
IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. MITCHELL, of Oregon, presented the following

MEMORIAL ON BEHALF OF THE KLAMATH AND MODOC TRIBES AND THE YAHOSKIN BAND OF SNAKE INDIANS, OCCUPYING THE KLAMATH INDIAN RESERVATION, IN THE STATE OF OREGON, IN THE MATTER OF THEIR CLAIM FOR LAND EXCLUDED FROM SAID RESERVATION BY ERRONEOUS SURVEY OF THE OUTBOUNDARIES THEREOF, SAID BOUNDARIES NOT HAVING BEEN RUN AND MARKED AS PRESCRIBED BY THE TREATY OF OCTOBER 14, 1864.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The history of the claim of the Klamath and Modoc tribes and the Yahooskin band of Indians, occupying what is represented as the Klamath Indian Reservation, in the State of Oregon, for land excluded from said reservation by erroneous survey of the boundaries thereof, will be found set out in the reports made by the Secretary of the Interior in response to two resolutions of the Senate, all of which are printed in two Senate executive documents, viz, Senate Ex. Doc. No. 129, Fifty-third Congress, second session, and Senate Ex. Doc. No. 62, Fifty-third Congress, third session. In the presentation of the case in this paper these documents will be referred to simply by their numbers, the first figure used in each case indicating the document referred to, and the second the page thereof to which attention is directed, thus: 129, 10; 62, 5.

In view of the fact that the reports and other papers on the subject of this claim, thus furnished to the Senate, are not set out in the order of their dates, it is deemed desirable to insert in this statement all of the material papers in successive order, so as to present the history of the case clearly and intelligently.

A treaty was negotiated in 1864 by the United States with the Indians aforesaid, which was concluded October 14, 1864, was amended by the Senate, and finally ratified, and was proclaimed February 17, 1870.

By the first article of that treaty the said Indians surrendered their right, title, and interest in and to about 20,000,000 acres of land in Oregon and northern California, a reservation for their future use and occupancy being reserved by the treaty within the ceded territory.

The foregoing will more fully and clearly appear from the said first article of the treaty, which is as follows (16 Stat. L., 707):

The tribes of Indians aforesaid cede to the United States all their right, title, and claim to all the country claimed by them, the same being determined by the following boundaries, to wit: Beginning at the point where the forty-fourth parallel of

north latitude crosses the summit of the Cascade Mountains; thence following the main dividing ridge of said mountains in a southerly direction to the ridge which separates the waters of Pitt and McCloud rivers from the waters on the north; thence along said dividing ridge in an easterly direction to the southern end of Goose Lake; thence northeasterly to the northern end of Harney Lake; thence due north to the forty-fourth parallel of north latitude; thence west to the place of beginning: *Provided*, That the following described tract, within the country ceded by this treaty, shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, [and] held and regarded as an Indian reservation, to wit: Beginning upon the eastern shore of the middle Klamath Lake, at the Point of Rocks, about twelve miles below the mouth of Williamsons River; thence following up said eastern shore to the mouth of Wood River; thence up Wood River to a point one mile north of the bridge at Fort Klamath; thence due east to the summit of the ridge which divides the upper and middle Klamath lakes; thence along said ridge to a point due east of the north end of the upper lake; thence due east, passing the said north end of the upper lake, to the summit of the mountains on the east side of the lake; thence along said mountain to the point where Spragues River is intersected by the Ish tish ea wax Creek; thence in a southerly direction to the summit of the mountain, the extremity of which forms the Point of Rocks; thence along said mountain to the place of beginning. And the tribes aforesaid agree and bind themselves that, immediately after the ratification of this treaty, they will remove to said reservation and remain thereon, unless temporary leave of absence be granted to them by the superintendent or agent having charge of the tribes.

It is further stipulated and agreed that no white person shall be permitted to locate or remain upon the reservation, except the Indian superintendent and agent, employees of the Indian department, and officers of the Army of the United States, *guaranteed* [and] that in case persons other than those specified are found upon the reservation, they shall be immediately expelled therefrom; and the exclusive right of taking fish in the streams and lakes included in said reservation, and of gathering edible roots, seeds, and berries within its limits, is hereby secured to the Indians aforesaid: *Provided, also*, That the right of way for public roads and railroads across said reservation is *guaranteed* [reserved] to citizens of the United States.

The said Indians fully complied with the provisions of said treaty by removing and settling within the limits of the reservation thus created for them.

The Commissioner of the General Land Office was, upon recommendation of the Commissioner of Indian Affairs, directed by the Secretary of the Interior to cause a survey to be made of the boundaries of said reservation (62, 8, 9, 10).

While this survey was in progress the Indians manifested their dissatisfaction therewith. But not until it was completed, and they saw white settlers moving in upon land claimed as portions of the reservation, did they realize that they were being robbed of land which had been reserved for them by the treaty. They made complaints to their then agent, who, so far as the information furnished to the Senate in the case shows, made no reports on the subject to the Commissioner of Indian Affairs or other authorities at Washington or elsewhere, but appears to have endeavored to quiet the fears and complaints of the Indians by telling them that "the white people were only stopping for awhile, and that they would soon go away." (Agent Rook's letter, September 7, 1877; 129, 8.) In response to their persistent request for the removal and exclusion of the white settlers from their lands, they "were put off by telling them that when the new agent came he would arrange it for them." (Agent Rook's letter, August 21, 1877; 129, 6.)

The new agent referred to was J. E. Rook, who was appointed to and assumed charge of the agency in 1877. Whether inattention to their complaints on the part of the previous agent was from neglect, indifference or otherwise, the Indians had been led to look forward to the coming of the new agent for the redress of their grievances. He seems to have soon discovered that great injustice had been done the Indians, and appears to have had sufficient concern for their rights

and welfare, and the courage to deal with the matter to the extent of his authority and power. In his first annual report Agent Rook brought the subject to the attention of the Commissioner of Indian Affairs as follows:

[Extract from the annual report of J. R. Rook, agent for the Klamath Indian Agency, Oreg., dated August 22, 1877.]

RELATIONS WITH THE GOVERNMENT.

The state of disquietude among the tribes north of us has not been participated in by the Klamaths. They have their own grievances, which are serious, and a great deal of patience on their part and forbearance is shown. They claim that "There are lands offered for sale and purchased and occupied by white settlers which, in reality belong by treaty to them, and it is injustice to deprive them of these lands." For further particulars on this subject, see special letter to the Indian Department of August 1, 1877. (See Annual Report of Commissioner of Indian Affairs, p. 172; 129, 5.)

No special report from Agent Rook to the Commissioner of Indian Affairs dated August 1, 1877, is furnished in response to the Senate resolutions, but two copies of one and the same report from him is furnished, one copy of which is dated August 22, 1877 (129, 5), and the other dated August 21, 1877 (129, 6). This letter or report, together with all other letters and reports written by Agent Rook on the subject of the complaints and grievances of the Indians concerning the erroneous survey of the out boundaries of their reservation was embodied in a report made by him to the Commissioner of Indian Affairs, dated February 12, 1878, and set out in 129, 6, 7, 8, 9, except the first page of that report, which the Commissioner of Indian Affairs reports as missing. (See footnote, 129, 6.)

A careful reading of this report by Agent Rook will show that he gave prompt attention to the complaints of the Indians as to the error in the survey of the outboundaries of the reservation and the consequent injustice done them thereby. He promised the Indians to investigate the matter, and set a time for the investigation; but when the time came sickness prevented him from going over the boundary lines. He sent one of his employees, who returned strongly convinced that the Indians were right. This, the agent states, made it the more necessary that he should see the country and learn what he could of the boundary lines. With the description of the boundaries of the reservation as given in the treaty, and with the plat of survey of the boundary lines as made, he made an investigation which brought him to the following conclusions:

I very soon found that the plat and treaty did not agree, and I am forced to the conclusion that there is at least over 100,000 acres of land described by the treaty which is thrown out by the plat on the east side, and as much more on the west and north sides, which the Indians say was included in the agreement when the treaty was made. As the Indians claim the lines and boundaries were agreed upon, there are natural and well-defined boundaries, but as represented by the plat and so-called survey there is not a natural boundary line. Besides, on the southeast corner, on one plat which I have seen, three townships are thrown out, and by another four townships. As this is a square taken out without the least allusion to it by the description given in the treaty, and including the very best part of the reservation, lying between the body of the reservation and the mountains on the east, whatever may be the action and words of men, there can be but one opinion by those knowing the circumstances, that the whole country between what is called the line by the so-called survey and the mountains on the east belongs to the Indians by the treaty, and yet it is said to be surveyed and opened for settlement by the Government. Besides all this there is a continuation of marshes and lakes above on the north of the line, as represented by the so-called survey, while the treaty distinctly says the north end of the upper Klamath Lake. Such surveying and such representations of boundaries, giving room for little settlements between the Indians and the mountains, will keep up constant restlessness, if it does not result in serious difficulty. I

will inclose a plat (roughly drawn) describing the reservation as set forth by the two plats which have come under my observation, and also as the Indians claim the boundaries to be. (Agent Roork's report, August 21, 1877, 129, 6.)

Agent Roork obtained and furnished a letter from George Mercer, who surveyed the alleged boundary lines, showing that the Indians opposed the survey when it was being made (129, 7). He also obtained and furnished a letter from D. P. Thompson, of Portland, Oreg., who made public surveys on the lands adjoining the boundaries of the reservation, as erroneously surveyed, and who states "that the reservation lines are run by the cardinal points and by the section and township lines, rather than by the lines of the reservation described in the treaty. The survey does not appear to conform to the treaty in but one place, and that, on the west side, along the margin of the lake" (129, 7).

Agent Roork urged the matter upon the attention of the Indian Office, representing the loyalty and patience of the Indians under the grievous wrongs they were suffering, saying in his report of September 7, 1877:

You will see that if my statements in former communications, as well as in this, are true, that this is a question of no small magnitude, and that common honesty requires that it be settled according to the treaty. Permit me to say in this connection that I bring this question up because I can not do otherwise and be true to the trust committed to my charge. It will be seen in the near future that the mistake is that it has not been investigated and settled long ago.

As I have presented this matter it must astonish you—first, that men under oath of office would cause such a survey to be made and thereby lead the Government unwittingly to do such a thing; and secondly, that this thing has not been brought before the Department before this. What can be done? (129, 8.)

In his monthly report for August, 1877, he states as follows:

There has been a strange course of procedure by someone in regard to the lines and boundaries of this reservation. As nearly as I can now judge, at least one-third of the reservation as described by the treaty has been opened to settlement by the Government. The Indians have almost constantly from the time the so-called survey was made presented their claims, and time after time asked the agents to put the white people off from their lands; and as I investigate this matter evidence accumulates and becomes stronger, even from men who were present at the time when the treaty was made and who have been familiar with the service ever since. That there has been a very great wrong perpetrated as above indicated is evident. Notwithstanding all this these Indians have remained strictly loyal, but they are firm and positive that these wrongs must be corrected. As a matter of simple justice, I hope that there will be something done very soon.

It is only a question of time when something must be done, and the difficulties increase with each succeeding day. (129, 9.)

He closes his report of February 12, 1878, in which he reviews all that he had up to that date done and said on the subject, as follows (129, 9):

After going over all that I have written on this subject heretofore and becoming better acquainted with the country, people, and history of the treaty, I have to say that I have underestimated the wrongs done to the Indian by this so-called survey. I have counseled with a number of persons upon this subject (some of whom were present when the treaty was made), military officers and citizens, some of whom own lands within the bounds of the disputed territory. I have taken pains to have these men compare the plat of the so-called survey with the description of the treaty, and they all agree that there is a great disagreement. If you will read the unambiguous language of the treaty with the plat of the so-called survey before you it will not be necessary for me to present further evidence to substantiate what I have said. To prevent trouble, I respectfully recommend the appointment of a commission composed of three men—one from the military Department, one from the Indian Department, and one a citizen—this commission to be invested with full power and authority to send for men and papers, and to investigate this so-called survey, and settle and establish the boundary lines in accordance with the stipulations of the treaty.

Hoping that this subject will receive your early and earnest attention, I will await your instructions.

It thus appears that the more fully and thoroughly Agent Rook investigated the case the greater he discovered the wrong to be that had been done the Indians by the erroneous survey of the outboundaries of the reservation. His first impressions on the subject were that "there are at least 100,000 acres of land described by the treaty which are thrown out by the plat on the east side, and as much more on the west and north sides, besides three or four townships on the northeast corner of the reservation." He next reports that "more than one-third of the country included in the treaty has been opened for settlement."

The outboundaries of the reservation as erroneously surveyed included therein 1,056,000 acres; therefore, the more than one-third opened for settlement would be more than 528,000 acres.

But he does not yet seem to be satisfied that he had fully and truly represented the wrong done to the Indians, and hence he states in his report of February 12, 1878, that "after going over all that I have written on this subject heretofore, and being better acquainted with the country, people, and history of the treaty, I have to say that I have underestimated the wrongs done to the Indians by the so-called survey."

The settlers who had gone upon the lands excluded from the reservation by the survey, and other citizens of Lake County, Oreg., held a meeting on March 21, 1878, and adopted resolutions requesting, for the peace and prosperity of that section of the State, the appointment of a commission, with power to send for persons and papers, to examine into the disputed boundary question, their decision to be final. And the military authorities at Fort Klamath, and their superior officers, urged then, as they had done previously, the importance and necessity for an early and just settlement of the dispute. (129, 12, 13, 14.)

Upon these papers, from these sources, on the subject, coming before the Commissioner of Indian Affairs, he reported to the Secretary of the Interior (129, 13, 14) as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, March 25, 1878.

SIR: I have the honor to submit herewith a communication from United States Indian Agent J. H. Rook, dated February 12, 1878, reciting the fact that white people are settling upon the Klamath Indian reservation in Oregon, and that large herds of sheep and cattle are grazing upon the same, that the Indians are restless on account of said encroachments, which if not checked may lead to serious consequences.

From this and former communications from said agency there seems to be a wide difference of opinion as to the definite location of the outboundaries of this reservation, and upon the accuracy of the survey of its outboundaries depends the future peace of the Indians of this reservation.

I submit in this connection a letter from the War Department of the 27th of September last, inclosing a copy of a communication from the commanding officer at Fort Klamath, calling attention to the fact that the Indians question the accuracy of the survey and complain of the encroachments by whites, and suggesting the probability of difficulty unless the matter is satisfactorily adjusted. Major-General McDowell, in forwarding the same, asks early attention to this matter.

As the survey of the outboundaries and subdivision of portions of the same has been made under the jurisdiction of the General Land Office, I have the honor to recommend that the Commissioner of the General Land Office be requested to furnish this office with a copy of the plat and field notes of the survey of the outboundaries of said reservation, with his views as to the accuracy of that survey in determining the location of the outboundaries as defined in the treaty of October 14, 1864, with the Klamath Indians (16 Stat. L., p. 708).

The Indian agent should have a copy of the plat and field notes of the survey of the exterior limits of his reservation to show the Indians where their lines extend, and the views of the General Land Office are requested, that proper instructions may issue from this office to the Indian agent for his guidance in the management of the subject in question.

The return of letters from the War Department and Agent Rook is respectfully requested.

I have the honor to be, very respectfully, your obedient servant,

E. A. HAYT, *Commissioner*.

The SECRETARY OF THE INTERIOR.

A report, as requested, was called for by the Secretary of the Interior from the Commissioner of the General Land Office, which was made and referred to the Commissioner of Indian Affairs, and is as follows:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., April 8, 1878.

SIR: I have the honor to acknowledge the receipt of a letter from the Department, dated the 1st instant, with the following inclosures in reference to the Klamath Indian Reservation in Oregon, viz:

Letter from Commissioner of Indian Affairs to Department, dated March 25, 1878.

Letter from United States Indian Agent Rook to Commissioner of Indian Affairs, dated February 11, 1878, with rough diagram of said reservation.

Letter from Secretary of War to Interior Department, dated September 29, 1877, with inclosure from General McDowell.

From the correspondence in the case it appears that the Indians are dissatisfied with the boundaries of their reservation as surveyed, which they allege are not according to limits defined by treaty, and request is made that copy of the plat and notes of survey of the boundary be furnished for use of the Indian service, and that this office give an expression of its views as to the accuracy and sufficiency of said survey.

In compliance with request contained in letter from the Department, I transmit, herewith inclosed, copy of the plat and field notes of said survey.

By letter dated February 18, 1871, the Honorable Secretary of the Interior directed the survey to be made of said reservation, and George Mercer, under contract with the surveyor-general of Oregon, dated May 2, 1871, and subsequent special instructions made the survey which was approved, and returns thereof reached this office in December, 1871.

From an examination of the field notes of survey in connection with the limits described in the treaty, it appears that the treaty lines on the east and south and a portion of the west side of the reservation, described as mountains or ridge of mountains, were not followed by the surveyor, who, in running said lines, followed certain lines of the public surveys.

Owing to the fact that the public surveys in that region of country have not progressed sufficiently to show the topography of the country around the reservation as surveyed, this office has no information as to where the mountains described in the treaty are situated, or as to how far north the Upper Klamath Lake or Marsh extends. The extent of this marsh determines the north reservation line.

The deputy, in establishing the northwest corner of the reservation on the sixty-sixth mile, describes it as at a "point at the west of the head of Klamath Lake," then runs east across the lake or marsh to the summit of the mountains on the east of the lake at the end of the ninety-second mile. He then runs south to another mountain summit, and turning eastwardly runs a few miles until he reaches a point due north of what he terms the intersection of Ish tish ea wax Creek with Spragues River, which intersection is mentioned in treaty as on the eastern line, when he runs due south along the line of public surveys instead of following the mountains. The public surveys designate this creek as the Middle Fork of Spragues River, and the name Ish tish ea wax does not appear upon any plats of survey in that region.

On the south the surveyor mentions the summit of mountains on the one hundred and fiftieth mile, near the southeast corner of the reservation, and high mountains in several places along the line (see one hundred and seventy-fourth, one hundred and seventy-eighth, and one hundred and seventy-ninth miles), but he ran along the line of public surveys instead of along natural boundaries.

In the general description attached to the field notes (see p. 43) the surveyor states that it was impossible to mark a line exactly according to the description in treaty.

From the foregoing it appears that the lines surveyed are not strictly in accordance with the boundaries mentioned in the treaty, but this office has not sufficient data to enable it to show how much the survey varies from the boundaries.

In this connection I have to state that prior to the ratification of the treaty the public surveys had progressed to some extent over that part of the country both within and without the lines of the reservation as surveyed, and certain of the lands have been approved to the Oregon Central Military Road Company under act of Congress approved July 2, 1864.

For more particular information on the subject of the disposal of said lands, see report of this office dated November 4, 1874, to the Commissioner of Indian Affairs, and report dated February 20, 1875, to the Department, both reports from Division F, General Land Office.

The inclosures received with letter from Department are herewith returned.

Very respectfully, your obedient servant,

J. A. WILLIAMSON, *Commissioner.*

Hon. C. SCHURZ, *Secretary of the Interior.*

Here we have the clear and unequivocal statement of the Commissioner of the General Land Office, under whose direction the survey for the Klamath Indian Reservation boundaries was made, as is required by law for all surveys of Indian reservations (sec. 2115, Rev. Stat.), that—

From an examination of the field notes of survey in connection with the limits described in the treaty, it appears that the treaty lines on the east and south and a portion of the west side of the reservation, described as mountains or ridge of mountains, were not followed by the surveyor, who, in running said lines, followed certain lines of the public surveys. * * *

From the foregoing it appears that the lines surveyed are not strictly in accordance with the boundaries mentioned in the treaty.

With the condition and facts in the matter thus before him, the Commissioner of Indian Affairs again brought the subject to the attention of the Secretary of the Interior (129, 15, 16, 17) in report from which the following extracts are taken:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, July 15, 1878.

SIR: Referring to report from this office, dated March 25 last, upon the subject of the boundary lines of the Klamath Indian Reservation in Oregon, and the reply of the Department thereto, dated April 15 last, with inclosures, I have the honor to submit the whole subject for your consideration and action.

I had the honor in said report to request a copy of the plat and field notes of the survey of said reservation, as executed in the year 1871, under authority of the General Land Office, together with the opinion of that office as to the conformity, or otherwise, of said survey to the provisions of the treaty of October 14, 1864 (16 Stat. L., p. 758), creating the reservation.

With your said communication of April 15 last you inclosed copy of the plat and field notes as requested, and also copy of report, dated April 8 last, from the Commissioner of the General Land Office, giving his opinion as to the accuracy of the survey in question.

The treaty of 1864 defines the boundaries of said reservation as follows:

"Beginning upon the eastern shore of the middle of Klamath Lake, at the Point of Rocks, about twelve miles below the mouth of Williamsons River; thence following up said eastern shore to the mouth of Wood River; thence up Wood River to a point one mile north of the bridge at Fort Klamath; thence due east to the summit of the ridge which divides the upper and middle Klamath Lakes; thence along said ridge to a point due east" (west) "of the north end of the upper lake; thence due east, passing the said north end of the upper lake, to the summit of the mountains on the east side of the lake; thence along said mountain to the point where Sprague River is intersected by the Ish tish ea wax Creek; thence in a northerly direction to the summit of the mountain the extremity of which forms the Point of Rocks; thence along said mountain to the place of beginning."

It will be seen from the foregoing that the treaty describes the outboundaries of the reservation almost entirely by reference to permanent and very prominent natural objects, and consequently careful attention to the provisions and to the topography of the country could hardly have failed to result in a survey in accordance therewith. Instead, however, of pursuing this most natural and obvious course, the surveyor seems to have ignored the topographical features in question, and to have run his lines by and with reference to existing surveys of what were considered public lands.

In his said report to the Department of the 8th of April last, the Commissioner of the General Land Office declares that said survey does not follow the treaty lines, but that by reason of imperfect information relative to the situation of the mountains described in the treaty as constituting portions of the boundaries of the reservation he is unable to determine the extent of the deviation therefrom.

That such deviation is very considerable is shown by the statement of Agent Rook, who seems to have made diligent personal examination of the subject upon the ground, in the light of the treaty and plat of survey and aided by information derived from whites and Indians long conversant therewith. After such research he gave it as his opinion that over 100,000 acres of land rightfully belonging to the reservation under the treaty were thrown out by said survey, on the east side thereof, and as much more on the north and west sides.

To the Indians, who thoroughly understand the topography of their reservation and its well-defined natural boundaries, their deprivation, without consent or compensation, of these large bodies of land, presents itself as an ever-present outrage of the most inexcusable and flagrant character, and naturally creates bitter feelings among them, more especially as this land of which they consider themselves to have been robbed is filling up with settlers, many of whom are aggressive, unjust, and violent.

* * * * *

I have the honor to recommend that an inspector or some other discreet and judicious person in the Indian service be sent to said reservation to fully investigate the subject and devise a suitable plan for the equitable adjustment of the questions involved, and that he be further instructed to examine and report upon the feasibility of consolidating all the Indians belonging to the Klamath and Malheur reservations upon one reservation, and to ascertain the best locality for such new reservation, taking into consideration wood, water, arableness and healthfulness of climate, remoteness from organized white settlements, and all other requisites of a successful Indian community.

I have the honor to inclose herewith said copy of the plat and field notes of the survey in question; letters dated, respectively, February 12 and March 12, 1878, from Agent Rook; communication dated September 29, 1877, from War Department to the Honorable Secretary of the Interior, and referred by the latter to this office, and letter dated March 9, 1878, from Captain Jackson, First Cavalry, referred to this office by General Howard, to whom it was addressed, and respectfully request the return of said inclosures with your instructions.

Very respectfully, your obedient servant,

WM. M. LEEDS, *Acting Commissioner.*

The SECRETARY OF THE INTERIOR.

The matter received the consideration of the Secretary of the Interior, as shown by his letter to the Commissioner of Indian Affairs (129, 18, 19), from which the following extracts are taken:

DEPARTMENT OF THE INTERIOR,
Washington, September 12, 1878.

SIR: I have the honor to acknowledge the receipt of your letters dated, respectively, July 15 and August 13, 1878, in relation to the present status of the Klamath Indian Reservation, in the State of Oregon.

In your letter of July 15 you recommend:

First. "That a new survey may be made of the outboundaries of said reservation."

Second. "That the Department instruct the General Land Office to withdraw from sale or other disposal all lands lying within said reservation."

Third. "That all sales or leases of, or settlement upon, lands approved to or claimed by the Oregon Central Military Road Company or the State of Oregon in its behalf be prohibited until an investigation can be had of the rights of said company."

Fourth. "That one of the inspectors of the Indian service be sent to the Klamath Reservation to investigate the whole matter, to consider the feasibility of consolidating all the Indians on one reservation, and also to ascertain the locality for such a reservation."

From the public records it appears that the first official survey made of this reservation was approved by the General Land Office in December, 1871. That the surveyor employed by the Government to make said survey, instead of following the natural boundaries as prescribed by the treaty in running the lines of the outboundaries of the reservation, followed certain lines established by the public surveys. The Commissioner of the General Land Office, in his letter to the Department of April 8, 1878, states that his office has not sufficient data to enable it to show how much the survey varies from the treaty boundaries. To arrive at the correct limits of the reservation as it should be, in accordance with the natural boundaries as described in the treaty, would necessitate that a new survey be had by the Government.

It is not within the power of the Department to perform this act at the present time. Section 2115, Revised Statutes, prescribes "that Indian reservations shall be

surveyed under the direction and control of the General Land Office, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed." There does not at present appear to be any public funds available for the accomplishment of this work; besides, the survey approved by the Department in 1871 was then published to the world as showing the metes and bounds of the Klamath Indian Reservation. In the meantime, in view of this official act of the Land Department, settlers have located upon the desirable portions of the disputed territory, and their claims have been recognized by the General Land Office.

In view of the existing state of affairs, in relation to the conflicting claims of title to lands situated within and without the boundaries of the Klamath Indian Reservation as defined by the Government survey, approved December, 1871, I am of the opinion that your fourth proposition will be the only feasible solution of the whole matter—that an inspector of your Department be requested to visit the Indians located upon the Klamath Reservation, in the State of Oregon, and ascertain as to whether negotiations can not be entered into either for the removal of said Indians to a new reservation, the locality of which to be hereafter determined, or of consolidating them with some other Indian tribes already located upon an existing reservation.

The papers which accompanied your letters of July 15 and August 13, 1878, are herewith returned.

Very respectfully,

C. SCHURZ, *Secretary.*

The COMMISSIONER OF INDIAN AFFAIRS.

(The omitted-portions of the two last-mentioned letters pertain to another subject-matter of complaint of said Indians concerning their lands, but separate and distinct from the matter now under consideration.)

The military authorities again, in 1878, brought the subject to the attention of the authorities at Washington (129, 15, 18, 19). And Lewis M. Nickerson, who had succeeded J. R. Roork as agent of the Klamath Agency, in monthly report of July 2, 1879 (129, 17), and in special report of March 5, 1881 (129, 23), urged some definite action upon the matter, suggesting the plan and personnel of a commission to investigate and adjust the dispute.

In his annual report for 1881 the Commissioner of Indian Affairs (H. Price) thus refers to the matter:

The agents at the Klamath Agency in Oregon, and the military officers as well, have repeatedly warned the Department of the imminent danger growing out of the disputed boundary question at that agency. Herds of cattle are driven and grazed upon what is no doubt a part of the Klamath Reservation, and the Indians claim that lands acquired by them under solemn treaty stipulations have been sold to white settlers, who are now in full occupation and enjoyment of them. It is admitted by the General Land Office that the treaty lines of the east and south and a portion of the west side of the reservation were not followed by the surveyor who made the survey of the reservation in 1871, but that certain lines of the public survey lying considerably inside of the reservation, as defined by the language of the treaty, were followed instead. Hence, it would appear that the Indians have good grounds for complaint. Agent Nickerson has recently made this matter the subject of a special report to this Bureau, in which he again warns the Government of the danger of further delay in the settlement of this vexed question. He says: "While there is a patient waiting on the part of the Indians for the Government to redress what they believe to be their wrongs, there is also a deep and growing conviction in their minds that nothing will be done unless some complication shall arise that will compel action."

Not to heed these repeated warnings is to assume a responsibility that this office is unwilling to take upon itself.

Tillable lands within the reservations should in all cases be subdivided, where it has not already been done, in order that allotments may be made to individual Indians, and that all such lands may be made available for that purpose, whether remote from the agency or adjacent thereto.

It is hoped that this matter may be pressed upon the attention of Congress at its coming session, in order that the necessary appropriations may be had to relieve the Department of this most serious embarrassment. (129, 4.)

The same officer, in letter to Agent Nickerson, urged him to "counsel the Indians to be patient, at the same time assuring them of the

good will of the Department and the earnest desire it feels for an early settlement of the difficulties." (129, 24.)

Agent Nickerson, in his annual report for 1882, states:

They are still waiting for and expecting an adjustment of their boundary difficulties, believing that this Government can not consent to do them an injustice in regard to their lands, and to break the treaty which they themselves have so faithfully kept. I sincerely hope that the agent will, in the next annual report, be able to record the fact of the settlement of this "much-vexed question." (129, 4.)

In report of October 15, 1886, the Commissioner of Indian Affairs (A. B. Upshaw, acting) reported to the Secretary of the Interior the necessity for a survey of the boundary lines of the reservation in accordance with the treaty. (129, 23.)

The survey thus recommended appears to have been authorized and directed to be made by the Secretary of the Interior.

The commanding officer at Fort Klamath, Oreg. (Capt. G. S. Carpenter), learning of this proposed survey, reported that if it was to be a resurvey along the old platted lines it would not be satisfactory, and he urged that, "For the avoidance of future complications, it is of lasting importance that before a contractor runs the lines, the place where should be determined by mutual concord, or some determinate authority." (129, 21, 22.)

The contract for the survey was entered into, but the execution of the work was delayed at request of the Commissioner of Indian Affairs (J. D. C. Atkins), who, in a letter of January 11, 1887, to the agent (Hon. John Emery), informed him that from statements made to him the Indians would not be satisfied with the survey of the boundary lines as advertised for and proposed by the surveyor-general of Oregon; that there was no authority for the appointment of a commission to adjust the matter, as had been suggested; and, after stating some of the points in the dispute and reciting the descriptions of the reservation boundary as given in the treaty, directed him as follows:

The two principal points in dispute appear to be "the mountains west of the lake" and "Ish tish ea wax Creek."

You will at once proceed to take the evidence, under oath, of all persons, both Indians and whites, having knowledge of the true location of these points, and of the true eastern boundary as understood at the time the treaty was concluded.

It is probable that some of the older Indians, and especially Chief Schonchin, can give important testimony upon the subject. The signification of the Indian word *Ish tish ea wax* in English should be ascertained, and the identity of the stream established if possible.

You will exhaust every source of information likely to throw light upon the true location of the boundary without regard to its effect upon settlers or Indians. The testimony should be reduced to writing and forwarded with your report.

I inclose report from late Agent J. R. Rook, dated February 12, 1878, with rough plat showing boundaries as understood by him. You will return these papers with your report.

It may be added that *Ish tish ea wax Creek*, as laid down upon the plat of the Mercer survey of 1871, is identical with Middle Fork as shown on the public maps of Oregon.

Agent Emery's compliance with the foregoing instructions are shown in the following report made by him (129, 25, 26), and the testimony therewith submitted:

UNITED STATES INDIAN SERVICE,
Klamath Agency, Oreg., June 16, 1887.

SIR: I have the honor herewith to submit my report with the testimony obtained as to the boundary of Klamath Agency.

I have according to instructions, as far as possible, "exhausted every source of information likely to throw light on the true location of the boundary." If the testimony is meager and unsatisfactory, I beg you to remember that twenty-three years

have elapsed since the treaty was made, and it is difficult for men to recall, with sufficient accuracy to swear to them, events so long past.

It will be noticed that the testimony of the whites and Indians conflicts as to the intersection of the Ish tish ea wax Creek with Sprague River.

The Indians whose testimony I have taken are the most reliable on the reservation, and were all present when the treaty was made, their names appearing on the treaty.

Seonchin is the chief of the Modoc band that remained loyal during the Modoc war. Charles Preston was one of the interpreters at the council held in 1864, when the treaty was made, also at the council of 1865 with the Snakes, and stood with Superintendent Huntington on Yainax Butte when he pointed out the natural boundaries of the reservation as far as they could be seen from this mountain. Mo ghen kas kit is a subchief of the Modocs. Allen David and Henry Blow are both chiefs of the Klamaths.

I used every precaution to prevent collusion in taking their testimony.

They all agree in this that the treaty made with Superintendent Huntington gave them all of Sycan and Sprague River valleys.

The testimony of the whites places the "intersection of the Ish tish ea wax Creek with Sprague River 200 yards east of the Mercer survey, at the junction of the Middle Fork and the South Fork of Sprague River" (see accompanying map); this south branch is claimed to be the Ish tish ea wax of the treaty.

Mr. I. D. Applegate testifies that in 1868 Superintendent Huntington visited the above-named point with him, and designated it as the place where "the eastern boundary line would cross the valley."

The testimony of the Indians places the intersection of Ish tish ea wax Creek with Sprague River 10 miles farther east, at the base of the mountains.

Here a small stream flows from the southeast and empties into what the white settlers call South Sprague River, just below the point where the military wagon road crosses.

In this little stream the Indians have caught—probably for centuries—in the early spring, the Ish tish, a little fish, hence the name of the stream. A rocky barrier made by the Indians prevents these fish from ascending this stream more than 100 yards.

In company with Prof. W. T. Leeke, taking with me as guides Charlie Preston and Mo ghen kas kit, I visited these disputed points and made personal observations. (See supplemental statements of Charlie Preston and Mo ghen kas kit.)

I also visited the northern and northeastern part of the reservation, taking with me Indian guides. I traveled the whole extent of the Upper Klamath Lake or marsh to its eastern extremity, and then ascended Yam se, southeast of the upper lake, from whose summit I could trace the entire northern and eastern boundaries.

I found east and a little south of the upper lake a well-defined ridge and broken mountain range, of which Yam se is the highest peak. To reach this ridge and range it is necessary to run south several miles. No summit of mountains mentioned in description of boundary in treaty can be reached by extending the line north of the upper lake due east. Ex-Agent Rook's rough outline is misleading and incorrect. Then by following this broken chain of mountains, indicated by heavy red line, crossing the Sycan River and continuing along the eastern spur to its base; thence southeast to the junction of South Sprague River with the Middle Fork, a little east of the Mercer survey, we reach "the point where the Ish tish ea wax Creek intersects Sprague River," according to the testimony of the whites.

Again extending the line running north of the upper lake, still farther east, as indicated by a dotted red line, then south, we reach a broken ridge which divides the Sycan Valley from the Silver Lake country; thence along this ridge to the mountains east of Sycan Valley; thence along these mountains to "the point where Sprague River is intersected by the Ish tish ea wax Creek," according to the testimony of the Indians.

From personal observation and the sworn testimony of the Indians, I believe this to be the true point where "Sprague River is intersected by the Ish tish ea wax Creek."

Yet to reach the mountains following, which terminate at this point, it becomes necessary to extend the northern boundary line still farther east at least 12 miles, not along mountains, but through a low country; then south half as many miles to the ridge separating the waters of the Silver Lake country from those of the Sycan Valley; thence along the ridge to the said mountains east of the Sycan Valley.

It will be for the proper authorities to determine whether the language of the treaty will warrant the extension of the line so far east.

If from the testimony it is decided that the place where Sprague River is intersected by the Ish tish ea wax Creek is identical with the junction of the Middle Fork and South Sprague River then the line would run west of Sycan Valley as indicated on the map.

If a resurvey of the reservation is determined upon, I would recommend that the northern line be run so as to include all of Upper Klamath Lake, about 2 miles north of present line; also, that the eastern line be extended to the summit of the mountains, and that the southern line follow the well-defined range to the point of rocks. At present the line cuts off a portion of the Whisky Creek and Spring Creek valleys, which clearly belong to the reservation.

In view of the conflicting testimony of the whites and the Indians, a reestablishment of the Mercer survey, with permanent monuments, might be desirable.

Another solution of this question would be to give these Indians lands in severalty, there being sufficient lands within present boundaries for this purpose.

I will transmit the testimony of Dr. McKey, which will reach me in a few days.

Very respectfully,

JOSEPH EMERY,
United States Indian Agent.

Hon. J. D. C. ATKINS,
Commissioner of Indian Affairs, Washington, D. C.

P. S.—I send herewith a hastily drawn but tolerably accurate map of Klamath Reservation, with important points and lines noted.

J. E.

The testimony accompanying this report is as follows. (It will be found in 62, 16 to 21):

TESTIMONY OF CHARLES PRESTON.

Charles Preston, being sworn, testifies as follows:

I was interpreter at the time the treaty was made by the United States with the Klamath, Modoc, and Snake tribes of Indians. I was present when Mr. Huntington pointed out to the chiefs the boundary lines of the reservation, and named the natural boundary lines, as agreed with the Indians, as follows: From the summit of the mountain east of Fort Klamath the line runs north along the ridge to a point near Mount Scott called Bal lasal wisk se (meaning a mountain with deep canyons, and dry), from thence east, running north of Upper Klamath Lake to Chok chok lisk se; thence to Yian Dal wis, a mountain peak northeast of Sycan Valley; from thence, continuing east to the sharp mountain peak northeast of Sycan Valley, went south to the mountain called Wol lok se klus and south along that mountain ridge to the south base of said mountain, where is Ish tish ea wax Creek, and where it empties into Sprague River. The mountain line pointed out to me by Mr. Huntington lies east of Sycan Valley and also east of Sprague River Valley.

From the mouth of Ish tish ea wax the line runs south to the next mountain; hence along the ridge to Wal pe, and hence west along the mountain ridge to the Klamath Lake, passing through the Captain Ferer place, to a point of rocks named Kal wal. Ish tish ea wax is named from the fact that small red-lined suckers are caught there in large numbers in the spring of the year. I never heard any Indians call the North Branch of Sprague River Ish tish ea wax. I have never heard any Indians call the South Branch of Sprague River Ish tish ea wax. I do not know of any range of mountains west of Sycan Valley known as Winter Ridge. I have never heard of that name.

CHARLES (his x mark) PRESTON.

Witnesses:

WILLIAM T. SEEKE.
OLIVER C. MCFARLAND.

Subscribed and sworn to before me this 17th day of February, A. D. 1887.

TESTIMONY OF ALLEN DAVID.

Allen David, boo ki yu (chief), being sworn, declared and said that the west point of the northern line of the reservation begins on the top of a mountain called Bal la wis kse, and runs right north of Upper Klamath Lake to a high mountain called Tsne whels sto e los, and east to another mountain, Ba ha; from this mountain east and a little south to a high mountain, called Chok chok lisk se, meaning sharp top, the east point of north line; then south and a little east along the mountains east of Sycan Valley to big rock, Woo lo kisk los, and from this rock to Ish tish ea wax Creek; then a little southwest to the top of a mountain called We lege; from this mountain to Wal pe Mountain; then west along the mountain range to the point on the lake called Kal wal, a point of rocks on the south side of Mr. Dyer's house, now owned by Mr. McLean.

Ish tish ea wax is east of Blye, and means a place where little fish are killed. No other place on the reservation is called by this name. The mouth of North Sprague River is called Wok se.

ALLEN (his x mark) DAVID.

Witnesses:

SAMUEL CHAMBERS.
JAS. C. CRUIKSHANK.

DEPOSITION OF GEORGE MERCER, OF CORVALLIS, OREG.

The terms of the treaty are very indefinite.

In running the reservation boundary I complied with a request of Surveyor-General Odell to make the line conform to the township subdivision surveys, where the same could be done without injury to the claims of the reservation, thus avoiding any fractional surveys in closing to the reservation line.

There is probably no dispute or doubt in regard to the west boundary of the reservation, as that line is well defined.

Then, in running east from a point 1 mile north from the bridge of Fort Klamath, the summit spoken of as "the ridge that divides the Upper and Middle Klamath lakes," the ridge is not well defined; and then following north there is no well-defined ridge, the country being rolling and cut up by streams running in different directions. In fact, there is a good-sized river and several smaller streams crossed by that line.

That line I extended to a point due west of the north end of Upper Klamath Lake. I then ran east to the north end of said upper lake. There might be some little question raised as to the extreme north end, owing to the fact that as the waters in the lake rise and fall it overflows more land, and then again it recedes, leaving what was at other times a portion of the lake as dry land.

Then, in regard to the summit of the ridge east of the north end of the lake, there is a well-defined summit, but there is no ridge running from that summit to Sprague River at the mouth of "Ish tish ea wax" Creek. And should the line be run from that summit to the mouth of "Ish tish ea wax" Creek, it would throw out a large portion of the reservation.

And considering the indefiniteness of the terms of the treaty, and feeling satisfied that it was not the intention to establish the line there, I continued my course to a point due north of the mouth of "Ish tish ea wax" Creek.

Then, in running south, the line runs through Sycan Valley. I would say in regard to this line that it does not intersect precisely at the mouth of said creek, but runs about 100 yards west of said point. This was not at the time considered a serious deviation, as the distance was so small. I preferred to let it remain so, as the line as I ran it conformed to the range line of surveys.

The line was continued south to the summit of the ridge, the western extremity of which forms the Point of Rocks, being the place of beginning of survey, then continued westerly to the place of beginning.

This ridge is pretty well defined.

When I entered upon the survey of the Klamath Reservation I knew nothing of the country or the Indians, so I made every effort to get all the information that I could, not only as to the points named in the treaty, but also the manner in which the treaty was conducted.

From the best information that I could get, both from white settlers and the Indians, I am of the opinion that the terms of the treaty were agreed upon on the summit of Council Butte, an isolated mountain near Yainax Agency.

And it is held a reasonable conclusion that observations taken from one single point of a country 50 miles square would be rather vague as to dividing ridges and streams.

I think the Indians misunderstood the import of questions put to them by the commissioners.

In regard to the Sycan Valley, all with whom I conversed, both whites and Indians, agree in stating that the understanding was that the Indians were to have that valley.

It might be possible that the ridge still east of the Sycan Valley might be the ridge referred to in the treaty as running to the mouth of "Ish tish ea wax" Creek, but at that time I had no doubt in my own mind in regard to the line which I ran; in fact, I considered that the line that I established was very much farther east than the line imperfectly defined in the treaty.

In regard to "Ish tish ea wax" Creek, I never heard but one opinion expressed, either among the whites or Indians, but what it was the creek intended in the treaty.

GEO. MERCER.

Subscribed and sworn to before me this 16th day of May, A. D. 1887.

CORVALLIS, OREG.

JOSEPH EMERY,
United States Indian Agent.

TESTIMONY OF L. B. APPLGATE.

I, L. B. Applegate, of Linkville, Oreg., make the following statement relative to the controversy in regard to the boundary line of the Klamath Indian Reservation:

I was an employee at Klamath Agency for a period in the spring of 1866 and subsequently in 1868-69. I always understood the stream flowing westerly through Upper Sprague River Valley to a junction with North Sprague River to be the Ish tish ea wax Creek mentioned in the Klamath and Modoc treaty of 1864. During my service I always understood that the proper point for the eastern boundary line of the reservation to cross Sprague River Valley was at the junction of this stream with Sprague River, the point where the Mercer survey crosses. I heard no expression of dissatisfaction from the Indians as to the selection of this point as the eastern limit of the reservation during the time I was employed on the agency.

L. B. APPLGATE.

Subscribed and sworn to before me this 2d day of June, 1887.

JOSEPH EMERY,
United States Indian Agent.

DAIRY, OREG.

TESTIMONY OF MO GHEN KAS KIT.

Mo ghen kas kit, being sworn, deposed as follows:

From a mountain called Bal la wisk se (Full of Cares) the line of the reservation runs east, including Upper Klamath Lake, or Marsh, to Ba ha Mountain; then to Chok chok lisk se, a sharp-top mountain. From this mountain along the mountain east of Sycan Valley, following this mountain range to Woo tok sik los, east of Sprague Valley, and from this mountain to Ish tish ea wax; then southwest to the top of the mountain called We lye; from this mountain to Wal pe Mountain, then west along the mountains to Kal wal, on the Klamath Lake, a point of rocks south of the Dyer house.

Ish tish ea wax means a place where little fish are caught.

Ish tish ea wax Creek rises in the mountains east of Sprague River Valley. It is called Ish tish ea wax Creek by the Indians, just where they catch the little fish called ish tish, meaning little suckers. The Indian name of the creek below Ish tish ea wax is Ho bots. The white men call this creek Sprague River.

The smallest stream is called Ish tish ea wax, in which we caught the ish tish. It flows into the large creek a short distance below where Indians catch ish tish, as far as the office to the agent's old house (about 200 feet). I went with Agent Emery and pointed out to him Ish tish ea wax.

Mr. Huntington told the Indians that all of Sycan Valley would be in the reservation, where the Indians could go and gather camas, and all of Sprague River Valley would be in the reservation, and that Indians could go there and gather roots without a pass. Sycan Valley and Sprague River Valley are inside of the line that I pointed out to Agent Emery.

MO GHEN KAS KIT (his x mark).

Witnesses:

CALVIN K. SMITH.
JOSEPH KIRK, *Interpreter.*

Subscribed and sworn before me this 10th day of June, 1887, at Klamath Agency, Oreg.

JOSEPH EMERY,
United States Indian Agent.

TESTIMONY OF HON. R. P. EARHART.

I, R. P. Earhart, of Salem, Oreg., being first duly sworn, depose and say:

That I was the secretary of the commissioners appointed by the United States Government in 1864 to make treaty with the Klamath and Modoc Indians in Oregon.

That I was present at the council and at the signing of the treaty on the 14th day of October, 1864, and witnessed the same.

That at this distant time I have not sufficiently clear recollection of the boundary lines of the reservation agreed upon at said council and treaty to make a definite statement as to the whole of the boundaries of said reservation. That I do, however, clearly remember the place described as the starting point of the boundary line as being a point of rocks (or bluff of rocks) on the shore of Middle Klamath Lake below the mouth of Williamson River, where the Indian trail passed around such point or bluff, near the bluff and close to the water of the lake.

That as the country adjacent to and about the proposed reservation and so-called Klamath country was, at the time the treaty was made with the Klamath and Modoc

Indians, occupied as a roaming and hunting ground by hostile Indians and by the United States troops pursuing such hostile Indians, particular care was taken by the commissioners at such treaty to have the boundary lines of the reservation of a distinctly marked character, well defined and fully and clearly explained and understood by the Klamath and Modoc Indians, and that each topographical feature of such reservation boundary, as given in the treaty of October 14, 1864, was fully understood by them before signing the treaty.

R. P. EARHART.

Subscribed and sworn before me this 18th day of May, 1887.

JOSEPH EMERY,
United States Indian Agent.

SALEM, OREG.

TESTIMONY OF O. C. APPLGATE.

I, O. C. Applegate, of Olene, Klamath County, Oreg., make the following statement relative to the controversy in regard to the Klamath Reservation boundary line:

I was not present when the treaty of October, 1864, was made, but entered the service as interpreter a year later as the first employee of the Department appointed for the reservation. My service was almost continuous from that date until June 30, 1873, and I have subsequently served considerable time under agency authority.

During several months of my service prior to June 30, 1873, I was commissary in charge of Yainax Station.

I was clerking both under John Meacham, commissary in charge of Klamath Agency, and I. D. Applegate, commissary at Yainax, when George Mercer made the boundary line survey in 1871. I do not remember that the Indians ever expressed to me or in my presence any dissatisfaction with the boundary line as located by Mr. Mercer, except that subsequently, when white men began to drive cattle into the Sycan Valley, many of them claimed that the valley properly belonged to the reservation.

The stream flowing westerly through Upper Sprague River Valley to a junction with the Middle or North Fork of Sprague River I had always understood to be the Ish tish ea wax Creek mentioned in the treaty, and the line located near its mouth by George Mercer, as the eastern limit of the reservation, was apparently recognized by both whites and Indians for several years as the actual and proper boundary. I heard nothing of a claim of the Indians that the line should have crossed the above-mentioned stream some miles above its mouth until some years after the survey was made, although I was in almost continuous and always cordial communication with them.

O. C. APPLGATE.

Subscribed and sworn before me this 2d day of June, 1887.

JOSEPH EMERY,
United States Indian Agent.

OLENE, LOST RIVER, OREG.

SUPPLEMENTAL TESTIMONY OF CHARLES PRESTON.

Charles Preston, being duly sworn, says: I went as guide and interpreter with Agent Emery the 1st day of June, 1887, to the base of the mountain east of Bly, and pointed out to him the place where the Indians catch "ish tish," little fish, every year—in the spring and early summer—in a small stream called Ish tish ea wax. This little stream empties into a large creek called by the whites South Sprague River, a short distance below where the Indians catch the "ish tish," which means little fish.

CHARLES (his x mark) PRESTON.

Witnesses:

JOSEPH P. LEE.
SAMUEL CHAMBERS.

Subscribed and sworn before me this 18th day of June, 1887.

JOSEPH EMERY,
United States Indian Agent.

KLAMATH AGENCY, OREG.

TESTIMONY OF I. D. APPLGATE.

In the summer of 1868 I was, by J. W. Perit Huntington, Superintendent of Indian Affairs, appointed special commissary, with instructions to locate and take charge of the Snake Indians to be brought on the Klamath Reservation.

In November of the same year I accompanied Superintendent Huntington to Camp Warner, passing through Sprague River Valley. From Yainax Butte, the point where the treaty of 1864 was finally agreed to, Superintendent Huntington pointed out the

range of mountains said to lie east of the north end of Klamath Marsh, saying that from the summit of this mountain the boundary line will follow along those mountains in a southerly direction to where Ish tish ea wax Creek empties into Sprague River. Going east through the "gap or narrows," we came to where the east or middle branch and the one coming from southeast unite. Here the superintendent said the eastern boundary line would cross the valley. After the death of Superintendent Huntington I was continued in charge of Yainax Agency by Superintendent A. B. Meacham. In 1871 I was informed by letter that Surveyor Mercer and party were en route to survey Klamath Reservation. I was also instructed to render whatever assistance and give any information that might be required.

Mr. Mercer called upon me at Yainax in company with quite a number of Indians. There was but one question raised on the boundary; that was as to the mouth of "Ish tish ea wax" Creek, some saying there was no stream or river from the head of the valley down to the east fork; that it was a lake or marsh called "Hobosh;" that the "Ish tish ea wax" Creek emptied into this marsh. On investigation it was made plain that there was a well-defined creek running through the valley and emptying into Sprague River. All parties, including the Indians, were so well satisfied and convinced that the line should cross here that Mr. Mercer returned and continued the survey, I not deeming it necessary to visit the place at that time; and it is my recollection that not a single objection was raised after the matter was explained.

I. D. APPELEGATE.

Subscribed and sworn before me this 2d day of June, 1887.

JOSEPH EMERY,
United States Indian Agent.

DAIRY, OREG.

TESTIMONY OF J. M. McCALL.

I, J. M. McCall, being duly sworn, depose and say:

My home is Ashland, Oreg.; age, 62.

I was present at Yainax in the fall of 1865 as first lieutenant of the First Oregon Cavalry, with my command, at the time J. W. P. Huntington, Superintendent of Indian Affairs, was holding a council and treating with the Snake Indians.

I acted as commissary at Fort Klamath from September, 1865, to June, 1866, and aided in the issues made to the Indians. My understanding was that the treaty with the Klamaths, Modocs, and Snakes by Mr. Huntington included all of Upper Klamath Lake, known by the Indians as Klamath Marsh.

I remember nothing as to the eastern boundary of the reservation.

J. M. McCALL.

ASHLAND, OREG., *May 5, 1887.*

Subscribed and sworn before me this 5th day of May, 1887.

JOSEPH EMERY,
United States Indian Agent.

TESTIMONY OF HENRY BLOW.

Henry Blow, chief, being sworn, testified as follows as to the boundary of Klamath Reservation:

The north line of the reservation running toward the rising sun took in all of Upper Klamath Lake and ended at a mountain called Chok chok lisks se (Sharp Mountain); then turned south and a little east along the mountains east of Sycan Valley to the mouth of Ish tish ea wax Creek, and then nearly south to the top of the mountain; then west to a mountain called Wal pe, and from Wal pe toward the setting sun along a range of mountains to Rattlesnake Point, on the lake called Kal wal. This point of rocks is south of the house where Mr. McLean now lives.

Agent Dyer once lived there.

Ish tish ea wax is near the mountain on the east side of Sprague River Valley. Ish tish ea wax means where they kill little fish—"suckers."

I never heard Indians call the mouth of the North Branch of Sprague River Ish tish ea wax.

I signed treaty Mr. Huntington made with Indians, and he agreed with us where the boundary of the reservation should be. I remember what he say. I was with Mr. Huntington at Yainax when he point out to the Indians the high mountains on the east of the reservation. Charlie Preston was interpreter.

HENRY (his x mark) BLOW, *Chief.*

Witnesses:

JAS. C. CRUICKSHANK.
SAMUEL CHAMBERS.

Sworn before me this 25th day of February, A. D. 1887.

JOSEPH EMERY,
United States Indian Agent.

TESTIMONY OF LINDSEY APPLGATE.

I, Lindsey Applegate, being duly sworn, depose:

My home is Ashland, Oreg.; my age is 79 years; I was appointed United States Indian agent in 1865; was agent for four years, and in the Indian Service for twelve years.

The treaty boundary of the Klamath Reservation began at Modoc Point, a little northwest of what is now known as the Captain Ferer place; then followed the margin of the lake to the mouth of Wood River, and up Wood River to the bridge above Fort Klamath; then north to a point from which a line running east would include all of Upper Klamath Lake.

Ish tish ea wax Creek was considered by all the Indians to be on the eastern boundary of the reservation.

The point where the above-named creek empties into Sprague River is about 20 miles east of Yainax.

My understanding was that the eastern boundary line followed the summit of the mountain range terminating at Ish tish ea wax Creek.

LINDSEY APPLGATE.

Subscribed and sworn before me this 5th day of May, 1887.

ASHLAND, OREG.

JOSEPH EMERY,
United States Indian Agent.

The Commissioner of Indian Affairs submitted the case to the Secretary of the Interior (129, 26, 27, 28) as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, August 3, 1887.

SIR: In report of October 15, 1886, this office recommended that the boundary lines of the Klamath Indian Reservation, in Oregon, be run in accordance with the provisions of the treaty of October 14, 1864 (16 Stat. L., 707), and properly marked.

Subsequently, the office was informally advised by the General Land Office that the surveyor-general of Oregon was of the opinion that the survey of the eastern boundary would not be satisfactory to the Indians and the settlers until the locus of the boundary should be agreed upon by a commission, as a misunderstanding existed as to which range of mountains constituted the eastern boundary as defined by the treaty.

There being no authority of law for the appointment of a commission, Agent Emery was instructed, under date of January 11, 1887, to make a full investigation with the view of ascertaining, if possible, the location of the boundaries described in the treaty, and for this purpose to take the evidence of all persons, both Indians and whites, having knowledge of the true location of the points named in the treaty, and of the true eastern boundary as understood at the time the treaty was concluded.

His report, with the evidence taken, was submitted on the 16th of June, 1887.

The treaty of 1864 defines the boundaries of the reservation as follows:

"Beginning upon the eastern shore of the Middle Klamath Lake, at the Point of Rocks, about twelve miles below the mouth of Williamsons River; thence following up said eastern shore to the mouth of Wood River; thence up Wood River to a point one mile north of the bridge at Fort Klamath; thence due east to the summit of the ridge which divides the Upper and Middle Klamath lakes; thence along said ridge to a point due east (west) of the north end of the up lake; thence due east, passing the said north end of the upper lake to the summit of the mountains on the east side of the lake; thence along said mountains to the point where Sprague River is intersected by the Ish tish ea wax Creek; thence in a northerly direction to the summit of the mountain, the extremity of which forms the Point of Rocks; thence along said mountain to the place of beginning."

The two principal points in dispute are "the mountains east of the lake" and "Ish tish ea wax Creek."

The white settlers claim that the range of mountains lying between Klamath Marsh and Sycan Valley, and known as "Winter Ridge," is the true boundary as defined by the treaty, and that Ish tish ea wax Creek is that portion of Sprague River situated above the North Fork.

The Indians claim that the range of mountains mentioned in the treaty is that lying between the Sycan Valley and Summer Lake, and that they were to have possession of the whole of Sycan and Sprague River valleys.

(On the map of Oregon, Middle Klamath Lake of the treaty is designated as "Upper Klamath Lake" and Upper Klamath Lake of the treaty, as "Klamath Marsh.")

The line as surveyed in 1871 was located through the middle of Sycan Valley, midway between the conflicting claims of the Indians and settlers.

As to this survey, the surveyor, George Mercer, testifies (May 16, 1887), that in running the boundary he complied with the request of the surveyor-general to make the line conform to the lines of the public survey as far as possible.

As to the north boundary, he states that there might be some question raised as to the extreme north end of Klamath Marsh, owing to the fact that as the water in the lake rises and falls it overflows more land, and then again recedes, leaving what was at one time a portion of the lake as dry land.

As to the eastern boundary, he says there is a well-defined summit east of the north end of the lake, but no ridge running from that summit to Sprague River, at the mouth of the Ish tish ea wax Creek, and that he continued his course east to a point due north of Ish tish ea wax Creek, conforming to the range line.

He thinks that the Indians understood that they were to have the Sycan Valley, but agrees with the white settlers as to the location of Ish tish ea wax Creek.

Agent Emery submits a rough map of the reservation, showing the east boundary of the reservation as claimed by the settlers and Indians, respectively.

In his report, dated June 16, 1887, he states that he visited the northern and northeastern part of the reservation; that he found east and a little south of the upper lake a well-defined ridge and broken mountain range, of which Yamse is the highest peak; and that to reach this ridge it is necessary to run south several miles; that no summit of mountains mentioned in description of boundary in the treaty can be reached by extending the line north of the upper lake due east.

He then describes the lines on the map as claimed by the whites and Indians, respectively.

From personal observation, as well as the testimony of the Indians, he believes their claims as to the location of Ish tish ea wax Creek to be correct, but yet he says, "to reach the mountains following which terminate at this point it becomes necessary to extend the northern boundary line still farther east at least 12 miles—not along mountains, but through a low country—then south half as many miles to the ridge separating the waters of the Silver Lake country from those of the Sycan Valley, thence along this ridge to the said mountains east of the Sycan Valley."

General Fremont, in his expedition of 1843, crossed the upper portion of Klamath Marsh, and, after leaving the marsh, continued up a hollow formed by a small affluent to the lake and immediately entered an open pine forest on the mountain.

He then traveled in an easterly direction through the forest for about four hours, crossed a stream 30 feet wide (longitude $121^{\circ} 20' 42''$), from which the road was over a broad mountain, and after seven hours came upon the head waters of another stream. Still proceeding east, the mountain gradually rose. Toward noon on the fourth day after leaving Klamath Marsh he found himself on the verge of a vertical and rocky wall of the mountain. More than a thousand feet below was a green prairie country in which a beautiful lake was spread at the foot of the mountain, and all was like summer or spring. "Shivering on snow 3 feet deep, and stiffening in a cold north wind, we exclaimed at once that the names of Summer Lake and Winter Ridge should be applied to these two proximate places of such sudden and violent contrast." (Fremont's Memoirs of My Life, p. 301.)

General Fremont's narrative establishes the fact that "Winter Ridge" is immediately west of Summer Lake and not at the northeast corner of the Klamath Reservation, as laid down on the present map of Oregon.

Taking Winter Ridge as the summit of the mountains east of Klamath Lake, and following the mountains, would give nearly the eastern boundary claimed by the Indians, as shown by Agent Emery's sketch.

There is on file in the General Land Office a map of Indian reservations in Oregon, prepared by Superintendent Huntington in 1864, which shows the northern boundary of the Klamath Reservation to be about 21 miles in length. From the northeast corner the line was west of south some 33 miles; then southwest about 13 miles to the point of beginning, on Klamath Lake.

The line crosses the Sprague River at the junction of the two forks, but continues for some miles in a straight line, and there is no indication of any creek at the point where the line turns to the south west. The shape, as well as the size of the reservation, is entirely different from the reservation as surveyed, or as claimed by either Indians or whites; and, in fact, taking into consideration the topography of the country as now known, it can not be reconciled with either the boundary as described in the treaty or as surveyed in 1871.

This map is the only thing discovered that throws any doubt upon the claim of the Indians as to the eastern boundary.

As a further evidence of the incorrectness of the map referred to, and as a point in favor of the claim of the Indians, attention is invited to a map on file in this office, prepared by Superintendent Huntington, in January of the same year, which shows "Winter Range" immediately west of Summer Lake, and upon which map no other

range of mountains is shown between Summer Lake and Upper Klamath Lake or Klamath Marsh.

This corroborates the description of the country given by General Fremont.

Agent Emery recommends that if a resurvey be determined upon, the north line be run so as to include all of the upper lake or marsh, about 2 miles north of the present line; also that the eastern line be extended to the summit of the mountains, and that the southern line follow the well-defined range to the Point of Rocks, the present line cutting off a portion of Whisky Creek and Spring Creek valleys, which clearly belong to the reservation.

He also suggests that, in view of the conflicting testimony, the reestablishment of the Mercer survey, with permanent monuments, might be advisable.

As the eastern line was established some sixteen years ago and settlements have been made upon surveyed lands within the limits claimed by the Indians, I am inclined to the opinion that the reestablishment of the eastern boundary as surveyed by Mercer will be the easiest way out of the difficulty, the north and south boundaries to be surveyed as recommended by Agent Emery.

The claim of the Indians to the country east of the Mercer survey can be hereafter considered and referred to Congress, if deemed just.

In this connection I have the honor to acknowledge the receipt, by Department reference, of a communication from the Secretary of War dated June 24, 1887, with which he transmits, for such action as may be thought proper, a copy of an extract from an inspection report by the commanding officer of Fort Klamath, relative to the encroachments by owners of cattle upon the reservation, resulting from a lack of understanding in regard to the eastern boundary, and the difficulties and possible conflict between Indians and cowboys, that may at any time grow out of this state of affairs unless steps are taken to compel the intruders to recede, which seems to become more difficult as their herds increase in number.

The Secretary of War calls special attention to the indorsement of the commanding general of the Department of the Columbia, who shares the views of the post commander, and states that the prospect of trouble is very much increased as long as the uncertainty exists as to the location of the boundary lines.

As to this I have the honor to recommend that the Secretary of War be requested to cause the necessary steps to be taken to secure the presence of a sufficient military force upon the reservation to keep off all intruders and stock from the reservation as at present defined and as it may hereafter be surveyed.

It is believed that the permanent establishment of the lines as hereinbefore recommended, and the protection of the reservation from the encroachments of the cattlemen, will greatly lessen the danger apprehended.

If the views herein expressed with reference to the resurvey meet with your concurrence the Commissioner of the General Land Office should be instructed accordingly.

I inclose two copies of this report, copy of Agent Emery's report, with the evidence submitted by him, and return the letter of the Secretary of War.

I also inclose the map prepared by Superintendent Huntington, which belongs to the files of the General Land Office.

Very respectfully, your obedient servant,

A. B. UPSHAW, *Acting Commissioner.*

The SECRETARY OF THE INTERIOR.

It may be well to note here that the map proposed by Superintendent Huntington, in 1864, and on file in the General Land Office, referred to in the report of the Commissioner of Indian Affairs as the "only thing discovered that throws any doubt upon the claims of the Indians as to the eastern boundary," shows upon its face that it was prepared on January 1, 1864, while the treaty in which the boundary of the land reserved within the ceded country was not negotiated and concluded until October 14, 1864, and therefore said map can not be recognized as having any controlling weight in showing even approximately the boundaries of the reservation as prescribed in the treaty. And further, that map shows the southwestern corner of the reservation it describes as at least 24 miles farther south than the southwestern corner, or initial point of the reservation, as described in the treaty.

This map may have been and probably was proposed as a tentative representation of the location and general outlines of the reservation which it was proposed to reserve for the Indians, but if it served even

that purpose, the description of the reservation as given in the treaty subsequently negotiated and concluded shows clearly that the reservation as agreed upon differs widely from the one represented upon said map.

The survey recommended in the report of the Commissioner of Indian Affairs, of August 3, 1887, was executed and accepted by the Commissioner of the General Land Office. (129, 29.)

The claim of the Indians was not by these proceedings adjusted, but was left for the consideration of Congress, as shown by the annual report of the Commissioner of Indian Affairs (J. D. C. Atkins) for 1887, wherein he states as follows:

BOUNDARY OF KLAMATH RESERVATION IN OREGON.

In 1871 the outboundaries of this reservation were surveyed, since which time a dispute has existed between the white settlers and cattlemen in the vicinity and the Indians, the latter claiming that the eastern boundary was located too far west, thus depriving them of a large tract of country given them by treaty, and the former claiming that the eastern boundary included a large tract of country properly belonging to the public domain. In October, 1886, this office recommended that the boundary lines of the reservation be surveyed in accordance with the provisions of the treaty of October 14, 1864 (16 Stat. L., 707).

Subsequently, upon information from the General Land Office that the survey of the eastern boundary would not be satisfactory, either to the Indians or settlers, until its location had been agreed upon by a commission, I directed the agent in charge of the reservation to make a full investigation of the matter and to take the evidence of all available witnesses. Upon receipt of this report, in view of the vague and indefinite description of the boundaries given in the treaty, and the fact that settlement had been made upon the lands east of the reservation, it was determined to reestablish the eastern boundary in accordance with the survey made in 1871, although the claim of the Indians seemed to be well substantiated. When the line is re-marked the military will be requested to protect the reservation from the encroachments of cattlemen, concerning which the Indians may have many complaints.

It is also my intention to present the claim of the Indians to Congress for an appropriation to compensate them for the lands lost by the location of the boundary line, if, upon further consideration, they appear to be clearly entitled to the same. (See Annual Report of Commissioner of Indian Affairs for 1887, p. lxxviii; 129, 4, 5.)

The subject, like many others affecting the rights and interests of the Indian population, does not seem to have been given any "further consideration," owing, it is presumed, to the frequent changes in the head of the Indian Bureau occurring immediately thereafter. The Indians have never ceased to hope for the adjustment of their claim, believing that their patient waiting upon the proper authorities of the United States to settle the matter would not be used to their disadvantage, while other Indians were influencing the redress of their grievances by threats of outbreak, and in some cases by actual hostilities.

In the Senate resolution of December 13, 1894, the Secretary of the Interior is directed to furnish in connection with certain papers not furnished with the response made to the resolution of the Senate of May 31, 1894, and contained in Senate Ex. Doc. No. 129, Fifty-third Congress, second session, a careful estimate of the quantity of land lying between the boundaries of the said reservation, as surveyed under the direction of the Commissioner of the General Land Office, and the treaty boundaries thereof as claimed by the Indians and marked upon the tracing or diagram furnished by the Commissioner of Indian Affairs and now on file in the General Land Office, a copy of which is contained in said Senate executive document. (62, 1.)

The response of the Secretary of the Interior to this request of the resolution is contained in the report of the Commissioner of the General Land Office, dated February 5, 1895, which, after citing certain

papers, copies of which are furnished as required by the resolution, proceeds as follows:

Referring to the last clause of the resolution, I have the honor to report that "a careful estimate of the quantity of land lying between the boundaries of the said reservation, as surveyed under the direction of the Commissioner of the General Land Office and the treaty boundaries thereof, as claimed by the Indians and marked upon the tracing or diagram furnished by the Commissioner of Indian Affairs, and now on file in the General Land Office, a copy of which is contained in said Senate executive document," results in making said quantity of land 909,990 acres; also, the corresponding area, limited on the north by the red line marked "Take this for the north line," is 724,608 acres.

In this connection, and referring to the last clause of the resolution, quoted above, it seems proper to remark that the diagram therein referred to was compiled from the third and fourth diagrams contained in the Senate executive document, and is a compromise line lying between those shown on said diagrams; that it does not represent any boundary claimed by the Indians, and that no copy thereof is on file in this office.

In separate package is transmitted a tracing (No. 2) from the "Map of the exterior boundaries of the Klamath Indian Reservation," surveyed in 1871, which will be referred to further on.

To supply the information "concerning the accuracy of the survey of the boundary lines of the Klamath Indian Reservation, in the State of Oregon," etc., to correct errors in diagrams, and to present a connected graphical showing of all available and reliable data, map No. 1 has been prepared, and is transmitted in separate package.

REMARKS ON MAP NO. 1 AND THE BOUNDARIES.

This map exhibits the reservation boundaries, and data within them in black, traced from the map of survey made in 1887; and, to the tracing thus prepared, have been added the drainage in blue, and the mountain system in black, of some fifty full or fractional townships, compiled and reduced from official township plats, to the scale of the map. The data taken from other reliable sources, such as field notes of public surveys, Klamath and Ashland sheets of Geological Survey, and exploring expedition to Oregon, in 1843, are shown in red.

The route of Fremont's exploring party has been laid down from his original map, and the narrative of his journey through this region may be consulted for information in regard to the character of the country, soil, timber, mountains, etc., all of which will be found in his report, Senate Ex. Doc. No. 174, Twenty-eighth Congress, second session (p. 203, December 9). Figures in red along the route refer to the dates (December, 1843) on which the camps were made.

The red figures in parentheses on map No. 1 are taken from the Klamath and Ashland sheets of the Geological Survey (copies herewith), and express altitudes above sea level. These surveys are limited on the north and east, respectively, by the parallel of 43° of latitude and 121° of longitude, beyond which the Geological Surveys have not been extended north and east. The heavy dotted red line running southwardly from the mountain in the northwest quarter of T. 28 S., R. 12, E., to Yamsay Peak, and thence eastwardly to Winter Ridge, marks the ridge or divide from which flow the waters southwesterly through the several channels into Klamath Lake and north-easterly into Paulina or Silver Lake.

ISH TISH EA WAX CREEK.

The mouth of this stream, or its junction with the south fork of Sprague River, being referred to in the treaty of 1864 as "the point where Sprague River is intersected by the Ish tish ea wax Creek," the true location of said point is a matter of prime importance.

The deputy surveyor, in 1871, writes in the field notes of his one hundred and fourteenth mile:

"At 2.50 chains Sprague River, at the intersection of Ish tish ea wax Creek, 75 links wide, runs west."

At the end of his notes the deputy says:

"In making the treaty with the Indians and defining the boundary of the reservation from the best information I can obtain much of the information in regard to the country was either obtained from the Indians or from the top of some mountain, hence the description of the boundary is in many places very imperfect and can not be strictly followed, but running these lines I have endeavored to conform as near as possible to the description as furnished me, and availed myself of the best information to be had in regard to the points named.

"Whenever it has been possible to do so without materially changing the line from that described in my instructions, I have run the line on the line of the public surveys, thereby avoiding as much as possible making a fractional section."

On map No. 2 the surveyor-general for Oregon represents the Ish tish ea wax Creek as flowing west southwest into Sprague River on the reservation boundary. The plat of T. 36 S., R. 14 E., which had been five years in his office, is correctly reproduced on a smaller scale on map No. 1, and exhibits the stream represented on No. 2 as "Ish tish ea wax Creek," named "South Fork of Sprague River." This South Fork and the "Middle Fork of Sprague River" are the only streams named on the official plats of townships in the three ranges adjoining the surveyed east boundary of the reservation south of latitude 43°.

In the field notes of the resurvey of the reservation boundaries, executed in 1887, the deputy does not mention the "Ish tish ea wax Creek" when he crosses Sprague River, which he finds 120 links wide, but in his "General description" writes, in part, as follows:

"The Ish tish ea wax Creek, mentioned in the treaty, is about 3 miles farther east, contained no water at the time of the survey, and runs through a low, rolling country."

The stream to which, without authority, the surveyor-general for Oregon attached the name "Ish tish ea wax Creek" flows south and empties into the South Fork of Sprague River on the north side. This erroneous compilation of the plat of T. 36 S., R. 14 E., subdivided in 1886, is retained on the first diagram with Senate Ex. Doc. No. 129, Fifty-third Congress, second session, and emphasized by making the mouth of said creek (Fritz Creek) a point of the treaty boundary.

Two small streams, designated A and B on map No. 1, rise in the mountains lying southeast, flow northwardly nearly parallel to each other, and enter the South Fork of Sprague River, the former (A) about 3 miles, and the latter (B) about 8½ miles, as the crow flies (probably nearly 10 miles by the river), from the intersection of the surveyed reservation boundary with Sprague River. The comparative size of these and other creeks in this region may be inferred from their widths expressed in links in black figures along the streams (one link is equal to 8 inches, nearly). On the official plats the two streams under consideration are represented as ending a mile or more from the South Fork. Subdivision of the townships was made in the month of September, when water was low. In the spring, water from melting snow in the mountains would be more plentiful and the creeks would probably then run full to their mouths. Their general courses, resulting from the assumed conditions, are indicated by dotted red lines.

Combining all the testimony from official plats, field notes, the Klamath sheet, affidavits of Indians, etc., this office concludes that the stream marked B is the Ish tish ea wax Creek of the treaty, and that the mouth of said creek in section 8, T. 37 S., R. 15 E., is a point in treaty boundary line, for the following reasons:

The mouth of the creek is about 10 miles from the intersection of the surveyed reservation boundary with Sprague River.

Of the two streams A and B, the latter is nearest the base of the mountains.

The mouth of the creek B is just below the point where the military road crosses the South Fork of Sprague River, a definite and fixed point, easily found and identified.

According to the township plat, an Indian trail leads from the reservation to the creek B and ends there, presumably for a purpose.

WINTER RIDGE.

On a map of the Department of the Columbia (second edition, revised, 1885) a range of mountains is represented as crossing in a north-northeast direction the forty-third parallel of latitude at a point 17½ miles west of Bald Butte, and is marked "Winter Ridge." The south point of the ridge embraces Little Yamsay Mountain and the mountains lying 6 miles east of it, and is evidently intended to represent the ridge indicated on Map No. 1 by the heavy dotted red lines extending north from Yamsay Mountain. This office is unable to state any reasons for this erroneous representation. The true Winter Ridge, which lies immediately west of Summer Lake, was named by Fremont more than half a century ago (see his report, p. 207, December 16).

Winter Ridge is the only continuous ridge that extends in a southerly direction to the intersection of the Ish tish ea wax Creek with a tributary of Sprague River.

The ridge running south from Yamsay Peak or Mountain must, as a matter of course, end when it reaches the valley of either Sycan or Sprague River.

BALD BUTTE AND OTHER MOUNTAINS.

Bald Butte, in the southeast quarter of T. 29 S., R. 14 E., and north by east from Sycan Marsh, is referred to and described in the field notes as "a high bald mountain." The Butte, represented on the plat with a base covering nearly 4 square miles, situated in a flat, timbered country, its bare summit is necessarily a prominent and conspicuous landmark. For the above and other reasons "Bald Butte" is here assumed to be identical with the "Ba ha" of the Indians.

According to the subdivisional field notes the mountain in the northwest quarter of T. 28 S., R. 12 E., is elevated about 1,300 feet above the rolling eastern part of the township, and is consequently a prominent landmark. For this reason, and on account of its position relative to other peaks, to Klamath Marsh, and to other topographical features referred to in the testimony of the Indians, the mountain in question is considered identical with the "Tsne whels sto e los" of the Indians. This mountain is not a sharp peak.

The sharp top mountain "Chok chok lisk se" must be located in Winter Ridge, for reasons already stated; and south of it, in the same ridge, must be located "Woo tok sic los" or "Wol lok se klus." Exactly where this rock is located is a matter of little or no importance, provided it is placed somewhere in Winter Ridge, and between "Chok chok lisk se" and "Ish tish ea wax Creek."

THE TREATY BOUNDARY AS UNDERSTOOD BY THE INDIANS AND LAID DOWN ON MAP NO. 1 BY THE GENERAL LAND OFFICE.

For want of observed and recorded directions, from Yainax Butte to the several peaks bearing Indian names, referred to in the testimony, and the absence of all reference to their names and positions on the rude sketches prepared and submitted by Indian agents, the complete identification of said mountains is made almost impossible; but, this office suggests, on Map No. 1, two possible boundaries for consideration by the authority which may interpret the testimony submitted with this report, one of which possibly may be found to represent the Indians' understanding of the treaty.

The boundary, starting from the initial point on the eastern shore of Klamath Lake, 12 miles below the mouth of Williamson River, thence following the natural boundary to the point 1 mile north of the bridge at Fort Klamath, presents no difficulty. The proper location of the northwest corner of the reservation is now the important question. From the point 1 mile north of the bridge the line runs east to the highest point of the ridge; thence up the ridge to Dutton Point, near the southern shore of Crater Lake; thence along the high ridges of a spur of the Cascade Mountains to Cowhorn Mountain. Nothing is known of the physical character of this mountain with absolute certainty. From the fact that Fremont mentions beds of pumice stone on the line of his march, and field notes of the public surveys 7 or 8 miles east of the mountain describe corners of basalt stone and mentions lava, all volcanic products, it is inferred that the mountain is an extinct volcano, which stands in an unsurveyed and even unexplored region. The position on the map is located approximately by triangulation from the surveyed reservation boundary; and, situated as the mountain is, nearly due west from the mountain in T. 28 S., R. 12 E., Cowhorn Mountain is assumed to be the "Bal la wisk se" of the Indians; thence the boundary runs as marked by the heavy full red line to "Chok chok lisk se," the northeast corner of the reservation; then turning "south and a little east" it follows Winter Ridge, east of the headwaters of all streams flowing into Sprague River, and down the ridge to "Ish tish ea wax Creek;" thence to We lye and along the well-defined continuous ridge forming the south boundary of the reservation to Kal wal, the initial point (see Klamath sheet).

The area between the boundary thus defined and the surveyed boundary of the reservation is 682,240 acres.

In case the testimony is not deemed sufficiently definite to identify Cowhorn Mountain as the northwest corner of the reservation and the "Bal la wisk se" of the Indians, consider Dutton Point, which is a high peak "near Mount Scott" (about 3½ miles distant), and "a mountain with deep canyons and dry;" and, consequently, answers well to the description of "Bal la wisk se."

Looking east from this elevated station Yamsay Peak, or "Tsue whels sto e los (?)" (which, with the exception of Mount Scott, is the highest peak within the reservation), would be seen looming up east and elevated nearly 3,700 feet above Klamath Marsh; the round butte, "Ba ha (?)," northeast of and full 1,200 feet above Sycan Marsh, would appear just to the right of Yamsay Peak, while in the distance, and nearly in line, the sharp peak of "Chok chok lisk se" might be seen in Winter Ridge, marking the northeast corner of the reservation.

The four mountain peaks last mentioned, all conspicuous landmarks, may be regarded as marking the north boundary of the reservation, which is represented on Map No. 1 by a fine red dotted line to Yamsay Peak or Mountain. The line runs east nearly to Klamath Marsh, thence northeasterly to the north point of the marsh, thence on a straight line, regardless of drainage and ridges, to the summit of Yamsay Peak, and thence with the main ridge or divide to the northeast corner in Winter Ridge. From said northeast corner the boundary runs nearly south and follows the full red line to Dutton Point. This boundary would seem to satisfy the claims of the Indians.

The area between the boundary thus determined and the surveyed reservation boundary is 159,520 acres.

If, according to the wording of the treaty, the west boundary is continued north from top of ridge near Fort Klamath (D), the northwest corner would fall at E; thence it could run east to F, and thence on the ridge or divide herein described.

The foregoing describes and Map No. 1 illustrates the first attempt made to lay down the reservation boundary on paper in a systematic manner and in accordance with treaty stipulations.

A schedule of the papers forwarded with this report is inclosed, and Senate resolution adopted December 13, 1894, and the accompanying papers are herewith returned.

Very respectfully,

S. W. LAMOREUX,
Commissioner.

The SECRETARY OF THE INTERIOR.

With the report made by the Secretary of the Interior, in response to the resolution of May 31, 1894, four maps or diagrams are furnished. The third and fourth of these maps or diagrams are copies of those furnished with reports of Agents Rook and Emery, the second is a section of the map of the State of Oregon, showing the reservation as surveyed, and the first is a diagram compiled in the General Land Office from the third and fourth diagrams or maps, showing, as reported by the Commissioner of the General Land Office, "a compromise line lying between those shown on said diagrams; it does not represent any boundary claimed by the Indians."

It will be seen from the foregoing report of the Commissioner of the General Land Office that a careful estimate of the quantity of land lying between this "compromise line" and the lines of the reservation as surveyed results in making said quantity of land 909,990 acres; also the corresponding area limited on the north by the red line marked "Take this for the north line," is 724,608 acres.

In his report of June 29, 1894 (129, 2, 3), he says of this compromise line that the brown dotted lines show the approximate limits claimed by the Indians; and on townships between those lines and the surveyed lines he indicates lands settled upon and selected under the land laws of the United States, reporting then that "the total area so entered and selected is about 120,961 acres." (129, 3.)

The Commissioner of the General Land Office, when the matter came before him for report upon the resolution of the Senate of December 13, 1894, appears to have realized the full importance of the subject before him, and to have appreciated the necessity for furnishing all possible data and information that would throw any light upon the case, for the consideration of Congress. He therefore did not simply content himself with a mere formal compliance with the said resolution. He has gone fully and carefully into the subject, with special reference to the points of doubt involved in the disputed question as to the proper locus of the boundary lines of the reservation as described in the treaty.

The results of his labors in this direction are set out in his report, and more clearly shown upon his map No. 1, compiled and submitted with his report of February 15, 1895 (see 62). He states the sources of information from which he obtained the data for the preparation of said map; he then discusses the location of Is tish ea wax Creek of the treaty, and concludes that "the mouth of said creek in Sec. 8, T. 37 S., R. 15 E., is a point in the treaty boundary." His conclusions on this point are so forcibly presented, and appear so entirely fair, just, and correct, that it is believed that no one will find any reasonable ground for further doubt upon that point. That point, so ascertained and disposed of, is fixed entirely in accordance with the claims of the Indians, and shows that their testimony as to their understanding of the treaty boundaries is entitled to great consideration.

Having fixed the locus of this disputed point, the Commissioner of the General Land Office states that "the mouth of the creek is about 10 miles from the intersection of the surveyed reservation with Sprague River." (62, 3.) And then he proceeds to present the information, compiled from reliable sources, as to other physical features of the country which must enter into the consideration for ascertaining the points and directions given in the treaty for the locus of the boundary lines of the reservation.

He shows that Winter Ridge is the only continuous ridge that extends in a southerly direction to the intersection of the Ish tish ea wax Creek with a tributary of Sprague River; and he concludes that this Winter Ridge answers the call of the treaty for the eastern boundary of the reservation, which is in these words: "Thence along said mountain to where Sprague River is intersected by Is tish ea wax Creek."

Proceeding then to locate other points, he states that Bald Butte, as laid down on said map No. 1, is, for reasons given, assumed to be identical with the "Ba ha" of the Indians; that the mountain located in T. 28 S., R. 12 E., is considered identical with the Tsm whels sho e los of the Indians, and that the Chok chok lisk se of the Indians is located in Winter Ridge, whose location has already been fixed upon.

Having reached the foregoing conclusions, he then submits a description of "the treaty boundary as understood by the Indians and laid down on map No. 1 by the General Land Office," and states that "the area between the boundary thus defined and the surveyed boundary of the reservation is 682,240 acres."

After doing this he says:

In case the testimony is not deemed sufficiently definite to identify Cowhorn Mountain as the northwest corner of the reservation and the Bal la wisk se of the Indians, consider Dutton Point, which is a high peak "near Mount Scott" (about $3\frac{1}{2}$ miles distant), and "a mountain with deep canyons and dry," and consequently answers well to the description of Bal la wisk se.

From the point thus designated he describes and marks upon the map No. 1 other lines for the northern boundary of the reservation, and concludes: "The area between the boundary thus determined and the surveyed reservation boundary is 159,520 acres." (62, 7.)

It would seem only to be necessary to read the description of the reservation boundaries as given in the treaty while looking at this last-mentioned line, given as a probable northern line of the treaty reservation, to at once see that said line not only does not answer the calls of the treaty, but is clearly at variance therewith.

The treaty calls for the northern boundary line of the reservation are, after having reached the northern extremity of the west boundary line, as follows: "Thence due east, passing the said north end of the upper lake, to the summit of the mountains on the east side of the lake."

Dutton Point is due southwest from the "north end of the upper lake," and the land described by the Commissioner of the General Land Office from Dutton Point as the possible north boundary line of the reservation runs due northeast to a point supposed to be intersected for the north end of upper lake, and then southeast, and so on, thus making for the north boundary of the reservation a line forming two sides of a triangle, while the treaty calls for the extension of the west boundary line so far north as to reach a point due west of "the north end of the upper lake;" and from that point the treaty description for the north boundary line is: "Thence due east, passing the said north end of the upper lake, to the summit of the mountains on the east side of the lake."

It is clear that the calls of the treaty for the northern boundary line can not be met by fixing the extreme northern limit of the western boundary line of the reservation at a point so far south that a line running from it to the north end of the upper lake will be a line running northeast and not a line running due east. Nor will the calls of the treaty be met by running a line northeast to the upper end of the north lake and thence southeast, while the treaty calls for the northern boundary line are "due east, passing the said north end of the upper lake."

The treaty requires that the western boundary line must be extended to a point far enough north so that said point shall be "due east (west) of the north end of the upper lake."

To stop said western boundary line of the reservation at Dutton Mountain, it will fall far short of the requirements of the treaty. It must be continued so far north that a line run from its northern extremity, thence due east, passing the said north end of the upper lake, will include in the treaty reservation the whole of said upper lake.

Upon examination of the testimony taken by Agent Emery, and furnished with his report of June 16, 1887, it will be seen that only one of the witnesses, Charles Preston, a white man, fixes the northern limit of the west boundary line. He says:

From the summit of the mountain east of Fort Klamath the line runs north along the ridge to a point near Mount Scott called Bal lasal wisk se. (62, 16.)

Allen David, Booki yu, chief, says that the west points of the northern line of the reservation begin on the top of a mountain called Bal la wisk se, and runs right north of Upper Klamath Lake to a high mountain called Tse whels sto e los. (62, 16.)

George Mercer, white man, who made the first survey complained of, says in his affidavit:

The terms of the treaty are very indefinite. In running the reservation boundary I complied with a request of Surveyor-General Odell to make the line conform to the township subdivision surveys, where the same could be done without injury to the claims of the reservation, thus avoiding any fractional surveys in closing to the reservation line. There is probably no dispute or doubt in regard to the west boundary of the reservation, as that line is well defined. Then, in running east from a point 1 mile north from the bridge of Fort Klamath, the summit spoken of as "the ridge that divides the Upper and Middle Klamath lakes," the ridge is not well defined; and then following north there is no well-defined ridge, the country being rolling and cut up by streams running in different directions. In fact, there is a good-sized river and several smaller streams crossed by that line. That line I extended to a point due west of the north end of Upper Klamath Lake. I then run east to the north end of said upper lake. There might be some little question raised as to the extreme north end, owing to the fact that as the waters in the lake rises and falls it overflows more land, and then again it recedes, leaving what was at other times a portion of the lake as dry land. (62, 17.)

The testimony of L. B. Applegate does not touch upon the western and northern boundary lines.

Mo ghen kas kit testifies that—

From a mountain called Bal la wisk se (full of cares) the line of the reservation runs east, including Upper Klamath Lake, or Marsh, to Ba ha Mountain. (62, 18.)

R. P. Earhart, white man, testified as follows:

That I was the secretary of the commissioners appointed by the United States Government in 1864 to make treaty with the Klamath and Modoc Indians in Oregon; that I was present at the council and at the signing of the treaty on the 14th day of October, 1864, and witnessed the same; that at this distant time I have not sufficiently clear recollection of the boundary lines of the reservation agreed upon at said council and treaty to make a definite statement as to the whole of the boundaries of said reservation; that I do, however, clearly remember the place

described as the starting point of the boundary line as being a point of rocks (or bluff of rocks) on the shore of Middle Klamath Lake below the mouth of Williamson River, where the Indian trail passed around such point or bluff, near the bluff and close to the water of the lake; that as the country adjacent to and about the proposed reservation and so-called Klamath country was, at the time the treaty was made with the Klamath and Modoc Indians, occupied as a roaming and hunting ground by hostile Indians and by the United States troops pursuing such hostile Indians, particular care was taken by the commissioners at such treaty to have the boundary lines of the reservation of a distinctly marked character, well defined and fully and clearly explained and understood by the Klamath and Modoc Indians, and that each topographical feature of such reservation boundary as given in the treaty of October 14, 1864, was fully understood by them before signing the treaty.

The testimony of O. C. Applegate and I. D. Applegate, white men, do not touch particularly upon the western and northern boundary lines, but are directed mainly to the location of the mouth of Ish tish ea wax Creek.

Henry Blow, chief, testifies that "the north line of the reservation running toward the rising sun took in all of Upper Klamath Lake and ended at a mountain called Chok chok lisks se (Sharp Mountain)."

Lindsey Applegate, white man, testifies that—

The treaty boundary of the Klamath Reservation began at Modoc Point, a little northwest of what is now known as the Captain Ferer place; then followed the margin of the lake to the mouth of Wood River, and up Wood River to the bridge above Fort Klamath; then north to a point from which a line running east would include all of Upper Klamath Lake. (62, 20.)

There is clearly nothing found in the testimony of any of the Indians, and nothing in the testimony of any of the white men, except that of Charles Preston, to warrant the statement of the Commissioner of the General Land Office, made in his report of February 5, 1895, as to the northern boundary line for the reservation described by him as starting from Dutton Point and running northeast; and so on, that "this boundary would seem to satisfy the claims of the Indians." He is clearly not satisfied in his own mind that Dutton Point is the Bal la wisk se of the Indians, for he places that name—Bal la wisk se—at that point with an interrogative mark after it, while no such mark is placed or doubt thus expressed as to the location of said Bal la wisk se when he places that name at Cowhorn Mountain, further north. He is evidently better satisfied that the northern boundary line, running due east from Cowhorn Mountain, answers the calls of the treaty for said line; and that the line laid down by him on his map, No. 1, and designated thus—"This full red line is the treaty boundary claimed by the Indians, as interpreted by the General Land Office, January, 1895; the area between this line and the surveyed boundary of the reservation is 682,240 acres"—most nearly conforms in his judgment to the description of the reservation boundaries as given in the treaty.

Such a conclusion of the matter does not show the loss to the Indians of as much land as is shown by other lines laid down on other maps by agents of the Government who have gone over the ground personally. But it indicates beyond any reasonable doubt that from 682,240 acres to 909,990 acres have been left out of the reservation by the erroneous survey of its out boundaries.

This fact being so clearly established it is important to fix the value to the Indians of the land of which they have been so unjustly deprived. For it can not be reasonably expected that the land will be restored to them. The money value of the land appropriated to be paid to them or expended for their benefit will do them far more good than the restoration of the land. They are now taking allotments on what has been left to them of the reservation. They receive no annuities, have

no treaty, land, or other funds to their credit, and are distressingly in need of funds to aid them in improving their allotments, by clearing and breaking land, constructing buildings, irrigating ditches, fences, etc., procuring domestic animals, wagons, agricultural implements, etc.

There have been many recent payments to Indians for lands under negotiations for relinquishment of their right, title, and interest therein and thereto.

The following instances showing the prices paid for such lands will be sufficient to indicate the value to the Indians of the Klamath Reservation for the lands of which they have been unjustly deprived.

The Sac and Fox Indians in Oklohoma were paid \$485,000 for cession of about 394,000 acres of land, or about \$1.23 per acre. This price was further increased to nearly \$1.50 per acre by an additional appropriation made by Congress to pay those Sac and Fox Indians in Iowa for their interest in and claim to said land. (See 26 Stat. L., 752, 759; also Senate Ex. Doc. No. 172, Fifty-first Congress, first session.)

The Cœur D'Alene Indians in Idaho were paid \$500,000 for 184,960 acres of land, or over \$2.70 per acre. (See 26 Stat. L., 1030; also Senate Ex. Doc. No. 14, Fifty-first Congress, first session.)

The Crow Indians in Montana were paid \$946,000 for about 1,800,000 acres, or about 52½ cents per acre. (See 26 Stat. L., 1040; also Senate Ex. Doc. No. 43, Fifty-first Congress, second session.)

The Sisseton and Wahpeton Sioux Indians in South Dakota were paid \$2.50 per acre for ceded lands. (See 26 Stat. L., 1036.)

The Pawnee Indians in Oklahoma were paid \$1.25 per acre for ceded surplus lands. (See Indian appropriation act, March 3, 1893, Public, No. 125, p. 36; also Senate Ex. Doc. No. 16, Fifty-second Congress, second session.)

The Indians of the Siletz Reservation in Oregon were paid \$142,000 for 175,000 acres of ceded land, or about 81½ cents per acre. (See Indian appropriation act, August 15, 1894, Public, No. 197, p. 42; also Senate Ex. Doc. No. 39, Fifty-second Congress, second session.)

The Yankton tribe of Dakota or Sioux Indians were paid over \$600,000 for 168,000 acres, or \$3.62½ per acre. (See Indian appropriation act, August 15, 1894, Public, No. 197, p. 32; also Senate Ex. Doc. No. 27, Fifty-third Congress, second session.)

The Nez Percé Indians of Idaho were paid \$1,626,222 for 542,074 acres, or \$3 per acre. (See Indian appropriation act, August 15, 1894, Public, No. 197, p. 45; also Senate Ex. Doc. No. 31, Fifty-third Congress, second session.)

The United States agreed to pay for the more than 9,000,000 acres of land ceded in the Dakotas by the Sioux Nation of Indians as follows: For all land taken by settlers within three years after acceptance of the act of March 2, 1889 (25 Stat. L., 896), \$1.25 per acre; in next two years 75 cents per acre, and for the residue running thereafter undisposed of 50 cents per acre. If these lands are taken at the average of these prices their cost will be 83½ cents per acre.

For surplus lands ceded by the Cheyenne and Arapahoe Indians in Oklahoma payment was made to them at 55 cents per acre, and to the Choctaws and Chickasaws, for the same lands, \$1.25 per acre, making the combined payments for those lands over \$1.80 per acre. (26 Stat. L., 1025.)

The Cherokee Indians were recently paid about \$1.43 per acre for the large area in the Cherokee Outlet purchased from them. (See act March 3, 1893; also Senate Ex. Doc. No. 56, Fifty-second Congress, first session.)

About half of the Colville Reservation, in the State of Washington,

was opened to settlement by act of July 1, 1892 (27 Stat. L., 62), at \$1.25 per acre.

The foregoing are sufficient to show the prices at which the United States have obtained the relinquishment of the Indian titles and claim of the surplus lands of Indian reservations.

The foregoing prices per acre, viz, \$1.50, \$2.70, \$0.52 $\frac{1}{2}$, \$2.50, \$1.25, \$0.81 $\frac{1}{7}$, \$3, \$3.62 $\frac{1}{2}$, \$0.83 $\frac{1}{3}$, \$1.80, and \$1.43, make an average of about \$1.81 per acre as the price paid by the United States for Indian lands of various qualities and kinds. The average of the lands thus purchased will not show a higher grade of land than that of which the Indians of the Klamath Reservation have been unjustly deprived.

If they are allowed for the 909,990 acres claimed by them their claim at \$1.81 per acre would amount to the sum of \$1,647,081.90.

If they shall only be allowed at the rate of \$1.25 per acre for the same quantity their claim would amount to the sum of \$1,137,487.50.

If they shall be allowed only the quantity of land estimated by the Commissioner of the General Land Office to have been excluded from the reservation by the erroneous survey of its out boundaries, viz, 682,240 acres, their claim therefor at \$1.81 per acre would amount to the sum of \$1,234,854.40; or, if they shall only be allowed for said quantity of land at the rate of \$1.25 per acre, their claim would amount to the sum of \$852,800.

Whatever may be the quantity of land erroneously excluded from the reservation provided for in the treaty—and the quantity so excluded can not be less than 682,240 acres, and may be more—claim for compensation therefor at \$1.25 per acre is made by and on behalf of the Indians interested therein, and Congress is hereby petitioned to make suitable legislation and appropriation for the adjustment of the claim.

JOS. K. McCAMMON,

*Attorney for the Klamath and Modoc Tribes,
and the Yahooskin Band of Snake Indians.*

R. V. BELT, *of Counsel.*

WASHINGTON, D. C., *February 12, 1896.*