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Letter from the Secretary of the Interior, transmitting, in response to Senate resolution of April 21, 1890, a communication from the Commissioner of Indian Affairs relative to illegal occupation of the Capitan Grande and La Jolla Reserves

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L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

In response to Senate resolution of April 21, 1890, a communication from the Commissioner of Indian Affairs relative to illegal occupation of the Capitan Grande and La Jolla Reserves.

MAY 13, 1890.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, May 12, 1890.

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate of 21st ultimo, viz:

Resolved, That the Secretary of the Interior be directed to communicate to the Senate such information as is in possession of the Department in reference to the occupation of any portion of the Capitan Grande and the La Jolla Reserves of the Mission Agency in California by persons not Indians for ditches or flumes, and by what authority and under what right such occupation, if any, is maintained, and what steps, if any, have been taken by the Department to protect the Indians in their rights with reference to the same.

In response thereto I have the honor to transmit herewith copy of a communication of 10th instant from the Commissioner of Indian Affairs, and its inclosures, which contain the information called for by the resolution.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 8, 1890.

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of the following resolution of the Senate adopted April 21, 1890:

Resolved, That the Secretary of the Interior be directed to communicate to the Senate such information as is in possession of the Department in reference to the occupation of any portion of the Capitan Grande and the La Jolla Reserves of the Mission Agency in California by persons not Indians for ditches or flumes, and by what authority and under what right such occupation, if any, is maintained, and what steps, if any, have been taken by the Department to protect the Indians in their rights with reference to the same.

Under date of July 22, 1887, the San Diego Flume Company, of California, made application to this office for permission to cross the Capitan Grande Indian Reservation, in order to conduct water to supply the city of San Diego and reclaim arid lands in its vicinity.

August 8, 1887, the company was informed that under the opinion of the Attorney-General the desired permission could not be granted in the absence of Congressional action.

December 1, 1887, Agent Preston reported that a company was engaged in the construction of a flume across the said reservation; that it was a stupendous enterprise, and that it would deprive the Indians of their long-accustomed right to the water.

December 23, 1887, he was directed to immediately notify the San Diego Flume Company, or any other company that might be constructing ditches or flumes on the reservation, that the work must immediately cease, unless satisfactory arrangements could be made whereby the Indians could be supplied with a sufficient quantity of water, and that it must be constructed so that no damage would be done to the Indians.

He was directed to take the proper steps to carry out these orders, calling upon the military if necessary.

January 20, 1888, Agent Preston submitted a report of his proceedings in the matter, accompanied by a contract between the San Diego Flume Company and Agent Preston on behalf of the United States by which the company agreed to pay the sum of \$100 per mile for the 13 miles within the reservation traversed by its flume, and to furnish, at its own expense, at such places and points on the flume, and at and during such times and periods as the Indians thereon might desire, or the Indian agent might request, an ample and sufficient supply and quantity of water for the use of said Indians for agricultural or other purposes.

Agent Preston stated that the company had paid him the sum of \$1,300 for the right of way.

June 11, 1888, report was made to the Department upon this contract, and others for similar privileges on other Mission reservations, accompanied by the draught of a proposed amendment to the bill for the relief of the Mission Indians (S. B. 2, Fiftieth Congress), which had passed the Senate March 20, 1888, and was then pending before the House Committee on Indian Affairs.

This amendment authorized the Secretary of the Interior to grant permission for the construction of irrigating ditches, flumes, or pipes through the Mission reservations and to grant right of way to short lines of railroads.

It was recommended that the proposed amendment be transmitted to the House Committee on Indian Affairs, with request that it receive favorable consideration.

The amendment was favorably reported to the House as section 6 of the bill.

The bill, however, did not become a law.

December 3, 1889, the draught of a similar bill, containing the section relating to water privileges, was submitted to the Department, with recommendation that it be transmitted to Congress, with request for early and favorable action.

March 31, 1890, Agent Rust informed this office that the San Luis Rey Water Company had graded for a water ditch across the La Jolla Reservation without his knowledge, and that he had written a letter of inquiry. He asked for instructions.

May 1, 1890, he was advised that if any company was trespassing upon an Indian reservation under his charge its officers should be duly notified that they must desist from any operations on such reservation until right of way be granted by or under an act of Congress, and that if he were unable to enforce such order the fact should be reported to this office.

I inclose copies of the correspondence referred to.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

SAN DIEGO, CAL., July 22, 1887.

DEAR SIR: In order to supply the city of San Diego with suitable and abundant water, and reclaim the 60,000 acres of rich land which now surround it as a desert reaching to its very door-yards, it is necessary to draw from large storage reservoirs in the mountains some 45 miles back of the city where the winter rain-fall is always abundant and certain. To bring this down at an elevation sufficient to reach the valuable table-lands around San Diego, as well as to avoid the loss of water by transit through miles of dry, sandy, river bed, it is necessary to cross with our aqueduct the tract of public land generally known as the Capitan Grande Indian Reservation.

Assuming that permission to cross the reservation with an improvement so great and indispensable to this rapidly growing city would at any time be as freely given as it would be for a railroad or telegraph line, we have delayed application for such permission until the final location of the line of the aqueduct had been determined, so that we could accompany the same with an accurate map. The line runs through such rocky, steep hillsides, cut with so many ravines, that its location has been subject to constant change up to the time of grading. This map we will be able to forward in a few days.

Our line damages scarcely any arable land and we take no water that any Indian has ever used or can use. To avoid any question upon these points, however, we will bind ourselves to give any Indian, direct from the aqueduct all the water he may need for his land and pay annually for any land cut by the aqueduct such rental as the department or Indian agent may deem just. Our reservoirs and the living streams are all beyond and high above the reservation and the trifling amounts any Indians would want would bear no proportion to the amount of water we shall secure by various means in the high mountains.

For our business standing as well as for the vital necessity of this water to many thousands of people, we can furnish you all the evidence you desire, indorsements by the Government officers here, the board of city trustees, chamber of commerce, national banks, etc. Anything you wish of the kind or more accurate data about the topography of the land passed through we will furnish at any time or have our engineer accompany any agent of the Government with maps, etc., and explain matters fully.

Yours, respectfully,

THE SAN DIEGO FLUME CO.

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

MISSION AGENCY, CAL.,
Colton, July 22, 1887.

Being fully acquainted with all the facts above set forth I cheerfully indorse the request of the San Diego Flume Company.

JOHN S. WARD,
United States Indian Agent.

MINUTES OF THE ORGANIZATION OF THE SAN DIEGO FLUME COMPANY.

MAY 14, 1886.

The following persons met at the office of Hensly & Crittenden in San Diego, Cal., on this day and proceeded to organize a corporation to be called the San Diego Flume Company, viz: T. S. Van Dyke, George D. Copeland, Milton Santee, Howard Crittenden, and R. H. Stretch.

After consultation articles of incorporation were adopted and subscriptions made to the capital stock of the company as therein set forth, which articles read as follows:

Articles of Incorporation of the San Diego Flume Company.

Know all men by these presents that we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California, and we hereby certify:

First. The name of said corporation is the San Diego Flume Company.

Second. That the purposes for which it is formed are to appropriate, divert, and take water from the San Diego River and other streams in San Diego County, Cal., and convey and sell the same for irrigation, domestic use, mechanical purposes, and use by the city of San Diego and other cities and streams in said county; to build and maintain dams, reservoirs, or any kind of aqueduct proper for the conveyance of said water; to reclaim and improve by supplying with water dry land in said county and to that end to acquire, hold, and convey real estate.

Third. That the place where its principal business is to be transacted shall be San Diego, Cal.

Fourth. That the term for which it is to exist is fifty years from and after the date of its incorporation.

Fifth. That the number of its directors shall be five, and that the names and residences of those who are appointed for the first year are: George D. Copeland, San Diego; Milton Santee, Los Angeles; T. S. Van Dyke, San Diego; Howard Crittenden, San Diego; R. H. Stretch, San Diego.

Sixth. That the amount of the capital stock of this corporation shall be \$1,000,000, divided into 10,000 shares of the par value of \$100 each.

Seventh. That the amount of said capital stock which has been actually subscribed is — dollars, and the following are the names of the persons by whom the same has been subscribed, to wit:

Names of subscribers.	No shares.	Amount.
S. H. Marlette	2,000	\$200,000
George D. Copeland	1,600	160,000
Milton Santee	400	40,000
T. S. Van Dyke	500	50,000
Howard Crittenden	10	1,000
R. H. Stretch	10	1,000

In witness hereof we have hereunto set our hand and seals this 14th day of May, 1886.

Signed and sealed in the presence of
G. B. HENSLEY.

S. H. MARLETTE.
GEO. D. COPELAND.
MILTON SANTEE.
T. S. VAN DYKE.
HOWARD CRITTENDEN.
R. H. STRETCH.

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

On this 14th day of May in the year 1886, before me G. B. Hensley, a notary public in and for said county residing therein, duly commissioned and sworn, personally appeared S. H. Marlette, George D. Copeland, Milton Santee, T. S. Van Dyke, Howard Crittenden and R. H. Stretch, personally known to me to be the persons whose names are subscribed to the foregoing instrument and they each duly acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[NOTARIAL SEAL.]

G. B. HENSLEY,
Notary Public.

Thereupon it was ordered that said articles of incorporation be duly filed with the Secretary of State and the county clerk of San Diego County, Cal., and that the board of directors named therein adjourn to meet for the selection of officers and and such other business as may come before them until May 18, 1886.

MAY 18, 1886.

The board of directors met pursuant to adjournment.

Present: T. S. Van Dyke, Milton Santee, and Howard Crittenden.

The resignation of R. H. Stretch, a director, was received and accepted, and A. W. Hawley was duly elected to fill the vacancy as director.

The resignation of Howard Crittenden was filed and accepted, and S. H. Marlette was duly elected to fill the vacancy.

The members of the board of directors as now constituted, viz: G. D. Copeland, A. W. Hawley, T. S. Van Dyke, S. H. Marlette, and Milton Santee, being all present and accepting their positions.

The election of officers was then proceeded with.

The following officers were duly and unanimously elected: George D. Copeland, president; S. H. Marlette, vice president; A. C. Platt, secretary; Consolidated National Bank, treasurer; W. E. Robinson, superintendent.

Thereupon the board adjourned, to meet the 20th day of May, 1886, at 10 o'clock a. m.

A. C. PLATT, *Secretary.*

MAY 20, 1886.

Board of directors met pursuant to adjournment.

Present: Geo D. Copeland, president; T. S. Van Dyke, and A. W. Hawley.

It was ordered that the certificate of the Secretary of State be spread on the records. The same is as follows:

STATE OF CALIFORNIA, *Department of State*:

I, Thomas L. Thompson, secretary of the State of California, do hereby certify that a copy of the articles of incorporation of the San Diego Flume Company, certified by the county clerk of the county of San Diego as a copy of such articles filed in his office, was filed in this office on the 17th day of May, A. D. 1886, which articles and a copy thereof contained the required statement of facts, to wit:

First, the name of the corporation as aforesaid.

Second, the purposes for which it is framed.

Third, the place where its principal business is to be transacted.

Fourth, the term for which it is to exist.

Fifth, the number of its directors or trustees and the name and residences of those who are appointed for the first year.

Sixth, the amount of its capital stock and the number of shares into which it is divided.

Seventh, the amount of its capital stock, actually subscribed and by whom.

Witness my hand and the great seal of State at office in Sacramento, Cal., this the 17th day of May, A. D. 1886.

[SEAL.]

THOS. L. THOMPSON,
Secretary of State,
By J. F. LINTHICUM,
Deputy.

We, the undersigned, president and secretary of the San Diego Flume Company of San Diego, Cal., hereby certify that the above and foregoing is a true and correct copy of the proceedings in the organization of said company and of the articles of incorporation as certified to by the secretary of state of California.

Witness our hands and the seal of said corporation this 14th day of January, 1888.

[SEAL.]

GEORGE D. COPELAND,
President.

Attest:

L. F. DOOLITTLE,
Secretary.

STATE OF CALIFORNIA, *County of San Diego*:

Whereas the San Diego Flume Company, of the city and county of San Diego, which was organized on the 17th day of May, 1886, under and by virtue of a charter granted and issued by the secretary of said State of California, under the laws of said State relating to corporations, on the said 17th day of May, 1886, a copy of which is hereto annexed duly certified; said corporation, as organized, consisting of the following named corporators, to wit: S. H. Marlette and Milton Santee, of the county of Los Angeles; Geo. D. Copeland, T. S. Van Dyke, Howard Crittenden, and R. H. Stretch, of the city and county of San Diego, the present organization being as follows: George D. Copeland, president; W. E. Robinson, vice-president; L. F. Doolittle, secretary; Consolidated National Bank of San Diego, Treasurer; directors, Geo. D. Copeland, W. E. Robinson, A. W. Hawley, G. F. Judson, and W. H. Ferry, has entered upon certain lands in the said county of San Diego which have

been reserved by the United States Government and set apart for the occupancy, use, and enjoyment of that part of the Mission Indian tribes of California, generally known as the Captain Grande Indians, and situate within the reservation known as the Captain Grande reservation, composed of the following townships and sections, to wit:

Township 14 south, range 2 east, sections 10, 11, 14, 15, 22, 23, 25, 26, 27, 28, 33, 34, and 35; township 15 south, range 2 east, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10; township 14 south, range 3 east, sections 31 and 32; township 15 south, range 3 east, sections 5 and 6; and has constructed and built, and is now constructing and building a diverting reservoir and head-works for a water system, and a flume for conducting water on, under, and through said reservation, said flume crossing above, and, as it passes through said reservation, both the north and south branches of the San Diego River and other smaller tributaries thereto, having for its effect the diversion of said river and branches from their original beds or channels, for the distance of 13 miles, and conveying the same through said reservation for the supplying of the city of San Diego, and for other purposes; and whereas said company hereby declares itself solvent and able to respond in damages to the full value of the lands so as aforesaid appropriated by it, and such other damage as may result from the construction and use of said water-works and flume, either to the right of said Government or the Indians now occupying, or that may hereafter occupy said lands, and has signified its willingness to pay to the Government of the United States for the use of said Indians or other use, a reasonable value for the land and water appropriated and used by said company, and for said easement, with all the usual rights of land and water, and of ingress, egress, and regress, the same for the purpose of maintaining and keeping, and to secure to the Indians thereon, or to be thereon, the rights to use, and the use of waters from said flume to be turned upon their land at the expense of said company. This contract, therefore, made and entered into by and between the Government of the United States of America of the one part, and the said San Diego Flume Company of the other part, witnesseth:

That the said United States, for and in consideration of \$100 per mile, to wit, \$1,300 for the distance of 13 miles (estimated) traversed by said flume, and in the further consideration that the said company and its successors and assigns shall well, truly, and faithfully furnish at its own expense and at such places and points along said flume, and at and during such times and periods of time as the Indians thereon may desire, or the Indian agent may request, an ample and sufficient supply and quantity of water for the use of said Indians, either for agricultural or other purposes—meaning domestic and for stock—the said Indians consenting thereto; the said flume being manifestly, if completed, of vast and lasting utility to the public, particularly the city of San Diego, and likewise, manifestly facilitating the use of their said streams and increasing the value of the same for the purposes of the Indians, hath through and by said agent, Joseph W. Preston, by and with the approval of the Commissioner of Indian Affairs, acting also on behalf of the Government of the United States, consenting to said right of way and water appropriation, doth grant, bargain, sell, and convey to the said San Diego Flume Company, its assigns and successors, the sole right, title, use, and enjoyment of the reservoir, head-works, and water rights aforesaid, and a right of way through the townships and sections aforesaid, as now projected and designed, with all the necessary lands for head works, rights, and privileges usual and appurtenant to the same. The said United States hereby reserve for the use of the Indians transit for their stock and other purposes. It is hereby stipulated that should said company, its assigns or successors, neglect, fail, or refuse to comply with all or any of the terms of this instrument reasonably constructed and within reasonable time after notice of such failure, that it shall forfeit all further right, title, or interest to said right of way and the use thereof, and the said lands shall revert to the Government as if this instrument has not been made.

It is further stipulated on behalf of said company that the furnishing of water by said company to the Indians shall not be construed to furnish, or allow the Indians to furnish, either directly or indirectly, to any other person or persons.

Signed, sealed, and delivered and executed in triplicate in presence of—

JOSEPH W. PRESTON, [L. s.]
United States Indian Agent.
 SAN DIEGO FLUME COMPANY,
 By GEORGE D. COPELAND, [L. s.]
President.

Attest: January 16, 1888.

L. F. DOOLITTLE,
Secretary.

We, George D. Copeland, president, W. E. Robinson, vice-president, and A. W. Hawley, directors, being a majority and quorum of the board of directors of the San Diego Flume Company, do hereby certify that George D. Copeland, whose signature

appears above as president of said company, is the duly elected and constituted president of said company, and that his signature, which is genuine, to the above and foregoing instrument, is binding upon said company.

GEORGE D. COPELAND.
WILLIAM E. ROBINSON.
ALLEN W. HAWLEY.

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

On this 16th day of January, in the year 1888, before me A. C. Morgan, a notary public, in and for the said county of San Diego, personally appeared George D. Copeland, president of the San Diego Flume Company, and Joseph W. Preston, United States Indian agent, personally known to me to be the same person described in, and whose names are subscribed to, the within instrument, and they acknowledged to me that they 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.

A. C. MORGAN,
Notary Public.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, August 8, 1887.

GENTLEMEN: I have received your letter of the 22d ultimo, stating that in order to supply the city of San Diego with suitable and abundant water, and reclaim the 60,000 acres of rich lands which now surround it as a desert, it is necessary to draw from large storage reservoirs in the mountains some 45 miles back of the city, and to bring this water down to a sufficient elevation to reach the valuable table-lands around San Diego, as well as to avoid the loss of water by transit through miles of dry sandy river bed, it is desired to cross the Capitan Grande Indian Reservation with an aqueduct, and ask permission of this Department to do so.

You also state that your line damages scarcely any arable land on the reservation, and that you take no water that the Indians have ever used or can use; but to avoid any question upon that point you offer to bind yourselves to give the Indians all the water they may need for their land, direct from the aqueduct, and pay an annual rental for such land out by the aqueduct as the Department or Indian agent may deem just and proper.

In reply I have to say that an opinion has very recently been rendered by the honorable Attorney-General which is quite applicable to your case.

A party petitioned that an order be made instructing the agent in charge of the Lemhi Indian Reservation, Idaho, not to interfere with the petitioner or prevent him from constructing a ditch through a portion of said reservation (the reservation was established by executive order) for the purpose of carrying water from the Lemhi River for use below for mining and agricultural purposes.

It was stated in the petition that the diversion of the water and the right to dig the canal or ditch would be useful to the petitioner, and beneficial in its effect to the Indians.

The Attorney-General after discussing the question raised by the petitioner, as to the legal status of the reservation, said:

"Attorney-General Devens, in an opinion reported in 16 Opins., page 553 (in which I concur), maintained that the United States had power to grant such privileges, but the power to make the grant exists only in Congress, and without action by Congress it can not be lawfully exercised. The conclusion then is, in the absence of Congressional action, the right should not be granted to the petitioners in this case to enter upon the Lemhi Reservation, unless the Indians be lawfully removed or dispossessed."

As I understand your letter your case is exactly similar to the one quoted above, and the opinion there given, I trust, will be a sufficient answer to your application.

Very respectfully,

A. B. UPSHAW,
Acting Commissioner.

SAN DIEGO FLUME COMPANY,
San Diego, Cal.

UNITED STATES INDIAN SERVICE, MISSION CONSOLIDATED AGENCY,
Colton, Cal., December 1, 1887.

DEAR SIR: I have the honor to submit the following special report of my action as relates to Capitan Grande Indian Reservation, in San Diego County, Cal., under instructions, to my predecessor, John S. Ward, contained in your authoritative letter of March 16, 1887 (15013, case 31).

* * * * *

In addition to the squatters, I found a large number of cattle, all along up the cañon, owned by parties in the city of San Diego, and others unknown. I also find the whole country swarming with laborers engaged for 10 or 12 miles in hauling lumber, and in the construction of a flume from a point in the northern part of township 14 and on down along the sides of the mountains through township 15, and on in the direction of San Diego.

The flume will be about 38 miles in length, and is intended to supply the city with this mountain water. It is a stupendous project. I here refer to it to call your attention to the fact that they have diverted or will divert the water of both branches of the river from their channels, and thus deprive the Indians of the benefit of their long accustomed right, especially will this diversion affect the Indians along the north prong of the stream. I naturally supposed that no company would have undertaken the appropriation of all this water and the diversion of these streams without having previously made some arrangements with the Government or its agents. I sought an interview with parties interested in the enterprise, among them General Crittenden, of San Diego, who is a party in interest, but he could not state what or any arrangements with the Government to thus appropriate this water and land. It is possible that the Department understands the matter. I don't, and feel it my duty to report the fact for such action as you may deem proper to take in the premises. I believe the name and style of the syndicate or company is the San Diego Land and Water Company.

Respectfully submitted by

JOSEPH W. PRESTON,
United States Indian Agent.

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

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

SIR: I am in receipt of your report dated December 1, 1875, upon the removal of trespassers from the Capitan Grande Reservation.

Your action in the matter is approved.

By reference to pages 306 and 308 of the Annual Report for 1886, you will see that the Capitan Grande Reservation now contains the following sections: Township 14 south, range 2 east, sections 10, 11, 14, 15, 22, 23, 25, 26, 27, 28, 33, 34, and 35. Township 15 south, range 2 east, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. Township 14 south, range 3 east, sections 31 and 32. Township 15 south, range 3 east, sections 5 and 6.

Where a white man is legally married to an Indian woman he may live upon an Indian reservation with his wife so long as his conduct is not detrimental to the peace and welfare of the Indians, it being understood that by such residence he can acquire no rights whatever.

As to the San Diego Land and Water Company, I have to state that application was made July 22, 1887, by the San Diego Flume Company for permission to cross the Capitan Grande Reservation, in order to conduct water from large storage reservoirs in the mountains, some 45 miles back of the city, to reach the valuable tablelands around San Diego.

August 8, 1887, the company was informed that the permission could not be granted. (Copy inclosed for your information.)

You will immediately notify this company or any other that may be constructing ditches or flumes on the reservation that the work must immediately cease, unless satisfactory arrangements can be made whereby the Indians can be supplied with a sufficient quantity of water, and that it must be constructed so that no damage will be done to the Indians.

You will take proper steps to carry out these orders, calling upon the military if necessary.

If the company is not operating on the reservation, but is constructing a ditch or flume which will deprive the Indians of their accustomed water privileges, you will consult Special Attorney Ward with the view of instituting such legal proceedings under the laws of California as may be available to protect the Indians from injury.

Steps will be taken as early as practicable to make allotments in severalty to the Mission Indians under the provisions of the act of February 8, 1887 (copy inclosed), wherever it can be done with advantage to them.

From your report it is believed that this course will be advisable on the Capitan Grande Reservation, and I would be glad to have your views as to the advisability of making allotments on any of the other reservations.

The law requires allotments to be made by a special agent in conjunction with the agent in charge.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

JOSEPH W. PRESTON, Esq.,
*United States Indian Agent,
Mission Agency, Colton, Cal.*

UNITED STATES INDIAN SERVICE, MISSION CONSOLIDATED AGENCY,
Colton, Cal., January 20, 1888.

DEAR SIR: I have the honor to submit a special report of my actions in the matter of the San Diego Flume Company, San Diego County, Cal., now operating upon the Capitan Grande Indian Reservation in said county.

Pursuant to your instructions, contained in your letter L 32612, December 23, 1887, I visited the city of San Diego, where the office of said company is located, on the 14th instant, and presented my instructions to the president of the company, Mr. George D. Copeland, and requested a compliance with the demands of the Department in the premises, to wit, either that the work on said flume shall immediately cease or that arrangements be made by the company whereby the Indians on said reservation can be secured in an ample and sufficient supply of water. Thereupon the president called together the board of directors and, in my presence, submitted the matter to them. The matters were then and there fully discussed, and while they were unwilling to be considered as of the class of willful tort feasers and trespassers, and insisted that they had entered on the reservation by the consent of all the Indians thereon, and under the act of Congress of 1866, and by advice of counsel, etc., and in view of the doubtful character of their rights, the momentous importance to them from a financial stand-point, the vast interest to the public, and their inability to resist by force, and their indisposition to come in conflict with the Government, they concluded to accept and to meet the pacific, and alternative proposition contained in my instructions, and proposed to furnish at their expense, at such point or points along the line of said flume, and at and during such times and periods of time as the Indians might desire or the Indian agent requests, an ample and sufficient quantity of water for all of the wants and domestic purposes, irrigation, stock, or domestic; and, in addition thereto, to pay to the Government for the use of said Indians a reasonable sum, to be fixed, for the right of way and easement across said reservation as now located and designed, the terms, rights, liabilities, conditions, and restrictions of the "arrangement" to be made by myself.

Having previously visited the reservation, inspected the flume, and ascertained the parts traversed by it, estimated the distance, the character of the land taken and to be occupied and appropriated, ascertained the location of the Indians, the arable lands and how situated and probably affected by the construction and perpetual operation of the flume, and generally considered all the subjects appertaining, as best I could, locally affecting the Indians and the reserved rights of the Government; having also previously consulted Col. Robt. H. Gardner, United States Indian inspector, on the several matters, and obtained his views on the subject, the expediency and the equity of the course best to pursue and to recommend, and also considering the great expectation and interest of the community—especially the city of San Diego—the amount of work already done, and the money already expended, etc., I could not conscientiously hesitate to offer to them such terms as would not, necessarily, involve the destruction of the enterprise, the ruinous loss, and irreparable damage to the company as well as the much needed and inestimable, not to say indispensable, supply of pure drinking water for the growing city of San Diego, especially so when the interests of the Indians to be affected (only seven heads of families) and the rights of the Government could and would be subserved and protected thereby. And that in doing so I could act within the scope of the authority given me in your said letter, I therefore concluded the arrangement couched in the accompanying contract, the terms and language of which were dictated wholly by myself and accepted by said company. To this contract I refer you for more specific details. I will add, however, that as the land traversed by and appropriated for the flume was for the most part mountainous, high, barren, and rocky, and of little

or no value, I estimated the arable land together with the easement at \$100 per mile, estimating the distance from or by the company's plat at 13 miles, making the amount paid \$1,300. In all, the lands taken are about 80 acres. While this is more than the land was worth, it and the easement I thought reasonably worth the sum at which I fixed it.

It is obvious that if I had taken advantage of the embarrassed condition of the company I could have extorted a much larger sum of money from them. They would have submitted to it and have paid it, rather than to sustain the inevitable consequent loss by stoppage, etc. But was it right, or just, or equitable? I thought not. The Government can not afford to become an extortioner from even her erring subjects. Her coffers are too full to exact unjust tribute from her neighbors, much less her subjects. Having some difficulty on my mind concerning the form of the contract, because I can find no specific requirement in relation to this class of cases in the regulations, I have drawn it under the general law of contracts; and I think it binding and enforceable in the courts. Upon this subject I have had the examination and inspection of Hon. Olin Wellborn, ex-member of Congress, who is counsel for the company, and who is (he informs me) personally acquainted with you, and was while in Congress chairman of the House Committee on Indian Affairs. Should other requirements be necessary, I ask specific direction of the Department. Should an act or resolution of Congress be necessary for the complete protection of the company, I presume that they will make application therefor.

The company paid into my hands the said sum of \$1,300, and, upon examination of the regulations, "miscellaneous receipts," I have doubt as to what, if any, class it comes under. It would seem to come, by implication, under class 1 or 111. Please instruct me. As I am required in such cases to make suggestions as to how this money, or such money, should be applied for the use of the Indians, I respectfully suggest that in view of the fact that you seem to concur in my suggestion to have these few Indians select their homes on the reservation, and that the remaining land be restored to the public domain and their selections allotted to them, that as soon as they make their selections and define their homes the money be applied to repairing and building houses for them. The flume company has, and will continue for some time to have, a train of wagons hauling lumber and other material to and through the reservation. I could make arrangements to purchase and have delivered a sufficient quantity for their purposes. This money, together with the wages paid them by the company for work, would go far towards making them comfortable, and enabling them to live like their civilized white neighbors. Since they will live in a community of whites, and, as before stated, in some degree mixed with them, means should be furnished them to enable them to rise (if it be to rise) to the level of their white neighbors. This course will prove very encouraging to them, and doubtless have an elevating tendency.

The other suggestion is that, inasmuch as no Indian school can be established there, some of this money might be applied to tuition in schools wherever they can be induced or allowed to attend. Indeed, the whole of it might well be so applied. But I regard the former suggestion as the more important one, with the quickest beneficial results. It is sometimes quite cold in those mountains, and comfort is the most pressing claim upon the fund, and would doubtless be preferred by them. Concluding this report I trust that I shall not be considered partial to the company nor to that community as against the Government, which in this, as in all matters relating to my office, I have hitherto endeavored to serve faithfully, when I state that in my opinion, drawn from a fuller knowledge of the location and contemplated operation of the company, as well as from my observation of the high character of the gentlemen who have it in charge, the Indians will be actually benefited rather than injured by the presence of that flume. It is claimed by the company, and not doubted by me, that from this flume, under the contract, the lands of the Indians can and will be irrigated in places never before irrigated from the streams, and that without any expense or labor of the Indians; that they will be furnished work at good wages by the company, and that the company will in all respects aid and encourage and protect their persons from the sly liquor dealers and in other rights. They also have the consent of the Indians, who seem now to be willing for them to operate their flume. This consent will be forwarded to the Department when received; it is in writing.

I have had a certified copy of the organization of the company made out, and herewith send it with the contract.

Awaiting your further action, and trusting that my efforts to settle and quiet the troubles treated of will be accepted as the honest efforts of the agent, this report is

Respectfully submitted by

JOSEPH W. PRESTON,
United States Indian Agent.

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

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, June 11, 1888.

SIR: Under date of August 8, 1887, the San Diego Flume Company of California was informed by this office, in reply to its application, that permission could not be granted for said company to cross the Capitan Grande Indian Reservation in order to conduct water across said reservation to supply the city of San Diego and reclaim lands in its vicinity.

December 23, 1887, Agent Preston was directed to notify this company, or any other that might be constructing ditches or flumes on the reservation, that the work must immediately cease unless satisfactory arrangements could be made whereby the Indians could be supplied with a sufficient quantity of water, and that it must be constructed so that no damage would be done to the Indians.

January 20, 1888, Agent Preston submitted a report of his proceedings in the matter, accompanied by a contract between the San Diego Flume Company and Agent Preston on behalf of the United States.

By this contract the company agreed to pay the sum of \$100 per mile for the 13 miles within the reservation traversed by its flume, and to furnish at its own expense, and at such places and points along said flume, and at and during such times and periods as the Indians thereon may desire, or the Indian agent may request, an ample and sufficient supply and quantity of water for the use of said Indians for agricultural or other purposes.

The agent, on behalf of the United States, grants to said company the sole right, title, use, and enjoyment of the reservoir head-works, etc., and a right of way through the reservation, reserving for the Indians transit for their stock and other purposes.

Agent Preston reports that the Indians will be actually benefited, in his opinion, rather than injured by the presence of the flume, as their lands can be irrigated in places where they could not be before the construction of the flume.

The company has paid into the hands of the agent the sum of \$1,300.

February 20, 1888, Agent Preston transmitted other contracts, as follows:

(1) With the Garden of Eden Company and B. B. Barney, for the use and occupation of a flume already constructed from the Andreas Cañon to irrigate lands in section 35, township 4 south, range 4 east, Aqua Caliente Reservation.

These parties are the purchasers of this section and of the flume which was constructed, as is alleged, partly for the benefit and with the connivance of late Agent McCullum while Indian agent.

They agree to tap their flume at such places as they may be requested to do and to carry such part of the water flowing through said flume and during such time as the Indians or their agent may request, not more or less at any one time than one inch of water under the usual rules for measurement; and in addition to pay for the use of the Indians for the right of way the sum of \$75, the distance being about three-fourths of a mile.

The contract contains proper restrictions and conditions.

As to this contract Agent Preston remarks as follows:

"This agreement secures to the Indians more water from that stream than they had ever been able to have reach them through the sands of the original channel and, at the same time, has it delivered to them free of costs, whenever desired, as requested; and they get pay for the narrow line over a section of land that was never cultivated, and, without this water, could never have been cultivated. It also definitely settles any future trouble if complied with, and if not, then the rights of the company are forfeited. Finally, it is indispensable to the white owner and does not injure but will benefit the Indians."

(2) With the Palm Valley Land Company.

This contract recites that said company had located, surveyed, designated, and partly constructed a water ditch or canal on or through township 4 south, range 4 east, sections 3, 10, 15, 23, 26, and 27, having for its purpose to convey and conduct water from a point north of said reservation (Aqua Caliente) through the same to a point south and beyond said sections.

The company, in consideration of the full, free, and exclusive right of way through said reservation, with certain other privileges, grants to the Indians a permanent water right of 160 acres of land in section 14, township 4 south, range 4 east, free of cost, and a like right for an additional 160 acres on said section whenever the same is needed, or in lieu thereof it agrees to pay the sum of \$8,000 for the use of the Indians upon demand of the agent.

It is stipulated that in the event the Indians shall cease to occupy the reservation, or the lands be restored to the public domain, the rights of the company shall remain unimpaired and the rights of the Indians shall revert to the company.

As to this contract, Agent Preston says:

"I believe, and my opinion is well backed by disinterested men, who are in a position to know, that I have by this means secured to the Indians a very great benefit, without the deprivation of the least useful right or the sacrifice of the least

interest. They thus get water from a great way off, which they never before had or would have had, and that free of cost of labor; a water right which between the common white dealers would be estimated at thousands of dollars. * * * If they (the Indians) can by means of this ditch and under this agreement secure the water thereby to be furnished it will indeed be a most fortunate event for them. They see it and are anxious to have the benefit of it."

(3) With the Palm Dale Railroad Company.

From the recital in the contract it appears that this company has surveyed and located a narrow-gauge or motor railroad line through sections 1, 12, 24, and 25 of township 4 south, range 4 east, Aqua Caliente Reservation, with the view of building and constructing a line of railroad through said sections at an early date, the distance being estimated as it passes through the reservation at 4 miles, and having for its destination or terminus a point on section 25.

It is agreed that said company shall have the full, free, and exclusive use, enjoyment, possession and control of the right of way as now located through the sections of said reservation before named, and the width of 50 feet on either side and from the center of said tract, and shall pay the sum of \$100 per mile for the distance of 4 miles.

According to a diagram submitted by Agent Preston, this road starts at Seven Palms, in section 25, township 3 north, range 4 east, and runs directly south through the center of section 36 and sections 1, 12, 13, 24, township 4 south, range 4 east, to its terminus in section 25 in that township. The only sections in the reservation are sections 12, 24, and east half of section 25, in township 4 south, range 4 east, even sections and unsurveyed portions only of said township being reserved.

The agent states that this company is composed principally of the stockholders of the Palm Valley Land Company, and says:

"This little line will prove of great convenience to the Indians in many ways, and of no possible injury to them, unless it be the injury supposed to come from a too near approach and too great familiarity with the whites, which can not now be prevented on account of the disposition the Government has made to the railroad of those odd sections."

Agent Preston also reports that there is a valuable hot spring on section 14, township 4 south, range 4 east, which certain parties desire to utilize for bathing purposes. They propose to erect at their own cost over the waters of the spring a commodious bathing-house, to be used exclusively by the Indians; and for the use of the whites another bathing-house near the spring and to pay the Indians an annuity for the same, depending in amount upon the increased use of the spring by the influx of people, etc., beginning the first year with \$100.

No contract has been submitted. This spring is located just across the road from a hotel which is in section 15, and not in the reservation.

The whole number of Indians on this reservation is reported to be thirty-eight.

April 6, 1888, Agent Preston transmitted to this office a petition signed by J. M. Forquer, J. M. Shearer, and Ben V. Smith, asking the right of way and permission to construct a pipe to convey water under or through certain sections in the Porterero or Banning reservation.

He reports that "the land over which the pipe is to be run is mostly rough and mountainous; and the arable part can not be affected because the pipe, by the terms proposed, will be sunk under ground at least 18 inches, and so as not to prevent cultivation."

Again, they allege that water can be developed near their proposed line on the reservation which they propose to develop and make tributary to their pipe, and offer to do this at their own expense, and to divide it equally with the Indians.

It is proper to state that no water has ever been obtained or used by the Indians on that part of the reservation, and probably would never be. This water would bring into better use a good tract of land, and thus is offered an actual benefit to the Indians without any corresponding inconvenience or injury. In addition to this they propose to pay \$50 per mile for this right of way.

So far as this office is advised none of the foregoing enterprises can result in any damage to the Indians, but on the contrary would be of more or less advantage to them.

The Mission reservations are unlike other Indian reservations.

There are some twenty-one of them, the largest containing some 88,000 acres and the smallest 80 acres. They are situated for the most part in a desert country where irrigation, except in small valleys along the streams, is difficult and expensive.

In some of these reservations the alternate sections are railroad lands and open to settlement by whites.

The lands set apart and reserved for the Indians ought not to stand in the way of the development and occupation of the surrounding country when no interests of the Indians can be injured thereby.

The Department, however, under the opinion of the Attorney-General in the matter of an application to construct a ditch on the Lemhi Reservation in Idaho, has no

authority to approve the contracts submitted, even if in proper form and for the benefit of the Indians and the United States

Nor do such contracts seem to be of sufficient importance to require each one to be submitted to Congress for special legislation.

A bill for the relief of the Mission Indians (S. 2) passed the Senate on the 20th of March last, and is now before the House Committee on Indian Affairs.

It is hoped that this bill will receive favorable consideration at an early date in the House, where an amendment might be inserted conferring authority upon the Secretary of the Interior to grant permission for the construction of irrigating ditches, flumes, or pipes through the Mission reservations, and to grant the right of way for short lines of railway across such reservations.

I have accordingly prepared the draught of such an amendment, and have the honor to recommend that it be transmitted to the House Committee on Indian Affairs with the request that it receive favorable consideration and that action be taken upon the bill at the earliest possible date.

I inclose duplicate copies of the papers and of this report.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

Amendment to Senate bill No. 2, to follow section 5.

SEC. 6. That previous to the issuance of a patent for any reservation as provided in section three of this act, the Secretary of the Interior may authorize any citizen of the United States, firm, or corporation to construct a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such reservation, for agricultural, manufacturing, or other purposes, and may grant a right of way for rail or other roads through such reservation: *Provided*, That any individual, firm, or corporation desiring such privilege shall first give bond to the United States in such sum as may be required by the Secretary of the Interior, with good and sufficient sureties, for the performance of such conditions and stipulations as said Secretary may require as a condition precedent to the granting of such authority: *And provided further*, That this act shall not authorize the Secretary of the Interior to grant a right of way to any railroad company through any reservation for a longer distance than ten miles. And any patent issued for any reservation upon which such privilege has been granted, or for any allotment therein, shall be subject to such privilege, right of way, or easement. Subsequent to the issuance of any tribal patent, or of any individual trust patent, as provided in section five of this act, any citizen of the United States, firm, or corporation may contract with the tribe, band, or individual for whose use and benefit any lands are held in trust by the United States, for the right to construct a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such lands, which contract shall not be valid unless approved by the Secretary of the Interior under such conditions as he may see fit to impose.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, December 3, 1889.

SIR: I have the honor to transmit herewith the draught of a bill for the relief of the Mission Indians in California.

The draught of a similar bill was submitted to the Department January 10, 1884, accompanied by a report on the condition and needs of said Indians, made by the late Helen Hunt Jackson and Abbot Kinney. (See Senate Ex. Doc. No. 49, Forty-eighth Congress, first session.)

The bill passed the Senate on the 3d of July, 1884, but failed to receive consideration in the House of Representatives.

The draught of a similar bill was transmitted to the Department for submission to the Forty-ninth Congress November 30, 1885. (See Senate Ex. Doc. No. 15, Forty-ninth Congress, first session.) It passed the Senate February 15, 1886, was favorably reported from the Committee on Indian Affairs in the House of Representatives, but failed to receive further consideration. (See H. R. Rep. No. 2556, Forty-ninth Congress, first session.)

At the beginning of the first session of the Fiftieth Congress the bill was introduced in the Senate by Senator Dawes, and passed that body March 20, 1888. (See Senate Rep. No. 74, Fiftieth Congress, first session.)

June 11, 1888, this office suggested an amendment to the bill as passed by the Sen-

ate, so as to confer authority upon the Secretary of the Interior to grant permission for the construction of irrigating ditches, flumes, or pipes through the Mission reservations, and to grant the right of way for short lines of railway across such reservations.

August 18, 1888, the bill and proposed amendment were favorably reported from the Committee on Indian Affairs in the House of Representatives, but no final action was taken thereon. (See H. R. Rep. No. 3232, Fiftieth Congress, first session.)

The bill herewith submitted is the same as that reported from the House committee, with the exception of the following proviso added to the sixth section, viz:

"*Provided*, That no authority or grant under the provisions of this section shall be construed to confer any right, privilege, or franchise upon any citizen, firm, or corporation, other than the rights expressly authorized to be granted by this section."

This proviso is inserted to remove any apprehension that may exist that the section might confer rights upon any corporation that it does not possess under existing law.

The compensation of the commissioners is also increased from \$8 to \$10 per day, which is considered a reasonable price for the character of the services required.

The necessity for the proposed legislation is so fully shown in the documents and reports herein referred to, and has been so often expressed in the annual and other reports of this office, that further statements upon the subject seem superfluous.

It is sufficient to say that the necessity still exists and is becoming more pressing every year.

This necessity exists not alone on account of the rights of the Indians, but of the settlers, some of whom have been perhaps unjustly treated through the inability of this office to properly determine the just rights of all parties.

I have the honor to recommend that the draught of the proposed bill be transmitted to Congress with request for early and favorable action.

Very respectfully,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

BILL for the relief of the Mission Indians in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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 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. 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, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the commission and approved by him in favor of each band or village of Indians occupying any such reservation, which patents shall be of legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of section four of this act, for the period of twenty-five years, in trust for the sole use and benefit of the band or village to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust and free from all charge or incumbrance whatsoever: *Provided*, 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

person 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. And a separate patent in similar form may be issued for any tract or tracts at any time after the appraised value of the improvements thereon shall have been paid: *And provided further*, That in case any lands 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 shall determine: *And provided further*, That said patents declaring such lands to be held in trust, as aforesaid, shall be retained and kept in the Interior Department, and certified copies of the same shall be forwarded to and kept at the agency by the agent having charge of the Indians for whom such lands are to be held in trust, and said copies shall be open to inspection at such agency.

SEC. 4. That whenever any of the Indians residing upon any reservation patented under the provisions of this act shall, in the opinion of the Secretary of the Interior, be so advanced in civilization as to be capable of owning and managing land in severalty, the Secretary of the Interior may cause allotments to be made to such Indians, out of the land of such reservation, in quantity as follows: To each head of a family not more than six hundred and forty acres, not less than one hundred and sixty acres of pasture or grazing land, and in addition thereto not exceeding twenty acres as he shall deem for the best interest of the allottee, or arable land in some suitable locality; to each single person over twenty-one years of age, not less than eighty nor more than six hundred and forty acres of pasture or grazing land, and not exceeding ten acres of such arable land.

SEC. 5. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior he shall cause patents to issue therefor in the name of the allottees which shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State of California, and that at the expiration of said period the United States will convey the same by patent to the said Indian, or his heirs as aforesaid, in fee discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That these patents, when issued, shall override the patent authorized to be issued to the band or village as aforesaid, and shall separate the individual allotment from the lands held in common, which proviso shall be incorporated in each of the village patents.

SEC. 6. That previous to the issuance of a patent for any reservation as provided in section three of this act the Secretary of the Interior may authorize any citizen of the United States, firm, or corporation, to construct a flume, ditch, canal, pipe, or other appliances, for the conveyance of water over, across, or through such reservation for agricultural, manufacturing, or other purposes, and may grant a right of way for rail or other roads through such reservation: *Provided*, That any individual firm or corporation desiring such privilege shall first give bond to the United States in such sum as may be required by the Secretary of the Interior, with good and sufficient sureties for the performance of such conditions and stipulations as said Secretary may require as a condition precedent to the granting of such authority: *And provided further*, That this act shall not authorize the Secretary of the Interior to grant a right of way to any railroad company through any reservation for a longer distance than ten miles. And any patent issued for any reservation upon which such privilege has been granted, or for any allotment therein, shall be subject to such privilege, right of way, or easement. Subsequent to the issuance of any tribal patent, or of any individual trust patent, as provided in section five of this act, any citizen of the United States, firm, or corporation may contract with the tribe, band, or individual for whose use and benefit any lands are held in trust by the United States for the right to construct a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such lands, which contract shall not be valid unless approved by the Secretary of the Interior, under such conditions as he may see fit to impose: *Provided*, That no authority or grant under the provisions of this section shall be construed to confer any right, privilege, or franchise upon any citizen, firm, or corporation other than the rights expressly authorized to be granted by this section.

SEC. 7. 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 to the full protection of the legal or equitable rights of any Indian or tribes of Indians in any of such lands.

SEC. 8. That each of the commissioners authorized to be appointed by the first section of this act shall be paid at the rate of ten dollars per day for the time he is actually and necessarily employed in the discharge of his duties and necessary traveling expenses; and for the payment of the same, and of the expense of surveying, the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.

UNITED STATES INDIAN SERVICE, MISSION AGENCY,
Colton, Cal., March 31, 1890.

SIR: I have the honor to report that the San Louis Rey Water Company have graded for a water-ditch across the La Jolla Reservation without my knowledge. I have written them a letter of inquiry, and will be obliged for instructions. I understand they have no contract and are trespassers, I believe, without reason or excuse.

Respectfully yours,

HORATIO N. RUST,
United States Indian Agent.

Hon. THOMAS J. MORGAN,
Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 1, 1890.

SIR: Referring to your communication dated March 31, 1890, reporting the fact that the San Louis Rey Water Company has graded for a water-ditch across the La Jolla Reservation without a permit, I have to state that no reservation is known to this office by that name.

For the purpose of identification, the township and range in which the reservation is situated should be given. If any company is trespassing upon an Indian reservation under your charge its officers should be duly notified that they must desist from any operations on such reservation until right of way is granted by or under an act of Congress.

If you are unable to enforce such order the fact should be reported to this office.

Very respectfully,

T. J. MORGAN,
Commissioner.

H. N. RUST,
United States Indian Agent, Mission Agency, California.