

1-29-1887

Letter from the Secretary of the Interior, transmitting, in response to Senate resolution January 21, 1887, report of the Commissioner of the General Land Office on the withdrawal from settlement of certain lands in Oregon.

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Exec. Doc. No. 60, 49th Cong., 2nd Sess. (1887)

This Senate Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

In response to Senate resolution January 21, 1887, report of the Commissioner of the General Land Office on the withdrawal from settlement of certain lands in Oregon.

JANUARY 29, 1887.—Referred to the Committee on Public Lands and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 28, 1887.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate of the United States of 21st instant, as follows:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to advise the Senate, at his earliest practicable convenience, whether four townships or any other quantity of the public lands in Wasco County, State of Oregon, has within the past year been withdrawn from settlement and attached to the Warm Springs Indian Reservation; and, if so, upon what authority and for what purpose has this been done?

In reply to the above resolution I have the honor to invite attention to the inclosed copy of report of 27th instant from the Commissioner of the General Land Office, to whom the matter was referred, showing the action taken by his office in relation to said lands and the reasons given therefor.

Accompanying the report of the Commissioner is a map of the State of Oregon, on which is shown in red color the Warm Springs Indian Reservation as surveyed; the boundary of the reservation as it appears to be called for by the treaty is also indicated on said map by blue lines; and the four townships wherein there has been a temporary suspension by the action of the General Land Office of disposals of lands until the correct boundary line of the reservation shall have been determined, under instructions of this Department, are indicated in yellow.

Copies of the correspondence relating to the subject are also herewith inclosed.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 27, 1887.

SIR: I have the honor to acknowledge the receipt, by reference from the Department for early report, of a resolution of the Senate of the United States dated January 21, 1887, directing the Secretary of the Interior to advise the Senate whether four townships or any other quantity of the public lands in Wasco County, State of Oregon, has been withdrawn from settlement and attached to the Warm Springs Indian Reservation within the past year, and, if so, upon what authority and for what purpose it has been done.

In reply I have the honor to report that by letter from the Secretary of the Interior dated October 5, 1885, with letter from Commissioner of Indian Affairs inclosed, the attention of this office was called to alleged encroachments of the public surveys upon the Warm Spring Indian Reservation on the north, and upon examination of the records of this office, in connection with the treaty with the Warm Springs Indians dated June 25, 1855, Stats. 12, p. 963, it was evident that the public surveys in townships 5 and 6 south, of ranges 9 and 10 east, Willamette meridian, Oregon, had encroached upon the reservation, owing to the fact that in 1871, when the survey of the north boundary of the reservation was made, the surveyor stopped several miles short of the summit of the Cascade Mountains, described in the treaty as the northwest corner of the reservation. Subsequently the public surveys were extended over the townships above named, and the plats were filed in the United States local land office.

The attention of this office having been called to the matter, an order was sent to the land officers on October 9, 1885, directing the suspension of all disposals of land in the four townships named, on the ground that the official records indicated that the greater part of said townships would fall within the reservation as defined in the treaty.

For the information of the Department I inclose map of Oregon with the reservation shown thereon, as heretofore surveyed, in red color, and also showing by a blue line what appears to be the line called for by the treaty. The four townships withdrawn as above stated are shown in yellow color.

The Senate resolution is herewith returned.

Very respectfully,

WM. A. J. SPARKS,
Commissioner.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, October 5, 1885.

SIR: I transmit herewith copy of letter of 3d instant from the Commissioner of Indian Affairs, with inclosure noted therein, in relation to alleged defective surveys of the public lands adjacent to the Warm Springs Indian Reservation whereby the lands of said reservation are encroached upon and made to appear as public lands. These alleged errors in survey are stated to involve the establishment of the northern, southern, and western boundaries of said reservation.

Agreeably to the recommendation of the Commissioner of Indian Affairs, you are hereby instructed to cause the necessary steps to be taken at once to ascertain whether any of the lands embraced within the boundaries of said reservation as defined by treaty have been surveyed as public lands, and, if so, that the surveys be corrected

in the field, so as to separate the reservation from the public lands by permanent marks wherever the surveys have been extended up to the reservation line, or over and beyond it into the reservation.

Very respectfully,

H. L. MULDROW,
First Assistant Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., October 3, 1885.

SIR: I have the honor to invite your attention to the inclosed copy of a communication, dated September 1, 1885, from the agent in charge of the Warm Springs Reservation in Oregon, from which it appears likely that in extending the public surveys in that section of country the boundaries of said reservation on the north, south, and west have not been respected as was proper they should have been; and that some of the lands belonging to the reservation have been surveyed as public lands.

In the treaty establishing the reservation (Stat., 12, p. 963) natural objects are given, in describing the boundaries; and as Agent Gesner observes that there is no mistaking the topography of the country about there, if the public surveys have been extended into the reservation, it would seem as if it must have been intentional on the part of the surveyor.

I would respectfully recommend that the attention of the General Land Office be called to the subject, in order that steps may at once be taken to ascertain whether any of the lands embraced within the boundaries of said reservation as defined by treaty, have been surveyed as public lands; and, if so, that the surveys be corrected in the field so as to separate the reservation from the public lands, by permanent marks, wherever the surveys have been extended up to the reservation line or over and beyond it into the reservation.

The Indians of this reservation have always felt that they were outrageously imposed upon by the representatives of the Government in the making of the supplementary treaty of November 15, 1865 (Stat., 14, 751), in that, as they allege, a clause was interpolated in the treaty by which they were made to relinquish their rights to fish in accustomed places beyond the limits of their reservation, a right they had reserved by a former treaty. Their present agent shares in this feeling, and declares that "they were willfully and wickedly deceived" and that it well nigh destroyed their confidence in the Government.

Whether they have just cause for complaint in this regard or not, they certainly should be protected against the possibility of any such imposition as we have reason to suspect has been attempted in the matter herein set forth.

I inclose a copy of this report.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

UNITED STATES INDIAN SERVICE,
Warm Springs Agency, Oregon, September 1, 1885.

SIR: I have the honor to say that, if what I have been recently told be true, there has been surveying done under contract from the United States surveyor's office, either last summer or the summer before last, that includes the lands of this reservation on the north, south, and west boundaries.

If the surveys are where stockmen claim they are, they have not been made where the treaty calls for or anywhere near it. There is no mistaking the topography of the country. In justice to the Indians the matter should be looked into.

Very respectfully,

ALONZO GESNER,
United States Indian Agent.

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

CERTAIN LANDS IN OREGON.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., October 26, 1885.

SIR: I have the honor to acknowledge the receipt of Department letter, dated October 5, 1885, inclosing copy of letter from the Commissioner of Indian Affairs in relation to alleged encroachments of the public-land surveys upon the Warm Springs Indian Reservation in Oregon, and directing me to investigate the matter at once, and if the allegations are sustained to cause the surveys to be corrected in the field, so as to separate the reservation from the public lands by permanent marks wherever the surveys have been extended up to the reservation line or over and beyond it into the reservation.

The Commissioner of Indian Affairs incloses copy of letter from the United States Indian agent stating that if the surveys are where stockmen claim that they are they include lands of the reservation on its north, west, and south sides. In reply, I have the honor to report that, upon an examination of the official township plats of surveys in Oregon in connection with the treaty with said Indians defining the limits of their reservation, found in Stat., 12, page 964, this office finds that the reservation has been encroached upon by the public surveys at the northwest corner of the same, and, under a liberal construction of the treaty, also encroached upon at the southwest corner of the same. I have, therefore, on the 9th instant, directed the United States local land officers at The Dalles to suspend the disposal of all lands in townships 5, 6, 12, and 13 south, range 9 east, and townships 5 and 6 south, range 10 east, Willamette meridian, until further orders.

The limits of the reservation are for the greater part defined by the treaty as being Des Chutes River, a meandered stream. The south boundary is the Metolius River, either certain rivers or divides and ranges of mountains. The east boundary is the "main branch of the Des Chutes River" mentioned in the treaty.

The west boundary is supposed to be the summit of the Cascade Mountains described in the treaty as running in a "southerly direction" from a point on the summit of said mountains "to Mount Jefferson." The north boundary is described as along a certain divide. This line was surveyed in 1871, and the surveyor states that no well-defined divide exists, and that he followed the "most clearly defined line of peaks westerly, keeping the highest ground all the way." After running and marking 31 miles he says: "As the line is now traced further than settlements can extend for many years to come, my instructions require me to cease at this point."

By reference to map of Oregon, herewith inclosed, it will be seen that he stopped several miles short of the summit of the Cascade Mountains. From the fact that the lines of public surveys in townships 5 and 6 south, range 10 east, have been closed upon a line marked with mile-posts for the west boundary of said reservation, it appears that some part of that boundary has been run also, beginning at the thirty-first mile-post set by the surveyor of the north boundary and running a direct line thence toward Mount Jefferson, so that on the west the public surveys, so far as made, have encroached upon the reservation. The records here do not show how far said west boundary was run.

The boundary of the reservation, after leaving Mount Jefferson, is not clearly defined by the treaty. It is thus described: "Thence down the main branch of Des Chutes River, heading in this peak, to its junction with Des Chutes River." Upon the Oregon map, herewith inclosed, the said reservation in red color is represented by a direct, and the nearest, line from Mount Jefferson to the Metolius or main branch of the Des Chutes River. Said river heads in township 13 south, range 9 east, as will be seen by skeleton map of that township herewith inclosed, and on the map of Oregon, herewith, a straight red line is drawn from Mount Jefferson to the head of said river, which does not "head in said peak."

The question arises where the line should run from Mount Jefferson; whether to the nearest point on the Metolius River; second, to the head of said river, or, third, to follow the creek heading in said peak to its intersection with the Metolius River. If the latter, then the line strikes the Metolius in township 12 south, range 9 east. (See black line on Oregon map.) This appears to this office nearest to the intent of the treaty.

The appropriation for public surveys is the only one under control of this office available for the purpose of extending said Indian boundary and closing the public surveys thereon. If that appropriation is deemed applicable, the said work may be contracted for and executed during the next surveying season. It is too late now to get the work done in that mountainous district this season.

The question of the proper construction of the treaty limit is submitted to the Department, also the applicability of the said appropriation for the purpose.

Very respectfully, your obedient servant,

WM. A. J. SPARKS,
Commissioner.

HON. L. Q. C. LAMAR,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, March 27, 1886.

SIR: Referring to former correspondence upon the subject, I transmit herewith for your information copy of a further letter of 20th instant from the Commissioner of Indian Affairs, concerning the encroachments of the public surveys upon the lands of the Warm Springs Indian Reservation in Oregon, with the inclosed copy of report of Agent Wheeler, of Warm Springs Indian Agency, noted therein, relating to the establishment of the north boundary of said reservation, as intended in the treaty of June 25, 1855 (12 Stat., 964).

In accordance with the recommendation of the Commissioner of Indian Affairs, you are hereby authorized and directed to cause a resurvey of so much of the townships abutting upon the north boundary line of the said Warm Springs Indian Reservation as may be necessary to enable the surveyor-general for Oregon to construct plats showing the proper segregation of the public lands from the reservation as the same is defined by treaty, the expenses for this work to be defrayed from the appropriation "for such resurvey of the public lands as in the discretion of the Commissioner of the General Land Office may be considered necessary, \$15,000" (23 Stat., 499).

It is presumed that the cost will not exceed the sum of \$1,200.

The maps which accompanied your report of 26th October last upon this subject are herewith returned.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, March 20, 1886.

SIR: Referring to the report of the Commissioner of the General Land Office dated October 26, 1885, in reply to Department letter of October 5, 1885, directing an investigation by that office to determine whether the public surveys have encroached upon the Warm Springs Indian Reservation in Oregon, as alleged, and if so, to cause the surveys to be corrected in the field, so as to separate the reservation from the public lands, which report was referred to this office by the Department October 27, 1885, *for remarks*, I have the honor to state that, in the absence of sufficient data to enable this office to reply intelligently to the question submitted by the General Land Office as to the proper construction to be placed upon the treaty of June 25, 1855 (12 Stat., p. 964), particularly as to where the line of the reservation should run from Mont Jefferson, it was deemed advisable to refer the subject to the agent in charge of the reservation, which I accordingly did by letter of December 23, 1885.

His reply is at hand, dated February 15, 1886.

It will be observed that the most important question in dispute relates to the north boundary line of the reservation. The Indians claim that the line should have been run from a point in the middle of the channel of the Deschutes River, several miles north of where it was located by the survey of 1871. The agent says that it is the only question in dispute or ever likely to be. In his opinion the line should be relocated, beginning on the Deschutes River, near the N. E. corner of T. 6 S., R. 13 E., and extending to a point near the west boundary of T. 5 S., R. 9 E. He states that it would not interfere much, if any, with any settlements thus far made by the whites, and that it would settle a question that will otherwise give much trouble and cause dissatisfaction for years to come.

As regards the south boundary from Mount Jefferson east, the agent says that nearly all the Indians agree that White Water Creek is the proper boundary, and that all of them, as far as he can discover, are willing to have it so. Furthermore, that the Indians have never claimed any part of T. 12 and 13 S., R. 9 E. He thinks that justice to white settlers demands the withdrawal of the suspension of the disposal of lands in said townships. It is his opinion also that the north half of T. 5 S., R. 9 and 10 E., is outside the reservation, and that the suspension should be removed to that extent.

The questions submitted to the Department for determination by the General Land Office, and upon which this Office is called upon "for remarks," relate to the construction or interpretation of the treaty in respect to the boundaries of the reservation and the applicability of the appropriation for public surveys for the purpose of extending the reservation boundaries and closing the public surveys thereon.

In respect of the disputed boundary question I have no information other than that presented in the report of the agent, and it appears that the only serious dispute is as to the proper location of the north boundary line.

As has already been remarked, the agent is of opinion that the initial point of the survey of that boundary should have been established several miles north of where it

was established. The Indians make the same claim, and attempt to show that the agents of the Government who negotiated the treaty with them took them to the top of a hill and pointed out the position of the line as decided upon after full discussion of the question, and that an oak tree was blazed to mark the line, which still stands as a witness. The line as decided upon was several miles north of the line surveyed in 1871.

In view of the foregoing statements, I am of opinion that the north line of the reservation should be relocated, beginning at the point designated by Agent Wheeler as the proper starting point.

I do not undertake to say whether the appropriation for the public surveys is applicable to the correction of the surveys as ordered by the Department in letter to the General Land Office of October 5, 1885, but if it can be so used, either in closing the public surveys on the reservation boundaries or otherwise, I respectfully urge that the necessary authority be given therefor, so that the lines of the reservation may be defined and marked in place as recommended by Agent Wheeler.

A copy of his report is inclosed herewith, and report of General Land Office returned.

Very respectfully, your obedient servant,

J. D. C. ATKINS;
Commissioner.

The SECRETARY OF THE INTERIOR.

○