Letter from the Secretary of the Interior, transmitting information, in response to Senate resolution of April 1, 1880, relative to affidavits field in that department by or on behalf of the settlers on the Uncompahgre Park in Colorado; also letter from Hon. C. H. McIntyre on the subject, &c.
LETTER
FROM THE
SECRETARY OF THE INTERIOR,
TRANSMITTING

Information in response to Senate resolution of April 1, 1880, relative to affidavits filed in that department by or on behalf of the settlers on the Uncompahgre Park in Colorado; also letter from Hon. C. H. McIntyre on the subject, &c.

MAY 4, 1880.—Laid on the table and ordered to be printed.

DEPARTMENT OF THE INTERIOR,

SIR: I have the honor to acknowledge the receipt under date of 3d ultimo of a resolution of the Senate of the United States as follows:

APRIL 1, 1880.

Resolved, That the Secretary of the Interior be and he is hereby directed to furnish the Senate copies of all affidavits filed in the Interior Department by or on behalf of the settlers on the Uncompahgre [Uncompahgre] Park in Colorado; also a copy of the letter of Hon. C. H. McIntyre on the subject of settlement on said park.

Neither the files of this department nor those of the Commissioners of the Indian Office or General Land Office contain any affidavits upon the subject referred to in the resolution of the Senate, so far as a careful search of the department and said offices disclose.

A copy of letter dated the 19th ultimo from the Commissioner of Indian Affairs, with copy of letter of Mr. McIntyre, will be found herewith, the delay in forwarding said papers resulting from a second search for the affidavits called for, which search proved unavailing.

I am, sir, very respectfully,

C. SCHURZ,
Secretary.

The President of the Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 19, 1880.

SIR: I have the honor to acknowledge the receipt by department reference of Senate resolution, dated the 1st instant, directing—

That the Secretary of the Interior be and he is hereby directed to furnish the Senate copies of all affidavits filed in the Interior Department by or on behalf of the settlers on the Uncompahgre [Uncompahgre] Park in Colorado; also a copy of the letter of Hon. C. H. McIntyre on the subject of settlement on said park.
In reply, I have to state that from a careful examination of the files of this office it appears that no affidavit relative to settlers upon the park, referred to in the resolution, have been filed in this bureau. I inclose a copy of a letter from Hon. C. H. McIntyre, dated March 1, 1877, upon the subject.

The Senate resolution is herewith returned, and a copy of this report inclosed.

Very respectfully, your obedient servant,

R. E. TROWBRIDGE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

STATE OF COLORADO, HOUSE OF REPRESENTATIVES,
Denver, March 1, 1877.

DEAR SIR: In reply to your request that I should answer the statement of Acting Commissioner S. A. Galpin, of date Washington, D. C., February 8, 1877, I have to say that no modification of the proclamation of the President, so as to include the valley alone without an actual survey, is practicable. That the statements of the Acting Commissioner that the Indians claimed this valley and all grazing and agricultural lands is true, but amounts to nothing unless the Commissioner intends to be understood as holding that the Indians and not the United States Government have the right to decide where the lines of the reservation should run; and if this be the proper construction, he will find that this little valley is not a tenth of their claim, and that the entire northern line will have to be moved south many miles. In regard to the statements that the Indians never intended to cede any of their agricultural lands, and that this valley, being identified by a certain hot spring therein, was specially claimed as belonging to them, I know of no foundation for the statement. Not a word is said in the Brunot agreement of September 13, 1873, as ratified by the act of Congress (Statute laws, vol. 18, p. 37), about any hot springs, and courts have always held that parties are conclusively presumed to intend to do what their plain agreement purports, and that no evidence outside of the agreement can be received in order to modify or change it. There is in the agreement a proviso to the metes and bounds given therein, that if any part of the Uncompahgre Valley shall be found to extend south of the north line, the same is not intended to be conveyed. To this the answer is, that the main valley of the Uncompahgre does not lie to the south, but 10 or 15 miles to the north, and that there are several valleys farther south than the one in question, but the decisive answer is, that Congress, by express acts, has provided that the United States Government, by her surveyor, is the proper authority to determine the question of boundary lines of Indian reservations, and that when once determined, is final. (See Revised Statutes United States, sec. 2115, title Indians, and subdivisions 2 of sec. 2396, title Public lands.) So the Supreme Court of the United States has decided, without regard to the acts of Congress, that the government, having once made and adopted a survey, is bound by it and cannot afterwards make a new survey. (See 2 Black, 560.) Justice and right certainly do not demand that the possession of this land should be given to the Indians as against the settlers. The Indians' right to any land is simply that of temporary possession, and is subordinate to the title of the United States (Johnson vs. McIntosh, 8 Wheat., 543). The Indians did place a value on this valley for grazing purposes, I presume, but the stock of the settlers and miners occupying the country first above will hereafter render it useless to them though the settlers be removed by the Army from the land described in the President's proclamation.

So far as the spring is concerned, any amount of proof can be furnished that the Indians have repeatedly said that it was of no use to them. Indeed (as was well said in a late editorial of the Denver Tribune), the late Indian agent and the government have been a source of much greater annoyance to the settlers than the Indians. If the government is satisfied that it has made a mistake and therefore deprived the Indians of their right of possession, it would appear to be more proper to recompense them rather than to deprive citizens of rights that have vested under pre-emption and mining laws. It is admitted by the Indian Department that the government made the survey; that it was adopted by the final authorities; that by no possible construction of the agreement could the mining country included in the presidential proclamation be reserved to the Indians; and that the entire valley had been taken up prior to the proclamation by pre-emption claims. The government being bound by the survey, no reservation or appropriation of the tracts could be made after
a citizen has acquired a right to it under a pre-emption law; and this was so determined in an action brought by the United States to dispossess a pre-emptor (U. S. vs. Fitzgerald, 15 Peters, 407). So, also, the Supreme Court says the claim of a pre-emption is not that shadowy right which by some it is considered to be. Until sanctioned by law, it has no existence as a substantial right, but when covered by law it becomes a legal right, subject to be defeated only by a failure to perform the condition annexed to it (Lytle vs. Ark., 9 How., 333). No principle is better settled in this country than that an inchoate title to land is property (Delossus vs. U. S., 9 Peters, 133). The Acting Commissioner substantially admits the executive order, embracing as it does a larger area of land than was claimed by the Indians, cannot stand, and this admission is a sufficient reason why the order should be withdrawn, and is a full answer to the command by him.

Very respectfully,

Hon. J. B. CHAFFEE,
United States Senate, Washington, D. C.

C. H. MCINTYRE.

STATE OF COLORADO, HOUSE OF REPRESENTATIVES,
Denver, March 1, 1877.

Dear Sir: The undersigned, citizens interested in the San Juan country, desire to impress upon you the necessity of having the executive proclamation of August 17, 1876, in relation to a portion of the Uncompahgre Valley withdrawn.

We understand that the facts showing its injustice, as well as a legal argument against its validity, have been forwarded to you, and we trust that you will leave nothing undone to secure the desired end.

Very respectfully yours,

J. SLEFFORD.
BEN. HUGHES.
F. C. KING.
T. C. HOYT.
R. C. KILHAM.
S. H. LASHNER.
A. W. BEGOLD.
M. P. CODDING.
WM. STORY.
J. GOTTHELF.
W. B. FELTON.
M. R. MOORE.
Geo. X. YOUNG.
J. P. RUSSELL, M. D.

Hon. J. B. CHAFFEE,
Washington, D. C.

THOS. G. Gibbon.
ROBERT GAMMON.
FRED. C. PECK.
F. C. CARRUTHER.
THOMAS A. DOBAN.
J. L. LOCKE.
ANDREW W. RICHARDSON.
C. P. CROSS.
J. H. GREEN.
ALVA ADAMS.
N. A. FOSS.
JOHN D. COPLER.
WM. CLARK.