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B-47255 February 6, 1945

Number: B-47255

Date: 1945-02-06

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Mr. L.P. Wilsey, Authorized Certifying Officer, Forest Service, Department of Agriculture, 214 Mayer Building, Portland 4, Oregon.

Dear Mr. Wilsey:

Reference is made to your letter of October 27, 1944 (A, Disbursement, vouchers), requesting to be informed whether payment is authorized on the voucher therewith transmitted in favor of Walter M. Ternquist in the amount of $25.20, for the services furnished by him in burying three carcasses of bulls under circumstances recited in Memorandum from District Ranger James P. Landon, as follows:

"It has been the custom in past years for the cattle of Ole Peterson to run at large in the Lewis River area. In the past with no logging above his ranch the cattle have not bothered in the settlement around Speelyai and Congar. This last summer the logging operations on the upper river drive the cattle, including nine bulls, into the settled area below. The bulls became mean and dangerous, and in several instances chased residents into houses or made them run for protection. In one case a logger was knocked down and trampled by one of the animals. The valley residents signed and presented to the Skauania County sheriff. The sheriff made a

trip into the area and notified Mr. Peterson that he must get rid of the

bulls or prevent their running at large. Arrangements were made with Mr.

Thunder, Woodland butcher, to come up and kill the animals. Mr. Thunder

appeared over the 4th of July week-end and slaughtered two of the animals.

Mr. Peterson refused to sell him any of the others, Later the sheriff was

notified again and he made another trip to the area, notifying Mr.

Peterson for the second time that he should get rid of the bulls. Mr.

Peterson, I believe, contacted another butcher who eventually took one of

the animals. In the meantime the lives of the individuals in the valley

were still endangered. Several of the woman in the area were kept in

their houses all day because of the cattle being around outside. The situation got so bad that finally three of the animals were shot July 15 by a local resident. This incident was on private lands adjacent to the Lewis River Guard Station. The carcasses lay not over 200 yards from the government mess hall, which at that time was being operated for feeding a fire suppression crew of fifteen men. The mess hall received the full effect of stench and flies every afternoon when the upstream wind blew."

"After the animals were killed we contacted the owner asking him what he planned to do with the bodies. The individual who shot the animals out their throats as they would bleed and notified Peterson immediately. Nothing was done to remove the animals. Later Mr. Peterson said he had no plans as to the disposal of the carcasses. As the stench began to grow the county officials were approached as to what to do with the animals. They stated they had no jurisdiction in the matter and that it was entirely Mr. Peterson's responsibility. As the weather was hot and the carcasses were decomposing rapidly it was necessary to do something immediately to safeguard the health of the federal employees staying at the Guard Station."

"The man who shot the bulls was without means to bury them. The owner refused to do so. The sheriff of the county refused to do more than stated above. The dead animals constituted community nuisance but the neighbors were not organized to handle. The dead animals constituted a menacing nuisance to health and offense to camp crew."

"The case was presented to the Forest Supervisor by phone, who personally called the sheriff's office and was told the county officials would not take any action toward removing or enforcing removal by the owner. Thereupon the Forest Supervisor, K.P. Oscil, instructed Ranger London to engage a logger with a tractor to bury the carcasses, to remove a rapidly

increasing menace to the health of the Forest Service employees a the guard station."

"Mr. Walter N.T. Sumquist, a local logger, was asked if he would bury the animals with his tractor. This he agreed to do, and he accomplished it the next after it the next afternoon, July 17. At this time the animals were decomposed to such an extent that he had difficulty in getting close enough to carry out his job."

It thus appears that no Government officer or employee was responsible for the shooting of the bulls; that their carcasses were not on Government land; and that while their burial was apparently authorized by a Government official such officer acted without authority in so doing -- there being no legal duty on the part of the Federal Government to remove local nuisances not on Government land and not caused by action of any Government official. That duty would appear to rest with the local law enforcement officers and their failure or refusal to act does not transfer that duty to the Federal Government. Section 3678, Revised Statutes, provides:

"Sec. 3678. All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

I find no provision in the appropriation for Salaries and Expenses, Forest Service, National Forest Protection and Management, act of June 28, 1944, Public Law 367, authorizing expenditures of the nature here involved.

The voucher, which is returned herewith, may not be certified for payment.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General of the United States