

Bishop, California. August. 17. 1928.

The United States Attorney,  
Federal Building.  
Los Angeles, California.

Dear Sir:-

I have the honor to request your opinion and assistance relative to the matter of the enclosed Copy of Summons regarding an action brought by the Southern Sierras Power Company, a corporation, Plaintiff vs Joe McLaughlin, Mary McLaughlin, etc, Defendants.

The circumstances relating to this case are as follows:

The said Joe McLaughlin and Mary McLaughlin, his wife, are Indians under the jurisdiction of the Federal Government. The said Indians reside at Mono Lake, Mono County.

The land in the name of Joe McLaughlin is covered by a Trust Patent issued Sept. 25. 1907, under the Act of Feb. 8. 1887, 24 Stat. L., 389.

Under date of January. 30. 1923, the said Joe McLaughlin, signed a Petition before me as Superintendent of the Indian Service, requesting that he be allowed to dispose of his allotment by sale. This was referred to the Commissioner of Indian Affairs at Washington, and under date of March 3. 1923, I was advised that I might advertise the land for sale. Under date of May. 1. 1923, the said land was duly advertised by this office for a period of sixty days as required in the regulations. On opening the bids June. 30. 1923, it was found that of the three bids obtained, the highest bid was made by the Board of Public Service Commissioners of the City of Los Angeles, their bid being \$4320. as against \$4300. the next in amount. The Board of Public Service Commissioners were notified of the award, and report on the matter has now been made the Indian Office at Washington, with a request that a Patent in Fee be issued to the Board of Public Service Commissioners covering the land in question. Sufficient time has not intervened for this report to be acted upon or for the Patent to issue, and now comes the Southern Sierras Power Company, another corporation, with an action seeking to condemn the land contained in the Joe McLaughlin allotment which we contend has been properly and legitimately sold to the City of Los Angeles.

co. The question arises, - Have the Southern Sierras Power Company authority to bring such action?

The Complaint is dated July-26-1923 and from the provisions contained therein, I take it, that an answer must be filed within thirty days.

I have the honor therefore to solicit your assistance in the filing of this answer.

This Summons was served on me on Monday, Aug. 13, this week, therefore my reason for not submitting the same at an earlier date.

Any further information needed, I will gladly furnish at your request, if possible.

The Complaint is enclosed herewith.

I consider this matter of special importance to the Indians concerned. As it is, they have received a good price for their land, whereas under condemnation proceedings, I assume they would be required to accept whatever amount might be fixed covering condemnation.

Please let me hear from you as early as practicable.

Very Sincerely Yours.

Superintendent.

JES-8

Department of Justice  
OFFICE OF THE  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF CALIFORNIA  
LOS ANGELES

August 21, 1923.

Ray B. Farrett,  
Supt. United States Indian Service,  
Bishop, California.

Dear Sir:

Referring to your letter of August 17, 1923, relative to the case of the Southern Sierras Power Company against Joe McLaughlin, et al., we beg to advise you that in our opinion this action is proper as against McLaughlin and his wife, unless title has been transferred to and vested in the Board of Public Service Commissioners of Los Angeles.

The Act of March 3, 1901, Chap. 832, found in 31 Statutes at Large, 1083, provides in part as follows:

"That lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the state or territory where located in the same manner as land owned in fee may be condemned and the money awarded as damages shall be paid to the allottee."

It would seem, therefore, that under the provisions of this section this proceeding is proper. However, if the final patent has not been granted, and the defendant Indians are tribal Indians residing on an Indian reservation, they are subject to the exclusive Federal jurisdiction until the granting of the final patent.

If such are the facts, the procedure in this case would be to have the case removed to the Federal court. You are in possession of the facts in this regard and would therefore be able to advise us as to the same.

We note from your letter that the summons was served on you on Monday, August 13th. Was the summons also served upon McLaughlin and a copy upon

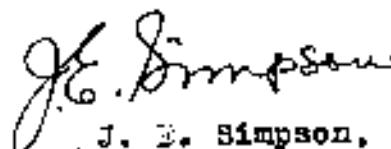
his wife? If the summons is served within the county in which the action is brought, which in this case is the County of Mono, the defendant has ten days after the day of service within which to appear. If the summons is served outside the county in which the action is brought, the defendant has thirty days in which to appear. It is, therefore, necessary for us to know the date upon which the summons was served upon the defendants and the county within which it was served.

Pending the receipt of this information we would suggest that you immediately communicate with the Indian Office at Washington and ascertain whether or not the final patent has been issued to the Board of Public Service Commissioners and if so, when the same was issued. If the patent has been issued, McLaughlin will, of course, have no interest in the property and will not need to appear as defendant in the same but the money will be immediately due and owing by the Board of Public Service Commissioners.

We will write to the attorneys for the plaintiff in this case and request of them sufficient time within which to appear pending the proceedings for removal to the Federal court.

Respectfully,

FOR UNITED STATES ATTORNEY,



J. E. Simpson,  
Assistant U.S. Attorney.

Encl.

31526-23

Bishop, California. Aug. 22. 1923.

Commissioner of Indian Affairs,  
Washington, D.C.

Dear Sir:-

With reference to my letter dated August 16. 1923, relative to the sale of the Joe McLaughlin Indian allotment to the Board of Public Service Commissioners of the City of Los Angeles; I wish to advise that the Southern Sierras Power Company, a corporation, have served notice upon me of an action having as its intent, the condemnation of the Joe McLaughlin Indian allotment for public purposes.

Inasmuch as this land was duly advertised for sale, the Southern Sierras Power Company having been given special notice as well as the City of Los Angeles, and the result being that the highest bid was received from the City of Los Angeles, it is contended by this office that proper legal procedure has been followed and that it would be absolutely unfair to all concerned to not consider the highest bid submitted.

As the time for reply on the action is limited, I have submitted the matter to the office of the United States Attorney at Los Angeles, who has replied as follows:

"The Act of March 3. 1901, Chap 932, found in 31 Statutes at Large, 1083, provides in part as follows:

"That lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the state or territory where located in the same manner as land owned in fee may be condemned and the money awarded as damages shall be paid to the allottee."

The attorney states further, that under the provisions of this section this proceeding is proper. However if the final patent has not been granted, and the defendant Indians are tribal Indians residing on an Indian Reservation, they are subject to the exclusive Federal jurisdiction until the granting of the final patent.

If such are the facts, the procedure in this case would be to have the case removed to the Federal Court.

I am today forwarding the original Trust Patent in the name of Joe McLaughlin, to the Attorney for his information. Inasmuch as this Trust Patent reads that the United States does and will hold the land in trust for the said Joe. McLaughlin for a period of twenty-five years, and furthermore that said period of trust has not expired, that in this case the Federal Government has exclusive jurisdiction until the granting of final patent, which in this case would be the issuance of a final patent by the United States to the legal purchaser.

The United States Attorney advises that their office will communicate with the plaintiff requesting of them, sufficient time within which to appear pending proceedings for removal to the Federal Court.

A copy of my letter to the United States Attorney dated August 17, 1923, is enclosed for the information of the Office.

Very truly yours -

Superintendent.

Bishop, California  
August 22, 1925

United States Attorney  
Southern District of California  
Federal Building  
Los Angeles, California

Dear Sir:

I am in receipt of a letter dated August 21, 1925, from Mr. J. F. Simpson, assistant United States attorney, relative to the case of the Southern Sierras Power Co. against Joe McLaughlin, et al.

I note what you say regarding the act applicable to condemning of Indian lands for public purposes. For your further consideration and information I am sending the trust patent in the name of Joe McLaughlin covering the land in question. This patent is a trust patent stipulating that the United States will hold the land for the period of 25 years in trust for the sole use and benefit of the said Indian and that at the expiration of said period the United States will convey the same by patent to said Indian in fee." No other patent has been issued, therefore, I would consider the Indian as being subject to the supervision of the Federal jurisdiction until the granting of the final fee patent. Under such conditions it would seem to me to be proper that the case be removed to the Federal court.

In regard to the date of serving notice on the Indians I would say that Joe McLaughlin and his wife reside at Mono Lake, Mono County, and I am informed that notice has been served upon them, but I have been unable to obtain the date thus far.

I would say that final report on the sale of the Joe McLaughlin allotment to the City of Los Angeles was forwarded on August 16th, therefore sufficient time has not elapsed for the patent to issue to the Board of Public Service Commission.

As stated in your letter, I am communicating with the Indian Office at Washington advising them in full regarding the matter. As mentioned in the last paragraph of your letter, an extension of time is absolutely necessary within which to make proper report on this matter.

Very truly yours,

Superintendent

ADDRESS REPLY TO  
"THE UNITED STATES ATTORNEY"  
AND REFER TO  
INITIALS AND NUMBER

JES  
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Department of Justice  
OFFICE OF THE  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF CALIFORNIA  
LOS ANGELES

Aug. 23, 1923.

TIME AND PLACE OF HOLDING COURT  
FELONY—FIRST MONDAY IN MAY AND SECOND MONDAY IN NOVEMBER.  
LOS ANGELES—SCOPE MONDAY IN JANUARY AND JULY.  
SAN DIEGO—SECOND MONDAY IN MARCH AND SEPTEMBER.

Mr. Ray Parrott,  
Superintendent Indian Service,  
Bishop, California.

Dear Sir:

Referring to the case of the Southern Sierras Power Company vs. Joe McLaughlin, we beg to advise you that since writing to you, we have ascertained the fact which we had at that time overlooked, namely, that the County of Mono is within the jurisdiction of the Federal court for the Northern District of California, and that the matter would therefore be handled by the United States Attorney for that district, Mr. John G. Williams, and you should, therefore, refer the matter to him.

Mr. Henry Coil, one of the attorneys for the plaintiff, has advised us that he will refrain from having any default entered until the proper attorneys who represent the defendant have time in which to investigate the matter. He also states that a copy of the summons and complaint have been served upon Mr. Williams, United States Attorney for the Northern District of California. If you will direct your correspondence to Mr. Williams and furnish him with all of the information that you have regarding the case, he will be able to advise you as to the proper procedure.

Respectfully,

FOR UNITED STATES ATTORNEY,

*J. E. Simpson*  
J. E. Simpson,  
Assistant U. S. Attorney.



ADDRESS REPLY TO  
"THE UNITED STATES ATTORNEY"  
AND REFER TO  
INITIALS AND NUMBER

TIME AND PLACE OF HOLDING COURT  
LOS ANGELES—FIRST MONDAY IN MAY AND SECOND MONDAY IN NOVEMBER.  
LOS ANGELES—SECOND MONDAY IN APRIL AND JULY.  
SAN DIEGO—SECOND MONDAY IN MARCH AND SEPTEMBER.

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Department of Justice  
OFFICE OF THE  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF CALIFORNIA  
LOS ANGELES  
Aug. 24, 1923.

Mr. Ray R. Parratt,  
Supt., United States Indian Service,  
Bishop, Calif.

Dear Sir:

I am in receipt of your letter of August 23, relative to the case of the Southern Sierras Power Company vs. Joe McLaughlin, et al.

Your letter undoubtedly crossed in the mails with my letter of August 23d, and you will observe from this letter that this matter should be referred to the United States Attorney for the Northern District of California whose office is in San Francisco.

My reference in the letter of August 21st to the issuance of another patent referred to the issuance of the patent to the Board of Public Service Commissioners, of the City of Los Angeles, and I infer from your letter that there has not been sufficient time for the issuance of this patent to the city of Los Angeles.

For your information as to the jurisdiction of the Federal Courts over Indian allottees, I quote the following section from the Acts of Feb. 8, 1887, Chapter 119, 24 Statutes, 390 and the Act of May 6, 1906, Chapter 2348, 34 Statutes, 182:

"Allottees subject to State laws; patents in fee.— At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. Provided, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be

issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent; Provided further, That until the issuance of fee-simple patents, all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States; And provided further, That the provisions of this Act shall not extend to any Indians in the Indian Territory. "

Trusting that this information will be of some assistance to you, I am

Respectfully,

FOR UNITED STATES ATTORNEY,

*Edwin Simpson*  
E. B. Simpson,  
Assistant U.S. Attorney.

Enclosed is the trust patent.

Bishop, California  
August 25, 1923

Mr. John G. Williams, U. S. Attorney  
Northern District of California  
Federal Building  
San Francisco, California

Dear Sir:

I wish to refer to the matter of a summons served upon me relative to an action brought in the superior court of the County of Mono, State of California, by the Southern Sierras Power Company, a corporation, as plaintiff vs. Joe McLaughlin, Mary McLaughlin, et al. It was my understanding that this case came within the jurisdiction of the southern district of California, therefore I referred the matter to the attorney at Los Angeles under date of August 23rd. I am now advised under date of August 23rd by the Los Angeles attorney that inasmuch as the action is brought in the County of Mono it is within the jurisdiction of the Federal court for the northern district, therefore I am transferring the matter to your attention. The circumstances relating to this case are as follows:

The said Joe McLaughlin and Mary McLaughlin, his wife, are Indians under the jurisdiction of the Federal Government, and reside at Mono Lake, Mono County.

The land in the name of Joe McLaughlin is covered by a Trust Patent issued Sept. 23, 1907, under the Act of February 8, 1887, 24 Stat. L. 389.

Under date of January 30, 1923, the said Joe McLaughlin signed a petition before me as Superintendent of the Indian Service, requesting that he be allowed to dispose of his allotment by sale. This was referred to the Commissioner of Indian Affairs at Washington, and under date of March 3, 1923, I was advised that I might advertise the land for sale.

Under date of May 1, 1923, the land was duly advertised by this office for a period of sixty days as required in the regulations. On opening the bids June 30, 1923 it was found that of the three bids obtained the highest bid was made by the Board of Public Service Commissioners of the City of Los Angeles, their bid being \$4320, as against \$4300, the next in amount. The Board of Public Service Com-

missioners were notified of the award, and report on the matter has now been made the Indian Office at Washington, with a request that a patent in fee be issued to the Board of Public Service Commissioners covering the land in question. Sufficient time has not intervened for this report to be acted upon or for the patent in fee to issue, and now comes the Southern Sierras Power Company, another corporation, with an action seeking to condemn the land contained in the Joe McLaughlin allotment which we contend has been properly and legitimately sold to the City of Los Angeles.

Under date of August 21st the U. S. Attorney at Los Angeles advised me that in accordance with the act of March 31, 1901, Chapter 632, found in El Stat. at Large 1083 provides in part as follows:

"That lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the state or territory where located in the same manner as land owned in fee may be condemned and the money awarded as damages shall be paid to the allottee."

The attorney adds "It would seem, therefore, that under the provisions of this section this proceeding is proper. However, if the final patent has not been granted, and the defendant Indians are tribal Indians residing on an Indian reservation, they are subject to the exclusive Federal Jurisdiction until the granting of the final patent."

I would say further that the trust patent stipulates that the United States will hold the land for a period of 25 years in trust for the sole use and benefit of the said Indian and that at the expiration of said period the United States will convey the same by patent to said Indian in fee. No other patent has been issued, therefore I would consider the Indian as being subject to the supervision of the Federal jurisdiction until the granting of the final fee patent. Under such conditions it would seem to me to be proper that the case be removed to the Federal court.

The United States attorney in Los Angeles advises that Mr. Henry Coll, one of the attorneys for the plaintiff, has advised that he will refrain from having any default entered until the proper attorneys who represent the defendant have time in which to investigate the matter. He also states that a copy of the summons and complaint have been served upon you, therefore you are doubtless familiar with same.

The Commissioner of Indian Affairs has been advised of the action also regarding the matter having been placed before the U. S. attorney.

Any information that you may wish and that I am able to furnish I will gladly give upon request.

Very truly yours,

Superintendent