

1953

# Randolph Land & Livestock Co. et al v. United States of America et al : Response of the United States of America to Reply Brief of Appellant

Utah Supreme Court

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J. Lee Rankin; A. Pratt Kesler; William H. Veeder;

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In the  
**Supreme Court of the State of Utah**

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**RANDOLPH LAND & LIVESTOCK  
COMPANY, A Corporation; DES-  
ERET LIVESTOCK COMPANY, A  
Corporation; BOUNTIFUL LIVE-  
STOCK COMPANY, A Corporation;  
HAROLD SELMAN, NICK CHOUR-  
NOS, ORVAL JOHNSON and WIL-  
LIAM JOHNSON,**

*Objectors and Appellants,*

**v.**

**THE UNITED STATES OF AMERICA,  
*Water Claimant and Respondent,***

**THE STATE ENGINEER OF THE  
STATE OF UTAH,**

*Respondent.*

Case No.  
7983

**In the Matter of the General Determination of Rights to the  
Use of Water of Bear River Drainage Area in Rich County,  
State of Utah.**

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**RESPONSE OF THE UNITED STATES  
OF AMERICA TO REPLY BRIEF OF  
APPELLANT**

---

**J. LEE RANKIN,**  
*Assistant Attorney General*  
**A. PRATT KESLER,**  
*United States Attorney*  
**WILLIAM H. VEEDER,**  
*Special Assistant to the  
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## RESPONSE OF THE UNITED STATES OF AMERICA TO REPLY BRIEF OF APPELLANT

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COMES NOW the UNITED STATES OF AMERICA,  
under and pursuant to the authority of HERBERT  
BROWNELL, JR., *Attorney General of the United States,*

acting by and through J. LEE RANKIN, *Assistant Attorney General*, A. PRATT KESLER, *United States Attorney for the District of Utah*, and WILLIAM H. VEEDER, *Special Assistant to the Attorney General*, appearing specially for the purpose of objecting to the jurisdiction of this Honorable Court as to the United States of America, and for no other purpose, and in that connection, but without submitting to the jurisdiction of this Honorable Court, makes response to the Reply Brief of the appellants to the Motion to Dismiss the above-entitled cause insofar as it pertains to the United States of America.

## STATEMENT OF POINTS

1. The Representatives of the Forest Service and the Bureau of Land Management could Not Appear for or Subject the United States of America to the Jurisdiction of the Court Below.

2. Neither the Attorney General of the United States Nor the United States Attorney or Any Other Official of the National Government Is Empowered to Submit the United States of America to the Jurisdiction of the Court Below or This Honorable Court.

## RESPONSE TO PRINCIPAL ISSUES PRESENTED BY REPLY OF APPELLANTS

### POINT NO. 1

### THE REPRESENTATIVES OF THE FOREST SERVICE AND THE BUREAU OF LAND

MANAGEMENT COULD NOT APPEAR FOR OR SUBJECT THE UNITED STATES OF AMERICA TO THE JURISDICTION OF THE COURT BELOW.

Only the Attorney General of the United States of America (or his designee) is empowered to make an appearance or file pleadings in actions of the character here involved with the District Court of the First Judicial District of the State of Utah in and for the County of Rich. Irrespective of that fact, appellants make this statement: Appellants' Reply Brief, pages 10 and 11. "This case is a general water adjudication proceeding initiated by the State Engineer whereby all water claimants are permitted to appear *if they desire* by filing their water claims." Continuing, it is stated that the claimant shall "*file in the office of the clerk of the district court* a verified statement of claim \* \* \*." There is then cited this provision of the Utah law: "The statements filed by the claimants shall stand in the place of pleadings, and issues may be made thereon \* \* \*." That Act, state the appellants, constitutes:

"The person who files water claims is a petitioner for judicial relief."

Following the quoted statute, appellants' Reply declares:

"The United States of America voluntarily filed water claims in 1945 and in 1951. The claims filed in 1945 were based upon alleged applications to appropriate water by the Forest Service and by the

Bureau of Land Management." Appellants' Reply Brief, pages 11 and 12.

Appellants then add:

"The United States came into court asserting numerous claims to the use of water which it sought to have adjudicated in its favor." Appellants' Reply Brief, page 13.

Issue must be taken with that statement which is repeated throughout appellants' Reply that the United States of America was subject to the jurisdiction of the district court in which this cause originated. As emphasized above, the Attorney General of the United States is the only official who could under the circumstances make an appearance on behalf of the United States. 28 U. S. C. 309; 28 U. S. C. 310; 28 U. S. C. 315. The conclusion just expressed is predicated upon the fact that the Attorney General is the Chief Law Officer of the United States of America. *United States v. San Jacinto Tin Co.*, 125 U. S. 273, 279 (1887). Speaking of the Attorney General, our Highest Court declared that: "He is undoubtedly the officer who has charge of the institution and conduct of the pleas of the United States, and of the litigation which is necessary to establish the rights of the government. \* \* \* The attorneys of the United States in every judicial district are officers of this character, and they are by statute under the immediate supervision and control of the Attorney General." Having reviewed the authority of the Attorney General, the Supreme Court of the United States concluded: "In all this, however, the Attorney General acts as the head of one of the Executive departments, representing the authority of the



President in the class of subjects within the domain of that department and under his control." *United States v. San Jacinto Tin Co.*, 125 U. S. 273, 279, 280 (1887). As Chief Law Officer the Attorney General alone has the power to execute pleadings of the character signed by the Forest Service and the Bureau of Land Management and filed with the District Court.

In sustaining the proposition that the Attorney General alone has the power to file pleadings and appear on behalf of the United States, Justice Learned Hand speaking for the court declared:

"\* \* \* quite aside from the respectable authority that confirms our view, we should have had no doubt that no suit can be brought *except the Attorney General, his subordinate, or a district attorney under his 'superintendence and direction,' appears for the United States.*" *Sutherland, Alien Property Custodian v. International Insurance Co. of New York*, 43 F. 2d 969, 970 (C. A. 2, 1930); cert. denied 282 U. S. 890 (1930). (Emphasis added.)

In reaching that opinion Justice Hand referred to an earlier decision of the Supreme Court. *Pueblo of Santa Rosa v. Fall*, 273 U. S. 315 (1926). There the Highest Court recognized the propriety of bringing a motion to dismiss when, as here, the filings and appearances in the trial court were made by parties not authorized. On the subject, Justice Sutherland, speaking for the Court, stated:

"Whether, as a matter of practice, the challenge to the authority of counsel was seasonably interposed, it is not important to decide, for in any event,

the trial court, or this court, has power, at any stage of the case, to require an attorney, one of its officers, to show his authority to appear." *Pueblo of Santa Rosa v. Fall*, 273 U. S. 315, 319 (1926).

Justice Sutherland, pointed out in the words of Justice Washington in an earlier decision that: "\* \* \* it would be strange, if a Court whose right and whose duty it is to superintend the conduct of its officers, should not have the power to inquire by what authority an attorney of that Court undertakes to sue or to defend, in the name of another—whether that other is a real or a fictitious person—and whether its process is used for the purpose of vexation or fraud, instead of that for which alone it is intended."

Additional authority on the subject would be of no assistance to this Honorable Court. Suffice to reiterate:

"The representatives of neither the Forest Service nor the Bureau of Land Management were empowered to appear in the Court below or to subject the United States of America to the jurisdiction of that Court."

Any acts there taken by the officials of the Forest Service or the Bureau of Land Management were without force and effect and are hereby rejected.

## POINT NO. 2

NEITHER THE ATTORNEY GENERAL OF  
THE UNITED STATES NOR THE UNITED  
STATES ATTORNEY OR ANY OTHER OF-  
FICIAL OF THE NATIONAL GOVERNMENT

IS EMPOWERED TO SUBMIT THE UNITED STATES OF AMERICA TO THE JURISDICTION OF THE COURT BELOW OR THIS HONORABLE COURT.

"This case is a general water adjudication proceeding initiated by the State Engineer whereby all water claimants are permitted to appear *if they desire* by filing their water claims." Appellants' Reply Brief, page 10. In the phase of this response which immediately precedes, the lack of authority of the officials of the Forest Service and the Bureau of Land Management to appear on behalf of the United States of America or to submit it to jurisdiction was emphasized. Thus their acts insofar as the proceedings were concerned were nullities. There remains to be considered the question of whether the Attorney General, the Assistant Attorney General or the United States Attorney was empowered to submit the United States of America to jurisdiction; if their acts could have that effect.

Resolution of that proposition necessitates a consideration of the character of the action "initiated" by the State Engineer. On the subject this authoritative statement has been made: "\* \* \* an action to settle rights [to the use of water] is one to quiet title to realty." Wiel, *Water Rights in the Western States*, 3d ed., vol. 1, Sec. 283, p. 300.

This statement has been made relative to actions of this character:

"The statute [for adjudication] provides a remedy for the determination of water rights in the State of Utah, *which is synonymous with quieting*

*title to water rights in the State of Utah." Spanish Fork West Field Irrigation Co., et al. v. District Court of Salt Lake County, et al., 99 Utah 558, 573; 10 P. 2d 344 (1941). (Emphasis added.)*

It is evident that the subject action initiated by the State of Utah in the court below was in fact an action to quiet title. It is thus free from doubt that the suit which was "initiated" is one against the United States of America. *Larson v. Domestic and Foreign Corporation*, 337 U. S. 682, 687 et seq. (1948); *United States v. Shaw*, 309 U. S. 485 (1939). Thus in contravention of the express and repeated declaration by appellants, this action here on appeal is in truth and in fact an action against the United States of America to quiet title.

It is not contended by the appellants in their Reply that the United States of America has waived its sovereign immunity from suits under the circumstances. They rather adopt the proposition that in some manner the Forest Service and the Bureau of Land Management were empowered to subject the United States to the jurisdiction of the District Court and that the Assistant Attorney General or the Acting Assistant Attorney General could subject the United States to jurisdiction under the circumstances. That the Attorney General of the United States of America was not empowered and is not empowered to appear on behalf of the United States of America under the circumstances which here prevail has been emphasized in the brief in support of the motion of the United States of America to dismiss. See in that regard Motion to Dismiss and Supporting Brief, page 22 et seq. In particular *Stanley v. Schwalby*, 165 U. S. 255,

270 (1895). Those decisions reveal that absent a waiver of immunity from suit, the United States of America may not be joined in an action to quiet title. Further citation of authority would add nothing to what was stated in the original brief of the United States of America in support of its motion to dismiss.

To labor further the proposition would be of no assistance to this Honorable Court. It is respectfully submitted, predicated on the extensive authorities cited in support of the motion to dismiss and the authorities here cited that:

“Neither the United States of America nor its rights to the use of water were before the District Court in the proceedings below; that the United States of America is not before this Court except specially to object to jurisdiction; that this appeal and the action below insofar as the United States of America is concerned should be dismissed for want of jurisdiction.”

## DENIAL OF EXTRANEEOUS CONTENTIONS

Throughout appellants' Reply are numerous irrelevant and extraneous charges, statements and conclusions of law having no bearing on the questions presented by the United States of America in its motion to dismiss. Moreover, those issues were not presented in the lower Court and are not properly before this Court. By refusing to join issue in regard to them, does not constitute an admission or agreement on the part of the United States of America that those unfounded and unwarranted charges are true or correct. Moreover, the United States of America preserves the right

and privilege of having the issues resolved in an appropriate proceeding in which they are presented to a forum which has jurisdiction to determine them.

THE UNITED STATES OF AMERICA CLAIMS  
NO BENEFIT UNDER OR PURSUANT TO THE  
SUBJECT PROCEEDINGS OR THE DECREE  
WHICH WAS ENTERED.

It is respectfully submitted that neither this Honorable Court nor the District Court had jurisdiction over the United States of America in the subject proceedings. Accordingly, the United States of America claims no benefit under the decree which was entered and denies that any acts taken by any official of the United States of America in connection with the proceedings other than the motion to dismiss are binding upon it, and rejects any obligations which may be asserted against it by reason of the proceedings or the decree which was entered by the Court below.

CONCLUSION

As the appellants failed entirely to meet the issues presented by the United States of America in its motion to dismiss, it is respectfully submitted that the motion should be granted.

J. LEE RANKIN,  
*Assistant Attorney General*  
A. PRATT KESLER,  
*United States Attorney*  
WILLIAM H. VEEDER,  
*Special Assistant to the  
Attorney General*

April 6, 1954