

**SECRETARY OF THE INTERIOR JOHN W. NOBLE'S  
APPOINTMENT OF COMMISSIONERS  
APPROVED FEBRUARY 4, 1891**

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,

WASHINGTON, D. C., *January 31, 1891.*

A. K. SMILEY, Esq., *Redlands, California.*  
JOSEPH B. MORSE, Esq., *Lapeer, Michigan.*  
Prof. C. C. PAINTER, *Washington, D. C.*

GENTLEMEN:

The act "for the relief of the Mission Indians in the State of California," approved January 12, 1891, provides, in part, as follows:

"That immediately after the passage of this act the Secretary of the Interior shall appoint three disinterested persons as 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.

"SEC. 2. That it shall be the duty of said commissioners 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 the 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.

"SEC. 3. That the commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior." \* \* \*

The Secretary of the Interior having appointed you commissioners to discharge the duties imposed by said act, the following instructions are issued for your guidance in the performance of your important work.

As you are doubtless aware, these Indians received their name—Mission Indians—from their relation to the early Catholic missions on the Pacific coast, the first of which was established in 1769.

The original idea on which these missions were maintained seems to have been that so soon as the Indians should be brought, as converts of the church, into a condition for self-support, the lands which they were occupying and cultivating should be allotted as their own. Owing to the docility of the Indians and the profit of the system, it was continued up to the date of the secularization act of 1833, without recognition of the individual rights of the Indians. (See annual report of this office for 1875, pp. 9 and 10.)

This act was passed for the ostensible purpose of carrying out the design of the missions. The result, however, seems to have been the division of the lands among a few influential Spanish and Mexican families (see report of Commissioner Wetmore, p. 4). It is to be observed, however, that by the fundamental laws of the Mexican Republic of 1824, the regulation of 1828, and the regulation of the departmental legislature, one condition was that in making private grants of lands, the lands granted must be vacant lands, and another that such grants must be without prejudice or damage to the Indians. Under the treaty of Guadalupe Hidalgo, the rights of these Indians as existing previously to the acquisition of California by the United States, were guaranteed. The State of California also at an early day (April 22, 1850), enacted that persons and proprietors of lands on which the Indians were residing should permit such Indians to peaceably reside on such lands unmolested, and that the white person or proprietor might apply to have a sufficient amount of land for the necessary wants of such Indians, including their village, set off for such Indians.

It does not appear, however, that the Indians have ever availed themselves of this provision.

Southern California escaped the effects of the gold fever, and the tide of emigration did not turn in that direction until about the Fall of 1867.

In the annual report of this office for the year 1875 (p. 10) the effect of the emigration which set in during the year 1867 upon the Indians, is referred to as follows:

"Gradually, however, for the past eight years, Southern California has been filling up by emigration; Spanish and Mexican grants have been "determined" in such a way as to cover choice tracts wherever found; large ranches have been cut up and the desirable portions of public domain pre-empted, and thus all available agricultural lands have been seized or occupied by individual owners, who, in conformity to law, have become possessed of the lands on which the remnants of a few thousand Mission Indians are making their homes in San Diego and San Bernardino counties. So long as the pre-emptors and purchasers did not require their lands for use or sale, the Indians were allowed to remain undisturbed and in blissful ignorance of the fact that the place they called home had by law passed to the ownership of another. Of late, under the increasing demands for these lands, writs of ejectment are being procured by which the Indians are forcibly dispossessed and turned adrift in poverty and wretchedness."

January 31, 1870, on the representation of Lieutenant A. P. Greene, acting agent, indorsed by Superintendent B. C. Whitney, six townships were set apart for the permanent homes of these Indians and withdrawn from public sale.

The Commissioner of Indian Affairs in his report for 1875 (p. 11), states that "the setting apart of these reservations received the most strenuous, united, and persistent opposition of the citizens and press of California. The proceeding was represented as an enormous swindle upon the Government and a hardship and outrage upon the Indians, and numerous petitions and remonstrances, signed by leading citizens, were forwarded to the President; and the Indians themselves, for

whose benefit alone the reservations had been created, were induced to ask not to be sent thither but to be "let alone" upon the lands they were then occupying, and which they were left to believe would remain permanently their homes.

In accordance with this demand of public opinion in California, Commissioner Parker suggested to the Department the propriety of restoring the Pala and San Pasqual reserves to the public domain, which was accordingly done by executive order of February 17, 1871, and this last opportunity of furnishing these Indians with homes by substituting public lands in California for those in the title to which the Government had failed to protect them was lost.

This appears to have been the first attempt to establish a reservation or reservations for these Indians. As shown above, the reservation was abolished in a little over a year.

In 1873, John G. Ames was appointed a special agent to inquire into the condition and necessities of the Mission Indians, and submitted his report October 28, 1873 (copy herewith).

In 1874, Charles A. Wetmore was appointed a special agent to proceed to southern California and make a thorough inquiry into all the facts and circumstances affecting these Indians and to devise some plan whereby favorable legislation could be had for their relief. He submitted his report January 9, 1875 (copy herewith).

The only result of these investigations appears to have been the establishment, by executive order of December 27, 1875, of nine reservations.

In 1876 and subsequent years additional reservations were established.

July 13, 1883, Mrs. Helen Jackson and Abbot Kinney, Esq., special agents, made an exhaustive report upon the condition and needs of the Mission Indians, their recommendations being the basis of the act of January 12, 1891.

Regarding the reservations, they say—

"All the reservations made in 1876, and that comprises nearly all now existing, were laid off by guess by the surveyor in San Diego on an imperfect county map. These sections thus guessed at by the surveyor were reported by the Commissioner to the Interior Department, set aside by executive order, and ordered to be surveyed. When the actual survey came to be made, it was discovered that in a majority of cases the Indian villages intended to be provided for were outside the reservation lines, and that the greater part of the lands set apart were wholly worthless. The plats of these reservations are in the Surveyor-General's office at San Francisco; on each of them was marked by the surveyor an additional line in color, showing what tracts ought to be added to take in the Indian villages and fields."

There are now twenty reservations for these Indians, as shown by the accompanying map.

According to the report of Agent Rust, of May 9, 1890, there are thirty-seven separate villages of Mission Indians, six (524 Indians) being on lands owned by private parties; eight (615 Indians) on patented grants, and three (115 Indians) on Government lands; one village (48 Indians)

being partly on private and partly on Government lands; according to Agent Rust the number of Indians on reservations is 1,841; total 3,143.

Under the second section of the act it is your duty to select a reservation for each band or village of Mission Indians, "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."

In the case of each of the existing reservations, you will ascertain whether the reservation as described in the executive order creating it (and as modified by subsequent orders) contains all the land to which the band is entitled under the above provision, and in the event that such is not the case, you will submit a description of the reservation as it should be made. Such description should be made according to the public surveys if possible, and so that the lines can readily be established upon the ground from the description given. In case the existing reservation contains lands not needed or occupied by the Indians, and not available for the removal of other Indians thereto, a reduced reservation should be reported. Where a village or band is located upon public lands a reservation, complying as far as practicable with the requirements of the second section, should be selected and properly described.

Your attention is called to the following clause in the second section of the act:

"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." \*

You will examine the title to all such lands and ascertain to what extent, if any, the rights of the Indians are guaranteed or protected in the original grant or conveyance. If the Indians are willing to remove to another reservation, where they can be accommodated, such removal will be advisable, as they can then be given allotments and valid titles, which can not be done as to lands in which they have only the right of occupancy. If they are unwilling to remove, or if there are no lands available upon which to locate them, the boundaries of the lands occupied should be accurately defined as required by the act. The same course should be pursued as to private lands other than confirmed grants.

You are authorized to employ a competent surveyor and the necessary assistants to define the boundaries of the selected tracts, and to determine the legal subdivisions upon which Indians are located. Care should be taken to secure the services of a thoroughly honest, reliable, and competent surveyor.

The act requires you to appraise the value of the improvements be-

longing to any person to whom existing valid rights have attached under the public land laws of the United States or to the assignee of such persons, where such improvements are situated within the limits of any reservation selected and defined by you. Such appraisement is subject to the approval of the Secretary.

In order to acquire existing valid rights settlement must have been made on surveyed public land before it was set aside for Indian purposes. It is understood that in some cases settlement and improvement were made on unsurveyed lands before the reservation was created. In these cases the settlers are recognized as having equitable rights only. Therefore, where improvements of settlers are located within existing or selected reservations, it should be ascertained whether such improvements were made before the land was appropriated for Indian purposes, whether it was vacant land—that is, not occupied by Indians at the date of settlement—and whether it was surveyed or unsurveyed. The nature and extent of the improvements should be shown and their value carefully estimated in detail.

Where settlers are upon lands not needed for the Indians it will doubtless be advisable to exclude such lands from the reservation as defined by you. Where valid rights have attached and the lands are needed for the Indians, the value of the lands as well as of the improvements should be given.

Care should be taken that all tracts to which valid rights have attached are accurately described. For your information I inclose copies of office reports of October 11, 1886, and March 9, 1887, relative to certain alleged trespassers whose removal from the Mission reservations was directed by office letter of March 16, 1887 (copy also inclosed).

The third section provides—

“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 the 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 shall determine.”

Under the act of March 3, 1871 (16 Stats., 573), the Southern Pacific Railroad Company was granted the odd sections within twenty miles on each side of its road. Some of the existing reservations, and other lands occupied by the Indians fall within this grant. In some cases the lands have not yet been subdivided and the rights of the company have not yet attached, but as soon as the surveys are extended over the lands the title of the company will doubtless be complete.

If odd sections are retained or selected within the limits of the grant for reservation purposes, you will, if practicable, confer with the proper officers of the company with the view of ascertaining whether they will release the company's claim as contemplated by the act. Should the officers indicate that the company will decline to release its claim the reservations should be so defined as to exclude the odd sections within

the grant as far as possible. It is not apprehended, however, that there will be any difficulty in dealing with the company, as it has always manifested a desire to treat the Indians fairly, and can no doubt select other lands equally valuable.

You will observe that the eighth section of the act confers upon the Secretary of the Interior power to authorize the construction of ditches and other appliances for irrigating purposes through the reservations.

You will report whether any such appliances have been constructed through or across any of the reservations selected, and make such suggestions and recommendations regarding the subject of irrigation in any of the selected reservations as your observations may seem to require.

It is desired that you give as full a description as possible of the character of the land in each reservation, with the respective quantities of arable, grazing, and other lands. Your opinion as to the willingness of the Indians to take allotments as provided in the act, and the advisability of making such allotments based upon your observation during the progress of your work is requested.

The object of the act of January 12, 1891, is to secure the determination and adjustment of the rights of the Mission Indians as regards their lands, and also of the rights and claims of settlers in conflict therewith. I need not remind you that the accomplishment of that result depends in great measure upon your efforts, and I am confident that you will exercise all possible care and patience in the investigation in order that a satisfactory and final settlement of the troubles which have so long beset these Indians may be had.

You will each be allowed compensation at the rate of \$8 per diem while actually engaged in the work required of you, in addition to your actual and necessary traveling expenses—your salaries to commence on the day you take the oath of office and enter upon your duties.

Mr. Painter has been designated as disbursing officer of the commission and will be required to give bond in the penal sum of \$5,000. When he shall have filed his bond as disbursing officer, special instructions will be given him for his guidance in preparing and rendering his accounts in order that they may conform strictly to the regulations of the Department governing such matters. You are authorized to visit the local land officers and the office of the Surveyor-General of the State of California, if found necessary, in order to obtain information as to the status of lands, etc.

Upon the completion of your labors you will submit a full and detailed report thereof to this office.

Very respectfully,

T. J. MORGAN,  
*Commissioner.*

Approved February 4, 1891.

JOHN W. NOBLE,  
*Secretary.*