

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

In response to Senate resolution of February 13, 1889, report relative to the survey and sale of the Klamath Indian Reservation.

MARCH 1, 1889.—Referred to the Committee on Public Lands and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 1, 1889.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate dated February 13, 1889, in the following words:

Resolved, That the Secretary of the Interior be, and he hereby is, directed to inform the Senate what proceedings, if any, have been had in his Department relative to the survey and sale of the Klamath Indian Reservation in the State of California, in pursuance of the provisions of the act approved April 8, 1864, entitled "An act to provide for the better organization of Indian affairs in California."

In response thereto I transmit copy of a communication of 18th ultimo, from the Commissioner of Indian Affairs, with accompanying papers, and also copy of a communication of 28th ultimo, from the Commissioner of the General Land Office.

These papers, it is believed, furnish the information called for in the resolution which is afforded by the records of this Department.

Very respectfully,

WM. F. VILAS,
Secretary.

THE PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 18, 1889.

SIR: I have the honor to acknowledge the receipt, by your reference the 14th instant, of a resolution of the Senate of the 13th instant, as follows:

Resolved, That the Secretary of the Interior be, and he hereby is, directed to inform the Senate what proceedings, if any, have been had in his Department relative to the survey and sale of the Klamath Indian Reservation in the State of California, in pursuance of the provisions of the act approved April 8, 1864, entitled "An act to provide for the better organization of Indian affairs in California."

In response to said resolution, I have to state that I am unable to discover from the records or correspondence of this office that any proceedings were ever had or contemplated by this Department for the survey and sale of said reservation under the provisions of the act aforesaid; on the contrary, it appears to have been the declared purpose and intention of the superintendent of Indian affairs for California, who was charged with the selection of the four reservations to be retained under said act, either to extend the Hoopa Valley Reservation (one of the reservations selected under the act), so as to include the Klamath River Reservation, or else keep it as a separate independent reservation, with a station or subagency there, to be under control of the agent at the Hoopa Valley Reservation, and the lands have been held in a state of reservation from that day to this.

The public surveys were extended over the reservation, or some portions of it at least, a few years ago, but just when or how that came to be done I am unable to say. This information can be obtained, if desired, from the General Land Office.

I transmit herewith copies of office reports to the Department of May 28, June 21, June 23, July 6, and October 24, 1837, and April 4, 1838, inviting especial attention to the last mentioned (April 4, 1838) as showing the history of the Klamath River Reservation and its status as an Indian reservation as viewed by this office. Also copies of two opinions by the Attorney General—June 11 and July 11, 1837—touching the rights of the Indians in the fisheries of the Klamath River, within the boundaries of said reservation, and of certain papers referred to in the correspondence.

The Senate resolution is returned herewith.

Very respectfully, your obedient servant,

JNO. H. OBERLY,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 28, 1889.

SIR: I am in receipt, by reference from the Department for report, of a resolution of the Senate, dated February 23, 1889, requesting information relative to the survey and sale of the Klamath River Indian Reservation in the State of California. Accompanying said resolution are several copies, extracts, and letters from the Commissioner of Indian Affairs reporting on said matter.

In his letter of February 18 last, the Commissioner of Indian Affairs states as follows:

The public surveys were executed over the reservation, or some portions of it at least, a few years ago, but just when and how that came to be done I am unable to say. This information can be obtained, if desired, from the General Land Office.

In the matter of the public surveys referred to by the Indian Commissioner, I have the honor to report as follows:

The original reservation for the Klamath River Indians in California extended 1 mile in width on each side of the Klamath River, and up the same for a distance of 20 miles from the Pacific Ocean. Upon a subdivision of the lands along the Klamath River it was found that the reservation fell in the following townships, namely: 13 north, range 1

east; 12 and 13 north, range 2 east; and 11 north, ranges 2 and 3 east, Humboldt meridian, California.

Public surveys were executed (under contracts awarded by the United States surveyor-general for California) in the following townships at the dates and by the several deputies as follows: Thirteen north, ranges 1 and 2 east, by S. W. Foreman in May and June, 1882, under his contract dated April 24, 1882. Said surveys were approved by the United States surveyor-general for California, December 5, 1882, and subsequently accepted by this office. Townships 11 and 12 north, range 2 east, by John Haughn in 1882, under his contracts dated May 19 and June 14, 1882. Said surveys were approved by the United States surveyor-general for California, December 15, 1882, and February 9, 1883, and subsequently accepted by this office. Township 11 north, range 3 east, by John Haughn in 1882, under his contract of May 19, 1882. Said surveys were approved by the United States surveyor-general for California, December 15, 1882, and subsequently accepted by this office.

In his letter of April 4, 1883, to the Secretary of the Interior, the Commissioner of Indian Affairs recommended that allotments be made to the Klamath River Indians based upon the public surveys herein stated, and that the rest of the reservation be restored to the public domain.

In 1884 attempts were made by the Indian office to make allotments in the several townships named, using the stated public surveys purporting to have been executed therein by Foreman and Haughn as a basis.

On examination in the field the alleged public surveys were found to be so irregular that the further attempt to make allotments based thereon had to be abandoned until the surveys should be corrected, and the allotments which had been made were recommended for cancellation by the Indian Commissioner.

Upon the submission to this office of the facts as to the actual condition of said surveys, John B. Treadwell, special agent for the examination of surveys, was detailed to the field to make a thorough inspection of the surveys purporting to have been executed by S. W. Foreman and John Haughn, under stated contracts in the several townships.

From Mr. Treadwell's report it was conclusively shown that all of said alleged surveys were fraudulent, and although in February and March, 1883, partial suspensions, by reason of the Indian reservation stated, of subdivisions of sections of lands along both sides of the Klamath River had been ordered, on December 11, 1884, all of the lands in the townships named and the surveys thereof were formally suspended, and the district land offices duly notified thereof.

By reason of the fraudulent surveys referred to and to expedite the allotments to the Indians, the United States surveyor-general for California, in February, 1886, was instructed to invite proposals for the resurvey of the several townships embracing the Klamath Indian Reservation.

On June 17, 1886, a contract for the desired resurvey was awarded to John Gilcrest, United States deputy surveyor, by the United States surveyor-general for California, and the same was approved by this office July 24, 1886; liability, \$3,260.50, payable from the appropriation of March 3, 1885, for resurveys.

These resurveys by Gilcrest have been the subject of considerable correspondence between this office and the United States surveyor-general for California, and are now pending in that office. The original field notes as submitted by the deputy were returned to him for

correction, and the United States surveyor-general requested this office to examine the work in the field prior to his approval of the returns of said resurveys as submitted by the contracting deputy.

An examination in the field of said resurveys has recently been made by Charles F. Conrad, special agent of this office (now stationed at San Francisco, Cal.), and copies of the field notes and report by the examiner have recently been transmitted to the United States surveyor-general for California for his examination and guidance as to the approval of the submitted and pending returns of said resurveys. To the present date no action thereon has been taken by that office, so far as is known to this office.

The Senate resolution and the several reports, extracts, and other papers accompanying the same are herewith returned.

Very respectfully,

S. M. STOCKSLAGER,
Commissioner.

The SECRETARY OF THE INTERIOR.

[Extract from annual report of Indian Office for 1856.]

KLAMATH RESERVATION, *July 15, 1856.*

SIR: In accordance with your instructions of June 16, I report on the number, character, condition, and mode of living, etc., of the Indians in this vicinity.

When this reservation was first located, there were living upon it about 2,000 Indians—men, women, and children. Since that time there have been 500 Indians gathered in, which make the number now living within the bounds of this reserve about 2,500. So far as I am able to judge, from the short time I have been here, they are peaceably disposed and willing to obey the agent over them.

That portion who have always had their homes here subsist themselves upon fish, game, acorns, roots, etc. * * *

JAS. A. PATTERSON,
Indian Agent.

Hon. T. J. HENLY,
Superintendent Indian Affairs, San Francisco, Cal.

EXECUTIVE ORDERS.

Klamath River Reserve.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
November 10, 1855.

SIR: Referring to your communication of the 8th of August last to the acting Commissioner of Indian Affairs, advising him of the approval by the President of the United States of the recommendation of the Department that it was expedient to expend the money appropriated on the 3d of March last for removing the Indians in California to two additional military reservations, I have the honor now to make the following report:

On the 15th of August last the acting Commissioner inclosed a copy of your letter of the 8th of that month to the superintendent of Indian affairs in California, with directions to select these reservations from such "tracts of land adapted as to soil, climate, water privileges, and timber, to the comfortable and permanent accommodation of the Indians, which tracts should be unincumbered by old Spanish grants or claims of recent white settlers," limiting the dimensions of the reserves to within 25,000 acres each, and to report to this office a description of their geographical position in relation to streams, mountain ranges, and county lines, etc., and indicating the same upon a map. A copy of that letter is herewith, marked A.

By the last mail from California I have received from Superintendent Thomas I. Henley a report upon this subject, dated the 4th ultimo (a copy of which is herewith, marked B), by which it appears he recommends as one of the reservations aforesaid "a strip of territory 1 mile in width on each side of the (Klamath) river, for a distance of 20 miles." The superintendent remarks upon the character of the country

selected, and incloses an extract from a report (also herewith, marked C) to him of the 19th of June last, by Mr. S. G. Whipple, which contains in some detail a description of the country selected, habits and usages of the Indians, etc., but no map is furnished.

It will be observed from this report of the superintendent that he has deemed it important to continue the employ of an agent and to prepare for raising a crop in order to assure the Indians of the good faith of the Government and to preserve the peace of the country. Considering the great distance of this reserve from the seat of Government and the length of time it necessarily requires to communicate with an agency at the Klamath, it is desirable that some definite action be taken, if practicable, before the sailing of the next steamer, to leave New York on the 20th instant.

I therefore beg leave to ask your attention to the subject, and if you shall be of the opinion from the representations made by the superintendent in California and Mr. Whipple that the selection at the mouth of the Klamath River is a judicious and proper one, that it be laid before the President of the United States for his approval, but with the provision, however, that upon a survey of the tract selected that a sufficient quantity be cut off from the upper end of the proposed reserve to bring it within the limitation of 25,000 acres, authorized by the act of 3d March last.

I also inclose herewith a copy of another letter from Superintendent Henley, of 4th ultimo (marked D), in which he states in relation to the other reserve, that it is intended to locate it "between the headwaters of Russian River and Cape Mendocino." In reference to both of these proposed reserves and as connected with the means to be used to maintain peaceable relations with the Indians, the superintendent is of opinion that it is of great importance to provide for crops, and that to do so an agent in each instance is necessary. As this last-named selection has not been defined by any specific boundaries, and no sufficient description is given as to soil, climate, and suitability for Indian purposes, to enable the Department to determine the matter understandingly, of course nothing definite can now be done. But it may not be improper to consider the subject in connection with the general intent as to the particular locality in which it is proposed to make the location.

The reserve proposed on the Klamath River and Pacific coast does not appear from the map of the State of California to be very far removed from Cape Mendocino, or a point between that and the Russian River; and as provision is made only for two reserves in the State, other than those already in operation, the question arises whether it should not be situated farther in the interior, or perhaps eastern part of the State, than the point referred to. The Noome Lacke Reserve is situated in one of the Sacramento valleys, at about the latitude of 40° north and 122° of longitude west, about the center of that portion of the State north of the port of San Francisco. As, therefore, the proposed Klamath Reserve, being northwest from the Noome Lacke Reservation, would appear to be adapted to the convenient use of the Indians in that direction, the question is suggested whether the other reserve should not be located farther east and north, say on the tributaries of either Pitt or Feather Rivers. As in the case of the proposed reserve of the Klamath, I am desirous of obtaining your opinion and that of the President of the United States, with such decision as may be arrived at under the circumstances, in season to communicate the same by the next California mail, for the government of the action of Superintendent Henley.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 12, 1855.

SIR: I have the honor to submit herewith the report from the Commissioner of Indian Affairs of the 10th instant, and its accompanying papers, having relation to two of the reservations in California for Indian purposes, authorized by the act of 3d March last.

The precise limits of but one of the reservations, viz, a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River, are given, no sufficient data being furnished to justify any definite action on the other.

I recommend your approval of the proposed Klamath Reservation, with the provision, however, that upon a survey of the tract a sufficient quantity be cut off from the upper end thereof to bring it within the limit of 25,000 acres authorized by law.

Respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

The PRESIDENT.
Let the reservation be made, as proposed.

FRANKLIN PIERCE.

NOVEMBER 16, 1855.

KLAMATH INDIAN RESERVATION.

Mendocino.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
April 16, 1856.

SIR: Referring to the report I had the honor to submit for your consideration on the 10th of November last, relative to the establishment of a military reservation for the benefit of the Indians of northern California, upon both sides of the Klamath River, from its mouth the distance of 20 miles up the same; and to the remarks then made upon the subject of establishing a third similar reservation as proposed by the superintendent of Indian affairs in California, at Cape Mendocino, or at some point between that place and Russian River, or, as appeared to this office at that time more expedient, farther in the interior and easterly part of the State, I have now respectfully to call your attention again to the subject, and to submit for your consideration the following documents:

* * * * *
From these documents it appears that the section between the Noyo River on the south and Bee-da-loe or Hale Creek on the north, extending from the coast on the west to the Coast Mountains, combines advantages which are not to be found in any of the other locations examined, reference being had to the purposes for which it is required and to the habits and necessities of the Indians.

* * * * *
The tract intended for the reservation lies between the south bank of the Noyo River, so as to include that river, and a point 1 mile north of the mouth of Hale or Bee-da-loe Creek, extending eastward from the coast for quantity so as to include the valleys beyond the first range of hills to the Coast Mountains, conforming to their shape. Its geographical position is in Mendocino County, about 170 miles from San Francisco, and 80 miles south of Cape Mendocino, 70 miles northwest of Clear Lake, and about 180 miles from Sacramento City.

It is proposed to embrace within the limits of the reservation 25,000 acres of land.

* * * * *
If upon an examination of the subject you shall come to a similar conclusion, I have respectfully to request that the proposition may be laid before the President of the United States for his approval, and that the superintendent may be enabled to carry out with him, on his return to his post by the steamer of the 20th instant, such decision as may be made in the premises.

Very respectfully, your obedient servant,

GEORGE W. MANYPENNY,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

Smith River Reserve.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
April 9, 1862.

SIR: I have the honor to submit for your consideration a report from Agent Hanson, of February 14, and also his letter, with accompanying papers, of February 28, 1862, relative to the destruction by flood of the Klamath Reservation in California, and the selection of a new reservation in the Smith River Valley, with a map thereof as submitted by him.

The report having already been submitted to the Senate Committee on Indian Affairs and understood to meet their approval, I would respectfully recommend, should it meet with your concurrence, that the President be requested to cause such portions of the proposed reservation as have been proclaimed for sale, and are not included in the purchases made by Agent Hanson from individuals, to be withdrawn from sale, and that the local land office be instructed to respect the same as an Indian reservation until otherwise ordered.

Very respectfully, your obedient servant,

WM. P. DOLE,
Commissioner.

Hon. CALSB B. SMITH,
Secretary of the Interior.

[Indorsement.]

The lands embraced in the proposed reservation may be withdrawn from sale for the present.

C. B. SMITH.

MAY 3, 1862.

(The lands referred to were in townships 17, 18, and 19, lying upon the Pacific Ocean, in Del Norte County.)

This reserve was discontinued by act of Congress, approved July 27, 1868 (15 Stats., 221).

[Extract from the Annual Report of the Indian Office for 1886.]

THE KLAMATH RESERVATION.

My duties, as both agent and commanding officer, require me to exercise a supervision over the reservation on the Klamath. A small outpost is maintained at the mouth of that river to prevent intrusion on the Indian lands, and protect the Indians in their only industry—that of fishing for salmon.

Those Indians are also anxious for a subdivision of their lands, but before this can be done the lines of the reservation must be fixed determinately. It is alleged that fraudulent surveys of the public lands adjoining the reservation have made it impossible to fix its lines without creating a conflict of title.

The people, like the Hoopas, are friendly and well disposed, and maintain amicable relations with the white people about them, but should the military power of the Government be removed from this valley, both reservations would soon be overrun, and the Indians dispossessed. The Klamaths live almost exclusively on the salmon, though a few plant a little. They number about 400, and have no schools.

The census of both tribes, required by law, was taken at the end of June, and was forwarded to the Indian Office soon after the 1st of July.

I am, sir, very respectfully, your obedient,

WM. E. DOUGHERTY,
Captain First Infantry, Acting Agent.

The COMMISSIONER OF INDIAN AFFAIRS.

[Extract from Annual Report of Indian Office for 1885.]

REPORT OF SPECIAL AGENT ON CONDITION AND NEEDS OF NON-RESERVATION KLAMATH INDIANS IN CALIFORNIA.

SAN FRANCISCO, CAL., June 25, 1885.

SIR: In accordance with instructions contained in your telegram of 28th and letter of 29th ultimo, I have the honor to make the following report:

The distance from the line of the Hoopa Valley Reservation, at the junction of the Klamath and Trinity Rivers, to the Klamath River Reservation, upper line, by way of the river, is some 18 miles, and it is within these limits that the non-reservation Klamath Indians are located.

Nature seems to have done her best here to fashion a perfect paradise for these Indians, and to repel the approach of the white man. She filled the mouth of the Klamath River with a sand-bar and huge rocks, rendering ordinary navigation impossible, and pitched the mountains on either side into such steep and amazing confusion that the river has a hard struggle to drive its way through the wonderful gorges; it turns and twists and tumbles along the rocks and gulches in an incessant mad rush to the ocean, without one moment's rest and without touching the borders of one acre of meadow land. The banks and hills shoot up abruptly from the river in jaunty irregularity, as if formed solely for the capricious life and limited aspirations of the Indian. Tremendous boulders and craggy points jut into the river and change its course, forming innumerable eddies and back currents, where salmon seek rest, to be taken in large numbers by means of Indian nets. No level land of any considerable size is to be found here. I presume if the most level spot along the river was cleared of trees and scrub growth it would scarcely measure 5 acres.

This, then, is where these Indians dwell in their grotesque villages. They form a very respectable peasantry, supporting themselves without aid from the Government

by fishing, hunting, raising a little stock, cultivating patches of soil, and by day's labor at the Arcata lumber-mills. There is a crude thrift among them one can not help admiring. Their little villages are perched on the mountain side, with most picturesque attractiveness; their houses are all made of lumber, and look as if they had been tossed upon the hillsides and allowed to stand wherever they gained a foothold. The beauty of irregularity could have no finer effect with studied art or the taste of cultivated refinement. Often a latticed porch, a curtained window, or a high roof with overhanging eaves displays an attempt at civilization, crude as it may be. Many of the houses have board floors and open fire places. It is not uncommon for them to have beds raised from the floor, sleets, tables, and dishes. They generally wear hats, shirts, pants, and shoes or boots. I did not see one "blanket" Indian. Women wear the ordinary American-cut dress, and straw hats made by themselves. They wear their hair parted and brought off the forehead; males' hair is generally cut short. Nearly all the men and most of the women speak the English language very well; I could understand all the young and middle-aged of both sexes. They are comparatively well dressed and look very well.

The old men keep the nets in order and fish steadily; the women dress and dry fish, gather acorns for meal, and fetch wood and water; middle-aged men go off to work awhile, look after the hogs and horses, and make gardens, with their wives to help them. It is common to find little gardens of potatoes, beans, and corn among them, fenced in, just out of town as it were. I searched in vain for war-paint and the formation of lines on the war-path; heard no mutterings of revenge, no "blood sign on the moon," no indication of disturbance or attempts to settle difficulties by their own hands; no withdrawal from their peaceful pursuits or neglect of their meager crops and resources to gather in bands or agitate their grievances. In short, sir, I have never been more pleased with any Indian community. Thus I have endeavored to convey to you, regretting that I have not a more powerful pen, my impression of the quiet, peaceful disposition of these Indians and their inclination not to go abroad to molest others, but to remain unmolested within themselves, where they have done their best towards permanent settlement.

I do not deny a limit to this quiet state of affairs. The Indians, like our English cousins, do not wish foreign feet stepping on their territorial toes; nor are they very much farther advanced in practical Christianity, for while the latter rush to arms and powder first and arbitration afterwards, I promise you that these Indians will not remove the rust from their rifles unless they are in some way imposed upon and the hand of their guardian is tardy or withdrawn from their help and protection.

That the white man should seek such out-of-the-way places for a lodging seems strange when looked at abstractly, but an examination of facts explains it. Occasionally a man is found whose intentions and expectations get the better of his judgment. He goes out expecting to find a wealth of resources, early development, rapid settlement, and lands thrown open to white possession, a speculation in the rising value of real estate. Some get there by buying out "improvements" of some squatter, and they range a little stock on the public lands. Many take up with Indian women, and soon drop to the level of the most ordinary Indian life, waiting for something to turn up. By consorting with squaws they have assumed "acquired rights" among the Indians, and elbow their way to all the privileges of the Indians, and at the same time they are on the sharp lookout for every advantage a white man can grab. In city life they would be called Bohemians; more vulgarly bunners or leechers. Two white men told me they had their eyes on certain "locations," and they were just waiting to see what the Government is going to do. The white men here have certain legal rights, and they are entitled to a certain degree of respect and consideration. There is no danger, however, that they will get less than they have a right to or deserve.

This is the way the whites and Indians are dovetailed together upon this land. Close and careful observation leads me to the belief that the best interests of these Indians are perverted by a show of community of interests or rights mixed with those of white men. Neither Indians nor white men will respect each other as a class as they respect themselves; they never do. Peace and order are not promoted by such contact; Indians are never elevated by such association. The white men, with rare exceptions, fall from a former estate; they drop down to a level below themselves, or rather find their true level; and they are never engaged in advancing the Indians as a race in any manner or condition whatsoever. Indians derive their benefits from other sources. They are not generally pleased with the immediate proximity of white settlers; almost invariably they have told me they do not want these white men about them.

White men take advantage of Indians in all sorts of mean, petty, small ways, and the Indian always looks at a slight offense as a great wrong. Sometimes what a white man tries to make a joke of is a pretty serious matter; but it is concealed, as it can not be charged to an Indian. For instance, Joe Garet, a miserable specimen of a white man—one of the "settlers"—went into an Indian's house with some others, and while there in the house among the Indian family took out his six-shooter and shot towards a cot to see how near he could come without hitting it. What

would have been said and thought, sir, if Garret had been an Indian? Another of these white "settlers" told an Indian who was trying to make a place of his own that he must give it up and go into a village to live—that was what the Government wanted all Indians to do. He pretended to charge \$1 each per month for three horses happening to get on "his range," when he himself had sheep scattered everywhere. And so on. I took special pains to see every one of these white men in the presence of Indians, and so set such matters straight, which I did without gloves. I was careful also to instruct Indians not to interfere with whites; to go directly to the agent with all their troubles or for explanation of anything they did not fully understand. I repeat that the two races or classes are so antagonistic to each other at the point where they meet in the struggle for subsistence and life that their interests can never become common; nor will the races or classes in that relative situation ever respect each other. The seed of trouble and disturbance, ending in bloodshed, is sown in just such soil, where two divided interests are being cultivated together, one always choking the growth of the other. There is no doubt of this position.

The Indian is commonly called the ward of the nation; the United States Government is guardian of the Indian. This is the true station or rank of the Indian. He is generally and publicly so referred to and so regarded. A guardian always acts for his ward and in his stead; the ward has no motive power of action vested in himself; he has legal being only through his guardian. This should be the legal constitutional status of the Indian; but the law now says the ward may himself act as guardian while still a ward. Although in all respects a ward, he may manage his own property. He is expected and called upon to manage his own affairs, although a mere ward—incapacitated, in fact. In other words, the Indian ward is offered the opportunity of homesteading land, which, being a ward, he is utterly unable to do. He has no experience or comprehension of maps and diagrams, townships, sections, and locations. He could hardly find the front door of the land office; even if there, he could not intelligently communicate his business. The Indian is a thorough ward, he is a most helpless, dependent being—most diffident in action, without the slightest self-reliance or sufficient self-assertion to act where his interests and welfare require it. Plainly the guardian should always act for and in the stead of such a ward. And I submit, sir, with the utmost respect, that the acts of Congress are defective and inadequate in relation to this matter. That is, for the purpose of having the benefits intended accrue to the Indian in this case, certain lands should be set aside in whole and then parceled out for settlement as appears best for these particular Indians, in this particular locality, the Government acting at and disposing of every point.

Now, sir, if these petitions are clear, and there is any virtue in the propositions contained in them, the question before you resolves itself to very narrow limits. Shall these Indians be allowed to remain here or be removed? The law contemplates apparently, from circular of May 31, 1884, inclosed by you, the possession of land by Indians where improvements have been made "of any value whatever." Fisheries, staving for holding the fishermen and their nets, are dotted along the river. Indians have had general and actual, though unrecorded, possession and occupation of the whole river line here for years and years. Their dwellings are scattered and permanent. They wish to remain here; here they are self-supporting—actually self-sustaining. This is their old home, and home is very dear to them—treasured above everything else. No place can be found so well adapted to these Indians, and to which they themselves are so well adapted, as this very spot. No possessions of the Government can be better spared to them. No territory offers more to these Indians and very little territory offers less to the white man. The issue of their removal seems to disappear. How, then, can they finally be provided for, for their best good and secure protection, without detriment to the State of California, or the rights of any class of her citizens, however humble (or low), and with the least expense, anxiety, or care to the Government?

Within the lines on the river already defined there are fourteen villages, averaging about one and a half miles apart. The names of the villages are as follows, commencing with the Hoopa Valley Reservation going down-stream; "right" and "left" signify side of river, and the number of male inhabitants twenty years old and over is given opposite the name of each village:

Order.	Name.	Side of river.	No. of adult males.	Order.	Name.	Side of river.	No. of adult males.
1	Witch-pock.....	Right.....	39	9	Met-tah.....	Left.....	13
2	Wah-sook.....	Right.....	29	10	Shrayg-ron.....	Right.....	13
3	Kay-neck.....	Left.....	4	11	Sock-ter.....	Left.....	5
4	Kay-neckie-ko.....	Right.....	3	12	Peek-wan.....	Right.....	33
5	Campel.....	Left.....	12	13	Cot-top.....	Right.....	17
6	Moo-neck.....	Right.....	19	14	Wah-tek.....	Right.....	30
7	Hayk-meeek.....	Right.....	2				
8	Nats-koo.....	Left.....	7				217

This census is taken from the memory of two intelligent Indians, who brought up in mind every man individually by name, counting the villages separately. The agent estimated "about two hundred" before these figures were made known to him; several other persons have estimated about the same number. I hold it as correct, and it is intended to embrace some who are off at work, who claim residence and allegiance here.

Now, if a strip of land is taken 2 miles wide from one point to the other, embracing the river, there would be required about thirty-six sections or less, and if this were divided among these, say, 220 Indians, always excluding the white man; it would give to each about 100 acres of land much less than the offered homestead right. The Government has at no time contemplated doing less than this, so far as number of acres goes, and if I have fairly discussed the question, there is but one conclusion and no consideration of any doubt as to the step to take. I consequently have the honor to recommend that a body of land, a parallelogram 2 miles wide, taking in the Klamath River from Hoopa Valley Reservation to Klamath River Reservation, be set aside and appropriated to the sole use and possession of the Klamath non-reservation Indians; that squatters be immediately removed, and that any homesteads entered upon or taken within these borders be yielded up under the prior right and possession of the Indians, all improvements where entries have been made being paid for by the Government.

Directly associated with this recommendation is the matter of the specific allotment of individual parcels of land to individual Indians, and what is termed the "village system." This "village system" must not be confounded in any manner with Indian "tribal relations." While these Indians still have a sort of tribal code, they are rapidly becoming individualized and segregated in individual interests. They have hogs in separate small herds or bands; horses, also; they have little garden spots already referred to—lots marked off and fenced, say of an acre, more or less; places to go and get wood; particular grounds for gathering acorns. In fact, they have the model idea of American life—the gregarious plan of farming out, but "living in town." They are moving away from the community of property interests. Those Indians who work out, pick up "white" ideas and ways of living very fast. They are gradually but surely applying them. They are gradually of themselves breaking up the objectionable features of the "village system." And as their interests become more generally taken up in cultivating the soil, their homes will gradually become more scattered. You will observe that their population and their little villages are well dispersed over their possessions even now. New ranches or villages are continually being settled, but as it happens with more interest to their convenience and comfort, nearness to wood, water, and boat-landings, and the necessities of their habits of life than they have given to corners of quarter-sections.

I have the honor to respectfully submit that this settlement of Indians should be treated like a corporation; it should have such consideration as is given to an incorporated body. Laws in relation to these Indians should be special and particular. This body of Indians (and each and every other separate body of Indians, if I may suggest it) should have passed for it such laws as its separate case merits and requires. This is the application of law given to all societies, organizations, companies, and collective bodies of every description, and this body requires as well the enactment of such specific laws as will promote its best government, alike for the best interests of the Indians and the United States. Indian laws have been too general. I have the honor, therefore, to recommend that the strip of land referred to be set aside and given in trust to these Indians; that it be surveyed and staked off in 100-acre lots, apart from certain thoroughfares; that these lots be subject to the occupation and final possession of Indians, upon certain improvements being made, under such restrictions and regulations as may be provided by the Interior Department; that land may be reserved and used in common upon which there are villages; when abandoned to revert to the United States.

I have the honor to recommend, also, that when any law is considered pertaining to these Indians that provision be made to try and punish the murder of one Indian by another by civil process; that all cases of theft may be tried and punished by imprisonment; that Indians must send their children to school for three years, unless physically unable to attend school, before they can have clear title to any parcel of land.

I have the honor to further recommend that these same provisions be extended to the Indians on the Klamath River Reservation immediately adjoining the land here considered, and that the lower and remaining portion of that reservation be thrown again with the public lands, providing security and protection to the fisheries of the Indians above the mouth of the Klamath River.

To secure order along the Klamath River, and to bring before the Indians the responsibilities of citizenship, or even residence under the protection of the United States, there should be some show of discipline and authority ever present. No less expensive an organization could be effected than the present occupation of a squad of

soldiers near or upon the territory. The three soldiers at hand really act as sheriff and police force under civil authority, and the line of Indian towns should be under frequent patrol, and frequently be visited by the agent, who should be a civilian, for reasons which will be considered in a separate report.

In respect to preserving order, I am thoroughly convinced that if I was present when disputes or disturbances were entered upon by any parties I could avert a serious issue. I have the honor, then, to urgently recommend that the agent be directed to visit this locality personally once every month; that he be charged to make personal friends of the Indians, to listen patiently and respectfully to all their statements and stories, however trifling they may appear to himself, and to especially engender forbearance and conciliation. This is particularly applicable to the new agent about or soon to take charge at Hoopa Valley. Indians are naturally moody, and brood over sometimes imagined wrongs; if they can have a good big talk and talk it out, they are fully satisfied and relieved.

Referring, in conclusion, to the communication of General Pope, quoted in your letter, I have the honor to state that the situation on the Klamath River is just so serious that a broil between the whites and Indians, once started from dispute and brought to violence, would end in a bitter conflict and great bloodshed on both sides. These Indians have been terrible in their feuds with white men and among themselves, like other men all over the world, where arrayed in so-called "oppressed" classes, mobs, strikes; and once frenzied there are no bounds to passion. The Indian is brutal when aroused; the white man is brutal when aroused. Neither are at first conciliatory. The history of these Indians shows that they have been engaged in some bloody work. There is no absolute guaranty of peace. No, sir; not after the most beneficent laws are passed. So much the more should General Pope's words be heeded. And yet, in the face of these facts and the complaints made by General Pope, I would rather take my chances of life on the Klamath River than in the high courts of England or Russia. And I must nevertheless claim that these Indians are most tractable, and they promise much more in the advance of civilization than most of the Indians I have seen. Their increasing domestic pursuits, their increasing contact with outside "white" life, their increasing adaptation to "white" manners and dress, their increasing respect for law and order and horror of murder, all speak well for these Indians.

There is no sign of trouble at the present time. I saw the inhabitants of every village, and have the satisfaction of saying to you that I settled all their little troubles. I warned, urged, and counseled them to avoid dispute; to at once go to the agent with every difficulty, should any again arise; and I left them perfectly quiet, and with the pleasantest, most gratifying impressions of my visit among them. I saw all the white men I could, especially Mr. Laam, with whom I got along very well; went over the whole ground with him, and he made me promises with regard to his future conduct which I have no reason to discredit. I promised him that the Government would respect his rights. I told the Indians you were specially interested in their welfare, and promised them that you would consider them and their affairs just as soon as it could possibly be done, which I have the honor to urge.

Respectfully submitted,

PARIS H. FOLSOM,
Special Agent.

The COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 23, 1883.

SIR: I am in receipt of your letter of the 2d instant, addressed to the honorable the Secretary of the Interior, submitting a proposition to lease the salmon fisheries of the Klamath River, within the Klamath River Reservation in California, with the right to use the river banks and cut timber for fuel and other uses in connection with the fishing privilege.

In reply I have to say that no such proposition can be entertained. It would be against usage and at variance with the policy of the Department in the control and management of Indian affairs.

The permanent settlement of the Indians residing upon said reservation, and the disposal of so much of the reservation as may not be needed for that purpose, are matters engaging the attention of the Department at this time. What the final result may be I am unable to say.

The reservation is still in a state of Indian reservation, and must so remain, undisturbed with, until otherwise ordered by competent authority.

Very respectfully,

E. L. STEVENS,
Acting Commissioner.

D. B. HUME, Esq.,
Ellensburg, Oregon.

[Extract from the Annual Report of the Secretary of the Interior for year 1888.]

KLAMATH RIVER INDIAN RESERVATION IN CALIFORNIA.

"A strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River for a distance of 20 miles," was set apart for Indian purposes by Executive order of November 16, 1855, under and in pursuance of a provision in the act of March 3, 1855 (10 Stats., 699), providing for the collecting, removing, and subsisting of Indians in California on two additional military reservations, which were not to contain exceeding 25,000 acres each.

By the second section of the act of April 8, 1864 (13 Stats., 39), it is provided that the President, at his discretion, shall set apart not exceeding four tracts of land within the State of California to be retained by the United States for the purposes of Indian reservations, and that said tracts may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said State.

The third section of that act provides "that the several Indian reservations in California which shall not be retained for the purposes of Indian reservations" shall be surveyed and offered for sale as therein directed. Indians have continued to reside on the Klamath River lands, and those lands have been and are treated as in state of reservation for Indian purposes, the jurisdiction is under the United States Indian agent for the Hoopa Valley Agency. The taking of fish in the Klamath River, which has been pursued as a means of support and subsistence for many years past by the Indians living on the reservation, has been largely encroached upon recently by white persons, who have also engaged in traffic with the Indians.

To punish violators of the Indian intercourse laws, proceedings were instituted in the United States court for the northern district of California against one R. D. Hume (case entitled "United States v. Forty-eight Pounds Rising Star Tea, etc.") for trading with the Indians occupying that reservation in violation of section 2133 Revised Statutes. Upon the trial the court dismissed the libel of information, holding that "The Klamath River Reservation not having been 'retained for the purposes of Indian reservations,' under the act of 1864, nor included within either of the four tracts of land set apart under its provisions, the third section took effect as a relinquishment of the lands for purposes of Indian reservations, but the United States still retained possession of the lands for the purposes of disposing of them as directed by that section. * * * If these lands do not constitute an Indian reservation, they are certainly not an Indian country. They are held by the United States for sale; and even if this were not the case, the residence of 200 Indians on a tract 40 square miles in area would not make the whole tract Indian country within the meaning and intention of the law."

After full consideration of the interests involved, I have requested the Attorney-General to cause an appeal to be taken in the case, deferring, of course, to his judgment whether upon the questions of law in the case any different determination of the matter might reasonably be hoped for by such action.

Without awaiting the decision of this appeal, however, authority ought at once to be given the President or the Department to set apart these lands as a reservation, and thus remove all doubt and secure the immediate protection to the Indians which they can otherwise hardly expect to enjoy during the pendency of the appeal, and which the Department is powerless to give them.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
May 28, 1887.

SIR: I have the honor to invite your attention to the following, just received by telegram, from Captain Dougherty, acting agent at Hoopa Valley Agency, Cal., and to request instructions as to the proper course to be pursued in order to protect the Indians in their rights, to wit:

MOUTH OF KLAMATH RIVER, CAL.,
May 24, 1887.

COMMISSIONER INDIAN AFFAIRS,
Washington, D. C.:

R. D. Hume, of Ellensburg, Oregon, entered Klamath River with light-draught steamer and gang of men; take possession of fishing grounds of reservation Indians; defies Department to exclude him; has gone to Crescent City for floating establishment to anchor on fishing grounds. Indians expended much labor in clearing grounds, and will resent intrusion by Hume. Telegraph full instructions agency at once. Case urgent.

DOUGHERTY, Agent.

The Klamath River Reservation was established by Executive order of November 16, 1855, in pursuance of the act of Congress approved March 3, 1855 (Stat., 10, p. 238). See pamphlet of Executive orders herewith, pp. 302-303.

The Indians occupying the reservation, who, from the latest information obtained, number about 400 souls, are entirely self-supporting, and rely for subsistence almost exclusively upon the salmon with which the Klamath River abounds.

A small military force is maintained at the mouth of the river to prevent intrusion on the Indian reservation and protect the Indians in their fishing privileges. See annual report of this office for 1886, p. 43.

The Indians themselves are remarkably peaceable and industrious, and deserve well at the hands of the Government.

An interesting account of them by Special Agent Folsom, may be found in my annual report for 1885, p. 264.

For your information I will state that this same party, Hume, made application to the Department in 1883 for the privilege of taking fish in the Klamath River, within the reservation limits, offering \$50,000 for a ten-year lease. See copy of his letter herewith, and also copy of office letter in reply, dated July 23, 1883.

It will be proper to state also, that upon examination of the laws of California I find that the Klamath River has been declared to be a navigable stream, from its mouth to the town of Orleans Bar. See California Code and Statutes, 1877-'80, vol. 3.

The urgency of the case impels me to ask your early consideration of the matter presented.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF JUSTICE,
Washington, June 11, 1887.

SIR: The question presented by your communication of the 3d June instant arises upon the following state of facts:

On the 16th November, 1855, the President of the United States set apart as a reservation for the use of the Klamath Indians "a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River for a distance of 20 miles, with the provision, however, that upon a survey of the tract a sufficient quantity be cut off from the upper end thereof to bring it within the limit of 25,000 acres authorized by law."

(Executive Orders relating to Indian Reservations, p. 303.)

The Klamath Indians, consisting of about four hundred, are self-supporting and rely for subsistence almost exclusively on the salmon with which the Klamath River abounds.

Within less than a month past a small steamer from Ellensburg, Oregon, has entered the Klamath River with the intention of fishing in that part of it flowing within the limits of the reservation, and as it is feared the Indians may resort to violence to repel what they regard as an invasion of their rights, an opinion is asked as to the power of the Government to protect these Indians in the enjoyment of what they claim to be "fishing privileges in the Klamath River within the limits of their reservation."

The Klamath River has been declared by the legislature of California to be "navigable from its mouth to the town of Orleans Bar," a point some distance above the eastern and upper limit of the reservation.

The Klamath River being a navigable stream the public have the right to fish there and use it in any other way that does not amount to an interruption of or interference with interstate or foreign commerce or navigation, or a violation of some law of the State of California.

In the case of *McCready v. Virginia* (94 U. S., 391, 394) the Supreme Court says: "The principle has long been settled in this court that each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. (*Pollard's Lessee v. Hagan*, 3 How., 212; *Smith v. Maryland*, 18 How., 74; *Mumford v. Wardwell*, 6 Wall., 436; *Weber v. Harbor Commissioners*, 18 *id.*, 66.)

"In like manner the States own the tide-waters themselves and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people in their united sovereignty. (*Martin v. Waddell*, 16 Pet., 410.) The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right, in its discretion, to appropriate its tide-

waters and their beds, to be used by its people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation."

It follows, then, that so long as the acts of persons resorting to these waters to take fish fall short of invading the right of Congress to regulate commerce with foreign nations or among the several States no case for Federal interference can be said to exist.

Very respectfully, yours,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 21, 1887.

SIR: Referring to office report of May 28, 1887, inviting your attention to a telegram from Captain Dougherty, U. S. Army, acting agent at Hoopa Valley Agency, Cal., requesting instructions as to the proper course for him to pursue in order to protect the Klamath River Indians against the infringement of their fishing rights and privileges by one E. D. Hume, of Ellensburg, Oregon, who recently appeared in the river with a light-draught steamer and a gang of men to take possession of the fishing grounds of the Indians situate within the reservation limits, and also to the opinion of the Attorney-General, to whom the subject was referred (dated June 11, 1887), I beg leave to lay before you a brief statement of facts connected with the subject, and some questions that have occurred to me in endeavoring to discover some lawful means for the protection of these Indians. Brief herewith inclosed.

In all probability there will be trouble if steps are not taken to prevent Hume from interfering with the Indians. The Indians naturally, and of right, look to the Government for protection, and if they do not find it, they will be very likely to take the matter into their own hands, and as is invariably the case they will get the worst of it in the end, although they may do some damage at first. It is not difficult to foresee the utter destruction of this now happy and contented people should they, in despair of protection from the Government, undertake to defend their rights by violent means. Can it be expected that they will quietly submit to being robbed of the only means they have of obtaining food for their wives and children—their only dependence?

It seems to me the Government can and ought to protect them against so great a misfortune. To abandon them to such a fate would be fatal to the hopes of the Indians, and I trust the Government will be firm in acting as the guardian of their rights and interests.

I would respectfully ask whether the Department has any suggestions that might aid this office in dealing with this very important matter.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

BRIEF.

The Klamath River Reservation in California was established by Executive order, dated November 16, 1855, in pursuance of an act of Congress approved March 3, 1855 (Stat. 10, p. 238), providing for the collecting, removing, and subsisting of the Indians of California on five additional military reservations, which were not to exceed 25,000 acres each.

The reservation embraces "a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River."

The number of Indians occupying the reservation is about 400. They rely for subsistence almost exclusively upon the salmon with which the Klamath River abounds. A very considerable number of them, at least, have resided on the reservation continuously since its establishment, in 1855, at which time there were not less than 2,000 Indians living on the river within the territory set apart, where they had "always had their home." (An. Rep. I. O., 1856, p. 249.) In 1861 a freshet nearly destroyed the reservation and many of the Indians removed to Smith River, but the present occupants remained, and their residence has been unbroken from the beginning.

They have had exclusive use of the fisheries in the Klamath River, from which they have supported themselves, entirely unaided by the Government, at least since the freshet of 1861.

The Klamath River was not then, nor has it ever been, considered a navigable river in fact, but it appears that in 1880 the legislature of California declared it to be a navigable stream from its mouth to the town of Orleans Bar—(Cal. Code and Stats., 1877-80, vol. 3.)

Special Agent Folsom, who made a personal inspection of the reservation two years ago, says:

Nature seems to have done her best here to fashion a perfect paradise for these Indians, and to repel the approach of the white man. She filled the mouth of the Klamath River with a sand-bar and huge rocks, rendering ordinary navigation impossible, and pitched the mountains on either side into such steep and amazing confusion that the river has a hard struggle to drive its way through the wonderful gorges. * * * Tremendous bowlders and cragged points jut into the river and change its course, forming innumerable eddies and back currents, where salmon seek rest, to be taken in large numbers by means of Indian nets—(An. Rep. I. O., 1885, page 264.)

Have not the Indians acquired private rights in their fisheries by prescription?

Such rights are sometimes so acquired by prescription. (See 16 Peters, p. 423.)

Can the legislature of the State of California by declaring the Klamath River navigable, when in fact it is not navigable, deprive the Indians of the exclusive use of fisheries?

“The legislature of a State can not, by declaring a river navigable, which is not so in fact, deprive the riparian owners of their rights to the use of the water for hydraulic and other purposes without rendering them compensation.” (See case cited in “Angell on Water-courses,” p. 727.)

The Klamath Reservation having been declared by the President, in pursuance of an act of Congress, for Indian purposes exclusively, can the State of California so far defeat the purposes of said act of Congress as to grant liberty to any and all of her citizens to enter within its boundaries and engage in the business of catching and curing fish, to the injury of the Indians for whom the reservation was created?

When recently it was found necessary to construct dams and reservoirs within the limits of the Leech Lake and Lake Winnebago Reservations for desired improvements in the Mississippi River, Congress provided for compensating the friendly Indians residing on said reservations for all injuries incurred in the construction of said dams and reservoirs to private property, and in ascertaining and appraising such injuries the damages to the Indian fisheries was one of the principal items taken into account.

The Government did not feel justified in interfering with the privileges long enjoyed by the Indians as a means of support without paying them liberally for damages, notwithstanding the fact that the construction of the dams was a great public necessity, and the river a navigable one in fact.

The party complained of (Hume) proposes to anchor floats in the river and build a “two-story building” upon one of them, presumably to enable him to carry on the business without landing. (See Agent Dougherty’s letter of May 31, 1887.)

The Indians with their rude appliances would be placed to great disadvantage by this intrusion, and their agent declares that the effect would be to deprive the Indians “all along the Lower Klamath of their principal means of support.”

By seining near the mouth of the river the whites would obstruct the passage of the salmon and cut the Indians off from their accustomed supply.

Section 2149 of the Revised Statutes provides as follows:

“The Commissioner of Indian Affairs is authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person * * * within the limits of the reservation whose presence may, in the judgment of the Commissioner, be detrimental to the peace and welfare of the Indians.”

The presence of Hume and his party within the limits of the Klamath River Reservation is manifestly detrimental to the peace and welfare of the Klamath River Indians, in that it is likely to provoke open hostilities between them; and if they are permitted to remain the whites will deprive the Indians of their means of support. Certainly nothing could be more detrimental to their peace and welfare.

The right to navigate the river is not denied, but anchoring floats with a view to erecting buildings thereon for the accommodation of extensive business operations during an entire season is another thing.

Captain Dougherty, the acting agent in charge, is an Army officer of large experience amongst the Indians, and good judgment.

He asks that “the highest power be invoked to protect the Indians in the possession of their only (food) resource.”

The foregoing suggestions are made in view of the serious troubles likely to arise if this office should be forced to act strictly in accordance with the opinion rendered by the honorable Attorney-General upon the case as presented to him on the 3d instant.

A small military force has for a long time been stationed at the mouth of the Klamath to protect the Indians in their fishing privileges.

The conditions as regards the status of the reservation and the relations existing between the Indians and the Government remain unaltered, and it is not seen why the Indians are not entitled to the protection they have enjoyed all along.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 23, 1887.

SIR: Referring to my letter of the 21st instant, and accompanying paper relative to the Klamath River Reservation in California, and the attempted dispossession of the resident Indians of their fishing grounds by a gang of white men under one Hume, I have the honor to draw your attention to a case reported in 6th Sawyer, p. 29, "United States v. John Sturgeon."

The Pyramid Lake Reservation, referred to in the case cited, was established by Executive order in like manner with the Klamath River Reservation, save that in the case of the latter the action of the Executive was based upon authority directly conferred upon him by Congress.

The lake where the trespass occurred is a large inland sheet of water, estimated to be 40 miles long by from 6 to 15 miles wide, and is undoubtedly a navigable lake. However, the question as to whether it was or was not navigable cut no figure in the case. The point was, the defendants in the suit had been engaged in fishing, and dealing and trading in fish within the reservation limits; and it was argued that taking fish inside the reservation was not unlawful, upon which the court said:

"If this argument is sound the whole purpose of the law, in setting apart lands for the separate use of the Indians, is defeated;" and further on: "The President has set apart the reservation for the use of the Pah-Utes and other Indians residing thereon. He has done this by authority of law. We know that the lake was included in the reservation that it might be a fishing ground for the Indians. The lines of the reservation have been drawn around it for the purpose of excluding white people from fishing there, except by proper authority. It is plain that nothing of value to the Indians will be left of their reservation if all the whites who choose may resort there to fish. In my judgment those who thus encroach on the reservation and fishing ground violate the order setting it apart for the use of the Indians, and consequently do so contrary to law."

It can be said with equal truth regarding the Klamath River Reservation, with which we are now specially concerned, that the Klamath River was included in the reservation, "that it might be a fishing ground for the Indians." True, the executive order does not so state in terms, neither does the order setting apart the Pyramid Lake Reservation. But it is manifest from the description of the boundaries of the Klamath Reservation that it was the purpose and intention to exclude white people from fishing in the river, from its mouth to the upper extremity of the reservation.

Should the whites be permitted to enter the river to fish, but little if anything of value will be left of the reservation and the whole purpose of the law will be defeated.

I inclose herewith copy of pamphlet containing executive orders establishing Pyramid Lake Reservation, p. 345, and Klamath River Reservation, pp. 302, 303.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF JUSTICE,
Washington, June 23, 1887.

SIR: I have the honor to acknowledge receipt of your letter of the 22d June, and the inclosures therein referred to.

As I should prefer not to give an opinion upon such a case as I might collect from these inclosures, for fear that I might not see the case in all its parts in the same light as that in which it is seen by you, I have thought it best to ask a statement of the exact case on which an opinion is desired.

The inclosures sent me are rather arguments or briefs answering the opinion I heretofore rendered in the premises at your request, and from them I see no reason to change that opinion. I do not in any sense understand them to contain or present any case as indorsed by you requiring an opinion from me.

To enable you to have such a statement prepared, if you deem it necessary, I beg leave to return the four inclosures that accompanied your letter.

Very respectfully, yours,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 6, 1887.

SIR: Referring to the communication of the honorable Attorney-General of the 23d ultimo, I have the honor to suggest that the following statement be submitted to him and his opinion requested upon the propositions therein contained.

So far as we can ascertain the Klamath River Indians in California have held and enjoyed exclusive fishery privileges in the Klamath River from time immemorial, and were in full possession of them at the date of the Guadalupe Hidalgo treaty, by which the territory embracing the Klamath River and the State of California was acquired by the United States.

This exclusive possession has never been disturbed, and until recently never challenged.

In pursuance of the act of Congress approved March 3, 1855 (Stat. 10, p. 238) the President, by executive order dated November 16, 1855, defined the limits of the reservation which the Klamath River Indians now occupy upon either side of the Klamath River, from the Pacific Ocean to a point about 20 miles above.

Yielding for the purpose of this statement any supposed claim of the Indians to the exclusive enjoyment of the fishing privileges from the Pacific Ocean to the eastern boundary of their reservation by reason of the legislative and executive action above referred to, and treating the order establishing the reservation as conferring no rights upon the Indians in the premises, I would respectfully ask:

(1) Did not the Klamath River Indians acquire by prescription and hold at the date of the Guadalupe Hidalgo treaty, title or property in the fisheries of the Klamath River?

(2) Was not such title or property recognized and guaranteed by the provisions of said treaty?

(3) Was not the legislative and executive action which fixed the present reservation on either side of the Klamath River a recognition of the Indians' right and title to the exclusive fishery privileges of Klamath River within the boundaries thereof?

(4) If the Indians have rights under the Guadalupe Hidalgo treaty, or have acquired rights by prescription since the date of that treaty, can the State of California by direct or indirect means divest them of those rights?

(5) If the Indians have the exclusive right to fish in the Klamath River within the boundaries of their reservation, can not the Department, through this Bureau and its agents, protect those rights within said boundaries by the enforcement of the laws and regulations made in pursuance thereof for the maintenance of peace and order on Indian reservations?

As you perceive, I do not desire to re-open the questions settled by the Attorney-General in his opinion of the 11th ultimo, but acquiescing in the conclusions arrived at in the case as then presented, I now submit these additional facts and inquiries so that this office may be fully advised before final action is taken in the premises, and I trust that the Attorney-General will advise you of any law or procedure that in his judgment will enable this office to protect the Indians against the threatened invasion of their fisheries.

I bring this matter to your attention again with less hesitancy, in view of the suggestion of the honorable Attorney-General that the Department might see fit to ask for his opinion upon the rights of the Indians as disclosed by a new statement of the case containing additional facts.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF JUSTICE, *Washington, July 11, 1887.*

SIR: Your communication of the 7th July, current, submits for opinion a series of questions.

The first relates to a claim to a right of fishery by prescription in the Klamath River set up by the Indian Bureau in behalf of the Klamath Indians; the second asks to know whether such right, if established, is not protected by the treaty of Guadalupe Hidalgo; the third asks if the legislation and executive action resulting in fixing the limits of the reservation occupied by these Indians was not a recognition of their exclusive right to fishing privileges within the limits of the reservation; the fourth inquires whether, if such treaty and prescriptive rights exist, the State of California can divest them; and the fifth asks whether the Indians can not be protected by the Department of the Interior in these rights if they should appear to exist.

The matters covered by these questions are clearly justiciable in the appropriate courts at the suit of the Indians themselves who are interested in them. They are essentially judicial in their character, and as each is readily resolvable into a case at law or in equity, I do not see how it can be said to be a question arising in a course of executive administration.

There is nothing in the nature of the protectorate or guardianship exercised by the United States over the Indian tribes that warrants the executive department of the Government in assuming to determine a controversy properly cognizable by the judicial department of the Government, because the well being of the Indian tribe requires that such controversy should be decided.

The organic distinctions between the three great divisions of Government established by the Constitution must be respected or collisions and disorders inimical to good government will inevitably take place.

When the questions arose between the State of Kansas and the Shawnee and Miami and Wea Indian tribes as to the power of the State to tax certain lands held in severalty by individuals of these tribes, the three tribes filed bills in equity against the State officials seeking to enforce the right to tax, and the suits thus brought were finally determined in favor of the Indians by the Supreme Court of the United States. (The Kansas Indians, 5 Wall., 737; see also the case of the New York Indians, *Id.*, 761.)

My predecessor, Mr. Butler, declined to pass upon claims arising under a treaty with the Cherokee Indians on the ground that a board of commissioners had been established by the treaty for the purpose of determining cases of that kind, saying that the Attorney-General had "no power to give an official opinion, on the request of the head of a Department, except on matters that concern the official powers and duties of such Department." (3 Op., 369; see also section 356, Revised Statutes, and 13 Op., 160 and 11 Op., 407.)

It seems to me, therefore, that as the only way to settle the questions submitted is by judicial proceedings, it would be hardly proper for me to express an opinion on them, while my doing so might, at the same time, be regarded as an attempt of the executive branch of the Government to forestall such proceedings.

Very respectfully, your obedient servant,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 4, 1887.

SIR: Referring to the opinion of the honorable Attorney-General, of date July 11, 1887 (copy herewith), upon a series of questions propounded by this office, and submitted to him with your letter of July 7, 1887, touching the claims of the Klamath River Indians in California to the exclusive fishery privileges in the Klamath River within the boundaries of their reservation in said State, I have the honor to recommend that the Attorney-General be requested to direct the United States attorney for the northern district of California to bring suit in behalf of said Indians, in order that their rights in said fisheries may be judicially determined.

This recommendation is based upon the suggestion of the Attorney-General in the opinion above cited, as follows:

"The matters covered by these questions are clearly justiciable in the appropriate courts at the suit of the Indians themselves who are interested in them. They are essentially judicial in their character, and as each is readily resolvable into a case at law or in equity, I do not see how it can be said to be a question arising in a course of executive administration."

For the information of the district attorney, I inclose herewith copies of the following papers, viz:

(1) Office letter to the Department, dated May 28, 1887, and pamphlet of Executive orders; extract from annual report of this office for 1886, and Special Agent Folsom's report, all of which are referred to in said office letter.

(2) Office letter to the Department, dated June 21, 1887, and accompanying brief and extract from annual report Indian Office, 1886, p. 249, and letter of Captain Dougherty of May 31, 1887, therein referred to.

(3) Office letter to the Department, dated June 23, 1887, and supplemental to letter of June 21, 1887.

(4) Office letter to the Department, dated July 6, 1887.

(5) Letter from Agent Dougherty to this office, dated August 30, 1887.

(6) Telegram from Agent Dougherty, dated October 3, 1887.

A copy of this report is also inclosed.

Very respectfully, your obedient servant,

A. B. UPSHAW,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 4, 1888.

SIR: I have the honor to acknowledge the receipt, by your reference the 15th ultimo, for early report thereon, of a communication of the 14th ultimo from the Attorney-General, transmitting a copy of a letter from the United States attorney for northern California, asking to be furnished with certain information from this office as to the status of the Klamath River Indian Reservation in the State of California.

The district attorney desires the information in the suits brought by him, under instructions from the Department of Justice, against R. D. Hume, a trespasser on said reservation, in the commencement of which he observes that he finds himself confronted with a serious question, viz: "Whether, under section 2 of the act of April 8, 1864, Statutes at Large, vol. 13, page 39, this reservation was not abolished—not thereafter having been retained by Executive order or otherwise." * * *

In reply I have to state that the Klamath River Indian Reservation was set apart for Indian purposes by Executive order of November 16, 1855, in pursuance of the act of March 3, 1855 (10 Stat., 699), providing for the collecting, removing, and subsisting of the Indians in California on two additional military reservations, which were not to exceed 25,000 acres each. (See Pamphlet of Executive Orders, 1857, pp. 302, 303, copy herewith.)

At the date of the establishment of the reservation there were about 2,000 Indians living on the Klamath River, within the territory set apart, where they had "always had their homes." During the year following its establishment, 500 others were gathered on the reservation, so that by the middle of the year 1856 there were 2,500 Indians residing on the reservation. (Annual Report Indian Office, 1856, p. 249.)

In the year 1861 nearly all of the arable lands of said reservation and the improvements thereon were destroyed by a freshet, rendering the reservation almost worthless; in view of which a temporary reservation was established in the Smith River Valley, by order of the Secretary of the Interior dated May 3, 1862, to which it was proposed to remove the Klamath River Indians. (See Pamphlet, Executive Orders, p. 312.)

It would seem, however, that only a small portion—perhaps one-fifth of the whole number—removed to the Smith River Reservation. By far the greater number remained on the reservation, or south of it, farther up the river, and being self-sustaining—they lived principally upon fish—it was not deemed expedient to force their removal, or to have the old reservation restored to the public domain.

As to the number who did actually remove, I find in a report to this office, dated February 14, 1862, that Superintendent Hanson stated that he had removed one of the tribes numbering between 400 and 500, from Klamath. (Annual Report Indian Office, 1862, p. 317.)

In a subsequent report, made nearly three years after the flood, Superintendent Wiley, who succeeded Hanson, said: "There are at present 745 Indians at this (Smith River) agency, most of whom have been removed from the Bald Hills and the vicinity of Eel and Mad Rivers, in Humboldt County." (*Ibid.*, 1864, p. 117.)

From this it appears that most of the Klamaths left Smith River after having been removed thither. They nearly all returned to their old haunts on the Klamath River and vicinity.

By the act of April 8, 1864 (13 Stat., p. 38), California was constituted one Indian superintendency (instead of two as theretofore) and the President was authorized to set apart, not exceeding four reservations within the limits of said State, to be retained by the United States for the purposes of Indian reservations; and authority was given for the appraisement and sale of the several reservations within the State not retained under the provisions for the setting apart of the four reservations as aforesaid. The act also provided that the four reservations to be made might or might not, as in the discretion of the President should seem to be for the best interests of the Indians, include any of the reservations theretofore set apart, and that in case any one of the existing reservations should be selected, the same might be enlarged as the President should see fit.

And the question which confronts the district attorney is whether under said act (Sec. 2) the Klamath River Reservation was not abolished. He observes that he finds no legislation recognizing it since 1864, not even in the appropriation bills; that there have been but four reservations mentioned in the appropriation bills since 1864, viz: Round Valley, Hoopa Valley, Tule River, and Mission, and that the last act cited limited the reservation to four within the State.

I find that at the date of the act aforesaid, April 8, 1864, there were four reservations in existence in California, as follows:

- Klamath River (Pamphlet, Ex. Orders, p. 302).
- Mendocino (Pamphlet, Ex. Orders, p. 303).
- Smith River (Pamphlet, Ex. Orders, p. 312).

There was also a rented farm in the southern district owned by Mr. F. P. Madden, consisting of 1,280 acres, upon which some 800 Indians had been gathered, but it certainly could not be regarded as a reservation in the meaning of the act of 1864, as it did not belong to the Government, and could not have been sold under the third section providing for sale of reservations not retained. (Annual Report Indian Office, 1864, p. 118.)

Now it appears that in carrying out the provisions of the act of April 8, 1864, the Hoopa Valley Reservation was established (Pamphlet, Ex. Orders, p. 301); the Round Valley already in existence was retained, and it was the declared purpose and intention of the superintendent of Indian affairs for California, who was charged with the selection of the four reservations to be retained, to extend the Hoopa Valley Reservation so as to include the Klamath River Reservation, or else keep it up as a separate reservation, and have a "station" or subagency there, to be under control of the agent at the Hoopa Valley Reservation.

Under date of December 12, 1864, this office called upon Superintendent Wiley to report "what changes, if any, have been made from the old system of Indian affairs in California, in the reorganization of said affairs under the provisions of the act of April 8, 1864."

In reply, after referring to the many difficulties he had to contend with, as the lack of funds, severity of the weather, etc., he said:

"I shall start to-morrow (January 20, 1868) to arrange matters pertaining to the location of the reservation at Hoopa. * * * This, then, I propose to be one of the four reservations contemplated by the act.

"Smith River Reservation was located upon unsurveyed land, which had been purchased by the settlers from the Government, and the lands had been leased from year to year by the Indian Department, awaiting the final action of Congress upon the location. My understanding of section 2 of the act of April 8th is, that it is not contemplated to locate a reservation upon land the title to which had been forfeited by Government and vested in individuals. Provision is made for the purchase of improvements, but not for the land itself. For this reason (if no other had been considered) I did not feel that I had authority to locate it as a permanent reservation. I did not wish to locate three reservations in the north, unless satisfied that it was absolutely necessary, and I had from the first selected Round Valley as one reservation. I was therefore under the necessity of leasing a portion of the land (Smith River) for another year, and the Indians are now putting in a crop which I depend upon to subsist them until another one shall be raised by them at the place where I intend to remove them by next spring. It is my present purpose to establish them upon the land formerly occupied as an Indian reservation upon Klamath River, and which was abandoned in 1861, but is still reserved by Government. The Hoopa Reservation will either be extended so as to cover this point, or it will be kept up as a station attached to that reservation and under the control of the same agent. Another important object will be attained by the establishment of a station at this place, as a care can then be had for the large numbers of friendly Indians living on Klamath River who subsist themselves, but require some protection from Government. If my present plans regarding this matter are carried into effect, I will report fully as to the many advantages of the location, etc.

"At Round Valley matters have progressed to my entire satisfaction. The number of Indians is much larger than at the time of my taking possession, and their condition is materially improved. The prospects for raising a crop the coming season are excellent, and I hope by its aid to make the Indians more comfortable than they have ever been. At Mendocino, the Indians are doing well. Mr. Whipple is in charge as an employé, being under the direction of Mr. Yocom, special agent at Round Valley. I respectfully ask that instructions similar in character to those of 31st of October may be given as to appraising improvements of the settlers at Round Valley, or that I may be authorized to proceed under the same instructions, as I consider it of the first importance that the Government be placed in possession of all the valley at the earliest day possible.

"I have not as yet determined where to locate the other two reservations, or if it will be necessary to locate more than one.

"The only Indians under my care in the portion of the State formerly known as the Southern District, are at the Tule River Indian farm, which is rented from Mr. Thomas P. Madden, having been leased by my predecessor to the 30th of June, 1865. The property at Fort Tejon has been removed to Tule River, and the service of Mr. Hudson who was in charge of it dispensed with." (Superintendent Austin Wiley to Indian Office January 19, 1865.)

From the foregoing it will be seen that the plan of the superintendent was to abandon Mendocino and Smith River Reservations, retain Round Valley and establish one in Hoopa Valley, and annex the Old Klamath River Reservation (with which we are now especially concerned) to the new Hoopa Valley Reservation.

I find that this office warmly commended and approved the superintendent's course.

In a letter to him acknowledging the receipt of his report of January 19, 1865, the then Commissioner said:

"I have expressed my gratification at the improved condition of Indian affairs in California since the re-organization under the act of 1864, and am further confirmed in my opinion of the wisdom of that measure, and of the good judgment shown by you in carrying it into effect." * * *

Again, I find in the annual report of the Indian Office for 1865, page 11, the following:

"Under date of April 1, 1865, a report from late Superintendent Wiley furnished this office with information of the general condition of the Indians upon the reservations, and of the progress thus far made in the re-organization of Indian affairs in California under the law of 1864. * * * Up to the date of the report above referred to, but two of the four reservations to which the act of Congress limits the superintendency had been definitely settled upon, being those at Round Valley and Hoopa Valley.

"It was intended to remove the Indians from the Smith River Reservation and place them at the Old Klamath Reservation, still owned by the Government, but to place the occupants under the charge of an employé of the Hoopa Valley Agency. No definite suggestions were made as to the selection of the other two permanent reservations."

It might be proper to here observe that the civil war was in progress at the time the reorganization of Indian affairs in California was undertaken, and in the rush of affairs incident thereto appropriations were slow, and much difficulty and delay was experienced in effecting the reorganization.

It appears also that Superintendent Wiley was relieved in the spring of 1865 and a new superintendent (Maltby) appointed, which must have added to the general confusion and delay.

In the annual report of this office for 1866, p. 25, I find the following: "The reservations at present recognized in California are Round Valley in the northeast; Hoopa Valley in the northwest; Smith River, south of the latter, and near the coast; and Tule River, in the interior, in the southern part of the State."

As the Tule River Reservation was owned by a private individual, and simply leased by the Government, it could not be considered as a reservation in the meaning of the act of 1864, and it appears to have been the intention from the beginning to abandon the Smith River Reservation.

In a letter to the Secretary of the Interior, dated August 14, 1877, this office said:

"The agency at this (Klamath River Reservation) was removed to Smith River Indian Reserve, but the Indians refused to leave, and being self-sustaining, living principally upon fish, it was not deemed advisable to recommend its restoration to the public domain."

Again, to the Secretary of the Interior, March 8, 1878:

"When the Klamath Agency was removed to Smith River, in 1862, there was but one band of the Indians on the Klamath Reservation—the Humboldts—numbering about five hundred persons, who consented to the removal thereto, or to the subsequent removal to Hoopa Valley.

"There were thus left on the Klamath River some two thousand Indians, over which this office has since exercised no jurisdiction, and who have been entirely self-supporting. They rely for subsistence mainly upon the salmon which abound in the Klamath River.

"In view of these facts the reservation should, in my opinion, be preserved intact until some measures are devised for the permanent settlement of these Indians."

In 1883, in the case of the appeal of John McCarthy from the decision of the General Land Office, sustaining the action of the local land officers at Humboldt, Cal., in suspending McCarthy's pre-emption filing on a certain tract of land, for the reason that said tracts fell within the Klamath Indian Reservation, the Secretary of the Interior decided as follows:

"The appeal raises the question of fact, namely, whether said reservation, which was created by Executive order of November 16, 1855, has been regarded as a reservation since passage of the act of April 8, 1864 (13 Stat., 39), which limited the Indian reservations in California to four. It is sufficient for me to say that it has been so regarded, and that various allotments within its limits have recently been made. In my letter of March 26, 1883, to the Commissioner of Indian Affairs, I stated that when the selections within said reservation were all made I would consider the question of restoring the remainder of the lands to the public domain. Your decision is affirmed." (Secretary Teller to Commissioner McFarland, December 14, 1883.)

The Tule Reservation was not selected nor set apart under the provisions of said act, nor were any of the (twenty-one) mission reservations now in existence. The Tule Reservation was established by Executive orders of January 9 and October 3, 1873,

and August 3, 1878, and none of the mission reserves were made prior to 1870. (See pamphlet Executive orders, pp. 305-313.)

The Klamath River Reservation has certainly been regarded by this Department as in a state of Indian reservation.

Bills have been introduced in Congress from time to time providing for its restoration to the public domain.

In a report upon one of these bills (H. R. 3454, Forty-sixth Congress) this office said:

"I am unable to approve this bill as prepared for the reason that it entirely ignores the Indians who are now, and have since 1855 been, located upon the reservation in numbers variously estimated by competent authorities at from 1,200 to 3,000.

These Indians are entirely self-supporting, relying for subsistence mainly upon the salmon which abound in the Klamath River, and in my judgment are pre-eminently entitled to consideration at the hands of the Government." (Commissioner Indian Affairs to Secretary Interior, March 30, 1880.)

I do not find that any steps were ever taken to sell the Klamath Reservation as an abandoned reservation, under section 3 of the act of April 8, 1864, nor that the General Land Office was ever formally advised of the relinquishment of the same. The reservation appears to have been kept intact with a view to holding it for the continued use of the Indians, who it appears never did wholly abandon it.

In 1879, in compliance with the wishes of this office, all trespassers known to be on the reservation were removed by the military under direction of the War Department.

In 1883 the Secretary of the Interior directed that allotments of land be made to the Indians on the reservation, and the Indians were accordingly requested to make individual selections, but the work had to be suspended on account of the discovery of gross errors in the public surveys.

All this tends to show that the Department has regarded the lands as being in a state of reservation, and I may add that for a number of years the agent at the Hoopa Valley Agency has been required to exercise supervision over the affairs of the reservation.

I trust the foregoing will be sufficient for the district attorney's purposes in the suits referred to.

I inclose a copy of this report and return the Attorney-General's letter and inclosure.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

UNITED STATES INDIAN SERVICE.
HOOPA VALLEY AGENCY, *Cal.*, May 9, 1888.

SIR: I have the honor to inclose for your information a copy of an extract from a letter yesterday received from Hon. John T. Carey, United States attorney for the northern district of California.

Mr. Carey writes that he will bring the Hume case on for trial soon. His position on the subject of the Klamath Reservation has been a negative one from the beginning. The decision that his letter portends would be a calamitous one for the Klamath Indians. Those people have been waiting now for about three years for the approval of the survey that will enable them to select the subdivisions of land that they expect to make their permanent homes. Should the decision of the United States court be adverse to them they will not have standing room on their own land, for every habitable spot on it will be taken immediately by the whites.

It is claimed by those interested in abolishing the reservation that the act of Congress of April 8, 1864, diverted the Indian title. By the provisions of section 3 of this act, such reservations as were then in existence in California and not selected by the President should be surveyed into lots and sold at public auction, and by a special act of Congress, approved July 28, 1868, the Smith River and Mendocino Reservations were discontinued and restored to the public domain.

If a special act of Congress was necessary in the case of the Smith River and Mendocino Reservations, it ought to be presumed that no less authority will be necessary in the case of the Klamath Reservation.

I send you the information above that you may be prepared in advance to meet the contingency indicated in the letter of the United States attorney.

I am, sir, very respectfully, your obedient servant,

WM. E. DOUGHERTY,
Captain U. S. Army, Acting Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

[Extract from letter of Hon. John T. Carey, United States attorney, San Francisco, Cal.]

SAN FRANCISCO, CAL., May 3, 1888.

* * * * *
 I must confess that it is doubtful whether the courts will hold the Klamath to be a reservation. It has been discussed cursorily with the judge in the preliminaries of the Hume case, and I am of the opinion his inclinations are that by virtue of the act of 1864 it was abandoned by the Government.
 * * * * *

Very respectfully,

JOHN T. CAREY,
United States Attorney.

A true copy of extract.

WM. E. DOUGHERTY,
Captain First Infantry.

UNITED STATES INDIAN SERVICE,
Hoopa Valley Agency, Cal., May 29, 1888.

SIR: I have the honor to advise you that on the 19th instant the Klamath Reservation case, known on the court docket as the "United States vs. 48 pounds of tea, etc.," was brought up for a hearing before his honor Judge Hoffinan, in the circuit court in San Francisco. Being in the city on business, I was subpoenaed by the United States attorney, and was the only witness. The United States attorney did not appear in the case, and the Government was not represented. His honor stated that it was the sixth time the case had been set for a hearing, and decided to go on with it, and hear the Government's argument later.

The argument of Mr. Hume's attorneys consisted mainly of a citation of the historical and legislative record affecting the Klamath Reservation, and an attempt was made to show that the Indians had been removed from the land to Hoopa Valley, and that they properly belong at this agency.

Although the Government is undoubtedly at a disadvantage in the case as it stands now, I am of the opinion that the court will hold that the Klamath Reservation has been and still is reserved for the use of the Klamath Indians.

I am sir, very respectfully, your obedient servant,

WM. E. DOUGHERTY.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

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