62 of Deeds, at page 109, Lake County Records;

20 That on May 29, 1922, the said defendant T. A. Morrissey made a  
21 declaration of trust covering said property herein described as PARCEL  
22 TWO, which declaration of trust was recorded in the office of the  
23 County Recorder in and for the said County of Lake, in Vol. 62 of Deeds,  
24 at page 112, Lake County Records;

25 That on September 31, 1931, trustees of the said defendant  
26 Clear Lake Company made, executed and delivered a deed of conveyance  
27 covering said property herein described as PARCEL TWO (and other  
28 property) to said George T. Ruddock, which deed of conveyance was re-  
29 corded on October 9, 1931, in the office of the County Recorder in and  
30 for the said County of Lake in Vol. 75 of Official Records of Lake  
31 County, at page 292;



1 and possessed by Jim Brown, Mrs. Grace Barnes, Mr. Belton Barnes, Mr.  
 2 Tom Maranda, Mrs. Eva Maranda, Mr. Thomas Leon, Mrs. Lena Brown, Mrs.  
 3 Sara Morando, Mr. Fred A. Bogus, Mrs. Ethel Burgus, Mrs. Jodie Gonzales,  
 4 Steve Kelsey, Mr. Houghton Brown, Mrs. Houghton Brown, Mr. Little  
 5 Thomas, Mrs. Little Thomas, Mr. Johnnie Kelsey, Mrs. Effie Kelsey,  
 6 Cecil Thomas, Albert Thomas and George Luzintos, and each their pro-  
 7 genitors and ancestors, which persons last named and their progenitors  
 8 and ancestors are, and were, Indians and members of Tribal Indians  
 9 largely of the Pomo Indian Tribe, commonly called the Sulphur Bank  
 10 Band of Indians and, at all times, have been wards of the government  
 11 and under the supervision of the United States Indian Service;

12 That the said Indians above named and referred to, and their  
 13 ancestors, have actually, uninterruptedly and continuously, occupied,  
 14 used, cultivated, improved, enjoyed, claimed and been in possession of  
 15 said lands herein above described as PARCELS ONE and TWO from a time  
 16 prior to that of any claim thereto by any of the defendants herein  
 17 named and from a time prior to any claim thereto by any white person  
 18 or persons.

#### 19 IV.

20 That at the time, to wit, August 13, 1874, and prior thereto,  
 21 when said defendant, State of California, received from the United  
 22 States of America, List #32, indemnity school selections, and at the  
 23 time the said defendant, State of California, granted to said R. S.  
 24 Floyd, also known as Richard S. Floyd, and said defendant Thomas F.  
 25 Madden, the said patent recorded as aforesaid in Vol. 2 of Patents,  
 26 at page 250, Lake County Records, in the office of the County Recorder  
 27 of said County of Lake, the said lands described in this complaint  
 28 where, by reason of the premises, reserved and appropriated for, and  
 29 subject to the claims and rights of said Indians, and no right, title  
 30 or interest whatsoever therein passed to the said State of California  
 31 and/or to the said R. S. Floyd and Thomas F. Madden.

V.

That at the time, to wit, February 15, 1860, when said defendant  
1 Frederick Billings had issued to him the patent of the United States  
2 covering said lands herein described as PARCEL TWO and a portion of  
3 said lands herein described as PARCEL ONE, the said lands described in  
4 the complaint herein were, by reason of the premises, reserved and  
5 appropriated for, and subject to the claims and rights of said In-  
6 dians, and no right, title or interest whatsoever therein passed to  
7 said Frederick Billings.

VI.

8  
9 That plaintiff further shows that the patents and lists herein-  
10 before mentioned, as to all the lands hereinbefore specifically desig-  
11 nated, were issued without authority of law, for the reason that at the  
12 time of the issuance of such patents and lists, the said described  
13 lands were Indian lands and were lands already appropriated for said  
14 Indians long prior to any issuance of any such patents or lists;

15 That in issuing the said patents and lists affecting the said  
16 described lands, the officers or agents of the plaintiff acted by  
17 mistake and inadvertence, and that the said patents and lists, as far  
18 as they purport to convey said lands hereinbefore described, are void  
19 and of no effect as to said Indians and the United States of America;

20 That each said other defendants named herein claim to have some  
21 right, title and interest in said lands or to some part or portion  
22 thereof, and claim to have respectively derived the same from and  
23 through the said patent to said defendant Frederick Billings and/or  
24 that of the list or patent to said defendant, State of California;

25 That each said claim of right, title and interest in and to  
26 said lands by each said defendant is wholly void and of no effect as  
27 to said Indians.

VII.

28  
29 That the said Indians in this complaint referred to, together  
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1 with their ancestors and progenitors, have cleared the said lands  
 2 herein described as PARCELS ONE and TWO, built fences, barns, lodges,  
 3 houses, ceremonial halls (commonly called round houses), and other  
 4 valuable improvements thereon and have used said lands from time im-  
 5 memorial as a burying place for their dead, all of which would have  
 6 been well known to the said defendants, and each of them, prior to the  
 7 securing of purported interests and estates therein, had each said  
 8 defendant gone upon said lands described herein as PARCELS ONE and TWO  
 9 prior to the receiving or acquiring of such purported rights, interests  
 10 or estates in and to said lands.

11 VIII.

12 That plaintiff is not informed, and is unable to state what  
 13 portion of said lands each of said defendants claim, and that whatever  
 14 alleged right, title and interest of said defendants in each of them,  
 15 was acquired with knowledge of the facts of aforesaid and therefore  
 16 plaintiff prays that said defendants, and each of them, be compelled  
 17 to set forth and state with particularity the portions of said lands  
 18 and the right, title or interest so claimed by them.

19 IX.

20 That the said defendant, Crocker First National Bank, is a  
 21 corporation duly organized and existing under and by virtue of the laws  
 22 of the <sup>United</sup> States of America

23 That the said defendant, The California Borax Company, is a  
 24 corporation duly organized and existing under and by virtue of the laws  
 25 of the State of California

26 That the said defendant, The Sulphur Bank Quicksilver Mining  
 27 Company, is a corporation duly organized and existing under and by  
 28 virtue of the laws of the State of California

29 That the said defendant, the Sulphur Bank Consolidated Quicksilver  
 30 Mining Company, is a corporation duly organized and existing under and  
 31 by virtue of the laws of the State of California

1           That the said defendant, Empire Quicksilver Mining Company, is  
2 a corporation duly organized and existing under and by virtue of the  
3 laws of the State of California.

4           That the said defendant, Clear Lake Quicksilver Mining Company,  
5 is a corporation duly organized and existing under and by virtue of the  
6 laws of the State of California.

7           That the said defendant, Clear Lake Company, is a corporation  
8 duly organized and existing under and by virtue of the laws of the  
9 State of California.

10          That the said defendant, Homestake Gold Mining Company, is a  
11 corporation duly organized and existing under and by virtue of the laws  
12 of the State of California.

13          That the said defendant, Golden Gate Gold Mining Company, is a  
14 corporation duly organized and existing under and by virtue of the  
15 laws of the State of California.

16          That the said defendant, Power and Irrigation Company of Clear  
17 Lake, is a corporation duly organized and existing under and by virtue  
18 of the laws of the State of Arizona.

19          That the said defendant, Clear Lake Water Company, is a corpora-  
20 tion duly organized and existing under and by virtue of the laws of  
21 the State of California.

22          That the said defendant, California Trust and Savings Bank, is  
23 a corporation duly organized and existing under and by virtue of the  
24 laws of the State of California.

25          That the said defendant, Pacific Gas and Electric Company, is a  
26 corporation duly organized and existing under and by virtue of the laws  
27 of the State of California.

28          That the said defendant, Pacific Telephone and Telegraph Company,  
29 is a corporation duly organized and existing under and by virtue of the  
30 laws of the State of California.

31          That the said defendant, Bradley Mining Company, is a corporation  
32

1 duly organized and existing under and by virtue of the laws of the  
2 State of California .

3 X.

4 That the true names of the said defendants herein sued under  
5 fictitious names are to the plaintiff unknown and plaintiff asks leave  
6 of the court to amend the complaint with respect thereto when the true  
7 names of such defendants sued herein under fictitious names become  
8 known to plaintiff,

9 XI.

10 That the plaintiff is the owner in fee simple of and entitled  
11 to the possession of the lands herein described as PARCELS ONE and TWO,  
12 subject only to the rights of the said Indians therein and thereto,

13 WHEREOF, plaintiff prays that said defendants may be required  
14 to set forth the nature of their claims, and of the claim of each and  
15 all of them;


16 That all adverse claims of said defendants, and each of them,  
17 may be determined by decrees of this court;

18 That by said decree, it be declared and adjudged that this  
19 plaintiff is the owner of all of said premises in fee simple, subject  
20 to the rights of said Indians and/or other Indians therein and thereto,  
21 and that the defendants have no estate, nor interest whatever in or to  
22 said lands or premises, or any part thereof, and that the title of  
23 plaintiff thereto is good and valid;

24 And for costs of suit and for such other and further relief  
25 to this court shall seem meet and proper;

26 And further, that the said defendants and each of them be properly  
27 enjoined from setting up any claim to the said lands or any part thereof  
28 and from creating any cloud upon the title of plaintiff therein and  
29 thereto.

30 FRANK J. HENNESSY, United States Attorney.

31 By   
32 G. B. HJELTN, Assistant United States Attorney.

UNITED STATES OF AMERICA, )  
Northern District of California, ) ss.  
County of Sacramento. )

G. B. HJELM, being first duly sworn, deposes and  
says:

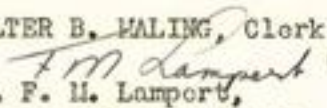
That he is an Assistant United States Attorney for  
the Northern District of California, and one of the attorneys  
for the plaintiff in the within entitled action; that he has  
read the foregoing Complaint and knows the contents thereof;  
that the same is true of his own knowledge except as to the  
matters which are therein stated on his information or  
belief, and as to those matters he believes them to be true.

That the reason why this verification is made by  
affiant and not by the plaintiff is that the plaintiff is  
a corporation sovereign.

That the sources of affiant's information and the  
grounds for his belief are the Abstracts of Title of the  
premises hereinbefore described, and official communications,  
records, files and documents received from the Department of  
the Interior of the United States.

  
G. B. HJELM

Subscribed and sworn to before me  
this 10<sup>th</sup> day of February, 1939.

WALTER B. WALING, Clerk  
By  (SEAL)  
F. M. Lampert,  
Deputy Clerk.



1 JOHN PARKS DAVIS  
2 705 Standard Oil Building  
3 San Francisco, California  
4 Telephone: DOuglas 1510

5 Attorney for Defendants,  
6 Estelle R. Davis, Ruth de  
7 Fremery, and Bradley Mining Co.

**FILED**

.....O'clock and.....Min.....

JUL 26 1940

**WALTER B. MALING,**  
CLERK.

66

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11  
12 Plaintiff,

13 vs.

14 STATE OF CALIFORNIA, et al,  
15 Defendants.

Civil No. 4068-L

16  
17  
18 ANSWER OF DEFENDANTS ESTELLE R. DAVIS,  
19 RUTH de FREMERY, AND BRADLEY MINING CO.

20 DEFENDANTS, ESTELLE R. DAVIS, RUTH de FREMERY and BRADLEY MINING  
21 CO. answer the complaint on file herein as follows:

22 I.

23 Answering paragraph I of said complaint, these  
24 defendants deny, generally and specifically, all and singular,  
25 each and every, the allegations of said paragraph.

26 II.

27 Answering paragraph II of said complaint, these  
28 defendants admit that on or about February 15, 1860, the United  
29 States of America, in pursuance of an Application for Homestead  
30 Patent, made and filed by the defendant, Frederick Billings,  
31 on or about February 18, 1859, issued its Patent to said  
32

1 defendant, Frederick Billings, covering lands included in  
2 PARCEL TWO, as described in said complaint, and other property,  
3 which Patent is recorded in the office of the County Recorder  
4 of Lake County, California, in Vol. 1 of Patents, at pages 261  
5 to 274, Lake County Records; but these defendants deny that said  
6 Patent was so issued by mistake or inadvertence.

7 Further answering paragraph II of said complaint,  
8 these defendants admit that on or about August 13, 1874, the  
9 real property described in said complaint as PARCEL ONE, and  
10 part of the real property described in said complaint as  
11 PARCEL TWO, was listed to the State of California by the United  
12 States of America in List 32 of Indemnity School Selections,  
13 but these defendants deny that such listing was by mistake or  
14 inadvertence.

15  
16 III.

17 Answering paragraph III of said complaint, these  
18 defendants deny, generally and specifically, all and singular,  
19 each and every, the allegations of said paragraph.

20 IV.

21 Answering paragraph IV of said complaint, these  
22 defendants deny, generally and specifically, all and singular,  
23 each and every, the allegations of said paragraph.

24 V.

25 Answering paragraph V of said complaint, these  
26 defendants deny, generally and specifically, all and singular,  
27 each and every, the allegations of said paragraph.

28 VI.

29 Answering paragraph VI of said complaint, these  
30 defendants admit that they claim to have some right, title and  
31 interest in and to a portion of the lands described in said  
32

1 complaint, and claim to have derived the same from and through  
2 the aforesaid patent issued to said defendant, Frederick  
3 Billings; and in this connection, these defendants further allege  
4 that defendants Estelle R. Davis and Ruth de Fremery, are the  
5 owners of, (and defendant, Bradley Mining Company, alleges that  
6 it has a lease and purchase agreement on), that portion of said  
7 lands particularly described as PARCEL TWO in paragraph I in the  
8 complaint filed herein.

9

VII.

10

11 Answering paragraph VII of said complaint, these  
12 defendants deny, generally and specifically, all and singular,  
13 each and every, the allegations of said paragraph.

14

VIII.

15

16 Answering paragraph VIII of said complaint, these  
17 defendants are without knowledge or information sufficient to  
18 form a belief as to the truth of the allegations contained  
19 therein, and basing their denials upon that ground, deny, generally  
20 and specifically, all and singular, each and every, the allegations  
21 contained therein.

22

IX.

23

24 Answering paragraph IX of said complaint, these  
25 defendants admit that defendant, Bradley Mining Company, is a  
26 corporation, duly organized and existing under and by virtue of  
27 the laws of the State of California; but these defendants deny  
28 that defendant, Homestake Gold Mining Company and Golden Gate  
29 Gold Mining Company, or either of them, are corporations now  
30 existing under and by virtue of the laws of the State of California,  
31 and in this connection, allege that said Homestake Gold Mining  
32 Company and said Golden Gate Gold Mining Company were dissolved  
and ceased to exist prior to the filing and serving of the complaint  
on file herein.

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X.

Answering paragraph X of said complaint, these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and basing their denials upon that ground, deny, generally and specifically, all and singular, each and every, the allegations therein contained.

XI.

Answering paragraph XI of said complaint, these defendants deny, generally and specifically, all and singular, each and every, the allegations of said paragraph.

FOR A FURTHER AND SEPARATE ANSWER TO SAID COMPLAINT, THESE DEFENDANTS ALLEGE:

That the Patent, alleged in the complaint to have been issued to said Frederick Billings, was issued by plaintiff to said Frederick Billings on or about February 15, 1860, approximately eighty years prior to the filing of the complaint in the present action, and that by reason of such lapse of time since the matters and things complained of are alleged to have taken place, it would be inequitable for this court to entertain this suit.

FOR A SECOND AND FURTHER SEPARATE ANSWER TO SAID COMPLAINT, THESE DEFENDANTS ALLEGE:

That plaintiff, and the Indians named in said complaint, and their ancestors and predecessors in interest, have been guilty of laches, and there has been such a long delay since the matters and things complained of are alleged to have taken place, that it would be inequitable for this court to entertain this suit.

FOR A THIRD AND FURTHER SEPARATE ANSWER TO SAID COMPLAINT, THESE DEFENDANTS ALLEGE:

That, between the said Billings patent application on

1 February 18, 1859, and the issuance by plaintiff to said Billings  
2 of said Patent, approximately one year later, on February 15,  
3 1860, the plaintiff had full opportunity to survey the lands  
4 described as PARCEL TWO in paragraph I of the complaint and to  
5 investigate the matters and things complained of in said complaint.  
6 These defendants further allege, upon information and belief,  
7 that, in pursuance of said application for patent, plaintiff  
8 instituted and obtained a survey with plats and field notes  
9 concerning said PARCEL TWO; These defendants allege that by the  
10 subsequent issuance of said Patent to said Frederick Billings,  
11 predecessor of these defendants, on February 15, 1860, plaintiff  
12 is estopped from maintaining this action.

13  
14 FOR A FOURTH AND FURTHER SEPARATE ANSWER TO SAID COMPLAINT, THESE  
15 DEFENDANTS ALLEGE:

16 That this action was not brought within six years after  
17 the date of the issuance of the respective patents mentioned in  
18 the complaint, and that the action is barred by the provisions  
19 of the Act of March 3, 1891, Chap. 561, Sec. 8, 26 Stat. and L.  
20 1095, 1099 (Title 43 of the U. S. Code, Sec. 1166).

21 FOR A FIFTH FURTHER AND SEPARATE ANSWER TO SAID COMPLAINT, THESE  
22 DEFENDANTS ALLEGE:

23 That neither the plaintiff, nor the Indians named in  
24 said complaint, nor any of their ancestors or predecessors in  
25 interest, was seized or possessed of any of the property  
26 described in said complaint within five years before the commence-  
27 ment of the action, and that the action is barred by the  
28 provisions of Sec. 318 of the Code of Civil Procedure of the  
29 State of California.

30  
31 FOR A SIXTH FURTHER AND SEPARATE ANSWER TO SAID COMPLAINT, THESE  
32 DEFENDANTS ALLEGE:

1           That the action was not commenced within three years  
2 after accrual of the alleged cause of action, and is barred by  
3 the provisions of Sec. 338 of the Code of Civil Procedure of the  
4 State of California.

5 FOR A SEVENTH AND SEPARATE ANSWER TO SAID COMPLAINT, THESE  
6 DEFENDANTS ALLEGE:

7           That said action is barred by the provisions of Sec.  
8 343 of the Code of Civil Procedure of the State of California.

9  
10 FOR AN EIGHTH FURTHER AND SEPARATE ANSWER TO SAID COMPLAINT, THESE  
11 DEFENDANTS ALLEGE:

12           That defendants, Estelle R. Davis and Ruth de Fremery,  
13 and their predecessors in interest, have been in exclusive and  
14 continuous possession of the real property hereinbefore described  
15 as owned by said defendants, under a claim of right, and they  
16 have claimed ownership of said real property for more than twenty  
17 years next preceding the commencement of the action; that such  
18 possession has been open and notorious, and adverse to the  
19 plaintiff and to the Indians named in said complaint, and to their  
20 ancestors and predecessors. That said defendants, Estelle R.  
21 Davis and Ruth de Fremery, and their predecessors in interest,  
22 have paid all taxes assessed against said real property.

23  
24 FOR A NINTH FURTHER AND SEPARATE ANSWER TO SAID COMPLAINT, THESE  
25 DEFENDANTS ALLEGE:

26           That defendants, Estelle R. Davis and Ruth de Fremery,  
27 acquired ownership of the real property hereinbefore described  
28 as owned by them, pursuant to a Decree of Distribution in the  
29 matter of the Estate of their father - George T. Ruddock, deceased -  
30 on June 18, 1937, which Decree of Distribution was recorded on  
31 June 22, 1937, in the office of the County Recorder in and for said  
32 County of Lake, Vol. 115 of Official Records of Lake County at

1 page 346; that said George T. Ruddock paid a good and valuable  
2 consideration for the real property hereinbefore described as  
3 presently owned by defendants, Estelle R. Davis and Ruth de Fremery;  
4 and that at the time of acquiring said real property he had no  
5 knowledge or notice of any of the matters alleged in paragraphs  
6 I, III, IV, V, VII and VIII; that each of the predecessors of  
7 George T. Ruddock paid a good and valuable consideration for  
8 said land at the time he acquired the same, and acquired the same  
9 without knowledge or notice of any of the matters alleged in  
10 paragraphs I, III, IV, V, VII and VIII. That said George T.  
11 Ruddock, and each of his predecessors in interest, was a bona fide  
12 purchaser for value of said real property.

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WHEREFORE, these defendants pray that they be hence  
dismissed with their costs herein incurred.

*Allen Parks Davis*  
Attorney for defendants, Estelle R.  
Davis, Ruth de Fremery and Bradley  
Mining Company


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STATE OF CALIFORNIA )  
City and County of San Francisco ) ss

E. A. GRIFFEN, being duly sworn, deposes and says:  
That he is the Secretary of Bradley Mining Company, one of the  
defendants in the above-entitled action; that he has read the  
foregoing Answer and knows the contents thereof; and that the  
same is true of his own knowledge, except as to the matters which  
are therein stated on information or believe, and as to those  
matters, he believes it to be true.



Subscribed and sworn to before me  
this 25th day of July, 1940

  
NOTARY PUBLIC  
in and for the City and County of  
San Francisco, State of California.



1 HOWARD J. FINN, and  
2 BROBECK, PHLEGER & HARRISON,  
3 Crocker Building,  
4 San Francisco, California,  
5 Telephone: Sutter 0666,  
6  
7 Attorneys for Defendants  
8 Joan Macdonough, a minor,  
9 and Mary Macdonough, a minor.

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**FILED**

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JUN 20 1940

**WALTER B. MALING,**  
CLERK.

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,  
Plaintiff,  
-vs-  
THE STATE OF CALIFORNIA, et al.,  
Defendants.

No. 4063 L.  
Civil.

ANSWER OF DEFENDANTS JOAN MACDONOUGH,  
A MINOR AND MARY MACDONOUGH, A MINOR.

The defendants, Joan Macdonough, a minor, and  
Mary Macdonough, a minor, by William O. B. Macdonough,  
their next friend, answer the complaint on file herein  
as follows:

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I.

Answering paragraph I of said complaint, the defendants deny, specifically and generally, all and singular each and every the averments of said paragraph.

II.

Answering paragraph II of said complaint, these defendants admit that on or about August 13, 1874, the real property described in said complaint as Parcel One, and part of the real property described in said complaint as Parcel Two, was listed to the State of California by the United States of America in List 32 of Indemnity School Selections, but these defendants deny that such listing was by mistake or inadvertence.

Furthering answering paragraph II of said complaint, these defendants admit that on or about February 15, 1860, the United States of America, in pursuance of an application for Homestead Patent made and filed by the defendant Frederick Billings, issued its patent to said defendant Frederick Billings covering lands included in Parcel Two as described in said complaint, and other property, which patent is recorded in the office of the County Recorder of Lake County, in Volume One of Patents, pages 261 - 274, Lake County Records; but these defendants deny that said patent was so issued by mistake or inadvertence.

III.

Answering paragraph III of said complaint, these defendants deny, generally and specifically, all and singular each and every the averments therein contained.

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IV.

Answering paragraph IV of said complaint, these defendants deny, specifically and generally, all and singular each and every the allegations therein contained.

V.

Answering paragraph V of said complaint, these defendants deny, specifically and generally, all and singular each and every the allegations therein contained.

VI.

Answering paragraph VI of said complaint, these defendants admit that the defendant William O. B. Macdonough as administrator with the will annexed of the estate of Joseph M. Macdonough, deceased, claims to have some right, title and interest in and to a portion of the lands described in said complaint, and claims to have derived the same from and through the list or patent to the defendant State of California. In this connection, these defendants allege that the defendant William O.B.Macdonough, as administrator with the will annexed of the estate of Joseph M. Macdonough, deceased, is the owner of that portion of said lands particularly described as follows, to-wit:

PARCEL ONE: Island number one situate in the Northwest quarter of Section 6, Township 13 North, Range 7 West, Mount Diablo Base Meridian, and the Southwest quarter of Section 31, Township 14 North, Range 7 West, Mount Diablo Base and Meridian according to the government survey thereof.

PARCEL TWO: A small island situated in the Northeast quarter of Section 6 and in the Northwest quarter of Section 5, Township 13 North, Range 7 West, Mount Diablo Base and Meridian, containing 1.73 acres, more or less.

1 These defendants deny, specifically and generally, all and  
2 singular each and every the averments of said paragraph  
3 not hereinbefore expressly admitted.

4

5 VII.

6 Answering paragraph VII of said complaint, these  
7 defendants deny, specifically and generally, all and singu-  
8 lar each and every the averments therein contained.

9

10 VIII.

11 Answering paragraph VIII of said complaint, these  
12 defendants are without knowledge or information sufficient  
13 to form a belief as to the truth of the averments contained  
14 therein, and basing their denials upon that ground deny,  
15 specifically and generally, all and singular each and every  
16 the averments therein contained.

17

18 IX.

19 Answering paragraph X of said complaint, these  
20 defendants are without knowledge or information sufficient  
21 to form a belief as to the truth of the averments contained  
22 therein, and basing their denials upon that ground deny,  
23 specifically and generally, all and singular each and every  
24 the averments therein contained.

25

26 X.

27 Answering paragraph XI of said complaint, these  
28 defendants deny, specifically and generally, all and singu-  
29 lar each and every the averments contained therein.

30

1           For a further and separate answer to said complaint  
2 these defendants allege:

3           That the real property described in said complaint  
4 which was listed to the State of California by the United  
5 States of America in List 32 of Indemnity School Selections  
6 was selected by the State of California in lieu of sixteenth  
7 and thirty-sixth sections lying within Mexican grants, of  
8 which grants the final survey had not been made at the date  
9 of such selection by said State. That thereafter, on or  
10 about March 1, 1877, the Congress of the United States of  
11 America confirmed to said State the title to the real  
12 property so selected by said State.

13

14           For a second further and separate answer to said  
15 complaint, these defendants allege:

16           That plaintiff, and the Indians named in said com-  
17 plaint and their ancestors and predecessors in interest,  
18 have been guilty of laches, and so long a time has elapsed  
19 since the matters and things complained of took place, that  
20 it would be inequitable for this Court to take cognizance  
21 thereof.

22

23           For a third further and separate answer to said  
24 complaint, these defendants allege:

25           That the action was not brought within six years  
26 after the date of the issuance of the respective patents  
27 mentioned in the complaint, and that the action is barred  
28 by the provisions of Section 1166 of Title 43 of the  
29 United States Code.

30

1           For a fourth further and separate answer to said  
2 complaint, these defendants allege:

3           That neither the plaintiff, nor the Indians named  
4 in said complaint nor any of their ancestors or predecessors  
5 in interest, was seized or possessed of any of the property  
6 described in said complaint within five years before the  
7 commencement of the action, and that the action is barred  
8 by the provisions of Section 318 of the Code of Civil Pro-  
9 cedure of the State of California.

10           For a fifth further and separate answer to said  
11 complaint, these defendants allege:

12           That the action was not commenced within three  
13 years after accrual of the cause of action, and is barred  
14 by the provisions of Section 338 of the Code of Civil Pro-  
15 cedure of the State of California.

16           For a sixth further and separate answer to said  
17 complaint these defendants allege:

18           That the defendant William O.B.Macdonough as admin-  
19 istrator with the will annexed of the estate of Joseph M. Mac-  
20 donough, Deceased, and his predecessors in interest, have been  
21 in exclusive and continuous possession of the real property  
22 hereinbefore described as owned by said defendant, under a  
23 claim of right, and have claimed ownership of said real  
24 property, for more than twenty years next preceding the  
25 commencement of the action. That such possession has  
26 been open and notorious, and adverse to the plaintiff and  
27 to the Indians named in said complaint and to their ances-  
28 tors and predecessors. That said defendant and his prede-  
29 cessors in interest have paid all taxes assessed against  
30 said real property.

1 For a seventh further and separate answer to said  
2 complaint, these defendants allege:

3  
4 That Joseph M. Macdonough paid a good and valuable  
5 consideration for the real property hereinbefore in this  
6 answer described, and that at the time he acquired said real  
7 property he had no knowledge or notice of any of the matters  
8 alleged in paragraphs I, III, IV, V, VI, VII and VIII of said  
9 complaint; that each of the predecessors of said Joseph M.  
10 Macdonough paid a good and valuable consideration for said  
11 land at the time he acquired the same, and acquired the same  
12 without knowledge or notice of any of the matters alleged  
13 in paragraphs I, III, IV, V, VI, VII and VIII of said com-  
14 plaint. That said Joseph M. Macdonough, and each of his  
15 predecessors in interest, was a bona fide purchaser for  
16 value of said real property.

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18  
19 WHEREFORE, these defendants pray that they be  
20 hence dismissed, with their costs herein incurred.

21  
22 Burbeck Phleg & Munson

23  
24 Howard Fin

25 Attorneys for Defendants  
26 Joan Macdonough, a minor,  
27 and Mary Macdonough, a  
28 minor.  
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STIPULATION

IT IS HEREBY STIPULATED, by and between the plaintiff and the defendants Joan Macdonough, a minor, and Mary Macdonough, a minor, through their respective attorneys, that the foregoing answer may be filed.

Frank J. Henning  
Emmet J. Scull  
Attorneys for Plaintiff.

Howard Fin  
Robert Phleg, Dawson  
Attorneys for defendants,  
Joan Macdonough, a minor, and  
Mary Macdonough, a minor.

IT IS SO ORDERED:

Martin J. Welch  
Judge of the District Court.

*[Faint, illegible text and markings at the bottom of the page, possibly a stamp or bleed-through.]*



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the source and receipt of a copy of the within is hereby  
made this 7th day of June, 1940.  
Emmet J. Scovell  
Attorney for Plaintiff.

Witness my hand and seal of the District Court  
at St. Paul, Minnesota, this 7th day of June, 1940.  
Walter E. [Signature]  
Judge of the District Court

Witness my hand and seal of the District Court  
at St. Paul, Minnesota, this 7th day of June, 1940.  
[Signature]  
Judge of the District Court

Witness my hand and seal of the District Court  
at St. Paul, Minnesota, this 7th day of June, 1940.  
[Signature]  
Judge of the District Court

Witness my hand and seal of the District Court  
at St. Paul, Minnesota, this 7th day of June, 1940.  
[Signature]  
Judge of the District Court

WITNESSES

1 HOWARD J. FINN, and  
2 BROBECK, PHLEGER & HARRISON,  
3 Crocker Building,  
San Francisco, California,  
Telephone: Sutter 0666,

4 Attorneys for Defendants  
5 William O.B.Macdonough and  
6 William O.B.Macdonough as  
7 Administrator, etc.

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**FILED**  
.....O'clock and.....Min.....  
JUN 1 - 1940  
**WALTER B. MALING,**  
CLERK.

14 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
15 OF CALIFORNIA, NORTHERN DIVISION.

17 UNITED STATES OF AMERICA, )

18 Plaintiff, )

19 -vs- )

20 THE STATE OF CALIFORNIA, et al., )

21 Defendants. )

No. 4068 L.

Civil.

22  
23 ANSWER OF DEFENDANT WILLIAM O.B.MACDONOUGH  
24 AND OF DEFENDANT WILLIAM O.B.MACDONOUGH AS  
25 ADMINISTRATOR WITH THE WILL ANNEXED OF THE  
26 ESTATE OF JOSEPH M. MACDONOUGH, DECEASED,  
SUED HEREIN AS JOHN DOE ONE, TO COMPLAINT.

27 The defendant William O.B.Macdonough and the de-  
28 fendant William O.B.Macdonough as administrator with the  
29 will annexed of the estate of Joseph M. Macdonough, Deceased,  
30 answer the complaint on file herein as follows:

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I.

Answering paragraph I of said complaint, the defendants deny, specifically and generally, all and singular each and every the averments of said paragraph.

II.

Answering paragraph II of said complaint, these defendants admit that on or about August 13, 1874, the real property described in said complaint as Parcel One, and part of the real property described in said complaint as Parcel Two, was listed to the State of California by the United States of America in List 32 of Indemnity School Selections, but these defendants deny that such listing was by mistake or inadvertence.

Further answering paragraph II of said complaint, these defendants admit that on about February 15, 1860, the United States of America, in pursuance of an application for Homestead Patent made and filed by the defendant Frederick Billings, issued its patent to said defendant Frederick Billings covering lands included in Parcel Two as described in said complaint, and other property, which patent is recorded in the office of the County Recorder of Lake County, in Volume One of Patents, pages 261 - 274, Lake County Records; but these defendants deny that said patent was so issued by mistake or inadvertence.

III.

Answering paragraph III of said complaint, these defendants deny, generally and specifically, all and singular each and every the averments therein contained.

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IV.

Answering paragraph IV of said complaint, these defendants deny, specifically and generally, all and singular each and every the allegations therein contained.

V.

Answering paragraph V of said complaint, these defendants deny, specifically and generally, all and singular each and every the allegations therein contained.

VI.

Answering paragraph VI of said complaint, these defendants admit that the defendant William O. B. Macdonough as administrator with the will annexed of the estate of Joseph M. Macdonough, deceased, claims to have some right, title and interest in and to a portion of the lands described in said complaint, and claims to have derived the same from and through the list or patent to the defendant State of California. In this connection, these defendants allege that the defendant William O. B. Macdonough, as administrator with the will annexed of the estate of Joseph M. Macdonough, deceased, is the owner of that portion of said lands particularly described as follows, to-wit:

PARCEL ONE: Island number one situate in the Northwest quarter of Section 6, Township 13 North, Range 7 West, Mount Diablo Base Meridian, and the Southwest quarter of Section 31, Township 14 North, Range 7 West, Mount Diablo Base and Meridian according to the government survey thereof.

PARCEL TWO: A small island situated in the Northeast quarter of Section 6 and in the Northwest quarter of Section 5, Township 13 North, Range 7 West, Mount Diablo Base and Meridian, containing 1.73 acres, more or less.

1 These defendants deny, specifically and generally, all and  
2 singular each and every the averments of said paragraph  
3 not hereinbefore expressly admitted.  
4

5 VII.

6 Answering paragraph VII of said complaint, these  
7 defendants deny, specifically and generally, all and singu-  
8 lar each and every the averments therein contained.  
9

10 VIII.

11 Answering paragraph VIII of said complaint, these  
12 defendants are without knowledge or information sufficient  
13 to form a belief as to the truth of the averments contained  
14 therein, and basing their denials upon that ground deny,  
15 specifically and generally, all and singular each and every  
16 the averments therein contained.  
17

18 IX.

19 Answering paragraph X of said complaint, these  
20 defendants are without knowledge or information sufficient  
21 to form a belief as to the truth of the averments contained  
22 therein, and basing their denials upon that ground deny,  
23 specifically and generally, all and singular each and every  
24 the averments therein contained.  
25

26 X.

27 Answering paragraph XI of said complaint, these  
28 defendants deny, specifically and generally, all and singu-  
29 lar each and every the averments contained therein.  
30

1           For a further and separate answer to said complaint  
2 these defendants allege:

3           That the real property described in said complaint  
4 which was listed to the State of California by the United  
5 States of America in List 32 of Indemnity School Selections  
6 was selected by the State of California in lieu of sixteenth  
7 and thirty-sixth sections lying within Mexican grants, of  
8 which grants the final survey had not been made at the date  
9 of such selection by said State.     That thereafter, on or  
10 about March 1, 1877, the Congress of the United States of  
11 America confirmed to said State the title to the real property  
12 so selected by said State.

13  
14           For a second further and separate answer to said  
15 complaint, these defendants allege:

16           That plaintiff, and the Indians named in said com-  
17 plaint and their ancestors and predecessors in interest,  
18 have been guilty of laches, and so long a time has elapsed  
19 since the matters and things complained of took place, that  
20 it would be inequitable for this Court to take cognizance  
21 thereof.

22  
23           For a third further and separate answer to said  
24 complaint, these defendants allege:

25           That the action was not brought within six years  
26 after the date of the issuance of the respective patents  
27 mentioned in the complaint, and that the action is barred  
28 by the provisions of Section 1166 of Title 43 of the  
29 United States Code.

30

1           For a fourth further and separate answer to said  
2 complaint, these defendants allege:

3           That neither the plaintiff, nor the Indians named  
4 in said complaint nor any of their ancestors or predecessors  
5 in interest, was seized or possessed of any of the property  
6 described in said complaint within five years before the  
7 commencement of the action, and that the action is barred  
8 by the provisions of Section 318 of the Code of Civil Pro-  
9 cedure of the State of California.

10           For a fifth further and separate answer to said  
11 complaint, these defendants allege:

12           That the action was not commenced within three  
13 years after accrual of the cause of action, and is barred  
14 by the provisions of Section 338 of the Code of Civil Pro-  
15 cedure of the State of California.

16  
17           For a sixth further and separate answer to said  
18 complaint, these defendants allege:

19           That the defendant William O.B.Macdonough as admin-  
20 istrator with the will annexed of the estate of Joseph M. Mac-  
21 donough, Deceased, and his predecessors in interest, have been  
22 in exclusive and continuous possession of the real property  
23 hereinbefore described as owned by said defendant, under a  
24 claim of right, and have claimed ownership of said real  
25 property, for more than twenty years next preceding the  
26 commencement of the action.           That such possession has  
27 been open and notorious, and adverse to the plaintiff and  
28 to the Indians named in said complaint and to their ances-  
29 tors and predecessors.           That said defendant and his prede-  
30 cessors in interest have paid all taxes assessed against

1 said real property.

2

3 For a seventh further and separate answer to said  
4 complaint, these defendants allege:

5 That Joseph M. Macdonough paid a good and valuable  
6 consideration for the real property hereinbefore in this  
7 answer described, and that at the time he acquired said real  
8 property he had no knowledge or notice of any of the matters  
9 alleged in paragraphs I, III, IV, V, VI, VII and VIII of said  
10 complaint; that each of the predecessors of said Joseph M.  
11 Macdonough paid a good and valuable consideration for said  
12 land at the time he acquired the same, and acquired the same  
13 without knowledge or notice of any of the matters alleged  
14 in paragraphs I, III, IV, V, VI, VII and VIII of said  
15 complaint. That said Joseph M. Macdonough, and each of  
16 his predecessors in interest, was a bona fide purchaser  
17 for value of said real property.

18

19 WHEREFORE, THESE DEFENDANTS PRAY THAT THEY BE  
20 hence dismissed, with their costs herein incurred.

21

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*Robert Phleggs & Hamilton*  
\_\_\_\_\_  
*Howard Finin*  
\_\_\_\_\_

Attorneys for Defendants  
William O. B. Macdonough, and  
William O. B. Macdonough as  
administrator with the will  
annexed of the estate of Joseph  
M. Macdonough, Deceased, sued  
herein as John Doe One.





1 over the age of 21 years, and not a party to nor interested  
2 in the above-entitled action, and am employed by Messrs.  
3 Brobeck, Phleger & Harrison, attorneys for defendants  
4 William O.B.Macdonough and William O.B.Macdonough as admin-  
5 istrator with the will annexed of the estate of Joseph M.  
6 Macdonough, Deceased, in the above-entitled action.

7 That Messrs. Brobeck, Phleger & Harrison reside  
8 and have their offices in San Francisco, California; that  
9 the United States Attorney has his offices in the City of  
10 Sacramento, California, and that there is a regular daily  
11 communication by mail between San Francisco, California,  
12 and Sacramento, California.

13 I did, on the 31st day of May, 1940, on behalf of  
14 the above-named defendants and their said attorneys, deposit  
15 in the United States Post Office at San Francisco, California,  
16 copies of the foregoing Answer of defendants William O. B.  
17 Macdonough and William O.B.Macdonough as administrator, etc.,  
18 to the complaint in the above-entitled action, addressed to  
19 said United States Attorney, enclosed in a sealed envelope,  
20 with the postage thereon fully prepaid. That said documents  
21 so enclosed in a sealed envelope were addressed to said  
22 United States Attorney, as follows:

23 "Frank J. Hennessy,  
24 United States Attorney,  
25 Post Office Building,  
26 Sacramento, California.  
27 Attention: Mr. C. B. Hjelm,  
28 Assistant United States Attorney."

*C. B. Hjelm*

28 Subscribed and sworn to before me  
29 this 31st day of May, 1940.

30 Eugene P. Jones  
Notary Public

in and for the City and County of  
San Francisco, State of California.

RETURN ON SERVICE OF WRIT

United States of America, }  
Northern District of California } ss:

I hereby certify and return that I served the annexed Alias Summons with copy of Complaint attached thereto on the therein-named RICHARD ROWE FIVE, by serving H. Vincent Keeling, as Administrator of the Estate of Frederick Billings, deceased, and

by handing to and leaving a true and correct copy thereof with H. Vincent Keeling personally at Lucerne, California in said District on the 17th day of March, A.D. 1940.

Marshal's Fees

Travel 8 14.05  
Service 2.00  
16.05

GEORGE VICE

U.S. Marshal.

By

*V. J. Ryan*

Deputy.

193v-490-v

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FRANK J. HENNESSY,  
United States Attorney,  
G. B. HJELM,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff.

~~COPY~~

58

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,

vs.

THE STATE OF CALIFORNIA; S. F. BUTTERWORTH; ALFRED  
A. WHEELER; CROCKER FIRST NATIONAL BANK, A CORPO-  
RATION; WILLIAM O. B. MACDONOUGH; JOHN DOE ONE, AS  
ADMINISTRATOR OF THE ESTATE OF JOSEPH M. MAC-  
DONOUGH, DECEASED; JOHN DOE TWO, AS EXECUTOR OF  
THE ESTATE OF JOSEPH M. MACDONOUGH, DECEASED; JOHN  
DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE, JOHN DOE  
SIX, JOHN DOE SEVEN, JOHN DOE EIGHT, JOHN DOE NINE  
JOHN DOE TEN, JANE DOE ONE, JANE DOE TWO, JANE DOE  
THREE, JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
LAW AND/OR DEVICES OF THE ESTATE OF JOSEPH M.  
MACDONOUGH, DECEASED; FREDERICK BILLINGS, THE  
CALIFORNIA BORAX COMPANY, A CORPORATION; THE  
CALIFORNIA BORAX COMPANY, A CO-PARTNERSHIP; THE  
SULPHUR BANK QUICKSILVER MINING COMPANY, A CORPO-  
RATION; THE SULPHUR BANK CONSOLIDATED QUICKSILVER  
MINING COMPANY, A CORPORATION; EMPIRE CONSOLIDATED  
QUICKSILVER MINING COMPANY, A CORPORATION; WILLIAM  
E. GERBER; RICHARD WHITE; CLEAR LAKE QUICKSILVER  
MINING COMPANY, A CORPORATION; RAYMOND G. LAHOUE;  
JAMES H. O'BRIEN; T. A. MORRISSEY; CLEAR LAKE  
COMPANY, A CORPORATION; ESTELLE R. DAVIS; RUTH  
deFREMERY; CLINTON E. DOLBEAR; P. R. BRADLEY;  
EDWARD A. NUTTER; A. T. HATHAWAY; HOMESTAKE GOLD  
MINING COMPANY, A CORPORATION; GOLDEN GATE GOLD  
MINING COMPANY, A CORPORATION; RICHARD ROWE ONE;  
RICHARD ROWE TWO; RICHARD ROWE THREE; RICHARD ROWE  
FOUR; RICHARD ROWE FIVE; JANE ROWE ONE; JANE ROWE  
TWO; JANE ROWE THREE; JANE ROWE FOUR; JANE ROWE  
FIVE; SAM BLAKE CORPORATION ONE; SAM BLAKE COR-  
PORATION TWO; SAM BLAKE CORPORATION THREE; SAM  
BLAKE CORPORATION FOUR; SAM BLAKE CORPORATION  
FIVE; POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
A CORPORATION; CLEAR LAKE WATER COMPANY, A COR-  
PORATION; CALIFORNIA TRUST AND SAVINGS BANK, A  
CORPORATION; PACIFIC GAS AND ELECTRIC COMPANY, A  
CORPORATION; PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, A CORPORATION; BRADLEY MINING COMPANY, A  
CORPORATION,

Defendants.

FILED  
O'clock and Min.  
MAR 19 1940  
WALTER B. MALING,  
CLERK.

4068

CIVIL NO. \_\_\_\_\_

Alias  
SUMMONS.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve (\*) upon FRANK J. HENNESSY, United States Attorney for the Northern District of California, plaintiff's attorney, whose address is Room 404, New Post Office Building, Sacramento, California, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WALTER B. MALING, Clerk

(S E A L)

By: F.M. Lampert  
F.M. LAMPERT  
Deputy Clerk

DATED: Sacramento, Calif.,  
March 12<sup>th</sup>  
~~February 10<sup>th</sup>~~, 1939.

(\*) Rule 5 (d) "All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter."

---oOo---

UNITED STATES MARSHAL'S OFFICE )  
Northern District of California. ) ss

14<sup>th</sup> I hereby certify that I received the within writ on the 14<sup>th</sup> day of March, 1939 and personally served the same on the 17<sup>th</sup> day of March, 1939 by delivering to, and leaving with \_\_\_\_\_ one of said defendants named therein personally, at the City of \_\_\_\_\_, County of \_\_\_\_\_ in said District, a copy thereof, together with a copy of the complaint attached thereto.

GEORGE VICE, United States Marshal

By: \_\_\_\_\_  
Deputy

\_\_\_\_\_, Calif.  
\_\_\_\_\_, 1939.

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JOHN PARKS DAVIS  
705 Standard Oil Building  
San Francisco, California  
Telephone: DOuglas 1510

Attorney for Defendants,  
Estelle R. Davis, Ruth de  
Fremery, and Bradley Mining Co.

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**FILED**  
O'clock and Min.  
MAR 6 - 1940  
**WALTER B. MALING,**  
CLERK.

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, : Civil No. 4068-L  
 :  
 vs. :  
 :  
 STATE OF CALIFORNIA, :  
 et al., :  
 :  
 Defendants. :

NOTICE OF MOTION OF DEFENDANTS ESTELLE R. DAVIS, RUTH  
de FREMERY AND BRADLEY MINING CO. TO DISMISS ACTION,  
FOR A MORE DEFINITE STATEMENT OF CERTAIN MATTERS ALLEGED  
IN PLAINTIFF'S COMPLAINT, AND FOR A BILL OF PARTICULARS.

To: FRANK J. HENNESSY, ESQ., United States Attorney, and  
G. B. HJELM, ESQ., Assistant United States Attorney,  
Attorneys for Plaintiff herein.

I.

You will please take notice that on March 11<sup>th</sup>, 1940,  
at 10:00 A.M., of said day, or as soon thereafter as counsel can  
be heard, ESTELLE R. DAVIS, RUTH de FREMERY, and BRADLEY MINING  
CO., three of the defendants in the above entitled action, and  
each of them, will move the above entitled court, at its court  
room situated in the Federal Post Office Building, Sacramento,  
California, to dismiss, and for an order dismissing the above  
entitled action, upon each and every of the following grounds:

(1) Said complaint fails to state a claim or cause

1 of action against said defendants upon which relief can be  
2 granted herein;

3 (2) That it appears from the face of said complaint  
4 that the claim or cause of action therein stated is barred by  
5 the provisions of the Act of March 3, 1891, Chapter 561, sec. 8,  
6 26 Stat. at L. 1095, 1099, limiting the time within which suits  
7 may be brought by the United States to annul patents;

8 (3) That it appears upon the face of said complaint  
9 that the claim or cause of action therein stated is barred by  
10 lapses of time;

11 (4) That it appears upon the face of said complaint  
12 that the claim or cause of action therein stated is barred by  
13 the laches of plaintiff or its wards therein referred to or by  
14 the laches of both;

15 (5) That it appears upon the face of said complaint  
16 that the claim or cause of action therein stated is barred  
17 by estoppel.

## 18 II

19 You will further take notice that at said time and  
20 place, above designated, said defendants will move the said  
21 court for a more definite statement of the following matters,  
22 referred to in said complaint, and for an order requiring plain-  
23 tiff to make more definite the following portion of, and matters  
24 contained in, said complaint:

25 Said complaint fails to show, and these defendants can  
26 not ascertain therefrom:

### 27 1) Paragraph I, (p.2)

28 (a) In what respect the lands described in said  
29 paragraph were "Indian" lands and what is the meaning and  
30 intent of the phrase "Indian lands";

31 (b) How and in what manner said Indians referred to  
32 "occupied" or "used" or "enjoyed" or "claimed" the lands or

1 any part thereof described in said paragraph during the period  
2 of fifty years, or any part thereof, prior to February 18, 1859,  
3 or which Indians of the Pomo Indian tribe or other tribes occupied  
4 or used or enjoyed or claimed said lands or any thereof during  
5 such period, or what the claims of said Indians to said land or  
6 any part thereof were, or what was the basis for any such claims;

7 (c) What were the "rights and claims" of the Indians,  
8 or any of them, referred to in said paragraph in and to said lands  
9 and premises, or any part thereof;

10 (d) Which part of said lands was "occupied, used,  
11 enjoyed and claimed" by Indians of the Pomo Indian tribe, and  
12 which part thereof was "occupied, used, enjoyed and claimed" by  
13 Indians of other tribes.

14 2) Paragraph II.

15 (a) (p. 3, et seq.) What part of said real property  
16 described as "Parcel Two" was included in the listing to the  
17 State of California by the United States of America in List No.  
18 32 of indemnity school selections;

19 (b) What was the mistake or what was the inadvertance  
20 or what was the mistake and inadvertence of the United States  
21 of America by or as a result of which it listed part of said  
22 Parcel Two to the State of California in List 32 of the indemnity  
23 school selections;

24 (c) What was the mistake or what was the inadvertance  
25 or what was the mistake and inadvertance of the United States by  
26 or as the result of which it issued its patent to said defendant  
27 Frederick Billings on about February 15, 1860, covering said  
28 lands described in said Parcel Two;

29 (d) What was the form and what were the contents  
30 of said "App lication for homestead patent" filed by said  
31 Frederick Billings on about February 18, 1859 as alleged in  
32 said paragraph;



1           (e) Whether the matters alleged to have been set  
2 forth in said affidavit of said Frederick Billings, referred to  
3 in said paragraph, were all the matters set forth or statements  
4 made therein, and what was the date of execution of said affi-  
5 davit.

6   3) Paragraph III (p. 9)

7           (a) How and in what manner said persons referred to  
8 in said paragraph "occupied and possessed" the lands, or any  
9 part thereof, described therein during the period of 125 years  
10 last past, or any part thereof, or which of their ancestors  
11 or progenitors were and are members of what tribe of Indians;

12           (b) How and in what manner the Indians referred to in  
13 said paragraph and their ancestors "occupied" or "used" or  
14 "cultivated" or "improved" or "enjoyed" or "claimed" or "were in  
15 possession of" the lands, or any part thereof, described in said  
16 paragraph during said 125 years, or any part thereof, or which  
17 Indians of the Pomo tribe, or other tribes, occupied or used  
18 or cultivated or improved or enjoyed or claimed or were in  
19 possession of said lands, or any part thereof, during such  
20 period, or what the claims of said Indians to said land, or any  
21 part thereof, were, or what was the basis for any such claims.

22           (c) What part of said lands was "occupied, used, culti-  
23 vated, improved, enjoyed, and claimed" by Indians of the Pomo  
24 tribe, and what part thereof was "occupied, used, cultivated,  
25 improved, enjoyed, and claimed" by Indians of other tribes;

26           (d) Whether any portion or portions of said Parcels  
27 One and Two were, at any time, actually enclosed by said Indians  
28 or their ancestors, and by which Indians of which tribe, and  
29 at what time or times;

30           (e) Which of said Indians, if any, are now residing  
31 on any portion of said lands, and what specific portions  
32 of said lands are now enclosed, cultivated, improved or used

1 for residence purposes by said Indians.

2 4) Paragraph IV. (p. 10)

3 (a) What were the "premises" by reason of which lands  
4 were "reserved and appropriated" and what were the "claims and  
5 rights of said Indians," as alleged in said paragraph;

6 (b) How and in what manner were said lands, described  
7 in said paragraph, "reserved and appropriated," and whether such  
8 lands were "reserved and appropriated" by an Act of the United  
9 States of America, and when such reservation or appropriation  
10 occurred.

11 5) Paragraph V. (p. 11)

12 (a) What were the "premises" by reason of which the  
13 lands described in said paragraph were "reserved and appropriated,"  
14 and what were the "claims and rights of said Indians," as alleged  
15 therein;

16 (b) How and in what manner were said lands reserved  
17 or appropriated, and whether said lands <sup>were</sup> reserved or appropriated  
18 by an Act of the United States and when such reservation or  
19 appropriation occurred;

20 (c) What portion of the lands described as Parcel One  
21 were included in the patent to defendant Frederick Billings,  
22 as alleged in said paragraph;

23 (d) Why said Frederick Billings received "no right,  
24 title or interest whatsoever" in said lands as alleged in said  
25 paragraph.

26 6) Paragraph VI. (p. 11)

27 (a) In what respect were the lands described in  
28 said paragraphs "Indian lands" and what is the meaning and in-  
29 tent of the phrase "Indian lands";

30 (b) How and in what manner the patents and lists  
31 referred to in said paragraph were "issued without the authority  
32 of law";

1 (c) How and in what manner were said lands "already  
2 appropriated for said Indians long prior to said issuance of any  
3 such patents or lists," and whether said lands were appropriated  
4 by any Act of the United States of America, and when such appro-  
5 priation occurred;

6 (d) What was the mistake or what was the inadvertence  
7 and what was the mistake and inadvertence of plaintiff, or of  
8 its officers or agents by, or as the result of which said patents  
9 and lists are "void and of no effect as to said Indians and the  
10 United States of America";

11 (e) How and in what manner are said patents and lists  
12 void and of no effect as to said Indians and the United States of  
13 America, as alleged in said paragraph.

14 7) Paragraph VII. (p. 11)

15 (a) What part of said Parcels One and Two were  
16 "claimed" or "used" and on what part of said lands were fences,  
17 barns, lodges, houses, and ceremonial halls built as alleged in  
18 said paragraph, and what other "valuable improvements" were made  
19 thereon, and at what time or times were any of the foregoing  
20 acts, if any, done or performed, as alleged;

21 (b) Which of the alleged acts, referred to in the  
22 preceding paragraph, if any, were done or performed by Indians  
23 of the Pomo tribe, or by Indians of other tribes; and if any  
24 of said alleged acts were done or performed by Indians of other  
25 tribes, to what tribe or tribes did such Indians belong.

26 III.

27 You will further take notice at the said time and place  
28 above designated that said defendants in the above entitled action  
29 will move said court for a bill of particulars and for an order  
30 requiring said plaintiff to furnish to them a bill of particulars  
31 with respect to each and every of the matters referred to in  
32 plaintiff's complaint, to which matters and said motion said

1 defendants hereby refer as though the same were herein incor-  
2 porated.

3 Said defendants will further move said court for a  
4 bill of particulars with respect to the following:

5 (1) What specific portion or portions of said Par-  
6 cels One and Two does plaintiff claim have been actually enclosed,  
7 used, cultivated, or improved by said Indians as alleged in said  
8 complaint; the time, place and extent of any such actual enclo-  
9 sure, use, cultivation or improvement; and which Indians of the  
10 Pomo tribe, or which Indians of other tribes, are claimed to  
11 have enclosed, used cultivated, or improved said lands;

12 (2) What specific portion or portions, if any, of said  
13 Parcels One and Two does plaintiff claim are now actually resided  
14 upon and used by any Indians mentioned in said complaint, and  
15 by which Indians;


16 (3) Regarding the application for homestead patent,  
17 the affidavit of Frederick Billings, and the patent issued to  
18 said Billings, all as referred to in Paragraph II, page 4, line  
19 28 et seq., defendants request copies of said application for  
20 homestead patent, said affidavit, said patent, and all docu-  
21 ments, reports, field notes, and any other papers or instru-  
22 ments executed by agents of the United States Government or  
23 others relating to said application and the issuance of said  
24 patent.

25 Said motion for a bill of particulars is made upon the  
26 ground that the matters therein referred to are not alleged with  
27 sufficient definiteness or particularity to enable said moving  
28 defendants to prepare properly their answers herein, or to pre-  
29 pare for the trial of said action, and said motion is further  
30 based upon the affidavit of the attorney for said defendants

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and upon the memorandum of points and authorities filed herewith.

Dated: February 29, 1940.

  
\_\_\_\_\_  
Attorney for Defendants,  
Estelle R. Davis, Ruth de Fremery,  
and Bradley Mining Co.

1 JOHN PARKS DAVIS  
2 705 Standard Oil Building  
3 San Francisco, California  
4 Telephone: DOuglas 1510

5 Attorney for Defendants,  
6 Estelle R. Davis, Ruth de Fremery,  
7 and Bradley Mining Co.

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FILED

.....O'clock and.....Min.....

MAR 6 - 1940

WALTER B. MALING,  
CLERK.

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR  
9 THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA, :  
12 Plaintiff, :  
13 -vs- : Civil No. 4068-L  
14 STATE OF CALIFORNIA, :  
15 et al., Defendants. :  
16

17 A F F I D A V I T

18  
19 STATE OF CALIFORNIA :  
20 City and County of San Francisco : ss.

21 JOHN PARKS DAVIS, being duly sworn,  
22 deposes and says:

23 I am the attorney for defendants ESTELLE R. DAVIS,  
24 RUTH de FREMERY and BRADLEY MINING CO. in the above entitled  
25 action.

26 The complaint on file in the above entitled action  
27 and in particular Paragraph II, page 4, line 28, et seq., con-  
28 tains the following allegations:

29 "That on or about February 18, 1859, the de-  
30 fendant Frederick Billings made and filed in the United  
31 States Land Office an application for homestead patent  
32 to the lands hereinabove described as PARCEL TWO (in-  
clusive of other property) and in connection therewith  
filed in said United States Land Office an affidavit  
setting forth therein that all said lands were unoccupied

1 "and constitute public domain and was subject to entry  
2 and was not otherwise disposed of or appropriated;

3 "That on about February 15, 1860, the United  
4 States of America, in persuance of said application,  
5 by mistake and inadvertently issued its patent to  
6 said defendant Frederick Billings covering said lands  
7 described in said PARCEL TWO (and other property) which  
8 patent is recorded in the office of the County Recorder  
9 of said Lake County in Vol. 1 of Patents, at pages 261  
10 to 274, Lake County Records;"

11 Since service of the complaint in the above entitled  
12 action upon the defendants represented by me, I have made dili-  
13 gent search for the records of patent proceedings and the portion  
14 of said records referred to in the above paragraphs of the com-  
15 plaint. My efforts to obtain the same, both at the United  
16 States Land Office in Sacramento and the United States Land Of-  
17 fice in Washington, D. C., have been unsuccessful. It was  
18 stated to me by my representatives that no such records were  
19 available at either office. It appears from all available  
20 information that such records have been removed from the files  
21 of the Government Land Office, their legal custodian. It appears  
22 from the complaint that the Government either has the record  
23 of said application, and said affidavit, or copies thereof, and,  
24 since they are but part of the record in said patent proceedings,  
25 undoubtedly has the other documents filed in connection with  
26 said patent proceedings, or copies thereof, and undoubtedly  
27 intends to use the same at the trial. As all of said documents  
28 are matters of public record which should be available to the  
29 defendants I represent, and as the matters contained therein, and  
30 the knowledge of the same, are necessary for an adequate prepara-  
31 tion of an answer in the above entitled action, it is respectfully  
32 submitted that copies of all said documents in the patent proceed-  
33 ings should be furnished pursuant to the motion for a bill of  
34 particulars on file herein.

35 Subscribed and sworn to before me  
36 this 29th day of February 1940

37 *James M. Miller*  
38 Notary Public in and for the City & County  
39 of San Francisco, State of California

*John Paul Davis*

1 JOHN MARKS DAVIS  
2 705 Standard Oil Building  
3 San Francisco, California  
4 Telephone: DOUGLAS 1510

5 Attorney for Defendants,  
6 Estelle R. Davis, Ruth de  
7 Fremery and Bradley Mining Co.

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FILED

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MAR 6 - 1940

WALTER B. MALING,  
CLERK.

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA, :  
12 Plaintiff, :  
13 -vs- :  
14 STATE OF CALIFORNIA, : Civil No. 2068-L  
15 et al., :  
16 Defendants. :

17 POINTS AND AUTHORITIES OF DEFENDANTS ESTELLE R. DAVIS,  
18 RUTH de FREMERY AND BRADLEY MINING CO., IN SUPPORT OF  
19 THEIR MOTION TO DISMISS SAID ACTION, FOR MORE DEFINITE  
STATEMENT, AND FOR A BILL OF PARTICULARS

20 Motion to Dismiss:

21 It appears from the face of the complaint that 80  
22 years have elapsed since the alleged cause of action accrued.  
23 Plaintiff is therefore barred by laches and lapse of time.

24 U. S. v. Beebe, 127 U.S. 338, 347; 32 L. Ed. 121;  
25 8 S.C.R. 1083

26 Moran v. Horsky, 178 U.S. 205, 213; 44 L. Ed. 1038;  
20 S.C.R. 856

27 Emerson v. Kennedy Mining etc. Co., 169 Cal. 718, 722.

28  
29 For a More Definite Statement:

30 See Federal Rules of Civil Procedure, Rule 12 (e).

31 As indicated in the motion, the allegations of the  
32 complaint are uncertain and indefinite. In view of the eighty-



1 year old claim presented in the complaint, greater detail and  
2 certainty should be required than in the case of prompt and  
3 diligent action.

4 See: Berthold-Jennings Lumber Co. v. St. Louis I. M. &  
5 S. Ry. Co., (C.C.A.(8,)1935) 80 Fed. (2d) 32, at page 43:

6 "In permitting appellants to present these stale  
7 claims, we think the court exercised a reasonable  
8 discretion in calling upon them for a clear and  
9 definite statement of the nature of the claims.  
10 Certainly, greater detail and certainty of  
pleading may reasonably be required of a suitor  
who has let his cause of action slumber for years,  
than of one who diligently and promptly presents  
it."

11 Presumably the Government bases this action upon the  
12 case of Cramer v. U. S., 261 U. S. 219, 61 L. Ed. 622, but  
13 even in the Cramer case the Supreme Court of the United States  
14 restricted its decision to lands actually enclosed and actually  
15 and continuously occupied by the three Indians involved in the  
16 action, who were on the land at the time the alleged cause of  
17 action accrued. Under the circumstances, without any admission  
18 on our part of the precedent of the Cramer case, the Government  
19 should set out the facts of alleged occupancy and enclosure with  
20 distinct particularity.

21  
22 Motion for Bill of Particulars:

23 The motion for a bill of particulars is authorized by  
24 Federal Rules of Civil Procedure, Rule 12 (e).

25 The affidavit filed herewith shows that these defend-  
26 ants have not been able to locate or obtain copies of patent  
27 records requested and which are presusably in the hands of plain-  
28 tiff. Accordingly, they should be furnished to defendants in  
29 order that they may prepare their answers.

30 It is fundamental that the granting of a bill of parti-  
31 culars is in the discretion of the court, but it is submitted  
32 that where claims are presented after a lapse of eighty years, on

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grounds of mistake and inadvertence, it is clear that a know-  
ledge of the patent proceedings is essential to the prepara-  
tion of an answer and a defense.

Respectfully,

*John Parks Davis*

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John Parks Davis, Attorney for  
Defendants Estelle R. Davis,  
Ruth de Fremery and Bradley Mining Co.

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RECEIPT of service of the foregoing notice of motion to dismiss action, for a more definite statement of certain matters alleged in plaintiff's complaint, and for a bill of particulars, and of affidavit and memorandum of supporting points and authorities is hereby acknowledged, and the same may be filed.

Dated: March 1, 1940



---

Assistant United States  
Attorney

1 JOHN PARKS DAVIS  
2 Attorney at Law  
3 705 Standard Oil Building  
4 San Francisco, California  
5 Telephone DOuglas 1510

6 Attorney for Defendant P. R. Bradley

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FILED

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MAR 4 - 1940

WALTER B. MALING,  
CLERK.

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA, :  
12 Plaintiff, :  
13 vs. : No. 4068 L  
14 THE STATE OF CALIFORNIA, :  
15 et al., :  
16 Defendants. :

17 DISCLAIMER

18 Now comes P. R. BRADLEY, one of the defendants herein,  
19 and disclaims any right, title or interest in or to any of the  
20 lands, properties, rights or interests described in the complaint  
21 herein.

22 W H E R E F O R E, said defendant prays that he be ab-  
23 solved from any costs herein.

24 Dated: February 29, 1940.

*P. R. Bradley*

25  
26 P. R. Bradley

27  
28 *John Parks Davis*  
29 John Parks Davis, attorney for  
30 Defendant P. R. Bradley  
31  
32

1 HOWARD J. FINN,  
2 BROBECK, PHLEGER & HARRISON,  
3 Crocker Building,  
4 San Francisco, California,  
5 Telephone: SUTter 0666,  
6 Attorneys for Defendant  
7 William O. B. Macdonough, etc.

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FILED  
O'clock and Min.  
FEB 29 1940  
WALTER B. MALING,  
CLERK.

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,  
Plaintiff,  
-vs-  
THE STATE OF CALIFORNIA, et al.,  
Defendants.

No. 4068 L  
Civil.

MOTION TO DISMISS, AND IN THE  
ALTERNATIVE FOR A MORE DEFINITE  
STATEMENT, AND TO STRIKE.

The defendant William O. B. Macdonough, and the  
defendant William O. B. Macdonough as administrator with  
the will annexed of the estate of Joseph M. Macdonough,  
deceased, sued herein as John Doe One as administrator of

1 the estate of Joseph M. Macdonough, Deceased, moves the court  
2 to dismiss the complaint on file herein upon the ground that  
3 it fails to state a claim upon which relief can be granted,  
4 and, more particularly, that said complaint does not allege  
5 facts showing that the listing or patenting of the real  
6 property described therein, as alleged therein, was without  
7 authority of law, or was by mistake or inadvertence, or was  
8 the result of fraud, or that such listing and patents were  
9 for any other reason void or voidable, and, further, that it  
10 appears from the face of the said complaint that the suit  
11 is barred by laches and limitations, the plaintiff having  
12 been guilty of an unreasonably long delay in filing such  
13 suit, and there being no allegations accounting for or ex-  
14 cusing the delay.

15  
16 Said defendants further move the court for a more  
17 definite statement, in the event that the foregoing motion  
18 to dismiss be denied, upon the ground that the matter here-  
19 inafter mentioned is not averred with sufficient definite-  
20 ness or particularity to enable said defendants properly to  
21 prepare their responsive pleading or to prepare for trial.  
22 The defects complained of, and the details desired to be  
23 stated, are as follows:

24  
25 (a) The complaint alleges in paragraph II on page  
26 3 that certain of the real property therein described was  
27 listed to the State of California "by mistake and inadvertence",  
28 but does not allege the facts constituting the alleged mistake  
29 or inadvertence. Said defendants desire a statement of the  
30 facts constituting the alleged mistake and inadvertence;

1           (b) The complaint alleges in paragraph II, on  
2 page 5, that the plaintiff issued a patent to the defendant  
3 Frederick Billings, "by mistake and inadvertently", but  
4 does not allege the facts constituting the alleged mistake  
5 or inadvertence. Said defendants desire a statement of  
6 the facts constituting the alleged mistake and inadvertence.

7           (c) The complaint alleges in paragraph VI, that  
8 in issuing the patents and lists mentioned therein, plain-  
9 tiff's officers or agents "acted by mistake and inadvertence",  
10 but does not allege the facts constituting the alleged mis-  
11 take and inadvertence. Said defendants desire a statement  
12 of the facts constituting the alleged mistake and inad-  
13 vertence.

14           (d) The complaint in paragraph II alleges that  
15 certain of the real property described therein was listed  
16 to the State of California by the United States of America  
17 in List #32 of indemnity school selection, but it does not  
18 allege why the land replaced by the property so listed was  
19 not available to the State of California for school pur-  
20 poses, and hence does not state facts removing the listing  
21 from the operation of the conformatory act of March 1, 1877  
22 (19 Stat. 267). Said defendants desire a description of  
23 the school lands which the lands described in the complaint  
24 were to replace, and a statement of the reason or reasons  
25 why the school land to be replaced by the land described  
26 in the complaint was not available to the State of Califor-  
27 nia, so that it can be determined whether or not such list-  
28 ing was confirmed by the act of March 1, 1877.

29           (e) The complaint alleges in paragraph II that  
30 the listing to the State of California was "by the United

1 States of America", and that the patent to the defendant  
2 Billings was issued by "the United States of America", and  
3 alleges in paragraph VI that such listing and the issuance of  
4 such patent were "without authority of law". These defend-  
5 ants desire a statement of the facts upon which is predicated  
6 the claim that the United States of America was without  
7 authority to make the listing and issue the patent.

8  
9  
10 Said defendants further move the court for an order  
11 striking from the complaint the portions thereof hereinafter  
12 described, upon the ground that they are comprised of redun-  
13 dant, immaterial and impertinent matter, and more particu-  
14 larly upon the ground that they are conclusions of law. Said  
15 portions of the complaint are as follows:

16 (a) Paragraph IV of said complaint, and each and  
17 every word and each and every line therein contained;

18 (b) Paragraph V of said complaint, and each and  
19 every word and each and every line therein contained;

20 (c) That portion of paragraph VI of the complaint  
21 beginning with the word "That" on line 10 of page 11, and  
22 ending with the word "lists" on line 15 of page 11, and each  
23 and every word and each and every line therein contained.

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30

Howard J. Finn  
Robert Phleger Harrison

Attorneys for defendants  
William O. B. Macdonough, and  
William O. B. Macdonough as  
admr., etc., sued herein as  
John Doe One.



ORIGINAL

GARRET W. McENERNEY,  
2002 Hobart Building,  
San Francisco, California,  
(Attorney for The Roman Catholic  
Archbishop of San Francisco, a  
corporation sole, Sued herein by  
a fictitious name),  
Defendant.

15

FILED

O'clock and Min.

APR 5 - 1939

WALTER B. MALING,  
CLERK

IN THE NORTHERN DIVISION OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA.

UNITED STATES OF AMERICA,  
  
Plaintiff,  
vs.  
THE STATE OF CALIFORNIA, etc.,  
  
Defendants.

Civil No. 4068-L

D I S C L A I M E R.

Now comes THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, a corporation sole (sued herein by a fictitious name), defendant herein, and disclaims any right, title or interest in or to any of the lands, properties, rights or interests described in the complaint herein.

WHEREFORE, said defendant prays that he be absolved from any costs herein.

Dated: March 29, 1939.

The Roman Catholic Archbishop of  
San Francisco, a corporation sole,

By John J. Betty  
its Incumbent.

Garret W. McEnerney  
GARRET W. McENERNEY,  
Attorney for Defendant The  
Roman Catholic Archbishop of  
San Francisco, a corporation  
sole (sued herein by a fictitious name.)

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PILLSBURY, MADISON & SUTRO  
Attorneys at Law  
Standard Oil Building  
San Francisco

12  
**FILED**

MAR 16 1939

WALTER B. MALING, Clerk  
By \_\_\_\_\_  
DEPUTY CLERK

In the Northern Division of the United States District Court,  
For the Northern District of California

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
THE STATE OF CALIFORNIA, THE  
PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY et al.,  
  
Defendants.

Civil No. 4068L

DISCLAIMER OF DEFENDANT, THE PACIFIC  
TELEPHONE AND TELEGRAPH COMPANY

Comes now the defendant, THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, a corporation, named herein as "Pacific  
Telephone and Telegraph Company, a corporation," and disclaims  
any right, title or interest in or to any of the lands described  
in the complaint in the above entitled action.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,  
By Pillsbury, Madison & Sutro.  
Its Attorneys.



1 lands described in said Paragraph II to Richard S. Floyd and  
2 Thomas P. Madden. Defendant alleges that it has no information  
3 sufficient to enable it to answer the balance of the allegations  
4 set forth in Paragraph II of said complaint, and basing its  
5 denial upon such allegations denies all and singular the allega-  
6 tions contained therein.

7 II.

8 Admits that the defendant State of California claims  
9 an interest in and to the properties described in said complaint  
10 on file herein because of certain unpaid state taxes and assess-  
11 ments against said land and appurtenances; that said interest  
12 consists of tax liens and tax titles accrued and accruing; that  
13 the lands described in said complaint on file herein constitute  
14 the lands in which it has already been ascertained that this  
15 defendant has some interest; that this defendant is still making  
16 extensive searches and that there will be other lands and  
17 appurtenances in and to which it will be shown before the  
18 termination of this suit that this defendant has some interest;  
19 that this defendant is unable to describe these lands at the  
20 present time.

21 III.

22 Defendant State of California further alleges that  
23 there are also certain State of California highway and roadway  
24 claims and lands appurtenant thereto in which this defendant has  
25 certain legal interests, for a more complete description of which  
26 reference is hereby made to the files of the Division of Highways,  
27 Department of Public Works, State of California.

28 IV.

29 Defendant alleges that it has no information sufficient  
30 to enable it to answer the allegations set forth in Paragraphs

1 I, III, IV, V, VI, VII, VIII, IX, X and XI of said complaint, and  
2 basing its denial upon said allegations denies all and singular  
3 the allegations contained in said paragraphs.

4 WHEREFORE, defendant State of California prays that  
5 this honorable court make its order adjudging and decreeing:

6 1. That said tax liens, title liens and highway and  
7 roadway claims and appurtenances accrued to defendant State of  
8 California are valid and existing.

9 2. That if and when any further tax liens and tax  
10 titles accrue during the pendency of this action this court  
11 further order and decree such tax liens and title liens to be  
12 then and there valid and existing.

13 3. That this court order that the defendant State of  
14 California be paid by plaintiff such sum or sums for its interest  
15 in and to said lands, highways, roadways and appurtenances as  
16 are adjudged to be full, just and reasonable for the taking  
17 thereof by plaintiff.

18 4. For such other, further and different relief as to  
19 the court may seem meet and just in the premises.

20 Dated March 14, 1939.

21 EARL WARREN, Attorney General of the  
22 State of California

23 Albert S. Langerle  
24 Deputy Attorney General

25 Attorneys for defendant  
26 State of California

27  
28  
29  
30

1 STATE OF CALIFORNIA }  
2 County of Sacramento } ss.

3 ALBERT F. ZANGERLE, being first duly sworn, deposes  
4 and says:

5 That he is a Deputy Attorney General for the State of  
6 California and one of the attorneys for the defendant State of  
7 California in the within entitled action; that he has read the  
8 foregoing answer and knows the contents thereof; that the same  
9 is true of his own knowledge, except as to the matters which are  
10 therein stated on information and belief, and as to these matters  
11 that he believes it to be true; that the reason why this verifi-  
12 cation is made by affiant and not by the State of California is  
13 that the defendant State of California is a corporation sovereign.

14  
15 Albert F. Zangerle

16 Subscribed and sworn to before me  
17 this 14th day of March, 1939.

18 M. W. Gallun  
19 Notary Public in and for the County  
20 of Sacramento, State of California  
21  
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GARRET W. McENERNEY,  
2002 Hobart Building,  
San Francisco, California,  
(Attorney for Edward H. Nutter,  
(Sued herein as Edward A. Nutter),  
Defendant.

9  
**FILED**  
O'clock and Min.  
MAR 14 1939  
WALTER B. MALING,  
CLERK.

IN THE NORTHERN DIVISION OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA.

UNITED STATES OF AMERICA,  
  
Plaintiff.  
vs.  
THE STATE OF CALIFORNIA, etc.,  
  
Defendants.

Civil No. 4068-L

D I S C L A I M E R.

Now comes EDWARD H. NUTTER (sued herein as Edward A. Nutter),  
defendant herein, and disclaims any right, title or interest in or to  
any of the lands, properties, rights or interests described in the  
complaint herein.

WHEREFORE, said defendant prays that he be absolved from any  
costs herein.

Dated: March 11<sup>th</sup>, 1939.

Edward H. Nutter  
(Edward H. Nutter)

Garret W. McENERNEY  
Attorney for Defendant, Edward H.  
Nutter (sued herein as Edward A.  
Nutter).

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FRANK J. HENNESSY,  
United States Attorney,  
G. B. HJELM,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff.

29  
FILED  
O'clock and Min.  
JUN 12 1939  
WALTER B. MALING,  
CLERK.

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
THE STATE OF CALIFORNIA, CROCKER  
FIRST NATIONAL BANK OF SAN FRAN-  
CISCO, a corporation, et al.,  
  
Defendants.

NO. 4068-L

DISCLAIMER OF JAMES M. O'BRIEN AND  
GEO. J. O'BRIEN

Come, now JAMES M. O'BRIEN and GEO. J. O'BRIEN, as  
Trustees of the trust known as "Clear Lake Company", and said  
JAMES M. O'BRIEN individually, defendants in the above en-  
titled action, and each of them disclaims all right, title  
or interest in and to all the real property described in the  
complaint herein, and every part thereof.

Dated: June 9, 1939.

James M. O'Brien AND  
Geo. J. O'Brien  
as Trustees of Clear Lake Company (Trust)  
James M. O'Brien, individually



1 FRANK J. HENNESSY,  
United States Attorney,  
2 G. B. HJELM,  
Assistant U. S. Attorney.

28  
FILED

O'clock and Min.

JUN 12 1939

WALTER B. MALING,  
CLERK.

10 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, )  
15 vs. )  
16 THE STATE OF CALIFORNIA, CROCKER )  
17 FIRST NATIONAL BANK OF SAN FRAN- )  
18 CISCO, a corporation, et al., )  
19 Defendants. )

NO. 4068-L

20 DISCLAIMER OF CLEAR LAKE COMPANY

21 Comes now CLEAR LAKE COMPANY, a corporation, one of  
22 the defendants in the above entitled action, and disclaims  
23 all right, title or interest in and to all the real property  
24 described in the complaint in this action, and every part  
25 thereof.

26 Dated: June 9, 1939.

27 (Corporate Seal)

*Clear Lake Company*  
CLEAR LAKE COMPANY, a corporation  
One of the Defendants,  
By *Jacobson, one of its*  
*charter directors*

1 FRANK J. HENNESSY,  
2 United States Attorney,  
3 G. B. HJELM,  
4 Assistant U. S. Attorney,  
5 Attorneys for Plaintiff.

27

FILED

O'clock and Min.

JUN 12 1939

WALTER B. MALING,  
CLERK.

12 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA.

14 -----  
15 UNITED STATES OF AMERICA, )  
16 Plaintiff, )  
17 vs. )  
18 THE STATE OF CALIFORNIA, CROCKER )  
19 FIRST NATIONAL BANK OF SAN FRAN- )  
20 CISTO, a corporation, et al., )  
21 Defendants.)

No. 4068-L

22 DISCLAIMER OF DEFENDANT T. A. MORRISSEY

23 Comes now T. A. MORRISSEY, one of the defendants in  
24 the above entitled action, and hereby disclaims all right,  
25 title or interest in and to all the real property described  
26 in the complaint in this action, and every part thereof.

27 Dated: June 6<sup>th</sup> 1939.

28  
29 T. A. Morrissey  
30 T. A. MORRISSEY  
31 One of the Defendants  
32

1 MORRISON, HOHFELD, FOERSTER,  
2 SHUMAN & CLARK,  
3 1110 Crocker Building,  
4 San Francisco, California.  
5 Attorneys for defendant  
6 Crocker First National Bank  
7 of San Francisco.

26  
FILED  
District and Min.  
Jul. 5-1939  
WALTER B. MALING  
CLERK

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 THE STATE OF CALIFORNIA, CROCKER  
15 FIRST NATIONAL BANK OF SAN FRAN-  
16 CISCO, a corporation, et al.,  
17 Defendants.

No. 4068-L

18 DISCLAIMER OF DEFENDANT CROCKER  
19 FIRST NATIONAL BANK OF SAN FRANCISCO

20 Comes now Crocker First National Bank of San Francisco,  
21 a national banking association, one of the defendants in the  
22 above entitled action, and hereby disclaims any interest in the  
23 property described in the said complaint.

24 WHEREFORE, defendant prays to be hence dismissed with  
25 its costs.

26 Dated May 29, 1939.

27 Morrison, Hohfeld, Foerster,  
28 Shuman & Clark  
29 *[Signature]*  
30 Attorneys for said defendant.

FILED 23

Of the Court

MAY 26 1935

WALTER B. MALING  
CLERK

1 FRANK J. HENNESSY,  
United States Attorney,  
2 G. B. HJELM,  
Assistant U. S. Attorney,  
3 Attorneys for Plaintiff.

~~COPY~~

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

-----

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 vs.

13 THE STATE OF CALIFORNIA; S. F. BUTTERWORTH; ALFRED  
14 A. WHEELER; CROCKER FIRST NATIONAL BANK, A CORPO-  
15 RATION; WILLIAM O. B. MACDONOUGH; JOHN DOE ONE, AS  
ADMINISTRATOR OF THE ESTATE OF JOSEPH M. MAC-  
16 DONOUGH, DECEASED; JOHN DOE TWO, AS EXECUTOR OF  
THE ESTATE OF JOSEPH M. MACDONOUGH, DECEASED; JOHN  
17 DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE, JOHN DOE  
SIX, JOHN DOE SEVEN, JOHN DOE EIGHT, JOHN DOE NINE  
18 JOHN DOE TEN, JANE DOE ONE, JANE DOE TWO, JANE DOE  
THREE, JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
19 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH M.  
MACDONOUGH, DECEASED; FREDERICK BILLINGS, THE  
20 CALIFORNIA BORAX COMPANY, A CORPORATION; THE  
CALIFORNIA BORAX COMPANY, A CO-PARTNERSHIP; THE  
21 SULPHUR BANK QUICKSILVER MINING COMPANY, A CORPO-  
RATION; THE SULPHUR BANK CONSOLIDATED QUICKSILVER  
22 MINING COMPANY, A CORPORATION; EMPIRE CONSOLIDATED  
QUICKSILVER MINING COMPANY, A CORPORATION; WILLIAM  
23 E. GERBER; RICHARD WHITE; CLEAR LAKE QUICKSILVER  
MINING COMPANY, A CORPORATION; RAYMOND G. LAHOUE;  
24 JAMES H. O'BRIEN; T. A. MORRISSEY; CLEAR LAKE  
COMPANY, A CORPORATION; ESTELLE R. DAVIS; RUTH  
25 deFREMERY; CLINTON E. DOLBEAR; P. R. BRADLEY;  
EDWARD A. NUTTER; A. T. HATHAWAY; HOMESTAKE GOLD  
26 MINING COMPANY, A CORPORATION; GOLDEN GATE GOLD  
MINING COMPANY, A CORPORATION; RICHARD ROWE ONE;  
27 RICHARD ROWE TWO; RICHARD ROWE THREE; RICHARD ROWE  
FOUR; RICHARD ROWE FIVE; JANE ROWE ONE; JANE ROWE  
28 TWO; JANE ROWE THREE; JANE ROWE FOUR; JANE ROWE  
FIVE; SAM BLAKE CORPORATION ONE; SAM BLAKE COR-  
29 PORATION TWO; SAM BLAKE CORPORATION THREE; SAM  
BLAKE CORPORATION FOUR; SAM BLAKE CORPORATION  
30 FIVE; POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
A CORPORATION; CLEAR LAKE WATER COMPANY, A COR-  
31 PORATION; CALIFORNIA TRUST AND SAVINGS BANK, A  
CORPORATION; PACIFIC G/S AND ELECTRIC COMPANY, A  
32 CORPORATION; PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, A CORPORATION; BRADLEY MINING COMPANY, A  
CORPORATION,

40681

CIVIL NO. \_\_\_\_\_

*Alias*  
SUMMONS.

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve (\*) upon FRANK J. HENNESSY, United States Attorney for the Northern District of California, plaintiff's attorney, whose address is Room 404, New Post Office Building, Sacramento, California, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RECORDED AT SACRAMENTO

WALTER B. MALING, Clerk

(S E A L)

By:

*F.M. Lampert*  
F.M. LAMPERT

Deputy Clerk

DATED: Sacramento, Calif.,  
*May 9<sup>th</sup>*  
~~February 10<sup>th</sup>~~, 1939.

(\*) Rule 5 (d) "All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter."

---oOo---

UNITED STATES MARSHAL'S OFFICE )  
Northern District of California. ) ss

I hereby certify that I received the within writ on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, and personally served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, by delivering to, and leaving with \_\_\_\_\_ one of said defendants named therein personally, at the City of \_\_\_\_\_, County of \_\_\_\_\_ in said District, a copy thereof, together with a copy of the complaint attached thereto.

GEORGE VICE, United States Marshal

By: \_\_\_\_\_

Deputy

\_\_\_\_\_, Calif.

\_\_\_\_\_, 1939.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve (\*) upon  
FRANK J. HENNESSY, United States Attorney for the Northern District  
of California, Plaintiff's attorney, whose address is Room 1411, New  
Post Office Building, Sacramento, California, an answer to the  
complaint which is herewith served upon you, within 30 days after  
service of this summons upon you, exclusive of the day of service.  
If you fail to do so, judgment by default will be taken against  
you for the relief demanded in the complaint.

WALTER B. MILLER,  
Clerk

(S E A L)

By:

*W. M. Lambert*  
W. M. LAMBERT

Deputy Clerk

DATED: Sacramento, Calif.,

*Nov 1939*  
~~February 1939~~, 1939.

(\*) Rule 5 (d) "All papers after the complaint required to be  
served upon a party shall be filed with the  
Court either before service or within a  
reasonable time thereafter."

UNITED STATES MARSHAL'S OFFICE  
Northern District of California

I hereby certify that I received the within writ on the  
day of \_\_\_\_\_, 1939, and personally served the  
same on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, by delivering to  
and leaving with \_\_\_\_\_  
one of said defendants named therein personally, at the City of  
\_\_\_\_\_ County of \_\_\_\_\_  
in said District, a copy thereof, together with a copy of the  
complaint attached thereto.

GEORGE VICE, United States Marshal

By:

Deputy

\_\_\_\_\_ Calif.

\_\_\_\_\_ 1939.

MARSHAL'S CIVIL ROOMS  
No. 21271

Northern District of California, SS.

I hereby certify and return, that on the 7<sup>th</sup> day of March, 1939

I received the within Summons and that after diligent search, I am unable to find the within-named defendants Jess W. Macdonough

(Reported to be Deceased.)

within my district.

Attorneys at 41 Broad St, New York are reported to be his Executors. Attorneys names not known.

George Vice

United States Marshal.

By Herbert P. Cole

Deputy United States Marshal.

Northern District of California, SS.

I hereby certify and return, that on the 7<sup>th</sup> day of March, 1939

I received the within Summons and that after diligent search, I am unable to find the within-named defendants Jessie L. Macdonough

within my district.

Reported to be now travelling.

Her Attorneys at 41 Broad St, New York may know her whereabouts.

George Vice

United States Marshal.

By Herbert P. Cole

Deputy United States Marshal.

Northern District of California, SS.

I hereby certify and return, that on the 7<sup>th</sup> day of March, 1939

I received the within Summons and that after diligent search, I am unable to find the within-named defendants JOHN G. AGER

within my district.

Reported to be in New York. No Attorneys here in S. F.

GEORGE VICE

United States Marshal.

By

Ray Lyon

Deputy United States Marshal.

RETURN ON SERVICE OF WRIT

United States of America, } ss:  
Southern DISTRICT OF California

I hereby certify and return that I served the annexed Summons

on the therein-named Clear Lake Co.

by handing to and leaving a true and correct copy thereof with together with a copy of the complaint James M. O'Brien personally

at Los Angeles in said District on the 22 day of May, A.D. 193

Robert E. Clark U.S. Marshal.  
By Ray M. Fleming Deputy.

RETURN ON SERVICE OF WRIT

United States of America, } ss:  
Southern DISTRICT OF Calif

I hereby certify and return that I served the annexed SUMMONS

on the therein-named Mr. James M. O'Brien

by handing to and leaving a true and correct copy thereof with James M. O'Brien personally

at Los Angeles in said District on the 22 day of May, A.D. 193 9

Robert E. Clark U.S. Marshal.  
By Ray M. Fleming Deputy.



RETURN ON SERVICE OF WRIT

United States of America, } ss:  
Southern DISTRICT OF California

I hereby certify and return that I served the annexed Summons  
on the therein-named T. A. MORRISSEY

by handing to and leaving a true and correct copy thereof with together with a true copy of the complaint T. A. Morrissey  
personally  
at Los Angeles in said District on the 22 day of  
May, A.D. 1939

Robert E. Clark  
U.S. Marshal.  
By Ray M Fleming  
Deputy.

RETURN ON SERVICE OF WRIT

United States of America, } ss:  
Southern DISTRICT OF California

I hereby certify and return that I served the annexed SUMMONS  
on the therein-named RAYMOND G. LA NOUE

by handing to and leaving a true and correct copy thereof with together with a true copy of the complaint Raymond G. La Noue  
personally  
at Los Angeles in said District on the 24 day of  
May, A.D. 1939

Robert E. Clark  
U.S. Marshal.  
By Ray M Fleming  
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

Northern DISTRICT OF California

ss:

I hereby certify and return that I served the annexed SUMMONS

on the therein-named Mary Macdonough, as Jane Doe Three,

by serving her Father Mr Dent W. Macdonough.

by handing to and leaving a true and correct copy thereof with Mr Dent W. Macdonough,

personally

at San Francisco California, in said District on the 7th day of

March, A. D. 19 39

George Vice

U. S. Marshal.

By Herbert R. Cole

Deputy.

Marshal's Fees

Trial \$ 28  
Service 6.00  
\$ 6.28

RETURN ON SERVICE OF WRIT.

United States of America,

Northern DISTRICT OF California

ss:

I hereby certify and return that I served the annexed Alias Summons

on the therein-named John Doe # 4 known to me as

The Archbishop of San Francisco,

together with copy of the complaint

by handing to and leaving a true and correct copy thereof/with Monsignor Thomas J. Connelly DD

Chancellor-Secretary to the Archbishop of San Francisco personally

at San Francisco, Calif. in said District on the 7th day of

March, A. D. 19 39

GEORGE VICE

U. S. Marshal.

By Bernard J. Ward

Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons

on the therein-named Joan Macdonough, as Jane Doe Two,

By serving her Father Mr Dent W. Macdonough.

by handing to and leaving a true and correct copy thereof with Mr Dent W. Macdonough.

personally

at San Francisco California, in said District on the 7th day of

March, A. D. 19 39

George Vice  
U. S. Marshal,

By Herbert P. Cole  
Deputy.

1 FRANK J. HENNESSY,  
2 United States Attorney,  
3 G. B. HJELM,  
4 Assistant U. S. Attorney,  
5 Attorneys for Plaintiff.

8  
FILED  
O'clock and Min.  
MAR 11 1939  
WALTER B. MALING,  
CLERK.

1939-489-5  
W D No. Civil  
RECEIVED  
MAR 7 1939

U S MARSHAL'S OFFICE  
SAN FRANCISCO, CALIF.

8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12 Plaintiff,

(ORIGINAL)



13 vs.

14 THE STATE OF CALIFORNIA; S. F. BUTTERWORTH; ALFRED  
15 A. WHEELER; CROCKER FIRST NATIONAL BANK, A CORPO-  
16 RATION; WILLIAM O. B. MACDONOUGH; JOHN DOE ONE, AS  
17 ADMINISTRATOR OF THE ESTATE OF JOSEPH M. MAC-  
18 DONOUGH, DECEASED; JOHN DOE TWO, AS EXECUTOR OF  
19 THE ESTATE OF JOSEPH M. MACDONOUGH, DECEASED; JOHN  
20 DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE, JOHN DOE  
21 SIX, JOHN DOE SEVEN, JOHN DOE EIGHT, JOHN DOE NINE  
22 JOHN DOE TEN, JANE DOE ONE, JANE DOE TWO, JANE DOE  
23 THREE, JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
24 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH M.  
25 MACDONOUGH, DECEASED; FREDERICK BILLINGS, THE  
26 CALIFORNIA BORAX COMPANY, A CORPORATION; THE  
27 CALIFORNIA BORAX COMPANY, A CO-PARTNERSHIP; THE  
28 SULPHUR BANK QUICKSILVER MINING COMPANY, A CORPO-  
29 RATION; THE SULPHUR BANK CONSOLIDATED QUICKSILVER  
30 MINING COMPANY, A CORPORATION; EMPIRE CONSOLIDATED  
31 QUICKSILVER MINING COMPANY, A CORPORATION; WILLIAM  
32 E. GERBER; RICHARD WHITE; CLEAR LAKE QUICKSILVER  
MINING COMPANY, A CORPORATION; RAYMOND G. LAHOUE;  
JAMES H. O'BRIEN; T. A. MORRISSEY; CLEAR LAKE  
COMPANY, A CORPORATION; ESTELLE R. DAVIS; RUTH  
deFREMERY; CLINTON E. DOLEBEAR; P. R. BRADLEY;  
EDWARD A. NUTTER; A. T. HATHAWAY; HOMESTAKE GOLD  
MINING COMPANY, A CORPORATION; GOLDEN GATE GOLD  
MINING COMPANY, A CORPORATION; RICHARD ROWE ONE;  
RICHARD ROWE TWO; RICHARD ROWE THREE; RICHARD ROWE  
FOUR; RICHARD ROWE FIVE; JANE ROWE ONE; JANE ROWE  
TWO; JANE ROWE THREE; JANE ROWE FOUR; JANE ROWE  
FIVE; SAM BLAKE CORPORATION ONE; SAM BLAKE COR-  
PORATION TWO; SAM BLAKE CORPORATION THREE; SAM  
BLAKE CORPORATION FOUR; SAM BLAKE CORPORATION  
FIVE; POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
A CORPORATION; CLEAR LAKE WATER COMPANY, A COR-  
PORATION; CALIFORNIA TRUST AND SAVINGS BANK, A  
CORPORATION; PACIFIC GAS AND ELECTRIC COMPANY, A  
CORPORATION; PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, A CORPORATION; BRADLEY MINING COMPANY, A  
CORPORATION,

8

4068L

CIVIL NO. \_\_\_\_\_

*Alias*  
SUMMONS.

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve (\*) upon FRANK J. HENNESSY, United States Attorney for the Northern District of California, plaintiff's attorney, whose address is Room 404, New Post Office Building, Sacramento, California, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WALTER B. MALING, Clerk

(S E A L)

By: F.M. Lampert  
F.M. LAMPERT  
Deputy Clerk

DATED: Sacramento, Calif.,  
March 6  
~~February 24~~, 1939.

(\*) Rule 5 (d) "All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter."

---oOo---

UNITED STATES MARSHAL'S OFFICE )  
Northern District of California. ) ss

I hereby certify that I received the within writ on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, and personally served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, by delivering to, and leaving with \_\_\_\_\_ one of said defendants named therein personally, at the City of \_\_\_\_\_, County of \_\_\_\_\_ in said District, a copy thereof, together with a copy of the complaint attached thereto.

GEORGE VICE, United States Marshal

By: \_\_\_\_\_  
Deputy

\_\_\_\_\_, Calif.  
\_\_\_\_\_, 1939.

1 NEAL CHALMERS  
2 Attorney-at-law  
3 327 Porter Building  
4 Woodland, California,

5 Attorney for defend-  
6 ant Clear Lake Water  
7 Company, a corporation.

4  
FILED

O'clock and Min.

MAR 7 - 1939

WALTER B. MALING,  
CLERK

8 IN THE NORTHERN DIVISION OF THE UNITED STATES  
9 DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
10 CALIFORNIA.

11 --oOo--

12 UNITED STATES OF AMERICA,  
13 Plaintiff,

14 -vs-

15 THE STATE OF CALIFORNIA; S. F. BUTTERWORTH; ALFRED  
16 A. WHEELER; CROCKER FIRST NATIONAL BANK, A CORPORA-  
17 TION; WILLIAM O. B. MACDONOUGH; JOHN DOE ONE, AS  
18 ADMINISTRATOR OF THE ESTATE OF JOSEPH M. MAC-  
19 DONOUGH, DECEASED; JOHN DOE TWO, AS EXECUTOR OF  
20 THE ESTATE OF JOSEPH M. MACDONOUGH, DECEASED; JOHN  
21 DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE, JOHN DOE  
22 SIX, JOHN DOE SEVEN, JOHN DOE EIGHT, JOHN DOE NINE,  
23 JOHN DOE TEN, JANE DOE ONE, JANE DOE TWO, JANE DOE  
24 THREE, JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
25 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH M.  
26 MACDONOUGH, DECEASED; FREDERICK BILLINGS, THE  
27 CALIFORNIA BORAX COMPANY, A CORPORATION; THE  
28 CALIFORNIA BORAX COMPANY, A CO-PARTNERSHIP; THE  
29 SULPHUR BANK QUICKSILVER MINING COMPANY, A CORPOR-  
30 ATION; THE SULPHUR BANK CONSOLIDATED QUICKSILVER  
31 MINING COMPANY, A CORPORATION; EMPIRE CONSOLIDATED  
QUICKSILVER MINING COMPANY, A CORPORATION; WILLIAM  
E. GERBER; RICHARD WHITE; CLEAR LAKE QUICKSILVER  
MINING COMPANY, A CORPORATION; RAYMOND G. LANOUE;  
JAMES M. O'BRIEN; T. A. MORRISEY; CLEAR LAKE COM-  
PANY, A CORPORATION; ESTELLE R. DAVIS; RUTH  
dePREMERY; CLINTON E. DOLBEAR; P. R. BRADLEY;  
EDWARD A. NUTTER; A. T. HATHAWAY; HOMESTAKE GOLD  
MINING COMPANY, A CORPORATION; GOLDEN GATE GOLD  
MINING COMPANY, A CORPORATION; RICHARD ROWE ONE;  
RICHARD ROWE TWO; RICHARD ROWE THREE; RICHARD ROWE  
FOUR; RICHARD ROWE FIVE; JANE ROWE ONE; JANE ROWE  
TWO; JANE ROWE THREE; JANE ROWE FOUR; JANE ROWE  
FIVE; SAM BLAKE CORPORATION ONE; SAM BLAKE COR-  
PORATION TWO; SAM BLAKE CORPORATION THREE; SAM  
BLAKE CORPORATION FOUR; SAM BLAKE CORPORATION FIVE;  
POWER AND IRRIGATION COMPANY OF CLEAR LAKE,

CIVIL  
NO.

4068L

1 A CORPORATION; CLEAR LAKE WATER COMPANY, A COR- )  
2 PORATION; CALIFORNIA TRUST AND SAVINGS BANK, A )  
3 CORPORATION; PACIFIC GAS AND ELECTRIC COMPANY, )  
4 A CORPORATION; PACIFIC TELEPHONE AND TELEGRAPH )  
5 COMPANY, A CORPORATION; BRADLEY MINING COMPANY, )  
6 A CORPORATION, )  
7 Defendants. )

8 ANSWER

9 COMES NOW CLEAR LAKE WATER COMPANY, a corporation,  
10 and answering plaintiff's complaint on file herein, admits,  
11 denies and alleges as follows:

12 I.

13 Denies the allegations contained in Paragraph I of  
14 said complaint save and except that this defendant admits that  
15 the lands described in said Paragraph I are situate in the  
16 County of Lake, State of California.

17 II.

18 Answering the allegations set forth in Paragraph II  
19 of said complaint, this defendant admits the same.

20 III.

21 Answering Paragraph III of said complaint, this de-  
22 fendant alleges that it does not have sufficient information or  
23 belief upon which to base an answer to the allegations as there-  
24 in set forth and therefore, basing its denial upon that ground,  
25 the said defendant denies each and all of the allegations  
26 therein contained.

27 IV.

28 Answering Paragraph IV of said complaint, this

1 defendant denies the allegations therein set forth and contained.

2  
3 V.

4 Answering the allegations set forth in Paragraph V of  
5 said complaint, this defendant denies the allegations therein  
6 set forth.

7  
8 VI.

9 Answering the allegations contained in Paragraph VI  
10 of said complaint this defendant denies the allegations as  
11 therein set forth.

12  
13 VII.

14 Answering Paragraph VII of said complaint, this defend-  
15 ant alleges that it has not sufficient information or belief upon  
16 which to base an answer to the allegations therein set forth and  
17 therefore basing its answer upon that ground, denies the alle-  
18 gations therein set forth.

19  
20 VIII.

21 Answering Paragraph XI of said complaint, defendant  
22 denies the allegations therein set forth and alleges that the  
23 title of plaintiff and said Indians, if any, is subject to the  
24 rights and easements of this defendant.

25  
26 FURTHER ANSWERING SAID COMPLAINT and as a further de-  
27 fense thereto, defendant alleges as follows:

28  
29 I.

30 That defendant CLEAR LAKE WATER COMPANY, a corporation,  
31 is a corporation organized and existing under and by virtue of



1 the laws of the State of California.

2  
3 II.

4 That said defendant is a public utility engaged in the  
5 business of storing and distributing water for irrigation pur-  
6 poses and owns and maintains a dam at the outlet of Clear Lake  
7 and stores water behind said dam and in Clear Lake and during the  
8 irrigation season withdraws said water through said dam at the  
9 outlet of said Clear Lake and conducts the same down Cache Creek  
10 and to a point near the town of Capay in the County of Yolo,  
11 State of California and to a point commonly known as Moore's Dam  
12 in said County of Yolo at which points said waters are diverted  
13 into the distributing system maintained by defendant and through  
14 which said waters are distributed and delivered to lands in the  
15 County of Yolo for irrigation purposes and that approximately  
16 forty thousand acres of land are and can be served with irrigat-  
17 ion waters through the works of this defendant.

18  
19 III.

20 That during the year 1914, Yolo Water and Power Com-  
21 pany, a corporation, predecessor of this defendant, constructed  
22 the dam hereinbefore referred to at the outlet of Clear Lake and  
23 was at said time the owner of all of the works, canals, ditches  
24 and properties now owned by the Clear Lake Water Company, a cor-  
25 poration, defendant herein, and that defendant succeeded to all  
26 of the property, rights, easements and distributing system of  
27 said Yolo Water and Power Company, a corporation.

28  
29 IV.

30 That since the year 1914, said Clear Lake Water Com-  
31 pany, a corporation, defendant herein and its predecessor in

1 interest, have continuously, openly and notoriously exercised  
2 and enjoyed without interruption the right to impound water in  
3 Clear Lake and thereby raising the level of said Clear Lake and  
4 overflowing the lands bordering on said Clear Lake and thereby  
5 overflowing the rim lands of islands situate in said Clear Lake  
6 and overflowing the rim lands of the lands described in plain-  
7 tiff's complaint.

8  
9 V.

10 That a certain gauge for the purpose of measuring the  
11 elevation of water in Clear Lake has been established and is  
12 commonly known as the Rumsey Gauge and that the zero mark on said  
13 Rumsey Gauge is 20.1 feet below center of a large concrete star  
14 in the northeast corner of the Lake County Courthouse yard at  
15 Lakeport, and is 21.56 feet below the iron step in the front  
16 entrance of the Bank of Lake building at the southeast corner  
17 of Main street and Second street in the City of Lakeport, County  
18 of Lake, State of California.

19  
20 VI.

21 That on or about the thirtieth day of June, 1913,  
22 William S. Tevis and Mabel P. Tevis, by a certain instrument in  
23 writing granted and conveyed to Yolo Water and Power Company, a  
24 corporation, predecessor of this defendant, the right to over-  
25 flow so much of the lands described in said instrument as might  
26 be required to raise the level of said Clear Lake to an elevat-  
27 ion ten feet over and above the low water mark of said Clear  
28 Lake as established by the Rumsey Gauge, which said low water  
29 mark is designated as zero on said Rumsey Gauge, which said in-  
30 strument is recorded in the office of the County Recorder of the  
31 County of Lake, State of California, in Book 50 of deeds, page

1 555, and the lands described therein are as follows:

2  
3 Fractional Sections One (1), two (2), three (3),  
4 eleven (11), twelve (12) and thirteen (13), all  
5 of township thirteen (13) north, range eight (8)  
6 west, M. D. B.; the southeast quarter ( $SE\frac{1}{4}$ ) and  
7 the fractional west half ( $W\frac{1}{2}$ ) of Section five  
8 (5); fractional section six (6); all of section  
9 seven (7) the west half ( $W\frac{1}{2}$ ) of the west half  
10 ( $W\frac{1}{2}$ ) of section eight (8); the west half ( $W\frac{1}{2}$ )  
11 of the northeast quarter ( $NE\frac{1}{4}$ ); the west half  
12 ( $W\frac{1}{2}$ ) of the southeast quarter ( $SE\frac{1}{4}$ ); and the  
13 fractional west half of section seventeen (17);  
14 fractional section eighteen (18) and lot one  
15 (1) of fractional section twenty (20) all of  
16 township thirteen (13) north, range seven (7)  
17 west, M. D. M.; also the parcel of swamp and  
18 overflowed land circumscribed by a line com-  
19 mencing on the line of marsh or overflowed land  
20 as represented in the public surveys, where the  
21 same is intersected by the north line of the  
22 northeast subdivision of the southeast fraction-  
23 al quarter of section six (6) in township thir-  
24 teen (13) north, range seven (7) west, M. D. M.,  
25 and running thence due west one (1) chain and  
26 eighty-four (84) links to a station on the out-  
27 er line of the marsh and line of water of Clear  
28 Lake; thence with the line of said marsh and  
29 lake south forty-seven (47) degrees east, eleven  
30 (11) chains and sixty (60) links to a station;  
31 thence south twenty and one-half ( $20\frac{1}{2}$ ) degrees  
west, twelve (12) chains and ninety (90) links  
to a station on line of lake due west, on the  
south line of said northeast subdivision of the  
southeast fractional quarter, thence due east  
one (1) chain and thirty-three links (33) to  
where said south line strikes said marsh or  
overflowed land as represented by the plat of  
said public survey; thence with the marsh line  
as represented on the public plat north twenty  
and one-half ( $20\frac{1}{2}$ ) degrees, east, thirteen (13)  
chains and twenty (20) links to a station;  
thence north forty-seven (40) degrees west,  
eleven (11) chains and ten (10) links to the  
place of commencement; also the southeast quar-  
ter ( $SE\frac{1}{4}$ ) of the southwest quarter ( $SW\frac{1}{4}$ ) of  
Section fourteen (14) in township thirteen (13)  
north, range seven (7) west, M. D. M., all of  
said property containing three thousand three  
hundred twenty (3320) acres, more or less, and  
being all of the lands situated in the County  
of Lake, State of California belonging to said  
William S. Tevis; together with any islands and  
marsh or overflowed lands in or along Clear Lake  
adjacent to the above described property and be-  
longing to said William S. Tevis.

Saving and excepting only such portions  
thereof as were heretofore conveyed by said  
William S. Tevis to the Clear Lake Quicksilver  
Company by deed dated the twenty-second day of

6.

NEAL CHALMERS  
ATTORNEY AT LAW  
WOODLAND, CALIFORNIA

1                   September, 1906, and recorded in the office  
2                   of the County Recorder of the County of Lake,  
3                   State of California, in book 39 of Deeds,  
4                   page 160.

5  
6                   VII.

7                   That said Yolo Water and Power Company, a corporation,  
8                   predecessor of this defendant and this defendant which has suc-  
9                   ceeded to all of the rights of said Yolo Water and Power  
10                  Company, have expended large sums of money in the construction  
11                  of the dam hereinbefore referred to and have continuously used  
12                  and operated the same and have stored water behind said dam  
13                  and have thereby overflowed so much of the lands described in  
14                  plaintiff's complaint as are overflowed when the level of said  
15                  Clear Lake is raised to an elevation ten feet over and above the  
16                  low water mark of said Clear Lake as established by the Rumsey  
17                  Gauge and that this defendant and its predecessor in interest  
18                  have continuously overflowed said lands in the operation of its  
19                  dam and in storing water in said Clear Lake for more than twenty  
20                  years last past, and that by reason thereof and by reason of  
21                  said conveyance of said William S. Tevis and Mabel P. Tevis,  
22                  this defendant and its predecessor in interest, have acquired a  
23                  prescriptive right and that the rights of any and all persons  
24                  claiming any right, title or interest in or to the lands des-  
25                  cribed in plaintiff's complaint, are subject to the right of  
26                  this defendant to overflow so much of the lands described in  
27                  plaintiff's complaint bordering on Clear Lake as may be required  
28                  to raise the level of said Clear Lake to an elevation ten feet  
29                  over and above the zero mark as established by and on said  
30                  Rumsey Gauge.

31                  WHEREFORE this defendant prays that in any Judgment or  
Decree the Court make its order that the title of any or all

1 persons claiming any right, title or interest in or to the lands  
2 described in plaintiff's complaint are subject to the right and  
3 easement of defendant Clear Lake Water Company, a corporation,  
4 to overflow so much of said lands bordering on Clear Lake as may  
5 be required to raise the level of said Clear Lake to an elevation  
6 ten feet over and above the zero mark of said Clear Lake as es-  
7 tablished by the Rumsey Gauge and that this defendant be granted  
8 such other and further relief as to the Court may seem meet and  
9 proper.

10  
11 

12 \_\_\_\_\_  
13 Attorney for defendant,  
14 Clear Lake Water Company,  
15 a corporation.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

1 STATE OF CALIFORNIA )  
2 COUNTY OF YOLO ) SS.

3  
4 M. J. GORMAN being first duly sworn, deposes and says:

5 That he is an officer, to-wit: Secretary of CLEAR LAKE  
6 WATER COMPANY, a corporation, one of the defendants in the  
7 above entitled action;

8 That he has read the foregoing Answer and knows the  
9 contents thereof and that the same is true of his own knowledge  
10 except as to the matters which are therein stated on information  
11 and belief and as to those matters, he believes it to be true.

12  
13 *M. J. Gorman*

14  
15 Subscribed and sworn to  
16 before me this second day  
of March, 1939.

17 *B. K. Gorman*  
18 Notary Public in and for  
the County of Yolo, State  
19 of California.

20  
21  
22  
23 Receipt of a copy of the foregoing Answer  
24 is hereby admitted this 7<sup>th</sup> day of March,  
25 1939.

26 *Frank J. O'Leary*  
27 *J. B. Gorman* U.S. Atty.  
Attorney for Plaintiff.

Northern District of California, ss.

I hereby certify and return, that on the 17<sup>th</sup> day of February, 1939  
I received the within Summons and that after diligent search, I am unable  
to find the within-named defendants Empire Consolidated Quicksilver Mining Company  
within my district.

Dated : Sacramento, Califo.  
Feb, 27th 1939

George Vise

United States Marshal.

By

Hayden Saunders

Deputy United States Marshal.

## RETURN ON SERVICE OF WRIT.

United States of America, }  
 Northern DISTRICT OF California } ss:

I hereby certify and return that I served the annexed Summons

on the therein-named State of California

copy of complaint attached  
 by handing to and leaving a true and correct copy thereof with Richard Olson, Sect. to Culbert I. Olson, Governor State of California personally  
 at Sacramento, California in said District on the 21 st day of  
February, A. D. 19 39

George Vice

U. S. Marshal.

By Hayden Saunders Deputy.

## RETURN ON SERVICE OF WRIT.

United States of America, }  
 Northern DISTRICT OF California } ss:

I hereby certify and return that I served the annexed Summons

on the therein-named Clear Lake Water Company

copy of complaint attached  
 by handing to and leaving a true and correct copy thereof with M. J. Gorman, Sect and Treasure  
Clear Lake Water Company personally  
 at Woodland, California in said District on the 18 th day of  
February, A. D. 19 39

George Vice

U. S. Marshal.

By Hayden Saunders Deputy.



RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons  
on the therein-named California Trust and Savings Company

by handing to and leaving a true and correct copy thereof with George Walker, Manager of  
California Trust and Savings Company personally  
at Sacramento, California in said District on the 27th day of  
February, A. D. 1939

George Vice U. S. Marshal.  
By Hayden Saunders Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons  
on the therein-named John Doe one, as  
administrator of the Estate of Joseph M. Mc Donough  
Deceased.

by handing to and leaving a true and correct copy thereof with Dent W. Mc Donough  
Administrator thereof personally  
at San Francisco California in said District on the 22 day of  
February, A. D. 1939

George Vice U. S. Marshal.  
By Herbert R. Cole Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

Northern DISTRICT OF California

ss:

I hereby certify and return that I served the annexed

Summons

on the therein-named

Pacific Telephone and Telegraph Company, a Corporation.

by handing to and leaving a true and correct copy thereof with

Mr P. J. Markin

Chief Special Agent.

personally

at San Francisco California in said District on the

16

day of

February

, A. D. 1939

George Vice

U. S. Marshal.

By Herbert P. Cole

Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

Northern DISTRICT OF California

ss:

I hereby certify and return that I served the annexed

Summons

on the therein-named

Pacific Gas and Electric Company, a Corporation.

by handing to and leaving a true and correct copy thereof with

Mr R. Kindig

Secretary.

personally

at San Francisco California in said District on the

16<sup>th</sup>

day of

February

, A. D. 1939

George Vice

U. S. Marshal.

By Herbert P. Cole

Deputy.

Northern District of California, ss.

I hereby certify and return, that on the 16<sup>th</sup> day of February, 1939  
I received the within Summons and that after diligent search, I am unable  
to find the within-named defendants Clinton C. Dolbear  
within my district.

George Vice  
United States Marshal.

By Herbert R. Cole  
Deputy United States Marshal.

Reported to be in  
Los Angeles

Northern District of California, ss.

I hereby certify and return, that on the 16<sup>th</sup> day of February, 1939  
I received the within Summons and that after diligent search, I am unable  
to find the within-named defendants A. J. Hathaway  
within my district.

George Vice  
United States Marshal.

By Herbert R. Cole  
Deputy United States Marshal.

Reported to be in  
Los Angeles

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons  
on the therein-named Crocker First National Bank

by handing to and leaving a true and correct copy thereof with J. W. Hall  
Vice President personally  
at San Francisco California in said District on the 16<sup>th</sup> day of  
February, A. D. 1939

George Vice U. S. Marshal.  
By Herbert P. Cole Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons  
on the therein-named Estelle R. Davis

by handing to and leaving a true and correct copy thereof with Estelle R. Davis  
personally  
at Oakland California in said District on the 17<sup>th</sup> day of  
February, A. D. 1939

George Vice U. S. Marshal.  
By Herbert P. Cole Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons  
on the therein-named Ruth D. Fremery

by handing to and leaving a true and correct copy thereof with Ruth D. Fremery  
personally  
at Oakland California in said District on the 17<sup>th</sup> day of  
February, A. D. 1939

George Vice U. S. Marshal.  
By Herbert R. Cole Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons  
on the therein-named P. R. Bradley

by handing to and leaving a true and correct copy thereof with P. R. Bradley  
personally  
at San Francisco California in said District on the 16<sup>th</sup> day of  
February, A. D. 1939

George Vice U. S. Marshal.  
By Herbert R. Cole Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons

on the therein-named Bradley Mining Company

by handing to and leaving a true and correct copy thereof with Mr Edward A Nutt

Secretary personally

at San Francisco California in said District on the 16<sup>th</sup> day of

February, A. D. 1939

George Vise U. S. Marshal.

By Herbert R. Cole Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss:  
Northern DISTRICT OF California

I hereby certify and return that I served the annexed Summons

on the therein-named Edward A Nutt

by handing to and leaving a true and correct copy thereof with Edward A. Nutt

personally

at San Francisco Calif in said District on the 16<sup>th</sup> day of

February, A. D. 1939

George Vise U. S. Marshal.

By Herbert R. Cole Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

Northern DISTRICT OF California

ss:

I hereby certify and return that I served the annexed

Summons

on the therein-named

Homestake Mining Company

by handing to and leaving a true and correct copy thereof with

Edward A. Nutter

personally

at San Francisco California in said District on the

16<sup>th</sup>

day of

February, A. D. 1939

George Vice

U. S. Marshal.

By Herbert P. Cole

Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

Northern DISTRICT OF California

ss:

I hereby certify and return that I served the annexed

Summons

on the therein-named

Golden State Gold Mining Company

by handing to and leaving a true and correct copy thereof with

Mr. Edward A. Nutter

personally

at San Francisco California in said District on the

16<sup>th</sup>

day of

February, A. D. 1939

George Vice

U. S. Marshal.

By Herbert P. Cole

Deputy.

1 FRANK J. HENNESSY,  
United States Attorney,  
2 G. B. HJELM,  
Assistant U. S. Attorney,  
3 Attorneys for Plaintiff.

1935  
M D No.          Civ  
RECEIVED  
FEB 17 1939

U S MARSHAL'S OFFICE  
SAN FRANCISCO, CALIF.

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7  
8 IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

2

10  
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 THE STATE OF CALIFORNIA; S. F. BUTTERWORTH; ALFRED  
15 A. WHEELER; CROCKER FIRST NATIONAL BANK, A CORPO-  
16 RATION; WILLIAM O. B. MACDONOUGH; JOHN DOE ONE, AS  
17 ADMINISTRATOR OF THE ESTATE OF JOSEPH M. MAC-  
18 DONOUGH, DECEASED; JOHN DOE TWO, AS EXECUTOR OF  
19 THE ESTATE OF JOSEPH M. MACDONOUGH, DECEASED; JOHN  
20 DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE, JOHN DOE  
21 SIX, JOHN DOE SEVEN, JOHN DOE EIGHT, JOHN DOE NINE  
22 JOHN DOE TEN, JANE DOE ONE, JANE DOE TWO, JANE DOE  
23 THREE, JANE DOE FOUR AND JANE DOE FIVE AS HEIRS AT  
24 LAW AND/OR DEVISEES OF THE ESTATE OF JOSEPH M.  
25 MACDONOUGH, DECEASED; FREDERICK BILLINGS, THE  
26 CALIFORNIA BORAX COMPANY, A CORPORATION; THE  
27 CALIFORNIA BORAX COMPANY, A CO-PARTNERSHIP; THE  
28 SULPHUR BANK QUICKSILVER MINING COMPANY, A CORPO-  
29 RATION; THE SULPHUR BANK CONSOLIDATED QUICKSILVER  
30 MINING COMPANY, A CORPORATION; EMPIRE CONSOLIDATED  
31 QUICKSILVER MINING COMPANY, A CORPORATION; WILLIAM  
32 E. GERBER; RICHARD WHITE; CLEAR LAKE QUICKSILVER  
MINING COMPANY, A CORPORATION; RAYMOND G. LANOUE;  
JAMES H. O'BRIEN; T. A. MORRISSEY; CLEAR LAKE  
COMPANY, A CORPORATION; ESTELLE R. DAVIS; RUTH  
deFREMERY; CLINTON E. DOLBEAR; P. R. BRADLEY;  
EDWARD A. NUTTER; A. T. HATHAWAY; HOMESTAKE GOLD  
MINING COMPANY, A CORPORATION; GOLDEN GATE GOLD  
MINING COMPANY, A CORPORATION; RICHARD ROWE ONE;  
RICHARD ROWE TWO; RICHARD ROWE THREE; RICHARD ROWE  
FOUR; RICHARD ROWE FIVE; JANE ROWE ONE; JANE ROWE  
TWO; JANE ROWE THREE; JANE ROWE FOUR; JANE ROWE  
FIVE; SAM BLAKE CORPORATION ONE; SAM BLAKE COR-  
PORATION TWO; SAM BLAKE CORPORATION THREE; SAM  
BLAKE CORPORATION FOUR; SAM BLAKE CORPORATION  
FIVE; POWER AND IRRIGATION COMPANY OF CLEAR LAKE,  
A CORPORATION; CLEAR LAKE WATER COMPANY, A COR-  
PORATION; CALIFORNIA TRUST AND SAVINGS BANK, A  
CORPORATION; PACIFIC GAS AND ELECTRIC COMPANY, A  
CORPORATION; PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, A CORPORATION; BRADLEY MINING COMPANY, A  
CORPORATION,

Defendants.

FILED

O'clock and Min.

MAR 1-1939

WALTER B. MALING  
CLERK

4068L

CIVIL NO. \_\_\_\_\_

S U M M O N S .



TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve (\*) upon FRANK J. HENNESSY, United States Attorney for the Northern District of California, plaintiff's attorney, whose address is Room 404, New Post Office Building, Sacramento, California, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WALTER B. MALING, Clerk

By: F.M. Lampert  
F.M. LAMPERT  
Deputy Clerk

DATED: Sacramento, Calif.,  
February 10<sup>A</sup>, 1939.

(\*) Rule 5 (d) "All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter."

-----oOo-----  
UNITED STATES MARSHAL'S OFFICE )  
Northern District of California. ) ss

I hereby certify that I received the within writ on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, and personally served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 1939, by delivering to, and leaving with \_\_\_\_\_ one of said defendants named therein personally, at the City of \_\_\_\_\_, County of \_\_\_\_\_ in said District, a copy thereof, together with a copy of the complaint attached thereto.

GEORGE VICE, United States Marshal

By: \_\_\_\_\_  
Doputy

\_\_\_\_\_, Calif.  
\_\_\_\_\_, 1939.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION.

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 4068 L

STATE OF CALIFORNIA, et al.,

CIVIL.

Defendants.

---

DEPOSITION OF C. M. CRAWFORD

Taken before Julia T. Combs, Notary Public, at Lakeport, California,  
September 4th, 1940, on behalf of Defendant WILLIAM O.B. MACDONOUGH.

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*Received*  
**FILED**

.....O'clock and.....Min.....

OCT 16 1940

**WALTER B. MALING,**  
CLERK

*Julia T. Combs*  
Notary Public in and for  
The County of Lake, State  
of California.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, NORTHERN DIVISION.

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UNITED STATES OF AMERICA,

Plaintiff,

No. 4068 L

vs.

CIVIL

THE STATE OF CALIFORNIA, et al.,

Defendants.

---

DEPOSITION OF C. M. CRAWFORD

- taken before -

Julia T. Combs, Notary Public, at Lakeport, California,  
on Wednesday, September 4th, 1940, on behalf of Defend-  
ant WILLIAM G. B. MAC DONOUGH.

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APPEARANCES:

- ON BEHALF OF DEFENDANT MACDONOUGH:  
MESSRS HOWARD J. FINN, and BROBECK,  
PHLEGER & HARRISON, with M. B. PLANT, ESQ.,  
appearing of counsel,  
Crocker Building,  
San Francisco, California.
- ON BEHALF OF DEFENDANT RUTH DEFEMERY, et al.,  
JOHN PARKS DAVIS, ESQ.,  
Standard Oil Building,  
San Francisco, California.
- ON BEHALF OF PLAINTIFF:  
EMMETT SEAWELL, ESQ.,  
San Francisco, California.

JULIA T. COMBS  
OFFICIAL REPORTER  
SUPERIOR COURT OF LAKE COUNTY  
LAKEPORT, CALIFORNIA

1 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
2 OF CALIFORNIA, NORTHERN DIVISION.

3 UNITED STATES OF AMERICA, )

4 Plaintiff, )

5 vs. )

6 THE STATE OF CALIFORNIA, et al., )

7 Defendants. )  
8 \_\_\_\_\_ )

No. 4068 L.

Civil.

9 DEPOSITION OF C. M. CRAWFORD.

10  
11 BE IT REMEMBERED that, pursuant to notice and stipulation,  
12 the deposition of C. M. CRAWFORD, a witness produced on behalf  
13 of defendants William O. B. MacDonough, William O. B. Mac-  
14 Donough as administrator with the will annexed of the estate of  
15 Joseph M. MacDonough, deceased; Joan MacDonough and Mary Mac-  
16 Donough, minors, by William O. B. MacDonough, their next friend,  
17 was taken before JULIA T. COMBS, a notary public in and for the  
18 County of Lake, State of California, duly commissioned, qualifi-  
19 ed and acting, on Wednesday, the 4th day of September, 1940, at  
20 the hour of eleven o'clock A. M., at the home of the said C. M.  
21 Crawford, at Lakeport, California; that there also appeared  
22 at said time and place, EMMETT SEAWELL, ESQ., counsel for  
23 Plaintiff; M. B. PLANT, ESQ., of the firm of Brobeck, Phleger  
24 & Harrison, counsel for Defendant, William O. B. MacDonough;  
25 and JOHN PARKS DAVIS, ESQ., counsel for Defendants Ruth Defemery,  
26 Estelle R. Davis, and Bradley Mining Company.

1 The witness was by said notary thereupon duly and regularly  
2 sworn to testify to the truth, the whole truth, and nothing but  
3 the truth in the matter of his deposition, and the taking there-  
4 of proceeded.

5 The said deposition in respect to the testimony given and  
6 all matters incident to the taking of the same were by Julia T.  
7 Combs, the official Reporter of the Superior Court of the State  
8 of California, in and for the County of Lake, and the notary  
9 herein, thereupon taken down in shorthand and transcribed into  
10 typewriting and delivered for submission to the said witness  
11 for perusal, correction and signature.

12 - - - - -

13 MR. PLANT: May it be stipulated gentlemen that all  
14 objections, except as to the form of the question, may be  
15 reserved until the trial?

16 MR. SKAWELL: It is so stipulated.

17 MR. DAVIS: It is so stipulated.

18 - - - - -

19 The testimony of said witness is as follows:

20 DIRECT EXAMINATION

21 MR. PLANT: Q. Colonel, will you state your full name?

22 A. I have that title but it has<sup>been</sup> just a name that has gone with  
23 me all of my life.

24 Q. Will you state your full name? A. Do you want the full  
25 name or the way I sign it? I sign it, C. M. Crawford.

26 Q. C. M. Crawford? A. Yes.

- 1 Q. How old are you Mr. Crawford? A. Eighty years old, past.
- 2 Q. And how long have you lived in Lake County?
- 3 A. All of my life.
- 4 Q. You are a resident of Lakeport at the present time?
- 5 A. Yes, Lakeport.
- 6 Q. And you have lived in Lakeport all of your life?
- 7 A. Practically so. I lived in the County all of my life. I
- 8 have been away at times teaching and in different parts of
- 9 the county for as much as three or four years at a time.
- 10 Q. That means you were born in 1860, is that correct?
- 11 A. Yes.
- 12 Q. And you spent your childhood and other years around Clear
- 13 Lake? A. Yes.
- 14 Q. You are an attorney at law, are you? A. Yes, sir.
- 15 Q. And were at one time District Attorney of Lake County?
- 16 A. Yes.
- 17 Q. And you have practiced here many years?
- 18 A. And I had the honor of being a member of the Assembly one
- 19 session, although I don't know whether that is much of an
- 20 honor or not.
- 21 Q. How long have you practiced in Lake County?
- 22 A. How long? About thirty-five years.
- 23 Q. Prior to that time you taught school? A. Yes.
- 24 Q. I have here a map which I am going to ask to have marked
- 25 Defendants' Exhibit A for identification.
- 26 (Notary marks map "Defendant's Exhibit A for identification")

- 1 Q. Now, I will show you this map Colonel Crawford, and call  
2 your attention to an Island marked "Island No. 1" on that  
3 map. A. That is north, isn't it. (Indicating  
4 map)
- 5 Q. Yes. A. Get it around so I can get the directions.
- 6 Q. I am going to call your attention to this Island marked  
7 "No. 1". A. Yes.
- 8 Q. Are you acquainted with that Island? A. Yes.
- 9 Q. By what name is it known to you? A. Well, it is  
10 generally known as "Sulphur Bank Island" to many.
- 11 Q. Has it been known by other names, do you know?
- 12 A. I have heard it called "Rattle Snake Island", but improper-  
13 ly so, because Rattle Snake Island is another place in the  
14 Lake.
- 15 Q. Where is Rattle Snake Island, so called?
- 16 A. Rattle Snake Island is at the mouth of Cache Creek.
- 17 Q. How far is that away from Island No. 1?
- 18 A. On a straight line, ten or twelve miles.
- 19 Q. This Island No. 1 is known to you as Sulphur Bank Island,  
20 and has it also been called MacDonough Island?
- 21 A. Yes, I have heard it called MacDonough Island.
- 22 Q. Is there another small Island over to the east of Island  
23 No. 1, which appears upon this map but which is not given  
24 a number, and suppose we mark that "No. 2".  
25 (Map is so marked at point indicated, No. "2")  
26 Now, I have marked that smaller island Island No. 2. Are

- 1       you acquainted with that island No. 2?
- 2   A.   Yes, but not so familiar as Island No. 1.
- 3   Q.   When did you first become acquainted with Island No. 1?
- 4   A.   Well, I can't tell exactly, but I would say about 1870.
- 5   Q.   Do you recall the circumstances?        A.   Yes.
- 6   Q.   What were they please?                A.   Well, my father was a
- 7       practicing lawyer, he was attorney for the people who were
- 8       operating the Borax Lake property across the hill, and he
- 9       was also attorney for the Sulphur Banks people, and he was
- 10      assisting them apparently, as near as I can remember, in
- 11      obtaining title to their mineral lands, and he went down
- 12      and took me with him. We first went to Borax Lake and
- 13      stopped for a few hours and the superintendent there went
- 14      with us over to Sulphur Banks and they talked to the
- 15      superintendent over there, and that is my first visit to
- 16      Sulphur Banks that I remember of.
- 17   Q.   And that was when you were/<sup>a</sup>small boy?        A.   Yes.
- 18   Q.   And did you from time to time visit that locality in later
- 19      years?                A.   Yes, quite frequently.
- 20   Q.   Under what circumstances?            A.   Well, I was usually
- 21      fishing or hunting, but I have been there to the Indian
- 22      Ranch a good many times in the discharge of my duties as
- 23      District Attorney of this County too.
- 24   Q.   Did you do much fishing and hunting in your boyhood?
- 25   A.   Yes, a lot of it.
- 26   Q.   And how old a boy were you at the time?



1 A. Oh, from ten to eighteen or nineteen years on.

2 Q. Could you give us any idea of the frequency you visited the  
3 location of these islands during that time, from the time  
4 you were ten to eighteen or nineteen years old?

5 A. No. I have been there many times is all I can say.

6 Q. Would you say you averaged once a year?

7 A. Yes, I think I did.

8 Q. Now, you have mentioned the Indian ranch, or rancheera.

9 Will you state where that ranch was located when you visited

10 the property in about 1870? A. Well, that is <sup>so</sup> far

11 back I couldn't tell. I wasn't over that way very far. I

12 was where they were mining, reducing sulphur. It was a

13 sulphur mine then, not a quicksilver mine.

14 Q. Let me ask you this: Do you know where that ranch was

15 located at any time between 1870 and 1880? A. Yes.

16 Q. Where was it? A. About where it is now, from

17 what I could observe.

18 Q. Have you any idea as to what its extent was at that time?

19 A. No, except there was a rock wall or fence that seemed to  
20 mark it.

21 Q. That is the same rock fence that is there now? A. Yes.

22 Q. You have been there fairly recent? A. Well, the last  
23 time I was there was three or four years ago.

24 Q. Well, will you state the fact Colonel with respect to  
25 whether or not the ranch was located any differently at  
26 that time than it was when you last saw it?

- 1 A. I don't think so.
- 2 Q. Now, will you describe the large island, that is Sulphur  
3 Bank Island, or Island No. 1, as it was during the period  
4 from 1870 to 1880? A. Describe the surface you mean?
- 5 Q. Yes, what was the nature of the Island, what was it like?
- 6 A. Well, it is a rocky island in the first place, but there is  
7 considerable soil filling up the crevices of the rock, and  
8 considerable timber and brush growing on the island; oak  
9 timber, cottonwoods and willows, and I think some pepperwood  
10 perhaps, and on the southerly part, southeastern part of  
11 the island there isn't so much growth, the growth is  
12 rather sparse; there would be bunches of young willows  
13 and bunches of young cottonwoods.
- 14 Q. Is the growth on any part of the island what you would  
15 call dense growth? A. Yes.
- 16 Q. On what portion of the island is the growth dense?
- 17 A. I would say four-fifths of it.
- 18 Q. Was that true during the period from 1870 to 1880?
- 19 A. Yes.
- 20 Q. Now, the other one-fifth, has that any timber or brush on  
21 it at all? A. I didn't get that.
- 22 Q. The remaining one-fifth, has it any timber or brush on it?
- 23 A. Yes, as I say scattering timber and brush. Some cotton-  
24 wood and willows.
- 25 Q. So summarizing, perhaps four-fifths of the island was  
26 covered with fairly dense growth and the other one-fifth

- 1 was covered sparcely with brush and small trees?
- 2 A. Yes.
- 3 Q. Now, during that period from 1870 to 1880 were you actually  
4 on the island at any time? A. Well, I wouldn't say  
5 positively, I think I was, but-- I was there fishing or  
6 hunting if I was there. There is nothing to impress that  
7 on my mind.
- 8 Q. Do you know whether or not you were on the island in later  
9 years? A. Yes, many times.
- 10 Q. So you have been on the island many times? A. Yes.
- 11 Q. Were you on the island at times in your youth? A. Yes.
- 12 Q. And those occasions may have been prior to 1880, you don't  
13 recall, is that correct? A. I know some of them  
14 must have been, because I was there many times fishing and  
15 hunting both.
- 16 Q. Now, will you state whether or not there were at any time  
17 any indian habitations on that island?
- 18 A. None to my knowledge.
- 19 Q. Do you know what an indian habitation looks like?
- 20 A. I should, I have been raised right up among them.
- 21 Q. You are familiar with the type of dwellings the indians  
22 use? A. Yes.
- 23 Q. And you saw none of them on that island? A. No.
- 24 Q. Will you state whether or not you ever saw Indians make any  
25 use of the Island in any way? A. Yes, I saw once or  
26 twice a Maheli cultivating a little garden on the southeast

1 part of the island, I think two or three different times  
2 when I had been there, oh, a little garden perhaps that  
3 would circle forty feet in diameter would cover it all, and  
4 I -- excuse me -- I have also seen indians taking wood from  
5 there in their boats across to the rancherea, to the main  
6 land, but there has never been any habitations until  
7 recently. The last time I was there there was a house on  
8 the island, but I just thought perhaps it was an Indian  
9 house but it may not have been. I did not investigate to  
10 find out.

11 Q. That was about 1935 or '36? A. Yes.

12 Q. But when you were around that Island in your youth you never  
13 saw any habitation there of any kind? A. No.

14 Q. What was it you said you saw cultivating a little garden?

15 A. An Indian woman, a Maheli.

16 Q. Would you be able to indicate on this map Colonel approx-  
17 imately where that little garden was? A. I think so.  
18 Right here. (Indicating on map)

19 Q. Now, let us mark that. I wonder if you would mark it with  
20 a cross? (Witness marks point indicated with a cross)

21 Q. You have marked the location there of the little garden  
22 you referred to with a cross, is that correct?

23 A. That is correct.

24 Q. Could you mark the location of the house you saw in 1935 or  
25 '36? A. Yes, it was further toward the north.

26 Q. Would you say it was in the neighborhood of these places,

- 1 "Old stone Lodges"? A. No.
- 2 Q. Was it a little north of that? A. It was near  
3 here. About there. (Indicating on map)
- 4 Q. A little bit north of those places marked "Old stone Lodges"?
- 5 A. I do not know whether it was an Indian's or white man's  
6 house. There was a house there when I was last there.
- 7 Q. Do you want to indicate that with a check mark, not a  
8 cross, just a check mark. A. Yes. (Witness places  
9 check mark at point indicated).
- 10 Q. Can you state whether or not that garden was there at all  
11 times during the period from 1870 to 1880?
- 12 A. I could not. I don't know.
- 13 Q. It might have been there every year, and it might not?
- 14 A. Yes.
- 15 Q. Do you know whether it was there every time you were there  
16 during that period? A. I know I was there several times  
17 and didn't notice it.
- 18 Q. Will you state whether or not there was at any time a  
19 cemetery, an indian cemetery, on that Island No. 1?
- 20 A. Not to my knowledge.
- 21 Q. By the way, were you acquainted with the custom of the  
22 Lake County, or Clear Lake, Indians with respect to dis-  
23 posing of their dead? A. I think so.
- 24 Q. Do you know what custom they practiced during the period  
25 from 1870 to 1880? A. Well, the indians in the north-  
26 ern part of the county were different to those at the

1 lower end, they cremated their dead; they would gather  
2 big logs and pile them up and put the body on there, to-  
3 gether with all of their belongings, if they had a saddle,  
4 bows and arrows, they were put on and all set afire and  
5 burned.

6 Q. You have seen that done? A. Many times.

7 Q. What did they do with the ashes? A. Left them where they  
8 fell, on the ground.

9 Q. What about the Indians in the southerly end of the Lake?

10 A. I think they must have practiced burial of their dead, bec-  
11 ause on Rattle Snake Island there was a burial ground/<sup>and</sup>there  
12 has been a lot of excavating of that place during the last  
13 year and scientists have expressed the opinion they were  
14 Indian bones.

15 Q. Did you ever observe the Indians burial of their dead?

16 A. I don't think I ever did.

17 Q. Did you ever observe any burial ground in use by the  
18 Indians? A. No.

19 Q. You refer to Rattle Snake Island, by that you mean the  
20 Island at the mouth of Cache Creek? A. Yes.

21 Q. Now, will you state whether the MacDonough Island, or Sulph-  
22 ur Bank Island, Island No. 1, is that located at the north  
23 or south end of the Lake? A. It is the further end,  
24 southerly end.

25 Q. Do you know what practice the Sulphur Bank Indians followed  
26 with respect to disposing of their dead? A. No, I do not.

- 1 Q. You never observed any burial grounds in the neighborhood?
- 2 A. No.
- 3 Q. Now, I am going to call your attention to the small island,  
4 the Island No. 2. Will you describe that island, what does  
5 it look like? A. Well, it depends a good deal on  
6 the height of the water in the lake as to what it looks like.  
7 When the lake is very high, as it used to vary from 14 to  
8 15 feet between winter and summer, that was when the Spring  
9 Valley Dam was in Cache Creek, and when the water is high  
10 it is mostly rock and big rock and jagged rock lower down,  
11 and I would say it was mostly a rock. I have fished around  
12 that island but not very often.
- 13 Q. In other words, it is quite steep, is it? A. Yes.
- 14 Q. Is there any brush on it? A. Yes, and willows  
15 grow on it, and usually a cottonwood or two.
- 16 Q. And is there any more level land around it or not?
- 17 A. A good deal? No.
- 18 Q. Will you state whether or not that is the way it appeared  
19 in your youth? A. I can't see very much difference,  
20 except as I say in early days when the Spring valley water  
21 Company had a dam in Cache Creek the height of the water  
22 in the lake in summer and winter was about fifteen feet  
23 different. It never has been that since, since the people  
24 went down there and tore the dam out.
- 25 Q. Will you state whether or not in your youth that island  
26 was regarded as an island? A. I don't think it was.

1 Q. Was it surrounded by water? A. It may have been  
2 some times and probably was when the lake was high.

3 Q. Was that island, the island marked No. 2, ever inhabited  
4 by Indians? A. Not to my knowledge.

5 Q. Did you ever see Indians making any use of it?

6 A. Never.

7 Q. You never saw any Indian habitations on it? A. No.

8 Q. You never saw them doing any gardening or any fishing there?

9 A. No.

10 MR. PLANT: I think that is all I have.

11 CROSS EXAMINATION

12 MR. DAVIS: Q. One question I want to ask about the map here.

13 As long as this map is referred to here for identification  
14 by Mr. Plant, I would like to have it shown approximately,  
15 it can be subsequently changed to work it out, the position  
16 of the present stone wall that is there, this particular  
17 thing mentioned "Old Stone wall". There is a stone wall there

18 now which runs approximately in this direction, the  
19 direction is northeast, from the point on the mainland,  
20 approximately above the figures 21.2, northeasterly.

21 Can you see this? (Indicating map) A. Yes.

22 Q. Now, can we just make a mark on this, or shall I substitute  
23 or bring in a map with that on it?

24 MR. PLANT: I will stipulate you can substitute or mark that in.

25 MR. DAVIS: We will temporarily mark this just in pencil.

26 This is not on your map and I wanted to show it here.



1 MR. PLANT: We will stipulate you can put it in at any future  
2 date that you want to.

3 MR. DAVIS: Q. Now, in connection with the cross-marks, Colonel  
4 Crawford, you are familiar with the rancheera at the present  
5 time, are you not? (Indicating cross marks just placed on  
6 map) A. Yes, I haven't been down there for three  
7 or four years.

8 Q. But you have been familiar with it for years, have you not?

9 A. Oh, yes.

10 Q. You have been familiar with the stone wall that is there at  
11 the present time, are you not? A. Yes.

12 Q. As to your knowledge, the Indian rancheera extends beyond  
13 that stone wall that is there now, approximately marked with  
14 crosses, into this mining area here, so far as you recall?

15 A. Not to my knowledge.

16 MR. PLANT: By this mining area, you refer to the area east of  
17 the wall?

18 MR. DAVIS: Yes, which I have marked there with pencil cross  
19 marks. Have you seen any Indian huts on east of the wall,  
20 or Indian habitations? A. No.

21 Q. Have you seen any Indian cultivation east of the wall?

22 A. No.

23 Q. You were familiar with the mining operations in your youth,  
24 were you not? A. Somewhat.

25 Q. And there were sulphur mining operations were there?

26 A. Yes.

- 1 Q. Before the quicksilver operations? A. Yes.
- 2 Q. Were those sulphur operations somewhere near that vicinity?
- 3 A. I think it was nearer than the present reduction works or  
4 mine.
- 5 Q. Nearer than the present operations? A. Yes.
- 6 Q. The present operations so far as can be seen of the map is  
7 somewhere here where the printing is on the map, "Subdivis-  
8 ion of Sections 5 & 6"? A. Yes.
- 9 Q. And it is your testimony that the sulphur operations were  
10 up here? A. It is my recollection.
- 11 Q. It is your recollection they were northwest?
- 12 A. Nearer the--
- 13 Q. Rancherea? A. But I could not say how much nearer.
- 14 Q. No. And this Rancherea and the territory around here is the  
15 territory you mentioned when you stated, when you as distr-  
16 ict attorney had to go down and settle many disputes there?
- 17 A. Yes.
- 18 Q. So you are thoroughly familiar with that particular property?
- 19 A. Yes.
- 20 Q. Have you ever seen any stone wall other than the stone wall  
21 that I have marked with crosses, such as indicated on the  
22 map; has this been the only stone wall that you have seen  
23 during the years that you have been there?
- 24 A. I don't remember any other. There maybe a stone wall for a  
25 short distance dividing the Stubbs property from the  
26 Sulphur Banks property, I rather think there is.

1 Q. Where would that be? A. Up in here somewhere.  
2 (Indicating on map)

3 Q. North of the line marked Township line, on the <sup>upper</sup> right hand  
4 corner of the map? A. Yes.

5 Q. but there is no such stone wall down in the area which we  
6 mentioned? A. Not to my knowledge.

7 MR. DAVIS: I have no further questions. If I may, I possibly  
8 will present another map which has that wall more accurately  
9 placed on it.

10 FURTHER CROSS EXAMINATION

11 MR. SEAWELL: Q. Now, you refer to this Island No. 1 as what  
12 Island, what name did you know that by?

13 A. Well, we always called it, the people I fished with and  
14 conversed with in referring to it, we always called it  
15 Sulphur Bank Island.

16 Q. Sulphur Bank Island? A. Sulphur Bank Island.

17 Q. And by what other names did you know it?

18 A. I have heard it called Rattle Snake Island.

19 Q. Is that not the common name for it? A. I don't  
20 think so. I think the common name for it is Sulphur bank  
21 Island.

22 Q. Did you ever hear it referred to by any other name?

23 A. Yes, the gentleman mentioned it awhile ago, I heard it  
24 called that.

25 MR. PLANT: MacDonough? A. Yes, MacDonough.

26 MR. SEAWELL: Q. When did you hear it called MacDonough

- 1 Island? A. I could not say.
- 2 Q. I mean, in your youth you heard it called MacDonough  
3 Island? A. I don't know.
- 4 Q. Would you say within the last forty years?  
5 A. Probably thirty or forty years.
- 6 Q. Prior to that you never heard it referred to as Mac-  
7 Donough Island? A. No.
- 8 Q. Evidently that is not the common name for the Island?  
9 A. No, the common name for the Island as far as I know is  
10 Sulphur Banks Island.
- 11 Q. Now, in answer to Mr. Plant's question as to the nature of  
12 the Island, or the geographical contour and growth on the  
13 Island, four-fifths, I believe you said, was brush and  
14 trees? A. Yes, I think so.
- 15 Q. And one-fifth was what? A. Well, it has some  
16 brush and trees on it, but it is not dense like it is on  
17 the other part. On this part up here toward the north  
18 it is all covered with heavy growth brush and trees, and  
19 in this portion down here the brush and trees are more  
20 scattered, and there is some land that is entirely bare  
21 in spots.
- 22 Q. Now, later on you testified that there was some cultivation  
23 on the Island, there was in your youth some cultivation?  
24 A. Yes.
- 25 Q. So you were speaking of the approximate portion when you  
26 said one-fifth was of a certain type?

- 1 A. Yes, certainly, I never measured it.
- 2 Q. Some portion of it was cultivated?
- 3 A. The portion of the Island that was cultivated I would say  
4 was a circle having a diameter of forty feet, that would  
5 cover it all.
- 6 Q. A portion of it was cultivated you remember in your youth?
- 7 A. Yes.
- 8 Q. By your youth, you mean when you were between the ages of  
9 ten and eighteen? A. Yes.
- 10 Q. Have you walked through that island from end to end, or  
11 what investigation have you made?
- 12 A. I have not been in the brushy area. I have been on the  
13 edge of it. I landed at different places around the Island  
14 but I never had occasion to go across it or fight my way  
15 through the brush.
- 16 Q. So you really don't know whether there are any Indian  
17 habitations in the center of the island or not?
- 18 A. I don't think that would be possible for a person could  
19 see evidence of it in trolling around the island.
- 20 Q. But to your knowledge you don't know what was in the center  
21 portion of the Island, you only ran on the edges?
- 22 A. I was only on the edges of the Island.
- 23 Q. You could not see through for 200 feet, or how far could  
24 you see? A. Some places you could see further than  
25 others, but generally speaking forty feet.
- 26 Q. Then it would be fair to say that you could not see further

- 1 than forty feet from the edge? A. I can only say  
2 what I observed.
- 3 Q. You could not see further than forty feet?
- 4 A. I don't see how persons could live in there and not see  
5 some signs of them coming out through the brush.
- 6 Q. You could not observe further than forty feet from the  
7 edge of the water?
- 8 MR. PLANT: The answer is he didn't go through.
- 9 MR. SEAWELL: I am asking if he observed any further than forty  
10 feet from the edge of the water line. You could see forty  
11 feet from the edge of the water line?
- 12 A. Only to the brushy part.
- 13 Q. And you never went in yourself? A. No. I don't  
14 mean I never was in on the Island, on the east part where it  
15 was not so brushy and so much timber, I have been over all  
16 of that many times.
- 17 Q. Well, what portion have you been over many times?
- 18 A. Well, where it runs down here toward the mainland there  
19 must be oh twenty or thirty acres in there where the brush  
20 and trees are scattered.
- 21 Q. Well, would you indicate on the map? Would you indicate  
22 about where you were? A. I can't tell exactly  
23 because you have no scale of miles here.
- 24 Q. The scale is, one inch equals 300 feet.
- 25 A. I would say that open part of the Island runs out about  
26 here.

1 Q. Draw a line across there. Will you draw a line and mark  
2 it?

3 (Witness draws line on map marked "Island No. 1")

4 MR. PLANT: It goes right through the end of Island No. 1,  
5 through the word "Island".

6 MR. SEAWELL: Q. How many times have you been onto that lower  
7 end of the Island? A. Oh, I could not tell you, many  
8 times.

9 Q. What would you call many times?

10 A. Sometimes we would go out there to eat our lunch, sometimes  
11 at the call of nature, and sometimes we went out to shoot  
12 at targets.

13 Q. You had targets at this end of the Island?

14 A. We put one up on a cottonwood tree I remember.

15 Q. How often, often? A. No, once, I think.

16 Q. Did you ever hunt on that Island? A. No.

17 Q. You went on there once to shoot at a target, and you did  
18 stop on the other occasions? A. We went there to eat  
19 lunch very frequently.

20 Q. By frequently, how many times? A. I don't know how often.

21 Q. Once a year, as Mr. Plant put it? A. Possibly.

22 Q. And you did not go any further inland above the point  
23 marked by you on the Island?

24 A. I am only guessing about that part, that is only approxi-  
25 ate.

26 Q. That is your best recollection at this date? A. Yes.

- 1 Q. In 1870 - 1880 you said you were familiar with the type  
2 houses the Indians lived in? A. Yes.
- 3 Q. And what type house was that? A. Well, they were  
4 principally tule houses. They made a circle around and they  
5 cut some long willow or oak posts, set them in the ground  
6 on the circumference of the circle and bent them over until  
7 they met at the top, and tied them with switches, and they wove  
8 in tule for the covering and that is the way they  
9 built them.
- 10 Q. Did they excavate for their houses?  
11 A. They would excavate for the sweat houses, and the sweat  
12 houses were their hospitals.
- 13 Q. They didn't excavate for the houses they lived in regularly?  
14 A. No.
- 15 Q. And you didn't observe any indication of those types of  
16 houses in the lower end of the island when you went there  
17 to shoot targets? A. I never saw them on any portion  
18 of the Island.
- 19 Q. You were only on the lower part? We have gone into that.  
20 A. I have been around it and I could see a short distance  
21 into it.
- 22 Q. Now, referring to what is indicated as "No. 2" on the map.  
23 This is referred to as Island No. 2? A. Yes.
- 24 Q. Now, in your youth you testified that was not referred to  
25 as an island, is that correct? A. As far as I can  
26 remember it wasn't.



- 1 Q. There was dry land, in other words, between what is referred  
2 to as the Island and the mainland?
- 3 A. I think so.
- 4 Q. Now, as to the rock wall, do you know approximately how  
5 many acres would be between the line, between this rock  
6 wall, which is indicated by crosses, and the water's edge?  
7 Have you any idea?
- 8 A. It wouldn't be hard to compute, it was a complete triangle.
- 9 Q. I was wondering if you have any idea at this time how many  
10 acres? A. No, I never observed it for that purpose.
- 11 Q. Well, in your youth you saw this stone wall, that is  
12 correct? A. Yes, I have seen that there many times.
- 13 Q. Well, in your youth you saw it there? A. Yes.
- 14 Q. And is it the same stone wall you had seen in your youth  
15 that is there today? A. I don't know, I never  
16 stayed there to watch if they changed it.
- 17 Q. Well, would you say it is in the same locality?
- 18 A. It seems to be.
- 19 Q. You never saw any other stone wall within - well within I  
20 would say a half mile of this wall marked by a cross?
- 21 A. Well, I think to the north there is a stone wall around  
22 here for a short distance, but I could not say exactly  
23 where it is, but I would say it is out near the Township  
24 line here. Either beyond the Township line or just before  
25 you reach it.
- 26 Q. Now, you state you never saw any Indians on the easterly

- 1 side of the stone wall marked with a cross on the map?
- 2 A. No, I don't think I ever did.
- 3 Q. Did you ever see any relics? A. Any what?
- 4 Q. Any relics, any bows or arrows, or anything of that nature
- 5 on the easterly side of the stone wall? A. No.
- 6 Q. Did you ever see any arrows on this portion of the Island
- 7 No. 1? A. I never saw any arrows there at all.
- 8 Q. And you never saw any relics whatsoever? A. No.
- 9 Q. You never saw any Indians of any kind on Island No. 1?
- 10 A. Oh, yes, I did see Indians there. I saw Indians out there
- 11 carrying wood, as I said awhile ago, they would load the
- 12 wood into boats and take it across to the Rancheria.
- 13 Q. And you saw this Indian woman cultivating? A. Yes.
- 14 Q. Now, you say you have never seen a cemetery in the south-
- 15 erly end of the lake, or around the Southerly end of the
- 16 lake, Indian Cemetery? A. No.
- 17 Q. Of any kind whatsoever? A. No, I never have.
- 18 Q. But you know those Indians buried their dead?
- 19 A. No, I don't know it.
- 20 Q. I thought you said the Indians in the southern end of the
- 21 lake buried their dead? A. I said apparently, from
- 22 the excavations made on Rattle Snake Island, that was a
- 23 fact.
- 24 Q. This other Island you are referring to is at the mouth of
- 25 some--
- 26 MR. PLANT: Cache Creek.

1 MR. SEAWELL: Cache Creek, to your knowledge you never saw any  
2 Cemetery there? A. No.

3 Q. So you do not know whether they buried them or not?

4 A. I do not.

5 Q. And you don't know how the indians in the northerly portion  
6 of the lake disposed of their dead?

7 A. I know at this end of the lake, yes. At the upper end of  
8 the lake I have seen them burn them many times.

9 Q. But in the lower end of the lake you have no knowledge of  
10 how they disposed of their dead, at the southern end of the  
11 lake? A. No, I haven't.

12 MR. SEAWELL: I think that is all.

13 RE-DIRECT EXAMINATION:

14 MR. PLANT: About two questions Colonel. I think you covered  
15 this but I want to be sure. Rattle Snake Island at the  
16 mouth of Cache Creek is about ten miles away from this  
17 property? A. On a straight line.

18 MR. DAVIS: By this property, you refer to the so-called  
19 Sulphur Bank Island?

20 MR. PLANT: Yes. Another question Colonel. You will notice  
21 on the lower - the southerly end of Sulphur Bank island  
22 there are three little square marks, marked "Old Stone  
23 Lodges". I understand you were over that portion of the  
24 Island many times in your youth? A. Yes.

25 Q. At that time were there any such lodges there? A. No.

26 MR. PLANT: That is all.

RE-CROSS EXAMINATION:

- 1
- 2 MR. DAVIS: Q. I also wish to call your attention to a portion
- 3 of the map under the numbers 21.2, on the shore line, and
- 4 in which it states "Old Stone Lodges", referring to the
- 5 main land, do you recall any old stone lodges around here
- 6 at any time? A. No.
- 7 Q. I also refer to the words "Old Stone Wall" which occurs on
- 8 a line drawn from the Island, so-called Island No. 2, to a
- 9 place which is marked "Stone Pile Marks Corner", the words
- 10 "Old Stone Wall" appears three times. Do you recall ever
- 11 seeing a stone wall along this line? A. No.
- 12 Q. In other words, this cross mark in pencil, that line marked
- 13 in pencil, is the stone wall?
- 14 A. The only stone wall I ever seen in that neighborhood, except,
- 15 until you get up to this old Stubbs place.
- 16 MR. DAVIS: No further questions.
- 17 MR. SEAWELL: Q. Do you wish to state this is in the same
- 18 position as the wall you remember in your youth?
- 19 A. I don't know about that.
- 20 Q. You don't know about that? A. No.
- 21 MR. DAVIS: Q. Is it approximately the same stone wall?
- 22 A. I think so, yes.
- 23 Q. In other words, so far as you know there would not be 50
- 24 or 100 feet difference, would there be, in the position?
- 25 A. Well, there might be so far as my knowledge goes.
- 26 Q. But there is no other stone wall this far inside? I am-

1 I am pointing to this dotted line?

2 A. Not that I know of.

3 Q. Summing up, so far as you know there was no other stone wall  
4 approximately in this vicinity?

5 A. Not that I know of.

6 Q. And I am pointing to the wall marked with crosses. In  
7 other words, your best recollection, the area that is now  
8 on the main land bounded by the stone wall is approximately  
9 the same area as you recall in your youth?

10 A. As far as I can remember.

11 MR. DAVIS: No further questions.

12 MR. SEAWELL: Q. You don't recall the number of acres or  
13 approximate number of acres behind the stone wall today  
14 as compared with your youth?

15 A. No, I don't. That would require computation and I never  
16 had occasion to make it.

17 MR. PLANT: That is all.

18 MR. SEAWELL: It is stipulated the entire title may be  
19 omitted, that is, the names of all of the defendants need  
20 not be copied into the title.

21

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26



1 STATE OF CALIFORNIA, )  
2 COUNTY OF LAKE. ) SS.

3 I, JULIA T. COMBS, a notary public in and for the  
4 County of Lake, State of California, duly commissioned, qualifi-  
5 ed, and acting, hereby certify as follows, to wit: That C. M.  
6 CRAWFORD, produced as a witness for and on behalf of William  
7 O. B. MacDonough, defendant, in the foregoing entitled action,  
8 appeared before me on the 4th day of September, 1940, at  
9 eleven o'clock A. M., at his home in the Town of Lakeport,  
10 County of Lake, State of California; that before the taking  
11 of said deposition said witness was by me first duly sworn,  
12 to testify to the truth, the whole truth, and nothing but the  
13 truth, in the testimony he was about to give in said action;  
14 that said witness was thereupon examined by counsel for the  
15 defendants and for plaintiff on oral interrogatories, and that  
16 said witness made answer thereto, under oath, as hereinbefore  
17 contained; that all of said questions and all of said answers  
18 thereto were by me taken down in shorthand and later transcribed  
19 into typewriting, as hereinbefore contained; that said deposit-  
20 ion was carefully read by the witness and corrected by him in  
21 any particular he desired and then subscribed by said witness  
22 in my presence.

23 I further certify that I am not a party to, or interested  
24 in, the foregoing entitled action.

25 And I further certify that I have written my initials  
26 near each and every correction made by said witness.

JULIA T. COMBS  
OFFICIAL COURT REPORTER  
LAKEPORT, CALIF.

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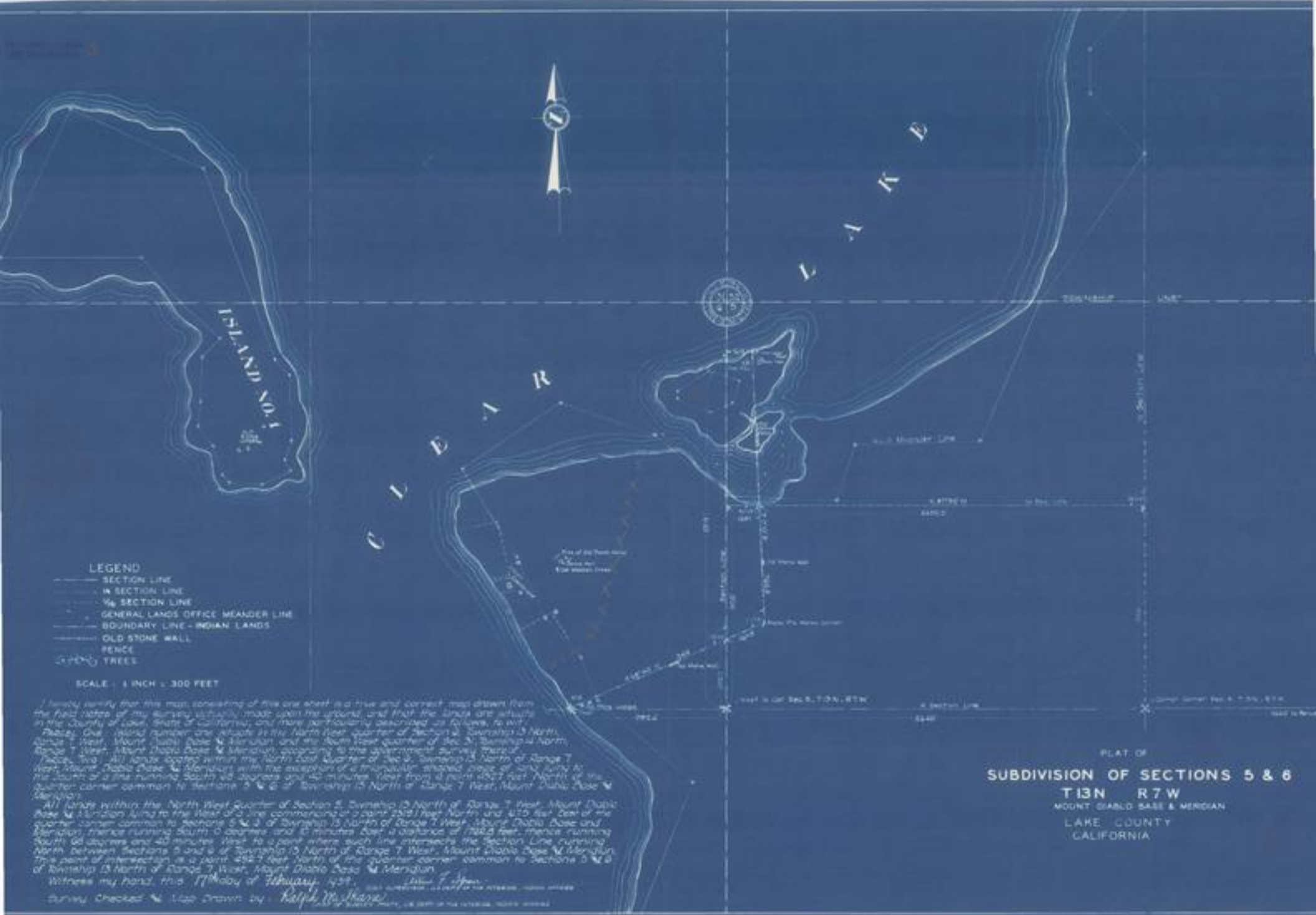
IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my notarial seal at the City of Lakeport, County of  
Lake, State of California, this 5<sup>th</sup> day of ~~September~~ October, 1940.

Julia T. Combs

Notary Public in and for the County of  
Lake, State of California.

Defendant's Exhibit A  
For Identification





**LEGEND**

- SECTION LINE
- 1/4 SECTION LINE
- 1/2 SECTION LINE
- GENERAL LANDS OFFICE MEANDER LINE
- BOUNDARY LINE - INDIAN LANDS
- OLD STONE WALL
- FENCE
- TREES

SCALE - 1 INCH = 300 FEET

I hereby certify that this map, consisting of five one sheet 14 1/2 inch wide and correct map drawn from the field notes of my survey actually made upon the ground, and that the lines are actually in the County of Lake, State of California, and more particularly described as follows, to wit:

Tracts One - Island number one situated in the North West quarter of Section 5, Township 13 North, Range 7 West, Mount Diablo Base & Meridian and the South West quarter of Section 6, Township 13 North, Range 7 West, Mount Diablo Base & Meridian, according to the government survey thereof.

Tracts Two - All lands located within the North East Quarter of Section 5, Township 13 North of Range 7 West, Mount Diablo Base & Meridian with the exception of a triangular shaped piece of land lying to the South of a line running South 88 degrees and 40 minutes West from a point 492.7 feet North of the quarter corner common to sections 5 & 6 of Township 13 North of Range 7 West, Mount Diablo Base & Meridian.

All lands within the North West Quarter of Section 5, Township 13 North of Range 7 West, Mount Diablo Base & Meridian lying to the West of a line commencing at a point 251.7 feet North and 475 feet East of the quarter corner common to sections 5 & 6 of Township 13 North of Range 7 West, Mount Diablo Base and Meridian thence running South 0 degrees and 10 minutes East a distance of 700.0 feet, thence running South 88 degrees and 40 minutes West to a point where such line intersects the Section Line running North between Sections 5 and 6 of Township 13 North of Range 7 West, Mount Diablo Base & Meridian. This point of intersection is a point 492.7 feet North of the quarter corner common to sections 5 & 6 of Township 13 North of Range 7 West, Mount Diablo Base & Meridian.

Witness my hand this 17th day of January, 1931.

Survey Checked by: *[Signature]*  
 Drawn by: *[Signature]*

PLAT OF  
**SUBDIVISION OF SECTIONS 5 & 6**  
**T13N R7W**  
 MOUNT Diablo BASE & MERIDIAN  
 LAKE COUNTY  
 CALIFORNIA