

Indian Occupancy Report.

Interior, & L. D. 341, lands in the possession of Indian occupants were not unappropriated public lands within the meaning of the Act of June 16, 1880. The substance of this circular was reaffirmed many times from 1881 until 1897, during a period of 17 years, so that it was the custom of the Department to allow no entries upon lands in the possession and use of Indian inhabitants. The purpose of this report is merely to show that the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, T. 30 N., R. 58 E., N. D. T., was occupied, improved and used by Indians long prior to May 31, 1897, when this land was selected, and Jan. 17, 1898, when said selection was approved.

This tract of land is situated on the west side of Ruby Valley, adjoining the foothills of the Ruby Mountains. An old irrigation ditch cuts diagonally across the NW $\frac{1}{2}$ NW $\frac{1}{2}$ NE $\frac{1}{2}$ Sec. 25, so that the larger southeast portion of the land is below said ditch. Due to the contour of the hill, this irrigation ditch returns to within about 75 feet of the southwest corner of the subdivision. Water runs northerly in this ditch. It is diverted from Overland Creek. At the time of the examination 32 acres of

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land were under cultivation as an alfalfa field. This comprised all of the land below the ditch. In the northwest corner of the subdivision but on the upper side of the ditch, there is a one-room log house, well built and whitewashed. Near the southwest corner of the area but not upon the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, there are several corrals above the ditch.

Attention is called to the fact that the NE $\frac{1}{4}$ NE $\frac{1}{4}$ covers that land which lies immediately to the east of the irrigation ditch from a point beginning approximately at the corrals and extending northerly to opposite the house of Joe Timcke. This matter is mentioned for the reason that most of the settlers in the country are familiar with the location of these corrals and the house of Joe Timcke, but they are not familiar with the land lines.

At the time of examination, the house was being occupied by Joe Timcke and other Indians. The corrals were also being used by them. Ownership was generally regarded as being in Joe Timcke, who is regarded as being chief of a tribe of western Shoshone Indians. A new alfalfa field to the east has recently been made by Luchacho

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Timoke on an Indian allotment. A new clearing has been made to the north by Frank Jim on another Indian allotment.

A treaty was made on Oct. 1, 1863, with the western Shoshone Indians. The same will be found on page 851 of Volume 2 of Indians Affairs, Laws and Treaties, compiled and edited by Chas. J. Kappler, 1894. The signature of Temoak is recorded in this treaty by his mark. This Temoak was the father of Joe Timoke. At a later date an Indian reservation appears to have been established, but the Indian Temoak, and his brother, did not go upon the same. An Indian agency was established at Ruby Valley near this land for the purpose of fulfilling the terms of the treaty of 1863.

Prior to 1868, when this land was surveyed, it was occupied for about 7 years by L. H. Head. Head occupied the land as a squatter and farmed the same. Later Head sold his squatter's right to M. P. Freeman or a bank in Elko, so that the sale of the lands was in the hands of Mr. Freeman. In 1875 these squatter's rights were purchased by Ira D. Wines. As the land had been surveyed in 1868, the right which Mr. Wines purchased was not such right as would prevent any one

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from occupying the land and establishing a claim thereto in case the settler connected himself with the Government by proper filings. Nevertheless Wines continued to claim the land as his own. He also became the owner of the Overland ranch which comprises a very large tract of land. The ditch, which has already been described, must have been built either prior to or during Head's occupancy of the land, for the reason that no cultivation would have been possible without water.

Owing to the fact that Indians were desirable as labor upon Mr. Wines ranch, and in order to encourage them to remain in his vicinity, he invited them to settle upon the NE $\frac{1}{2}$ NE $\frac{1}{2}$ Sec. 25. Among these Indians was Joe Timoke. At that time Timoke was living in a cabin near the corrals. He continued to live here for some time, but, following Mr. Wines' invitation occupied and continued to cultivate NE $\frac{1}{2}$ NE $\frac{1}{2}$ Sec. 25. In 1897 Mr. Wines made a State selection for this land despite the fact that it was occupied by the Indians. Following the approval of the State selection, he permitted the Indians to continue upon

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the land. They did not build any house on the subdivision until after the patenting thereof, but their homes were near the corrals and also just west of the present home of Joe Timoke. Within the past 10 years Mr. Wines acquiesced in the construction of the house in which Joe Timoke now lives.

During all these years Mr. Wines made Ruby Valley his home. His son, Stanley L. Wines, now 32 years of age, has lived in the valley practically all of his life. As the father has grown older he has turned his interests over to his two sons. The NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, T. 30 N., R. 62 E., was deeded to Stanley Wines in 1914. For more than 15 years Stanley Wines has seen Indians occupying and improving this subdivision. He was therefore a purchaser with notice of the Indian occupancy at the time of purchase. In his attached affidavit he claims that he was too young to remember whether the Indians occupied the land prior to the time his father selected it. This is the substance of his denial rather than his statement thereof.

Upon purchasing the land, Stanley Wines notified the Indians of his ownership at the time they were cutting

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hay. Despite the fact that it had been their labor which had continued the reclamation of this land and had resulted in its improvement, and despite the fact that it was their irrigating which had developed the crop of hay which they were cutting and which he cut, he nevertheless took the hay for his own use. As a result of this action, Joe Timoke requested Mr. Duval to make complaint.

As near as can be learned, the foregoing is an historical statement of the occupancy and use of this land. There are attached to this report affidavits of J. S. Short, Thos. Short, J. S. Short, Stanley Wines, Ira D. Wines and Albert Meyers. There is also attached a statement written by myself and translated by Jack F. Timoke to Joe Timoke, Muchacho Timoke, Bob Timoke, Lazy Jim, Billy Long, Charlie Joe Billy, and John Carson, Indians of Ruby Valley.

The winter of 1889 was a particularly severe winter. Using it as a definite date because of the fact that so many cattle were killed, it has been possible for the Indians to state definitely that Joe Timoke was then farming land on the NE¹/₄ Sec. 26. According to Lazy Jim, who is 85 years old, Joe Timoke's father farmed the land before him. The statements of the white men first named also show very clearly

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that long prior to 1897 the Indians were occupying this land. The statements do not agree so well as to the history of the various houses in which Joe lived near the land.

The only discordant affidavits are those of Ira D. Wines and his son Stanley Wines. Mr. Wines states that at the time of his purchase in 1875, the subdivision was unimproved and that he cannot say just when the Indian occupancy began with reference to the date of his filing, but it was subsequent to the time when he took possession as the purchaser of the Head interests. A period of 22 years elapsed between the time that Wines purchased the Head interests and the filing on the tract. While his memory may be faulty, since his desire was to retain the Indians in his vicinity, it appears most probable that his invitation to settle upon the land occurred long prior to 1897. His son, Stanley Wines, claims that in 1894-95 there was no clearing or cultivation on the NE $\frac{1}{2}$ NE $\frac{1}{2}$ Sec. 25, although there may have been a little meadow or green patch along the lower side of the ditch bank. His recollection is that most of this 40 acre tract was sagebrush and not cleared. He admits that about 16 or 17 years ago the Indians cleared a

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piece of ground near the northeast corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, but he cannot say if this was on this 40 acres or not.

As Mr. Wines is willing to concede that there was a little meadow or green patch below the ditch, he is doing fairly well because the Indians probably used it since their corrals were always just above the ditch. Such occupancy as that represented by the use of the meadow should be sufficient evidence of the fact that Stanley Wines knew of the Indian occupancy of this land prior to its selection in 1897.

Independent of the statements of these various witnesses, the official records of the land office show that a portion of the land was under cultivation in 1868 when the survey was made.

In view of the facts stated above and the affidavits attached hereto, it is clear that this Indian occupancy preceded the selection of the land in 1897 by many years; that Ira D. Wines and Stanley Wines were residents of Ruby Valley for many years; that they were generally familiar with the Indian occupancy of this land and that both had notice so that neither the father nor the son can claim any

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benefits as innocent purchasers.

Stanley L. Wines has recently made a desert land filing and his father is interested in the right to waters of Overland Creek. The water which is used upon the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, is derived from this stream. This right is a vested right, the existence of which is detrimental to Mr. Wines. At the present time there is a friction with the Indians regarding the use of water, owing to the fact that there is not sufficient for both. His purpose in endeavoring to prevent the Indians from occupying this land is therefore two-fold. It appears that he desires to not only enjoy the benefits of their labor and efforts of reclamation but also to destroy their water right by preventing their putting the water to beneficial use.

It is therefore recommended, in case an examination of the legal principles will permit, that the State of Nevada be directed to submit evidence in a hearing relative to the following charges:

1. "That the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, T. 30 N., R. 58 E., M. D. M., was not vacant and unoccupied land at the time of its selection on May 31, 1897, and at the time of the approval of this selection on Jan. 17, 1898."

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2. "That the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, T. 50 N., R. 58 E., M. D. M., was occupied and used and in the possession of Indians prior to the date of its selection by the State of Nevada on May 31, 1897."

In case the legal questions involved do not permit such action it is recommended that other appropriate action be taken looking to the revocation of the approval of this State selection in order that it may be set aside as an Indian allotment for the benefit of Joe Timcke. An extra copy of this report is transmitted for the use of the Bureau of Indian Affairs.

Very respectfully,

(Signed) Joseph Jensen,

Mineral Inspector, G.L.O.

10/16/15

See my letter this date to Comr.

(Signed) J. D. Yelverton,

Chief of Field Service.

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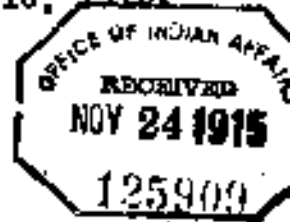
GENERAL LAND OFFICE

WASHINGTON, D. C.

ADDRESS ONLY THE
COMMISSIONER OF THE GENERAL LAND OFFICE

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512 Custom House,
San Francisco, Calif.,
Oct. 16, 1915.



Honorable Commissioner,
General Land Office,
Washington, D. C.

Sir:

I inclose herewith report by Mineral Inspector Joseph Jensen, dated Oct. 1, 1915, recommending that hearing be ordered to determine whether or not Joe Tincke, an Indian, is entitled to the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, T. 30 N., R. 58 E., N. D. M., which tract was certified to the State of Nevada Jan. 17, 1898, under the Act of June 15, 1880.

While the showing made as to the Indian's settlement is not altogether satisfactory, there would appear to be no objection to having a hearing in order to determine whether or not he had settled on this land prior to the selection by the State, if it were not for the fact that this land was certified in 1898. It seems unnecessary, however, for me to discuss the question of law involved in whether or not the Department can set aside a certification which was made more than six years ago.

Very respectfully,

(Signed) J. D. Yelverton,
Chief of Field Service.

10-27 UAX

1 x Com. Ind. Aff.
1 x C.F.D.
1 Ins.

Oct 22, 1915

Sells
MR

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DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON October 22, 1915.

ADDRESS ONLY THE
COMMISSIONER OF THE GENERAL LAND OFFICE

: Indian occupant prior to
: State selection; report
: referred to Indian Office.

The Commissioner
of Indian Affairs.

My dear Mr. Sells:

This office is in receipt of a letter dated October 16, 1915, from the Chief of Field Service, inclosing a report by a mineral inspector, dated October 1, 1915, recommending that hearing be ordered to determine whether or not Joe Fimoke, an Indian, is entitled to the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 25, T. 30 N., R. 58 E., M. D. M., Elko Land District, Nevada, which tract was certified to the State January 17, 1898, under the act of June 16, 1880 (21 Stat., 287). In the said letter, the Chief of Field Service says:

Sells

"While the showing made as to the Indian settlement is not altogether satisfactory, there would appear to be no objection to having a hearing in order to determine whether or not he

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*Copies filed in
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Land Alerts*

had settled on this land prior to the selection by the State, if it were not for the fact that this land was certified in 1898. It seems unnecessary, however, for me to discuss the question of law involved in whether or not the Department can set aside a certification which was made more than six years ago."

It appears from the report in this case that on July 16, 1914, and June 9, 1915, J. A. Duval, a resident of Ruby Valley, Nevada, writing for Joe Timoke, an Indian about sixty-five years old, made complaint that S. L. Wines, of Ruby Valley, claimed ownership of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25, T. 30 N., R. 59 E., M. D. M., upon which the Indian, Joe Timoke, and other Indians, were living and had been living for more than forty years.

This subdivision was selected by the State of Nevada under the act of June 16, 1880 (21 Stat., 287), known as the "two million acre grant," in lieu of the 16th and 36th sections, granted to the State of Nevada by the United States, in accordance with the act of March 21, 1864 (13 Stat., 30). Said subdivision was a part of the list No. 205, filed May 31, 1897, and approved January 17, 1898, under list No. 26, as certified by letter "G" of this office, dated January 28, 1898.

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