

REFER IN REPLY TO THE FOLLOWING:

5-1100

ADDRESS ONLY THE  
COMMISSIONER OF INDIAN AFFAIRS

DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

WASHINGTON

00260

Jan 28 - 1915

28

REPRODUCED FROM THE HOLDINGS OF THE NATIONAL ARCHIVES - LOS ANGELES BRANCH

*Sand Allotments*  
*134532-14*  
*J.T.R.*

Mr. Thomas K. Adreon,  
Special Agent in Charge,  
Leupp Indian School.

My dear Mr. Adreon:

I have your letter of December 14, regarding allotments on the public domain and the inadvisability of incurring additional expense in field investigations connected therewith.

The various suggestions made by you are fully appreciated. Under normal conditions the position you assume in the matter would be undoubtedly correct. For your information, however, possibly a brief review of some of the essential facts connected with this work would suggest to you a different line of thought.

While the Navajo Reservation proper, embracing some 12,000,000 acres in the aggregate, appears large, yet its general character is such and the present membership of the Navajo tribe so great, that adequate grazing facilities have not been afforded within the reservation to all members of the tribe. For a long time past, therefore, a number of these Indians have drifted away from the reservation in search of pasture for their

stock and have used almost exclusively, to a greater or less extent, considerable areas on the public domain adjacent to the reservation. This is borne out by the fact that as early as 1888, it was reported that the number of such Indians outside of the reservation was as high as 9,000.

When white stockmen entered this territory naturally conflicts and disputes arose between the Indian and white stock grazers as to the use of the range afforded by the public domain. At various times in the past the question has become somewhat acute, and logically the most ready method of affording adequate protection to the Indians would be the inclusion of the lands within an Indian reservation, so as to extend the jurisdiction of the Office thereover.

The aggregate area in the State of Arizona already withdrawn for Indian purposes has been so large, however, and the uniform and persistent opposition of officials of the State, the Cattle Growers Association, and other local parties interested therein has been so great, that the Office has not found itself in a position to urge the withdrawal of additional areas for the exclusive benefit of the Navajo Indians. It is a matter of regret, of course, that it has not been possible to take this step years ago.

Sometime prior to the year 1908 the controversy between white and Indian users of the range on the public domain in the vicinity of the Navajo Reservation became so acute that allotting agents were detailed to this locality for the purpose of assisting the Indians to file applications for allotments on the public domain under the 4th section of the General Allotment Act as amended. Presumably this action was had on the assumption that these Indians having lived on the public domain for a number of years, necessarily at some point they must have made settlement and established homes. Owing to the scarcity of water for domestic and stock watering purposes, it was also assumed that the allotment of lands to the Indians, containing practically all of the springs or water holes in this locality, would give them an effectual and undisputed control of the entire range, as unless the owners of white stock could get to the water they would not be in a position to use the adjoining pasture lands. In other words, the control of the water resources would practically control the entire range.

This presumption is strengthened by the fact that the 4th section of the General Allotment Act of February 8, 1887, (24 Stats., 388), as amended, authorizing allotments on the public domain, does not carry any specific direction as to

the character of settlement required or length of time during which residence must be maintained in order to entitle applicants to the lands applied for. While the Office and the Department have considered that a substantial compliance with the law as to settlement would be required, as an evidence of good faith on the part of the applicants, yet regard has also been given to the fact that we are dealing with Indians, and viewing the climatic conditions of the country in which they were located, the same character of settlement or length of time of residence should not be required in their cases as is demanded of white settlers under the homestead laws of the United States.

Again, the homestead law confines applications to heads of families or single persons over the age of 21 years, while under the 4th section of the General Allotment Act the right to allotment, if it exists in the applicant, carries also the right to allotment in behalf of his or her children. Therefore, if the head of a Navajo family has established reasonably permanent settlement on any specified area and by virtue of such settlement is entitled to allotment under the 4th section, he would likewise be entitled to file applications in behalf of each member of his immediate family, without settlement being required on any tract other than the one occupied by the head of the family.

It has been known to the Office for a number of years past, that 160 acres of land in this locality is not sufficient to produce a suitable support for the average Indian family, and that allotments in considerably larger areas would be required if the allottees are expected to derive sufficient maintenance from the land allotted. It was felt, however, that the aggregate area which could be controlled by the head of a family and the other immediate members thereof, would be sufficiently large to virtually guarantee to these Indians practically the exclusive use of the range in their locality; particularly if the allotments so located covered virtually all of the limited water resources there. In other words, the step of allotting these Indians under the 4th section of the General Allotment Act was devised for the purpose of combating the aggressive white owners of stock in the free use of the range where the Indians were located.

Coming back to the legal points involved, as to these applications covering lands on which no settlement can be shown by the applicant, or if a minor, or married woman, by the head of the family to which such applicant belongs, necessarily we would not be in a position to suggest an approval of the applications. If settlement has been made, however, by the

head of the family on a specific tract, even though that settlement would not measure up to the requirements of the white man's homestead law, yet the Office would feel justified in looking more closely into the rights of the Indian before recommending the rejection of his application.

With this idea in view, therefore, the Office does not feel in a position, with the information now before it, or without a further report from the field, to concur in all cases in the findings by Special Agents of the General Land Office that sufficient settlement has not been made by these Indians to entitle their applications to favorable action. If these Indians have a right to allotment on the public domain, we desire to see that right protected, and as a general proposition do not care to accept the statements of persons disinterested from an Indian standpoint to the effect that "sufficient settlement has not been made".

Moved by these considerations, therefore, it is suggested that you give the matter further thought, and a closer investigation, with a view of satisfying yourself that no settlement has been made, either by the applicant, or the head of the family to which such applicant belongs, before suggesting a cancellation in toto of all the applications of members of that

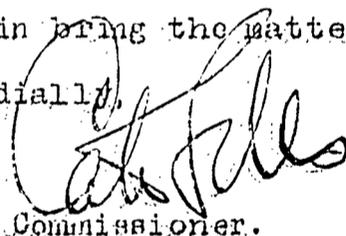
family. The Agency Farmer at Leupp, Mr. J.W. Bush, has been in this locality for a number of years and has probably visited various parts thereof to such an extent as to place him in a position at this time to state whether in his opinion any of the Navajo Indians in that locality have made sufficient settlement or residence on any one particular tract of land to justify the individual Indians in seeking to obtain allotments under the 4th section. If he is satisfied such settlement has not been made then a report through you to that effect would be sufficient to move the Office to recommend the cancellation of the applications. This, of course, would obviate the necessity of any additional field investigations and the expense incident thereto. While additional unnecessary expense connected with the investigation of these applications certainly is to be avoided, yet it is not desired to deprive these Indians of any rights to which they may be entitled, simply to save a few dollars of necessary expense connected with an investigation thereof.

You will understand, of course, that this matter has been gone into so fully, simply for the sake of placing before you these ideas as they occur to the Office. They are of a confidential nature to a large extent, and are here given for your personal information. In connection with these applications it should be also borne in mind that the attacks made

against their validity are in the main raised by persons who themselves certainly have no greater right to the use of the lands in this locality, because if the information disclosed by the records of the Office is correct, the Indians used this territory long before the white man ever reached it, and local conditions are such as to render it practically impossible for white men to comply with the homestead law and thereby obtain title to specific tracts for themselves. In other words, it is not a contest between a white homestead settler and an Indian homestead settler, as much as it is one between a white cattleman and an Indian cattleman.

I appreciate the motives inducing you to express yourself as you have in your letter of December 14, and if the views set forth herein suggest any additional ideas to your mind, please feel at liberty to again bring the matter to my attention.

Cordially,



Commissioner.

11-RHP-8