

ninth Congress, first session, nor does it appear that any claim for relief has ever been presented to this Department by the owners of *The Lydia*.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

JAMES S. COTHRAN,
House of Representatives.

[Rec'd Nov. 25. Duplicate No. 93.]

LONDON, *September 29, 1819.*

SIR: On the 23d instant I received a representation from Messieurs W. and E. Lawrence, of this city, respecting the case of the ship *Lydia*, of New York, an American vessel belonging to Stephen Hathaway, George Hathaway, and Isaac Waite, citizens of the United States. The vessel was captured by the British during the late war, and condemned in the court of vice-admiralty at Bermuda. The sentence was reverted in London and restitution ordered to the claimants. The ship being sold at Bermuda the proceeds were paid into court to abide the result of the appeal; but since the reversal of the sentence it appears that through the default of the proper officers of the court in that island the proceeds are not now forthcoming, and the owners are likely to sustain a total loss unless this Government will interpose and protect them against the misconduct or other inability of its own officers. It is to procure this interposition that my official aid is invoked by Messieurs Lawrence, who are the agents of the owners. I do not think it necessary to trouble the Department with a copy of the correspondence that has passed between us. It will be sufficient for the present to state that, perceiving that the ship when captured was sailing under the protection of a British license, I have declined interfering. She was proceeding in ballast from New York to Charleston, thence to carry a cargo of provisions to Cadiz. The license which she had on board would have rendered her a prize of war had she fallen into the hands of a cruiser of our country. I have deemed it proper to state thus much of the case, to anticipate whatever representations may be made by the parties themselves. I have said to them that, if I have misjudged the merits of their application in withholding my assistance, an appeal to the Department of State will be open to them.

Count Palmella has lately got back again to this place from Paris. I learn from him that affairs between Portugal and Spain still remain wholly unsettled. The Count proceeds to Rio Janeiro before long to take upon himself the office of foreign affairs.

I inclose the Times of the 4th of the present month. It contains a publication purporting to exhibit the proceedings of the general assembly of Nova Scotia in the month of March, on the subject of the convention concluded with this Government last autumn. I have no other knowledge of the existence of these proceedings than is afforded by this newspaper publication, and would incline to hope, from the nature of some of the sentiments and language towards the United States, that it must be spurious.

I have the honor, etc.,

(Signed)

Hon. JOHN QUINCY ADAMS,
Secretary of State.

RICHARD RUSH.

MISSION INDIANS IN CALIFORNIA.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A communication from the Secretary of the Interior submitting an extract from the report of the Commission for the relief of the Mission Indians in California, and other papers relating to the exchange of lands, etc., with a draft of a bill to carry into effect the recommendation of said Commission.

JANUARY 26, 1892.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate and House of Representatives:

I transmit herewith, for the consideration of Congress, a communication of 23d instant, from the Secretary of the Interior, submitting an extract from the report of the Commission appointed under the act of January 12, 1891, entitled "An act for the relief of the Mission Indians in the State of California," and other papers relating to the exchange of lands with private individuals and the purchase of certain lands and improvements for the use and benefit of the Mission Indians, with draft of a bill to carry into effect the recommendations of said Mission Commission.

I have approved the report of the Mission Commission, except so much as relates to the purchase of lands from and exchange of lands with private individuals, which is also approved subject to the condition that Congress shall authorize the same.

The matter is presented with recommendation for the early and favorable action of Congress.

BENJ. HARRISON.

EXECUTIVE MANSION, *January 25, 1892.*

DEPARTMENT OF THE INTERIOR,
Washington, January 23, 1892.

The PRESIDENT:

I have the honor to submit herewith a communication from the Commissioner of Indian Affairs, transmitting an extract from the report of the Mission Indian Commission, appointed under the provisions of the

act of January 12, 1891, entitled "An act for the relief of the Mission Indians in the State of California," and other papers relating to the purchase of lands from and exchange of lands with private individuals, in order that the requirements of the laws as to the reservations for each band or village of the Mission Indians may be complied with.

I also submit a draft of a bill prepared by my direction authorizing the Secretary of the Interior to purchase or exchange certain lands as recommended by the Commission, and which purchase or exchange has received executive approval, subject to the condition that Congress shall authorize the same.

This matter is presented with the recommendation that it receive the early and favorable action of Congress.

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

JOHN W. NOBLE,
Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 13, 1892.

SIR: Referring to your communication dated December 30, 1891, in which you return the report of the Mission Indian Commission and accompanying papers, and direct that the draft of a bill be prepared authorizing the Secretary of the Interior to purchase or exchange certain lands, as recommended by the Commission, I have the honor to transmit herewith draft of a bill authorizing the purchase and exchange of lands as suggested.

It is thought proper in this report to refer at length to the facts upon which the request for this legislation is based.

The reservation near Banning, called "Morongo," was established by the executive orders of May 15, 1876, May 3, 1877, August 25, 1877, and March 9, 1881. It embraces all of township 2 south, range 1 east, all of township 2 south, range 2 east, and township 3 south, ranges 1 and 2 east, except sections 16 and 36 in each of said townships. The commissioners report that this reservation, as now constituted, embraces considerable worthless mountain land and also much worthless wash and desert land; that it also contains more agricultural land suitable for dry farming, such as growing barley, than is needed by the Indians; that the Southern Pacific Railroad runs through the reservation, its officers claiming that by virtue of law it is entitled to the odd sections of land therein. Although these townships have not been surveyed, the odd sections have been determined by private survey.

W. S. Hatheway settled upon what was determined to be section 27, township 2 south, range 1 east, and developed considerable water on that section and in the cañon further up. He was ejected from this land by the Government after he had spent, as he claims, some \$1,500. He insists that his ejection was unlawful, as he was on railroad lands, and that he has a claim against the Government.

C. F. Jost and Margaret Jost, his wife, settled on section 25 some years ago, and made very valuable improvements, having good buildings, a good orchard, and having developed by means of ditches a large supply of water. They were also ejected, as they claim, unlawfully, and bring large claims against the Government for damages. The land occupied by them is right in the heart of what the Commission thinks

ought to be the Indian reservation, and is especially valuable because of the water developed upon it.

Richard Gird and John G. North, appreciating the great value of the water upon Hatheway's cañon and the cañon above the Protrero, procured an interest some years ago on sections 15 and 23, which are toward the upper end of the cañon, upon which there are valuable cienagas, and which were railroad lands. They also obtained rights to surplus water from Hatheway and from the Josts. They also took steps which resulted in their getting title to the east half of section 36, which they claimed to be a school section to which they could acquire title. Nearly all the houses, irrigating ditches, and very considerable orchards and vineyards of the Indians are on this section. The commissioners state that to lose this section would be an irreparable loss to the village. Gird and North also built irrigating ditches in the upper end of the cañon, established a field of alfalfa, put out an orchard, and spent considerable sums of money. They too were evicted. Claiming their eviction was unlawful and their losses great, they have commenced suit to recover damages and to determine their right to water and land.

The Commissioners say that, to state the situation briefly, they found that the Indians were the acknowledged holders of lands they did not want or work, and that the whites insisted upon rights to lands that are absolutely essential to the Indians, if a reservation is to be established there. The problem, therefore, was how, by means of the lands not wanted, to obtain the title to lands that were wanted, freed from all claims, and at the same time relieve the Government from threatened and actual litigation by the evicted parties.

They succeeded in making satisfactory arrangements with the railroad company, by which it was to relinquish all the lands needed by the Indians for other lands within the reservation not needed for the Indians. They also entered into an arrangement with Mr. C. O. Barker, who held powers of attorney from the several parties in interest, by which the parties referred to agree to relinquish all claims they may have in right or in equity to the lands needed, and to release and abandon all suits against the Government on account of damages claimed, and to accept other lands within the present reservation, they to have said lands conveyed to them by patent.

W. S. Hatheway is to relinquish all his claim to lands in township 2 south, range 1 east, and in township 2 south, range 2 east, all water rights of every kind, and all claims for damages by reason of eviction or otherwise, for which he is to receive a patent to the north half of section 14, township 3 south, range 1 east.

C. F. Jost and Margaret Jost are to exchange all their interest in and to lands and water rights of every sort and nature in township 2 south, ranges 1 and 2 east, and all claims for damages because of eviction and otherwise, they to receive in exchange therefor a patent to the west half of section 6, township 3 south, range 1 east.

Richard Gird and John G. North are to relinquish all their right in and to sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, in township 2 south, range 1 east, and sections 6, 7, 18, 19, 30, and 31, in township 2 south, range 2 east, and to any and all damages growing out of eviction or otherwise. Said Gird and North to receive in exchange therefor patents for the south half of section 8, the northwest quarter of section 8, the east half of the northeast quarter of section 8, the northeast quarter of section 10, the southeast quarter of the northwest quarter of section 10, the east half of the southeast quarter of section 10, the northeast quarter of the southeast quarter of section 10,

section 18, and the north half of section 20, all in township 3 south, range 1 east. The land to be given Hatheway is 320 acres; to the Josts, 320 acres; and to Gird and North, 1,840 acres.

Wellwood Murray and Eliza E. Murray, the Commissioners report, are the owners of the north half of section 1, township 3 south, range 1 east, less 10 acres owned by Mrs. Toutain. They report that this land is also needed in the proposed reservation, as it is near the present Indian village and can be readily placed under water. They are willing to exchange it for the east half of section 10 in township 4 south, range 4 east, now under reservation, which land is not needed. As to the proposed exchange, the Commissioners say that to bring it about requires a larger area of land surrendered than they get for the Indians in return, but that in making the exchange the delays and hazards of litigation are avoided. They secure the release of large claims for damages growing out of what are claimed to be unlawful evictions, and secure to the reservation exceedingly valuable water rights. They state that if they were dealing with reference to their own property as individuals they would not hesitate for a moment in making the exchanges.

The right of the Southern Pacific Railroad Company is derived from the twenty-third section of the act of Congress approved March 3, 1871 (16 Stat., 573-579). While it is doubtful whether the right of the railroad company has already attached to the unsurveyed sections, and while the rights of the Indians might possibly be maintained, it may result that the right of the railroad would eventually attach, and that the issue of legal proceedings to establish the rights of the Indians would be doubtful and the contest long and expensive.

It is to be observed that as to some tracts at least there are separate and distinct interests involved. The railroad company has a claim for the land, and the individuals' claims for the value of improvements made and water rights developed on these lands, to which they hope to obtain title by purchase from the railroad company.

The Commissioners report that the former agency clerk and physician, Dr. Ferrabee, purchased from the State the N. $\frac{1}{2}$ of the NW. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, and the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of Sec. 36, T. 8 S., R. 2 W., San Bernardino meridian, on which section the little water which the Indians in the Temecula Reservation have takes its rise. The purchase was made that the lands might be held for the use of the Indians. Dr. Ferrabee is willing to sell it to the Government for what it cost him, including taxes and interest. The Commission does not state the price, but expresses the opinion that the purchase can be made for not exceeding \$500.

In the Los Coyotes Reservation certain entries were made before the reservation was established, May 6, 1889. Among others Chatham Helm has received a patent for the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 35, the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of Sec. 34, T. 10 S., R. 4 E., San Bernardino meridian, and James Talley for the E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, and the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 26, and the NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 35, T. 10 S., R. 4 E. San Bernardino meridian.

The Commissioners report that Helm's house stands in the narrowest part of the cañon; that his claim separates the Indians below him at San Ysidro from their pasture lands above, as also from the village of San Ignacio; and that it is impossible for the Indians of San Ysidro to get their stock on to their pastures without passing through a gate, within a few feet of Helm's house, kept closed.

The Commission believes that if the claims of Helm and Talley could be extinguished, by purchase or otherwise, it would be a great advan-

tage to the Indians, removing an obstacle to the best use of their land and a serious obstacle in the way of their progress.

To do this will require about \$2,500 for Helm's place and \$2,000 for Talley's.

The purchases recommended by the Commission will require an appropriation not to exceed \$5,000.

As the proposed exchange and purchases have been approved by you and by the President, subject to the necessary authorization by Congress, I trust that speedy action may be taken by that body in order that the matter may be fully adjusted and the question of the proper disposition to be made of the Mission Indians be at length finally and forever determined.

I inclose copies in duplicate of so much of the report of the Commission as relates to the proposed purchase and exchange of lands, and of the opinion of Assistant Attorney-General Shields in relation to the matter.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, December 29, 1891.

SIR: I have the honor to acknowledge the receipt, by your verbal reference, of a communication from the Acting Commissioner of Indian Affairs, submitting the report of the Mission Indian Commission, duly appointed under the provisions of the act of Congress approved January 15, 1891 (26 Stat., 712), entitled "An act for the relief of the Mission Indians in California." By the first section of said act the Secretary of the Interior is required to appoint three Commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California "upon reservations which shall be secured to them as hereinafter provided."

Section 2 provides:

That it shall be the duty of said Commission to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements, which selection shall be valid when approved by the President and Secretary of the Interior. They shall also appraise the value of the improvements belonging to any person to whom valid existing rights have attached under the public-land laws of the United States, or to the assignee of such person, where such improvements are situated within the limits of any reservation selected and defined by said commissioners, subject in each case to the approval of the Secretary of the Interior. In cases where the Indians are in occupation of lands within the limits of confirmed private grants, the Commissioners shall determine and define the boundaries of such lands, and shall ascertain whether there are vacant public lands in the vicinity to which they may be removed. And the said Commission is hereby authorized to employ a competent surveyor and the necessary assistants.

It is provided by section 3 that said commission, when it has completed its labors, shall make report thereof to the Secretary of the Interior, and if there be no objection he shall cause a patent to issue for each of the reservations approved by him, in favor of each band or village of Indians occupying such reservation, with a proviso, however—

That no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for

the disposition of the public domain, unless such persons shall acquiesce in and accept the appraisal provided for in the preceding section in all respects, and shall thereafter, upon demand and payment of said appraised value, execute a release of all title and claim thereto; and a separate patent, in similar form, may be issued for any such tract or tracts at any time thereafter. Any such person shall be permitted to exercise the same right to take land under the public land laws of the United States as though he had not made settlement on the lands embraced in said reservation. (2) That in case any land shall be selected under this act to which any railroad company is or shall hereafter be entitled to receive a patent, such railroad company shall, upon releasing all claim and title thereto, and on the approval of the President and Secretary of the Interior, be allowed to select an equal quantity of other land of like value in lieu thereof at such place as the Secretary of the Interior may determine; and (3) that the trust patents shall be placed in the custody of the Interior Department and copies thereof shall be filed with the proper Indian agent and be open to public inspection.

Sections 4 and 5 make provision for allotments of land in severalty to the Indians residing upon any of said reservations, and the issuance of trust patents therefor.

Section 6 provides—

That in cases where the lands occupied by any band or village of Indians are wholly or in part within the limits of any confirmed private grant or grants, it shall be the duty of the Attorney-General of the United States, upon request of the Secretary of the Interior, through special counsel or otherwise, to defend such Indians in the rights secured to them in the original grants from the Mexican Government, and in an act for the government and protection of the Indians passed by the legislature of the State of California, April twenty-second, eighteen hundred and fifty, or to bring any suit, in the name of the United States, in the circuit court of the United States for California, that may be found necessary for the full protection of the legal or equitable rights of any Indian or tribe of Indians in any of such lands.

The California act above referred to makes it the duty of justices of the peace in said State to set off a sufficient amount of land for the necessary wants of the Indians residing upon lands owned by white persons upon the application of such owners.

The Senate Committee on Indian Affairs, in 1885, reported that "This act has never been repealed nor, so far as we could learn, complied with in a single instance. To-day, it would be held of no value in the California courts." (See Senate Report No. 1522, Forty-eighth Congress, second session, p. 150.)

The Commission, in said report, recommends that twenty-six reservations, particularly describing each by name, be set apart in said State for the use of said Mission Indians. The Acting Commissioner of Indian Affairs recommends generally the approval of the selections of reservations as made by said Commission and, in addition thereto, that "lot 1 of section 30" selected as school land in lieu of deficiency in fractional town 18 south, range 7 east, embracing 11.58 acres, be set apart if the claim of the State can be satisfied with other land, the list containing said lot not yet having been approved to the State.

The fourteenth reservation, named "Temecula," the Commission recommends should be set apart by executive order, and that a part of section 36, in town 8 south, range 2 west, should be purchased from the State's vendee at a price not to exceed \$400. The Acting Commissioner approves of the selection of the reservation by the Commission, but says that the question of the purchase of section 36 "will require Congressional action."

The Commission states that the eighteenth reservation, named "San Jacinto," contains some odd-numbered sections within the granted limits of the Southern Pacific Railroad Company, and it recommends that the company be allowed to select other lands in lieu thereof, subject to the approval of the Secretary of the Interior. This recommendation receives the approval of the Acting Commissioner.

The Commission also recommends that the reservation named "Agua Caliente" be diminished to include certain sections named, and that the surplus land be restored to the public domain, "except the east half of section 10, which they recommend be exchanged with Dr. Murray and wife." The proposed selection is approved by the Acting Commissioner.

It appears that within the limits of the reservation named "Los Coyotes" there are several patented claims, and among them the claims of J. J. Warren and Harmon T. Helm, which the Commission recommends be "extinguished by purchase or otherwise, because it would be of great benefit to the Indians." The Commission states that said claims were entered and patented before the reservation was set apart by executive order, but long subsequently to the time when the lands were in the possession of the Indians. The Acting Commissioner states that under the provision of said section 3, which prohibits the patenting of any tract as a reservation to which existing valid rights have attached, it will require an appropriation by Congress to pay the appraised value, should the owners be willing to dispose of their claims.

For the reservation named "Torres" the Commission selected among other tracts section 36, town 7 south, range 8 east, San Bernardino meridian, and certain odd-numbered sections within the grant to said railroad company. The company has signified its willingness to select other lands in lieu of those within the reservation, and the Acting Commissioner expresses the opinion that the State should be allowed to select land in lieu of said section 36, but expresses a doubt whether this can be done without additional legislation.

It is stated by the Commission that on the private grant called "Pauma Ranch" there are three rancheries which have been occupied by Indians since prior to the treaty with Guadalupe Hidalgo, and that the original grant excepted these Indian holdings. The present owner has commenced suit to determine his rights, and the Commission caused the Indian holdings to be surveyed, and entered into negotiations with the present owner, Bishop Mora, who made a quitclaim deed of 250 acres of land, also an interest in certain lands during the lifetime of one Maja and his wife, "and water rights of all of the Indians." The Acting Commissioner recommends the acceptance of the deed and the approval of the selection.

The Commission reports that the "Morongo" Reservation, as at present established, contains much waste land and more agricultural land than is necessary for the Indians; that the Southern Pacific Railroad runs through the reservation, and the company claims the odd-numbered sections; that white men have settled upon some of the railroad lands and have filed on the water in the cañon, one of whom, W. S. Hatheway, settled upon a tract shown by private survey to be in section 27, town 2 south, range 1 east, and was ejected therefrom after having expended, as he alleges, about \$1,500; that two others, C. F. Jost and Margaret Jost, settled upon section 25 some years ago and made valuable improvements, and they were also ejected; that Richard Gird and John G. North acquired an interest several years ago on sections 15 and 23, near the upper end of the cañon, and obtained rights of surplus water from said Hatheway and Josts; that, in addition, said Gird and North procured title to the east half of section 36, upon which are nearly all of the houses, irrigating ditches, and a considerable portion of the orchards and vineyards belonging to the Indians; that they also raised a field of alfalfa, and spent considerable money in making irrigating ditches in the upper end of the cañon, and in setting out an orchard; that these parties have also been ejected from their claims and have

commenced suit to recover damages and to determine their right to the lands and the water. The Commission reports that, finding the Indians in possession of lands they did not want, and the whites claiming lands that were essential to the well-being of the Indians if the reservation was to be established, and also desiring to relieve the Government of litigation and secure title to the lands claimed by the whites for the reservation, they wrote to the Commissioner of Indian Affairs on March 16, 1891, for instructions, and on April 1, same year, received a telegram to "go ahead;" that subsequently they were advised by letter from the Indian Office that they had ample authority "to give up lands within the reservation not occupied or needed by the Indians in order to secure within the reservation, free from incumbrance, lands which are needed for the Indians." Thereupon the Commission secured a proposition in writing from the alleged attorney in fact of said Hatheway, Josts, Gird, and North to release their several interests in and to the lands claimed by them and the water rights and all claims for damages on account of said evictions upon condition that they receive patents from the United States for other lands in lieu thereof as follows: Hatheway one-half section, the Josts one-half section, and Gird and North patents for 1,840 acres, which proposition the United States is authorized to accept "at any time prior to the 1st day of January, 1892."

The Commission further reports that in order to secure these various exchanges it will be necessary to surrender a larger area than will be secured for the Indians.

The Acting Commissioner expresses the opinion that there is ample authority in said act for the exchange of railroad lands, but the act does not contain any authority for the exchange of lands claimed by private parties, nor does he know of any law authorizing the issuance of patents to said parties as proposed by the Commission. He also says that the written instructions of April 1, 1891, to the Commission did not contemplate the issuance of patents for lands released from the reservation "except such as they might be entitled to under existing laws;" that "the act does not contain any authority for the exchange of school sections, but it is possible that this authority may exist under general laws," and he suggests that said proposition of said attorney in fact and the railroad company might be formally accepted, and afterwards Congress could be asked to authorize the exchange of the private and school lands.

By your said reference I infer that you wish my opinion whether the Executive Department is authorized to accept said propositions for the exchange of lands and issue patents therefor, and also whether any of the lands selected for reservation purposes are subject to settlement and entry prior to the issuance of patents for the same.

There can be no question, in my judgment, but that there is ample authority under the provisions of the third section of said act for the exchange of lands with the railroad company within the limits of said reservations, provided such company is or may be entitled to a patent for the lands claimed and releases its claim and title thereto. But I am unable to find any authority of law for an exchange of lands with or purchase of lands from private parties and the issuance of patents therefor. The duties of said Commission are expressly stated in the second section of said act.

Besides selecting the necessary reservations for said Indians, the Commission is specifically directed to appraise the improvements within the same belonging to any person, or his assignee who has acquired "valid existing rights * * * under the public land laws of the United States, * * * subject to the approval of the Secretary of the In-

terior," and also to define the boundaries of the lands occupied by Indians within the limits of confirmed private grants, and also to determine whether there are vacant public lands near, to which the Indians can be removed.

It thus appears not only that there is no express statutory authority for the exchange of lands claimed by private parties within the limits of the reservations selected by said Commission, but explicit instructions are given in said act for the appraisal by said Commission of the improvements of persons having "valid existing rights" therein, subject, however, to the approval of the Secretary of the Interior.

It is well settled, I think, that Congress alone has the power of the disposal of the property of the United States, and that the title to public land can pass only by virtue of some law of Congress. (Constitution of the United States, Art. IV, Sec. 3, clause 2; *United States v. Gratiot*, 14 Peters, 526; *United States v. Fitzgerald*, 15 Peters, 128.)

While the Executive Department can not patent lands from the public domain in exchange for those claimed by private parties, unless expressly authorized so to do by law, yet the President may reserve from sale and set apart for public uses tracts of land belonging to the United States. In *Grisar v. McDowell* (16 Wall., 364-381), the Supreme Court said:

From an early period in the history of the Government, it has been the practice of the President to order from time to time, as the exigencies of the public service required, parcels of land belonging to the United States to be reserved from sale and set apart for public uses.

And, in like manner, very many of the Indian reservations have been set apart by executive order, sometimes by the President, under his own hand, and occasionally by the Secretary of the Interior, whose acts are presumed to be by the direction of the President. (*Wilson v. Jackson*, 13 Peters, 498.)

From the papers referred, it is quite impossible to determine what rights the parties represented by said attorney in fact have to the lands proposed to be exchanged. It is true that the Commission reports that Gird and North procured "an interest some years ago on sections 15 and 23, * * * which were railroad lands," but it does not appear when or to what extent said interest was obtained. Besides, their proposition of relinquishment of their interest in the sections described does not state the extent of their interest therein or how they acquired any "valid existing rights" to the same. Moreover, an examination of the lands proposed for exchange by the railroad company shows that at least one section is the same as said attorney in fact proposes to exchange, namely, section 31, township 2 south, range 2 east, San Bernardino meridian.

The special counsel for the Indians, Mr. Lewis, in a letter dated December 7, 1891, concedes the right of the company to the lands claimed by it and urges the acceptance of its proposition before January 1, 1892, so that the basis for the several actions pending against "Preston and Morongo," and others expected, may be destroyed.

The right of said company is derived from the twenty-third section of the act of Congress approved March 3, 1871 (16 Stat., 573-579), which provides:

That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the

same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however,* That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.

Section 18 of the act of July 27, 1866 (14 Stat., 292-299), authorizes the Southern Pacific Railroad Company to connect with the Atlantic and Pacific Railroad and to have "similar grants of land, subject to all the conditions and limitations herein provided." By section 2 of the granting act it was agreed (*inter alia*) that "the United States shall extinguish as rapidly as may be consistent with the public welfare of all the Indians, and only by their voluntary cession, the Indian title to all the lands falling under the operation of this act and acquired in the donation to the road named in the act." Section 3 grants to said company

every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claim or rights at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office.

If the Mission Indians were in actual occupancy of lands at the date of the definite location of said road, it is very doubtful if the company acquired any right of possession to the land so long as it is so occupied. And if there were any other claims under the land laws of the United States which could be perfected, they would serve to except the land from the operation of the grant. So, also, under the rulings of this Department, no person can acquire a settlement right by entering upon lands in the actual use or occupancy of Indians.

This was expressly ruled in the case of the *Mission Indians v. Walsh* (12 L. D., 576), on review, 13 L. D., 269.

Hence, in order to determine whether the company has a legal right to the odd sections within the limits of its grant and also within the limits of the reservation proposed to be selected, it should clearly appear that they were, in the language of the granting act, "free from pre-emption or other claims or rights" at the date of the act. This is not shown by the report of the Commissioner; but as the special counsel of the Indians concedes the claim of the railroad to these lands, presumably he and the Commissioner are satisfied on that point. I am, however, clearly of the opinion, and so advise you, that there is no warrant of law authorizing the approval of said propositions for the exchange or purchase of lands, and issuing patents to private individuals as recommended; that under the provisions of the act of February 28, 1891 (26 Stat., 796), the State, if it has not disposed of the school sections, may select other lands in lieu thereof, and that the President, if deemed necessary, withdraw the lands involved herein from settlement and entry until Congress shall grant the authority to purchase, exchange, and issue the patents as proposed.

I see no objection to the approval of those reservations selected that are free from adverse claims.

Inasmuch, however, as additional legislation is necessary to authorize the Executive Department to purchase and exchange lands as recommended by said Commission, the Commissioner of Indian Affairs should be directed to prepare the draft of a bill to be submitted by the

President to Congress, authorizing the Secretary of the Interior to purchase or exchange the lands as recommended.

The papers submitted are herewith returned.

Very respectfully,

GEO. H. SHIELDS,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

EXTRACT FROM REPORT OF MISSION INDIAN COMMISSIONERS.

The SECRETARY OF THE INTERIOR

(Through the Commissioner of Indian Affairs:)

The undersigned Mission Indian commissioners most respectfully report as follows: As soon after their appointment as possible, all the members of the Commission went to California and proceeded to make themselves as familiar with the condition of the Indians and their reservations as possible. To do this they were compelled to travel over many miles of mountain roads and to have many surveys made. We have found a good many difficulties in the way of a satisfactory solution of the questions submitted to us. White men, in many instances, had encroached upon the Indian lands, especially upon those within the lines of Spanish grants. The Southern Pacific Railroad Company claimed to own the odd sections of land within the reservations near the line of its railroad. Settlers had moved on to these railroad lands and made improvements and developed water rights, and some of them had been ejected by the military and had brought suits against the Government or against the officers instrumental in the removal. We have attempted to adjust all these differences, and in some cases have succeeded, as will appear more in detail in our recommendations in regard to individual reservations.

It is our judgment that if our recommendations are adopted it will result in a reasonably comfortable adequate home for every Mission Indian who cares to avail himself of the provisions made for him on these reservations.

* * * * *

MORONGO.

The reservation near Banning, called Morongo, has given the Commission much trouble.

The reservation, as now constituted, embraces considerable worthless mountain land, and also much worthless wash and desert land. It also has in its borders now more agricultural land suitable for dry farming, such as growing barley, than is needed by the Indians. Indeed, because the Indians neither occupied nor worked some of these agricultural lands the Indian agent has thought it wise to lease a portion thereof. The proceeds have been devoted by him, as we understand it, for the benefit of the Indians.

The Southern Pacific Railroad runs through this reservation. Its officers claim that by virtue of law it is entitled to the odd sections of land within this reservation. There are about 100 Indians on the reservation, nearly all at their village called Potrero. This is at the mouth of a cañon about 5 miles long and of considerable breadth. There is a nice stream of water flowing from two cienegas, one of which is a little ways up the cañon and the other at nearly its head. If all the land of and near this cañon, and the small one adjacent called Hatheway's cañon, could be secured to the Indians, it would make as desirable location for them as their most earnest friend could wish.

Unfortunately for the Indians, whites have seen how valuable the land with the water is, and have settled upon some of the railroad lands in the cañon and have fled on the water. W. S. Hatheway settled on what, by private survey, is determined to be section 27 in township 2 south, range 1 east, San Bernardino meridian, and developed considerable water on that section and in the cañon farther up. He was ejected from these lands after he had spent, as he claims, \$1,500. He also insists that his ejection was unlawful, as he was on railroad lands, and that he has a claim against the Government. C. F. Jost and Margaret Jost, his wife, settled on section 25 some years ago and made very valuable improvements, having good buildings, a good orchard, and having developed by means of ditches a large supply of water. They were also ejected, they claim, unlawfully, and bring a larger claim

against the Government for damages. The land occupied by them is right in the heart of what we think ought to be Indian reservation, and is especially valuable because of the water that can be developed upon it. Richard Gird and John G. North, appreciating the great value of the water in Hatheway's cañon and the cañon above the Potrero, procured an interest some years ago on sections 15 and 23, which are toward the upper end of the cañon, upon which there are valuable cienegas and which were railroad lands. They also obtained rights to surplus water from Hatheway and from the Josts. They also took steps which resulted in their getting title to east half of section 36, they claiming it was a school section to which they could get title. Nearly all of the houses, irrigating ditches, and very considerable vineyards and orchards of the Indians are on this section. To lose section 36 would be an irreparable loss to this village.

Gird and North also built irrigating ditches in the upper end of the cañon, established a field of alfalfa and put out an orchard, and spent considerable sums of money. They, too, were evicted; claiming their eviction was unlawful, and their losses great, they have commenced suit to recover damages, and also to determine their right to the water and the lands. We fear if the claims of these various parties are pressed to a hearing in the various courts the result will be very disastrous to the Indians as affecting their rights to both water and land. We, then, were confronted by all these conflicting interests which left the Indians and the whites in that neighborhood all in a state of great uncertainty. To state the situation briefly, we found the Indians the acknowledged holders of lands they did not want or work, and the whites insisted upon rights to lands that are absolutely essential to the Indians, if a reservation is to be established there. The problem was, how, by means of the lands not wanted to obtain the title to lands that were wanted freed from all claims, and at the same time relieve the Government of threatened and actual litigation by the evicted parties. Believing that we could make such an arrangement, but having some doubt of our authority, we, on the 16th of March, asked for instructions. Upon the receipt of your telegram and letter of instructions of April 1, 1891, "to go ahead" we have spent much time and anxiety to bring about a settlement of all these conflicting interests. The result is, that we have a written offer from C. O. Barker who holds a power of attorney from W. S. Hatheway, C. F. Jost and Margaret Jost, Richard Gird and John G. North, authorizing him to do so, of a release of their several interests, and an exchange of their lands on the following basis:

The said Hatheway to relinquish all his claim to lands in township 2 south, range 1 east, and in township 2 south, range 2 east, San Bernardino meridian, and all water rights of every kind, and all claims for damages by reason of eviction or otherwise; said Hatheway to receive a patent therefor to the north half of section 14, in township 3 south, range 1 east, San Bernardino meridian.

Said C. F. Jost and Margaret Jost offer to exchange all their interest in and to lands and water rights of every sort and nature in townships 2 south, range 1 and 2 east, San Bernardino meridian, and all claims for damages, because of eviction or otherwise, the said Jost and Jost to receive in exchange therefor a patent to the west half of section 6, township 3 south, range 1 east, San Bernardino meridian.

Said Richard Gird and John G. North offer to relinquish all their right in and to sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, in township 2 south, range 1 east, San Bernardino meridian, and sections 6, 7, 18, 19, 30, and 31, in township 2 south, range 2 east, San Bernardino meridian, and to any and all damages growing out of eviction or otherwise. Said Gird and North to receive in exchange therefor patents to and for the south half of section 3, northwest quarter of section 8, east half of northeast quarter of section 8, the northeast quarter of section 10, the southeast quarter of the northwest quarter of section 10, east half of the southeast quarter of section 10, the northwest quarter of the southeast quarter of section 10, section 18, and the north half of section 20, all in township 3 south, range 1 east, San Bernardino meridian, as will appear more in detail in a written proposition signed by the said Barker, and acknowledged November 11, 1891, transmitted herewith and marked Exhibit L. Said proposition will hold good only until the 1st day of January, 1892.

We also, at an early date, opened negotiations with the officers of the Southern Pacific Railway Company, with a view of effecting an exchange with them. The outlook at first was very forbidding, and legal difficulties presented themselves to the officers of the railroad company. We were obliged to make several visits to San Francisco in the course of the negotiations. We finally have a proposition from them to release their right in and to the following lands, viz:

Section 13, east half of section 15, sections 23 and 25, east half of section 27, and section 35, all in township 2 south, range 1 east, San Bernardino meridian. Also, all of section 31 in township 2 south, range 2 east, San Bernardino meridian; they to receive in exchange therefor patents to the following lands:

All of section 18, except northwest quarter of northwest quarter; sections 20 and

32 in township 2 south, range 1 east, San Bernardino meridian; southeast quarter of section 20, section 32 in township 2 south, range 2 east, San Bernardino meridian. Also, northeast quarter and south half of southwest quarter of section 4; the northwest quarter of southeast quarter and south half of southeast quarter of section 6, in township 3 south, range 1 east, San Bernardino meridian; southwest quarter section 18, northwest quarter section 20, northwest quarter section 22, south half of section 28, in township 3 south, range 2 east, San Bernardino meridian. A copy of the said agreement is transmitted herewith, marked Exhibit G.

Wellwood Murray and Eliza E. Murray are the owners of the north half of section 1, township 3 south, range 1 east, San Bernardino meridian (less 10 acres near the northwest corner thereof, which is owned by Mrs. Toutain). This land is needed in the proposed reservation; it is near the present Indian village, and could readily be placed under water. The Murrays are willing to exchange it for the east half of section 10 in township 4 south, range 4 east, San Bernardino meridian, (Agua Caliente), as will be seen by their proposition transmitted herewith, marked Exhibit H. The land on section 10 is not needed. The Murrays supposed they had made an arrangement with Mrs. Toutain, by which she would deed to them her 10 acres, so that they could offer to exchange half section for half section; but, as she, though consenting orally, has declined to sign any papers, they propose to pay over \$100 to the Indian Department, to enable it to obtain Mrs. Toutain's claim to the 10 acres, which she will probably be glad to sell when she finds that the reservation will be established anyway. She will have no water and no way of getting any on her 10 acres. She is a woman who has given the Indians and the Indian agent much trouble; but we think it exceedingly desirable that the exchange be made with the Murrays.

The right of way for the irrigating ditch on section 10, township 4 south, range 4 east, San Bernardino meridian, should be reserved in the patent.

As will be observed, to bring about these various exchanges requires a larger area of land surrendered than we get for the Indians in return, but in making the exchange we avoid the delays and hazards of litigation, we secure the release of large claims for damages growing out of unlawful evictions, and secure to the reservation exceedingly valuable water rights. This commission, if it was dealing with reference to property owned by its members as individuals, would not hesitate for a moment in making these exchanges, and we urge that the exchanges be made as herein indicated and that they be made at once; for it will be observed that Mr. Barker's proposition holds good only until January 1, 1892, and we have reason to think that some of the parties who have given him a power of attorney would not be sorry if the settlement, on the basis herein named, was not effected.

We therefore recommend that the following described lands be set aside for the use of the Mission Indians now on the lands and for those to be hereafter placed thereon, which we estimate at about two hundred altogether. Said reservation should be called Morongo, viz:

Sections 10, 12, 13, 14, east half of sections 15, 22, sections 23, 24, 25, 26, east half of section 27, northwest quarter and east half of section 34, sections 35 and 36, all in township 2 south, range 1 east, San Bernardino meridian; also, the north half of section 1, except 10 acres in the northwest corner thereof, and the north half of section 2, all in township 3 south, range 1 east, San Bernardino meridian; also, sections 18, 30; and 31 in township 2 south, range 2 east, San Bernardino meridian; also, section 6 in township 3 south, range 2 east, San Bernardino meridian.

We also recommend that all the lands not herein mentioned as retained for a reservation or for the purposes of making the exchanges herein indicated, which are in the reservation as now established called Morongo, be restored to the public domain.

The lands selected by this commission will not exceed in area the amount prescribed by the act of Congress creating this commission. The aggregate of the lands retained is much smaller than in the reservations as now established. We have proceeded on the theory that the Southern Pacific Company would soon be, if not already, entitled to the odd sections within the railroad limit. This would reduce the acreage very largely. We also have thrown out worthless desert and mountain lands, thinking it unwise to give the Indians the appearance of holding a disproportionate quantity of lands. We have, however, retained sufficient lands for their reasonable needs. With their rights permanently settled, we hope the condition of the Mission Indians will materially improve.

All of which is respectfully submitted.

ALBERT K. SMILEY.
JOSEPH B. MOORE.
CHARLES C. PAINTER.

A BILL to authorize the Secretary of the Interior to carry into effect certain recommendations of the Mission Indian commission, and to issue patents for certain lands.

Whereas the act approved January twelfth, eighteen hundred and ninety-one, entitled "An act for the relief of the Mission Indians in the State of California," made it the duty of the commissioners therein authorized to be appointed "to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements;"

And whereas said commissioners were authorized to appraise the value of the improvements belonging to any person to whom valid existing rights had attached under the public-land laws of the United States, where such improvements were situated within the limits of any reservation selected by the commissioners, subject to the approval of the Secretary of the Interior;

And whereas it was further provided in said act that, in case any land should be selected to which any railroad company should be entitled to receive a patent, such railroad company should, upon releasing all claim and title thereto and on the approval of the President and Secretary of the Interior, be allowed to select an equal quantity of other land in lieu thereof;

And whereas no provision was made whereby lands claimed by private persons through titles derived or sought to be derived from railroad companies or other sources than the public-land laws could be so released and exchanged;

And whereas the commissioners appointed under said act have reported, among other things, that certain lands are in the occupation of Indians and are needed for their use, which certain persons have improved, and on which they have developed valuable water rights, expecting to obtain title from the railroad companies or to which they had obtained title from the State of California, and that said persons are willing to exchange said lands for other lands heretofore reserved for the use of the Mission Indians, but which lands are no longer needed for such purpose;

And whereas the report and recommendations of said commissioners have been approved by the Secretary of the Interior and the President, "except so much thereof as relates to the purchase of lands from and exchange of lands with private individuals, which is also approved subject to the condition that Congress shall authorize the same." Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized and empowered to carry into effect the recommendations of the said Mission Indian commissioners relating to the exchange of lands with private individuals, and to cause patents in the usual form to issue for the lands recommended to be given to such individuals in exchange for lands and improvements released and relinquished for the use of the Indians.

SEC. 2. That the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, to enable the Secretary of the Interior to purchase certain lands and improvements, for the use and benefit of said Mission Indians, as approved by said Secretary and the President.

REDLANDS, CAL., November 30, 1891.

DEAR SIR: Understanding that it is desired by you that in the formation of the reservation about to be made at Banning the north half of section 1 in township 3 south and range 1 east, in San Bernardino meridian is required, we offer to exchange this parcel of land (less 10 acres already deeded near the northwest corner), being 310 acres, for the east half of section 10, in township 4 south and 4 east in San Bernardino meridian, and situate near Agua Caliente No. 2, reservation in San Diego County, Cal., and to enable the Commissioners to make this exchange, and to possibly secure the remaining 10 acres, we agree to pay the sum of \$100 to the Commissioners on demand, or to the Secretary of the Interior.

FOR T. M. PARSONS.

Being duly authorized.

WELWOOD MURRAY.
ELIZ. E. MURRAY.

The UNITED STATES INDIAN COMMISSIONERS.

EXECUTIVE MANSION,
December 29, 1891.

The report of the Mission Indian Commission appointed under the act of January 15, 1891 (26 Stat., 712), is hereby approved, except so much thereof as relates to the purchase of lands from and exchange of lands with private individuals, which is also approved subject to the condition that Congress shall authorize the same.

All of the lands mentioned in said report are hereby withdrawn from settlement and entry until patents shall have issued for said selected reservations, and until the recommendations of said Commission shall be fully executed, and by the proclamation of the President of the United States, the lands or any part thereof shall be restored to the public domain.

BENJ. HARRISON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 29, 1891.

Under the act of Congress and as above provided.
Approved,

JOHN W. NOBLE,
Secretary

DEPARTMENT OF THE INTERIOR,
Washington, December 30, 1891.

SIR: I return herewith the report of the Mission Commission and accompanying papers received with your communication of 19th instant.

By the order of the President of the 29th instant, attached to said report, you will see that the same is approved, except so much thereof as relates to the purchase of lands from and exchange of lands with private individuals, which is also approved subject to the condition that Congress shall authorize the same and that all the lands mentioned in said report are withdrawn from settlement and entry until patents shall have issued for said selected reservations, and until the recommendations of said Commission shall be fully executed, and by the proclamation of the President the lands or any part thereof shall be restored to the public domain.

The above action has this day been communicated to Mr. Painter by telegraph, with directions to advise the Commission and parties interested.

I also inclose herewith a communication of 29th instant from the Assistant Attorney-General for this Department to whom the report was referred, and have to direct that a draft of a bill be prepared authorizing the Secretary of the Interior to purchase or exchange the lands as recommended.

You will also please prepare a list of the lands mentioned in said report of the Commission which are to be withdrawn by the order of the President for file in the General Land Office.

This list should be sent without delay.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

TEMECULA.

This reservation, as created by executive order, comprised sections 26, 27, 28, 34, and 35, in township 8 south, range 2 west, San Bernardino meridian. Owing to an almost entire lack of water, the land is suitable only for dry farming, and can be utilized alone for such grains as barley and wheat, which are made by the winter rains.

The Indians being unwilling to remove, the Commission recommends the setting apart of these sections as a permanent reservation for them, believing that with such crops as they will be able to raise, and the wages they can earn as laborers on the adjoining ranches, they can make a comfortable living. The little water they have has its rise on section 36, 160 acres of which ought to be added to the selections the Commission has made. The former agency clerk and physician, Dr. Ferree, purchased this land from the State that it might be held for this purpose, and is willing to sell it to the Government for what it cost him, including taxes and interest, and the Commission recommends that it be purchased and added to the reservation.

This land is described as follows:

The north half of the northwest quarter, the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section 36, township 8 south, range 2 west, San Bernardino meridian. This purchase can be made, we believe, for a sum not exceeding \$500.

There are at this place about 160 Indians, being a remnant of those who were ejected from the Temecula Valley some years ago.

The Commission recommends that the Government pipe the water from the above mentioned quarter sections to the schoolhouse, and to a central point of the village, under the supervision of the Indian agent, at an estimated cost of \$2,000.

LOS COYOTES.

The reservation of Los Coyotes was set apart by executive order.

It consists of section 3 and fractional section 4, in township 11 south, range 4 east, San Bernardino meridian, and all of township 10 south, range 4 east, San Bernardino meridian, except the following described lands: The south half of the north-east quarter and the southwest quarter of the northeast quarter and the north-east quarter of the southwest quarter of section 20; which has been patented to Hiram Keyes. Also, the west half of the southwest quarter of section 20, and the southeast quarter of the southeast quarter of section 19, and the northeast quarter of the northeast quarter section 30, patented to Eugene Paumenberg.

Also the northwest quarter of southeast quarter and the fractional southwest quarter, section 30, which is patented to one Helm. Also the north half of north-east quarter, section 31, and the north half of northwest quarter, section 32, to east quarter, section 31, and the north half of northwest quarter, section 32, to Jacob Jora. Also the east half of the northeast quarter and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter, section 26, patented to Robert Fain. Also the east half of southwest quarter and the southwest quarter of southwest quarter, section 26, and the northwest quarter of northwest quarter, section 35, patented to James Tally. Also the southwest quarter of the northwest quarter, section 35, and the southeast quarter of northeast quarter and the north half of southeast quarter; section 34, patented to Chat: Helm. Also parts of sections 31, 32, 33, south of the boundary line of the Rancho San José del Valle.

These entries were made before the reservation was set apart, but long subsequent to the time when the lands were in possession of the Indians, and the injustice and cruel wrongs inflicted upon them and the annoyances to which they are still subjected by one, especially of the settlers, give good cause to the Indians for bitter complaint. Chatham Helm was the first white settler in this cañon, and, unfortunately, his filings were allowed and his claim perfected.

His house stands in the narrowest part of the cañon, and his claim separates the Indians below him at San Ysidro from their pasturage lands above, as also from the Indian village of San Ignacio, on the eastern boundary of the township: It is impossible for the Indians of San Ysidro to get their stock on to their pastures without passing through a gate placed within a few feet of Helm's house, and kept closed. This he will not suffer them to do. He has been a great annoyance to the Indians also in regard to their use of water. The survey the Commission caused to be made discovered the fact that he was claiming a 40-acre piece belonging to the Indians, recovering which they are enabled to put the entrance to their ditch some distance farther up, giving them some relief in the matter of irrigation.

The Commission believes that if the claims of Helm and Tally could be extinguished by purchase or otherwise, it would be a great advantage to these Indians, removing an obstacle to the best use of their land, and a serious obstacle in the way of their progress. To do this would require about \$2,500 for Helm's place and \$2,000 for Tally's.

There are in all about 150 Indians in the two villages, which are 5 or 6 miles apart. They have sufficient good arable land for their agricultural needs, which, with their grazing lands, if made accessible would give them ample support.

There is no school at either village, and few of the children go from home to school.

The Commission recommends the setting apart permanently for them the above described land, and deems the extinguishment of Helm's and Tally's claim as of great importance to the Indians. The holdings of the other settlers do not block up the cañon as do those of these two men, more especially that of Helm.

I, C. O. Barker, acting under and in pursuance of a power of attorney duly executed by Walter S. Hathaway on the 3d day of March, 1891, do hereby agree to deliver to the United States or its authorized representatives a full and complete relinquishment to all the rights, title, and interest of said W. S. Hathaway to any and all land or lands lying within the townships known and described as townships 2 south, ranges 1 and 2 east, San Bernardino meridian, and more especially to that portion locally known as the Hathaway Cañon, and I further agree to furnish to the United States or its authorized representatives a full and complete relinquishment of all the rights, title, and interest in and to any and all of the water in said Hathaway Cañon and any and all water, either from creek, stream, spring, or cienega rising upon or flowing through or over any of the above-described land; and I further agree to furnish a full and complete relinquishment of any and all claims that the said W. S. Hathaway may have either in law or equity against the United States or any agent thereof for having been evicted from certain unsurveyed lands, to wit, the unsurveyed portion of township 2 south, range 1 east, San Bernardino meridian, ascertained by private survey to be section 27, or for any damage that the said Hathaway may have suffered by reason of the destruction of his improvements and the loss of the use of the land, for and in consideration of a good and sufficient patent, without cost to said Hathaway, for the land known and described as the north half of section 14, township 3 south, range 1 east, San Bernardino meridian, and acting in pursuance of an agreement entered into on the 6th day of August, 1889, between C. F. Jost and Margrett Jost, his wife, parties of the first part, and C. O. Barker, party of the second part. I further agree to deliver to the United States a full and complete relinquishment of all right, title, interest, or claim of the said C. F. Jost and Margrett Jost, his wife, to any and all lands lying within townships 2 south, ranges 1 and 2 east, San Bernardino meridian, and to any right, title, or interest to any and all of the water, either from creek, stream, spring, or other water source, rising on or flowing through or over any of the land in the above-described township; and of any and all claims for damages that the said C. F. Jost and Margrett Jost may have either in law or in equity against the United States or any of its agents for eviction from any portion of the above-described lands, or for any loss by reason of the destruction of their improvements, or the loss of the use of any portion of the above-described lands. For and in consideration of a patent for the west one-half of section 6, township 3 south, range 1 east, San Bernardino meridian, to be issued by the United States to said C. F. Jost and Margrett Jost.

And acting under and in pursuance of a power of attorney, executed on the 5th day of September, 1889, by Richard Gird and John G. North, I do hereby further agree to furnish a full and complete relinquishment to all the right, title, and interest of the said Richard Gird and John G. North to any and all lands lying in what is locally known as the Hathaway Cañon in township 2 south, ranges 1 and 2 east, San Bernardino meridian, including sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, in township 2 south, range 1 east, and sections 6, 7, 18, 19, 30, and 31, in township 2 south, range 2 east, San Bernardino meridian, and to all the right, title, and interest of said Richard Gird and John G. North to any and all water from any creek, stream, spring, cienega, or other water source whatsoever, rising on or flowing through or over any of the above-mentioned lands, and of any and all claims against the United States or any of its agents for damages for eviction from any portion of the hereinbefore-described lands, or for the damage to or destruction of improvements and loss of use of land.

For and in consideration of a patent or patents to be issued to the said Richard Gird and John G. North, for the south half of section 8, the northwest quarter of section 8, the east half of northeast quarter of section 8, the northeast quarter of section 10, the southeast quarter of northwest quarter of section 10, the east half of southeast quarter of section 10, the northwest quarter of the southeast quarter of section 10, all of section 18, and the north half of section 20, all in township 3 south, range 1 east, San Bernardino meridian. And for the further consideration that the Morongo Reservation shall be confined to sections 13, 14, 23, 24, 25, 26, 35, and 36, and the east half of sections 15, 22, 27, and 34, in township 2 south, range 1 east, San Bernardino meridian, and section 31 in township 2 south, range 2 east, section 6, in township 3 south, range 2 east, and the north half of sections 1 and 2 in township 3 south, range 1 east, San Bernardino meridian. And I do further agree that the United States or its authorized representatives shall have the option of accepting this offer at any time prior to the 1st day of January, 1892.

C. O. BARKER.

For a valuable consideration I hereby consent that sections 10, 12, west half 22, west half section 34, all in town 2 south, range 1 east, San Bernardino meridian, and sections, 18 and 30 in town 2 south, range 2 east, San Bernardino meridian, may be included in the Morongo Reservation.

December 3, 1891.

STATE OF CALIFORNIA, *County of San Bernardino*, ss:

On this 11th day of November, in the year 1891, before me, D. W. Herlihy, a notary public in and for said county, residing therein, duly commissioned and sworn, personally appeared C. O. Barker, known to me to be the person described in, whose name is subscribed to, and who executed the within instrument, and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.]

D. W. HERLIHY,
Notary Public.

This acknowledgment covers changes in contract in five different instances in regard to boundaries of said land.

ATTORNEY FOR THE MISSION INDIANS.

LETTER

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

A copy of a letter from the Attorney-General, and its inclosures, submitting an estimate for an appropriation to continue the employment of a special attorney for the Mission Indians of southern California.

JANUARY 26, 1892.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT,
January 25, 1892.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Attorney-General, of the 21st instant, and its inclosures, submitting an estimate for an appropriation of \$2,500 to enable the Attorney-General to continue the employment of a special attorney for the Mission Indians of southern California, upon the recommendation of the Secretary of the Interior.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 21, 1892.

SIR: Inclosed is a copy of a letter of January 19, 1892, from the Secretary of the Interior, transmitting a copy of a letter of January 14, 1892, from the Commissioner of Indian Affairs, and of its inclosures. They relate to an estimate of an appropriation for employing a special attorney for the Mission Indians of Southern California.

In the Indian act, August 19, 1890, an appropriation of \$2,500 was made for this purpose. Of this appropriation there is available \$620.15. The Commissioner of Indian Affairs asks that steps be taken with a view of obtaining from Congress an additional appropriation of \$2,500 or \$3,000 to continue the service.