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## Dispossessed Again: Paiute Land Allotments in the Mono Basin, 1907-1929

Robert B. Marks

*Whittier College*, [rmarks1949@icloud.com](mailto:rmarks1949@icloud.com)

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### Cover Page Footnote

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## Dispossessed Again: Paiute Land Allotments in the Mono Basin, 1907-1929

On September 23, 1907, the U.S. government under the signature of President Theodore Roosevelt issued land patents to seven Piute Indians in California's Mono Basin, and three more to Piutes claiming land elsewhere in Mono County. And then in the 1920s, three more patents were issued to Mono Basin Paiutes (spelled slightly differently this time) and another eight elsewhere in Mono County.<sup>1</sup> These documented actions open a vista onto an episode of Indian land ownership in California's Mono Basin—following their dispossession from their land—and through that onto the broader issues of Indian recovery of parts of their lands (however temporary) in the new legal, institutional, and economic systems of late-nineteenth and early-twentieth century America.

Like most California Indians, Mono Basin Paiutes were “non-reservation” Indians. Their land had been occupied and then settled and claimed by Euro-American settlers since about 1860. The U. S. government institutionalized that taking by the legal mechanisms of land surveys and the sale or transfer of ownership from the federal government to settlers by the Homestead Act of 1862 and the Desert Land Act of 1877.<sup>2</sup>

The Mono Basin Paiutes were never conquered by the U.S. military, although its presence was close by and was felt. The Paiutes also never ceded their land to the U.S. authorities, but neither did nearly all other California Indians. If they were not killed, California Indians were dispossessed of their lands. Among the new state's first acts was to disavow the legitimacy of any Indian claims to land and the ability of the U.S. government to make any treaties with California Indians. Only about one-third were removed to reservations.

As a result, nearly all California Indians in the second half of the nineteenth century were not just “non-reservation” Indians, but they were legally landless non-citizens as well. Those who survived the three-decade onslaught from what Benjamin Madley has termed “an American genocide” in California<sup>3</sup> thus had to figure out how best to survive and navigate the new legal landscape that undergirded the capitalist transformation of land, water, and labor that reached into all parts of Indian Country. The story of Indian reservations surely is an important part of the broader narrative of Indian conquest and removal from their homelands, as well as their loss of reservation land to the workings of the 1887 Dawes Act (more on that below).<sup>4</sup> But so too is

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<sup>1</sup> A note on terminology: The indigenous people of the Mono Basin call themselves Kutzadika<sup>a</sup> (also spelled Kootzaduka or Kutzadika'a), and their homeland Kootzagwae (Mono Lake Kootzaduka'a Tribe website, accessed April 2, 2022, <https://monolaketribe.us>). After California became a part of the United States, those governments and the white Euro-American settlers called the Kutzadika<sup>a</sup> Pah-Ute, Piute, or Paiute. For simplicity, the latter will be used throughout except when quoting or referring to a documentary source or referring to the period before California became a state. For an explanation of the terminological issues with respect to California, see Damon B. Akins and William J. Bauer, Jr., *We Are the Land: A History of Native California* (Berkeley and Los Angeles: University of California Press, 2021), 9-12.

<sup>2</sup> Janet A. McDonnell, *The Dispossession of the American Indian, 1887-1934* (Bloomington, IN: Indiana University Press, 1991).

<sup>3</sup> Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* (New Haven, CT: Yale University Press, 2016).

<sup>4</sup> For some of those stories, see Daniel Heath Justice and Jean M. O'Brien, eds., *Allotment Stories: Indigenous Land Relations Under Siege* (Minneapolis: University of Minnesota Press, 2021).

the story of how those not on reservations navigated through settler colonialism with few if any rights.

Recent studies highlight different approaches that individuals and small groups of Indians in the American West took to being legally landless but trying to obtain land nonetheless. Martha Knack tells the story of Tim Hooper, a Shoshone Indian in Western Nevada not far from the Mono Basin and his decades' long struggle to get title to land using the Homestead Act. That surely was a heroic struggle, since "only a small proportion of Indians were recognized as U.S. citizens before 1924" and "eligible to claim land under the ordinary 1862 Homestead Act."<sup>5</sup> In California, Khal Schneider explores how in 1878 a small group of Northern Pomo Indians under the leadership of Captain Jack left the Round Valley Reservation and bought enough land to establish what came to be called a "Rancheria." With a lawyer as back-up, Captain Jack and two others protected their claim to own the land they had purchased for \$350: "Nobody troubles us. We have our own homes here and feed ourselves well. Nobody does any harm to me here...[The land] belongs to all our folks, and nobody can take it." Other Pomos near Ukiah set up and defended numerous other collectively owned rancherias outside the control of the Office of Indian Affairs.<sup>6</sup> Elsewhere in Nevada, historian Steven Crum has shown, Western Shoshone individually and collectively received land allotments both on public domain, and in a national forest. Moreover, upon the recommendation of the Reno Indian Agency, President Taft authorized the establishment of a small 120-acre reservation as well as "colonies" for Shoshone living in or near towns or cities who also had land allotted to them.<sup>7</sup>

Although Tim Hooper acted individually and Captain Jack as the leader of a small collective, both sought to have legal title to land in their ancestral homelands. Hooper was "deeply attached to particular valley areas and the nearby mountain ranges," in the words of one official.<sup>8</sup> The Northern California rancherias were all in or near Pomo homelands too, although Schneider is clear to point out that the rancherias, with upwards of 100 or so members, created their own communities, gathering "the intersecting threads of seasonal labor, ceremony, and kinship to interweave the fabric of Indian community around Clear Lake and in the Russian River Valley."<sup>9</sup> As these studies suggest, the place to start with understanding what turned out to be a brief period of Indian land ownership in the Mono Basin is with their homeland.<sup>10</sup>

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<sup>5</sup> Martha C. Knack, "The Saga of Tim Hooper's Homestead: Non-Reservation Shoshone Indian Land Title in Nevada," *Western Historical Quarterly*, Vol. 30 No. 2 (Summer 2008): 127.

<sup>6</sup> Khal Schneider, "Making Indian Land in the Allotment Era: Northern California's Indian Rancherias," *Western Historical Quarterly*, Vol. 41 No. 4 (Winter 2010): 429, 437.

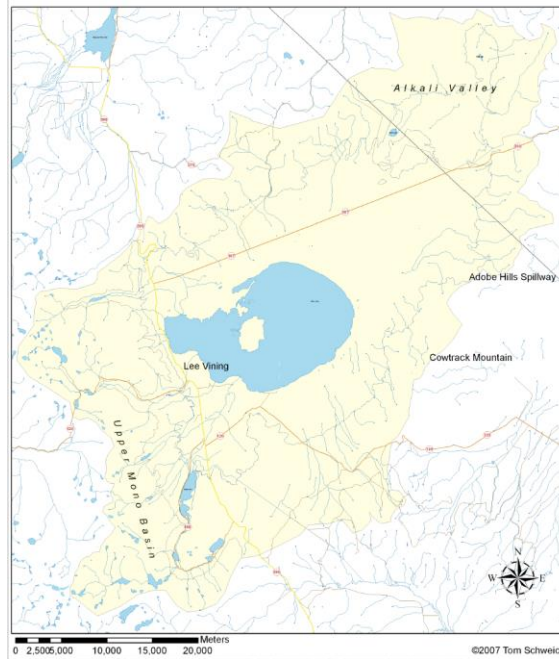
<sup>7</sup> Steven J. Crum, *The Road on Which We Came: A History of the Western Shoshone* (Salt Lake City: University of Utah Press, 1994), 72-73.

<sup>8</sup> Knack, "Tim Hooper's Homestead:" 149.

<sup>9</sup> Schneider, "Making Indian Land:" 437-38.

<sup>10</sup>This article is part of a broader environmental history of the Mono Basin that I am working on. Other articles on that topic completed so far include "Sheep Replace Pronghorn: An Environmental History of the Mono Basin," *Eastern Sierra History Journal*, Vol. 2, Article 1 (2021), "Mr. Clover Goes to Washington: Land, Water, and Fraud in the Mono Basin, 1910-1945," *Eastern Sierra History Journal*, Vol. 3, Article 1 (2022), and "Before Mulholland: Land, Water, and Power in the Mono Basin, 1872-1923," submitted to *Southern California Quarterly*.

Map 1. Mono Basin Watershed



Source: Tom Schweich. Used with permission.

### The Mono Basin<sup>11</sup>

Lying at about 6400 feet above sea level in a high desert, the Mono Basin is composed of an ancient lake and its surrounding drainage system; it is located east of Yosemite National Park near the current town of Lee Vining and is on the western flank of the Great Basin, the area west of the Colorado Rocky Mountains and east of the Sierra Nevada Mountains (Map 1). The Mono Basin is a “sink,” a depression formed at least 750,000 years ago by surface subsidence and bounded on its west by the Sierra Nevada Mountains and by higher hills to the east, south, and north. The Mono Basin (and the Eastern Sierra in general) is in the “rain and snow” shadow of the towering Sierra Nevada mountains. While the amount of precipitation in the basin averages around ten inches per year, huge amounts of snow (averaging over 400 inches annually) can fall in the Sierra Nevada. Three streams (and their tributaries) carrying snow melt from the mountains empty into Mono Lake, which now measures 13 miles east to west, and about eight miles north to south. Because Mono Lake has no outlet, evaporation leaves behind salts and other minerals which over the millennia have concentrated, rendering the lake highly alkaline (“salty”)—more so than the oceans and only slightly less so than the Great Salt Lake. In recent times, the level of the lake has fluctuated because of both natural and human causes.

Despite being highly alkaline, Mono Lake is not “dead,” but rather is a lively and unique ecosystem. Only one animal has evolved to be able live in the alkaline water, the brine shrimp (*Artemia monica*). These tiny creatures are about one-quarter of an inch long, and feed on the algae which grows in the lake during the spring and summer. The brine shrimp thrive on the algae, and because there are no competitors, each year trillions of brine shrimp are born, live, and

<sup>11</sup> For more detail, see Marks, “Sheep Replace Pronghorn,” 3-10.

then die. They constitute a source of food for dozens of species of migratory birds. The other unique animal which depends on the lake is the alkali, or brine, fly (*Ephedra hians*), a species that inhabits the shores of the lake in huge numbers and has evolved in a life cycle that includes the ability to lay its eggs in the salty lake's waters near the shoreline. The eggs mature into larva which pupate and then emerge as alkali flies. These flies too are major food source for birds, and the pupae became a food source for humans too.

The area around the lake today is an environment largely defined as sagebrush scrub and alkali sink scrub, plant communities dominated by species that can live in the high desert environment. Slightly higher up in the hills are pinyon and juniper pine woodlands, and higher yet are Jeffrey pine forests. Riparian forests of aspen and willow line the lower reaches of mountain streams flowing into Mono Lake. All of these ecosystems support a variety of animals from insects to rodents, mammals, fish, birds, and their predators. In short, Mono Lake and its surrounding ecosystems support a large variety of plants and animals and constitute a lively if ultimately fragile environment. Today it is protected by inclusion in the Mono Basin Scenic Area overseen by the U.S. Forest Service, and by the Mono Lake Tufa State Natural Reserve.

The Kutzadika<sup>a</sup> had been in the Mono Basin for millennia, had developed their own relationship to the environment, and had developed sophisticated ways of getting their food and other resources necessary for life from the Basin, as well as maintaining cultural and trade relations with neighboring tribes. Their name means “kutzavi eaters,” kutsavi being the larvae of the brine fly. Those patterns of life were upended when in the second half of the nineteenth century Euro-American settlers moved into the Mono Basin and brought about significant environmental, demographic, and economic changes.

### Dispossession

The Mono Basin was the Kutzadika<sup>a</sup> home, their land, their environmentally embedded culture that sustained them over the millennia. Then, in the middle of the nineteenth century U.S. troops followed by Euro-American settlers entered the Mono Basin, claimed the land as their land, and went about transforming it into irrigated farms and ranches. By the late 1800s, the U.S. government and settlers had transformed the Kutzadika<sup>a</sup> into “Pah Utes,” “Piutes,” or “Paiutes,” like other Indians in the Owens Valley and Nevada.

The Mono Basin Kutzadika<sup>a</sup> were not attacked or conquered by U.S. military forces or vigilante irregulars as had thousands of others in California's genocidal Indian Wars spanning more than two decades from 1850 to 1873.<sup>12</sup> But they certainly were aware of the military force brought to bear against their brethren to the west in the Yosemite Valley,<sup>13</sup> to the south in the Owens Valley, and to the east and north in what is now Nevada. Euro-American settlers began coming into the Mono Basin at least by 1858 following gold and silver mining strikes to the north in Monoville overlooking Mono Lake.

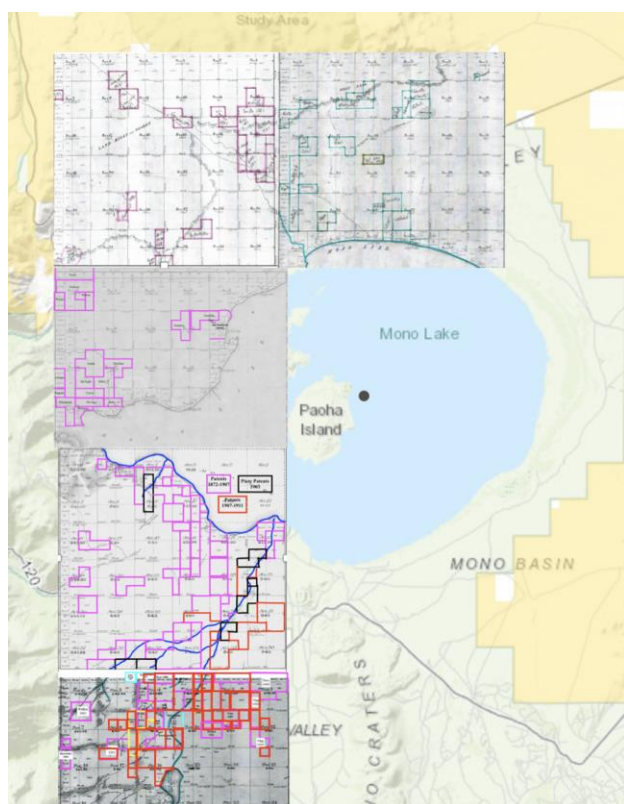
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<sup>12</sup> Madley, *An American Genocide*.

<sup>13</sup> Andrew Shaler, *Mariposa and the Invasion of Ahwahnee: Indigenous histories of Resistance, Resilience, and Migration in gold Rush California* (UC Riverside PhD dissertation, 2019).

In 1855, the U.S. government dispatched the surveyor A. W. von Schmidt to survey California by mapping the network of townships by which all the land could be distinctly inscribed upon the natural environment as abstract squares or rectangles—“quarter sections” of 160 acres—that could be sold to settlers or transferred to them under the terms of Homestead Act of 1862 and the Desert Land Act of 1877.<sup>14</sup> The Paiutes never ceded their land to the U.S. government in return for a reservation, but their land was taken from them nevertheless by the simple act of the survey which claimed all the land as the U.S. government’s.<sup>15</sup> The Mono Basin Paiutes were among the “dispossessed” American Indians.<sup>16</sup>

Map 2  
Dispossession by Land Survey: Land Patents in the Mono Basin, 1872-1925



<sup>14</sup> For von Schmidt’s story, see David Carle, *Putting California on the Map: Von Schmidt’s Lines* (Lee Vining, CA: Phalarope Press, 2018); David Carle, (2020) "Putting California on the Map: Von Schmidt’s Lines," *Eastern Sierra History Journal*, Vol. 1, Article 1 (2020). See also Thomas C. Fletcher, *Paiute, Prospector, Pioneer: The Bodie-Mono Lake Area in the Nineteenth Century* (Bishop, CA: Community Printing and Publishing, 1987), 24-28. For a succinct explanation of the land survey system, see Richard White, *California Exposures: Envisioning Myth and History* (New York, NY: W. W. Norton & Co., 2020), 94-97.

<sup>15</sup> One could argue that the land surveys of the American West were the final stage in a process of cartographic colonialism whereby the mapping of the continent focused on the land its resources, and systematically removed the indigenous peoples from the maps. David Bernstein, *How the West Was Drawn: Mapping, Indians, and the Construction of the Trans-Mississippi West* (Norman, OK: University of Nebraska Press, 2018), esp. pp. 161-193.

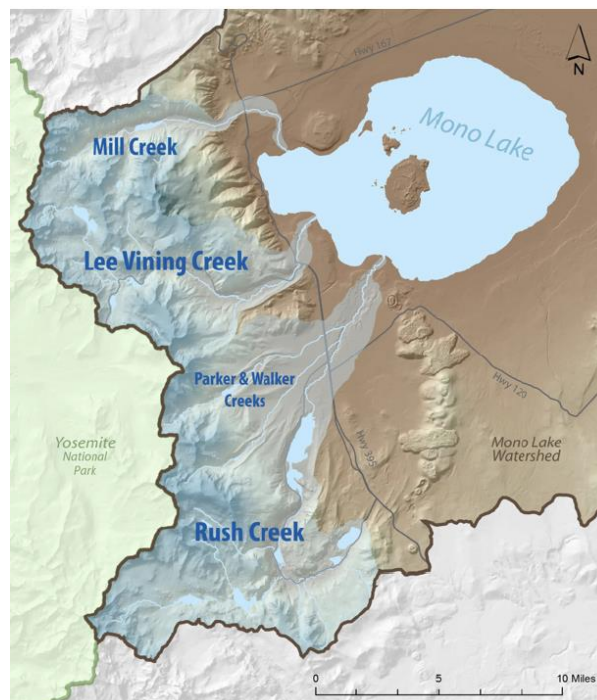
<sup>16</sup> Janet A. McDonnell, *The Dispossession of the American Indian, 1887-1934* (Bloomington, IN: Indiana University Press, 1991). McDonnell uses the term “dispossession” to apply to the workings of the Dawes Act of 1887, but



Source: Base map of the Mono Basin from the Bureau of Land Management “BLM California” online interactive map. Overlay of land patents by author.

Map 2 shows the distribution of the nearly 200 land patents issued in the Mono Basin from 1872 to 1925, nearly all of which went to Euro-American settlers. A small minority were ten land allotments to Paiutes that will be discussed in more detail shortly. Geographically, most of the land patents were to the west and southwest of Mono Lake, with some more to northwest and north of the lake. The reason for that distribution is simple: three streams brought fresh water down from the Sierra mountains to the west, and to the north of the lake there were springs and a high-water table that could be tapped. The rest of the Basin was far from any easily accessible source of fresh water (Map 3).

Map 3  
The Three Major Streams flowing into Mono Lake



Source: Mono Lake Committee. Used with permission.

The land was transferred to settlers by sale (\$1.25 per acre), by the Homestead Act of 1862 (in 160 acre lots), and the Desert Land Act of 1877 (in 640 acre lots). To get the land patents in the latter two cases, settlers first had to “enter” the land they wanted, improve it by building houses and other buildings, and farming or ranching the land. Desert Land Act “entry-men” in addition had to prove that they had gotten water to their land. These actions took up to five years and were offered as “proof” of perfecting their claim, and upon verification the land patents were issued. The existence of the Mono Basin land patents showed that the land had become the

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her narrative mostly concerns what happened to reservation Indians. Nonetheless, the term “dispossession” applies as well to what happened to California Indians.



settlers' and that they had begun transforming the environment from that which the Kutzadika<sup>a</sup> had tended for millennia into farms and ranches governed by market forces and outside demands for food and fuel.

In the forty years from 1860 to 1900, the access of Paiutes to their sources of subsistence in their Mono Basin homeland was systematically denied—the result of a slow-motion eco-war, if you will. Many Euro-American settler ranches were of considerable size. To the southwest of the lake were two ranches owned by the Farrington brothers; W. J. had 2200 acres, and Archie had 4500 acres on which they raised cattle and grew hay. The Conway ranch northwest of the lake was over 1000 acres. Three Mattly brothers owned 1100 acres; another Mattly brother owned an additional 480 acres. Below them along Rush Creek was the 320-acre Drake ranch.<sup>17</sup> The ranches were mostly fenced with barbed wire, keeping sheep and cattle in and Paiutes out.

To grow their crops and raise their livestock for export, settlers transformed the hydrology of the Mono Basin. If the semi-desert land was relatively plentiful, fresh water was scarce. Settlers diverted water from the streams running into Mono Lake into ditches distributing water to ranches, tapped springs for gardens, and dug wells to supply household needs. Some of this hydro-engineering work was done by the individual homesteading families, and some by gangs of mining men from outside the Mono Basin. Increasingly extensive irrigation systems diverted fresh water from the streams running into Mono Lake. Conflicts among settlers and developers over who had water rights were adjudicated in the courts.<sup>18</sup>

### Possession through Allotment

The nineteenth-century American rules and assumptions about private land ownership and who could claim water rights transformed the world of the Mono Basin Paiutes. Increasingly they had to adapt to it, mostly by becoming wage laborers, working the land that had been theirs but was now embedded in a capitalist system that commoditized land, water, and people.<sup>19</sup> Paiutes were also excluded from the provisions of the Homestead Act because they were not considered U.S. citizens and couldn't begin to reclaim at least some of their land that way, nor was the Desert Land Act open to them. But a few Paiute men and their families were able to gain ownership of land through the General Allotment, or Dawes, Act of 1887.

By this act, the U.S. sought to break up Indian reservation land that had been held in common by the tribe into privately held parcels held in trust for 25 years by the government, or until the allottee proved him or herself capable of managing their own affairs. The assumption behind this act was that by not owning land individually on reservations Indians did not have the incentives to properly use the land to its highest use—that was, in the official view of the U.S. government, farming and ranching—and thus would remain “Indians” not assimilated into white culture.<sup>20</sup>

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<sup>17</sup> F. W. McIntosh, *Mono County California: The Land of Promise for the Man of Industry* (Mono County Board of Supervisors, 1908), 86-88.

<sup>18</sup> For a more in-depth studies of the controversies over Mono Basin water rights, see Marks, “Mr. Clover Goes to Washington:” 7-18, and “Before Mulholland: Land, Water, and Power in the Mono Basin.”

<sup>19</sup> Charlotte Sunseri, “Capitalism as Nineteenth-Century Colonialism and Its Impact on Native Californians,” *Ethnohistory* Vol. 64 No. 4 (October 2017): 471-495.

<sup>20</sup> That these policies of the United States toward American Indians were longstanding is made clear in the recently issued *Federal Indian Boarding School Initiative Investigative Report*, May 2022

Not incidentally, if they became self-supporting farmers or ranchers on their own land, they would then not be wards of the state. The Dawes Act sought to remedy this problem in American Indian policy by arrogating to the U.S. government the authority to make the allotments whether the tribe agreed or not. Supporters included those who wanted to take ever more Western land that was locked up in Indian Reservations, in particular railroads and land-hungry settlers, and reforming “Friends of the Indian” who hoped to bring land ownership and with it the underpinnings of “civilization” to benighted Indians.

In the words of the first historian of the Dawes Act, D. S. Otis: “Let it be said that allotment was first of all a method of destroying the reservation and opening up Indian lands; it was secondly a method of bringing security and civilization to the Indian....One finds inescapable the conclusion that the allotment system was established as a humane and progressive method of making way for the ‘westward movement.’”<sup>21</sup>

The outcome of this policy nationwide was largely considered to be a failure, since many Indian allottees did not want to farm, or did not have the capital to buy the tools, draft animals, or seed even to get started. As an intentional outcome, the land hunger of Euro-American settlers and railroads could be slaked by buying up Indian reservation land, which they did, and Indian reservation land west of the Mississippi was cut in half as a result of allotment.<sup>22</sup>

Nearly all historical scholarship and explanations on allotments under the Dawes Act treat them as applicable only to Indians on reservations and examines the impact of allotment on reservations. But a close reading of the Act itself shows that it did contain a section (Sec. 4) addressing “Allotments to Indians Not Residing on Reservations” or whose tribe had not been provided a reservation. Such an Indian “shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her...in quantities and manner as provided in this act for Indians residing upon reservations,” or 160 acres to the head of a household. “And patents shall be issued to them.” Sec. 5 provides “that upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor [sic] in the name of the allottees...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.”<sup>23</sup>

Thus, the Paiutes in the Mono Basin were eligible for allotments under the 1887 Dawes Act. And seven Mono Basin Piute Indians applied for and then received land patents in 1907, six for land

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[https://www.bia.gov/sites/default/files/dup/inline-files/bsi\\_investigative\\_report\\_may\\_2022\\_508.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf). In 1803, for instance, President Thomas Jefferson wrote “To encourage them to abandon hunting, to apply to the raising stock, to agriculture, and domestic manufacture, and thereby prove to themselves that less land and labor will maintain them in this better than their former mode of living. The extensive forests necessary in the hunting life will then become useless, and they will see advantage in exchanging them for the means of improving their farms and of increasing their domestic comforts,” p. 21.

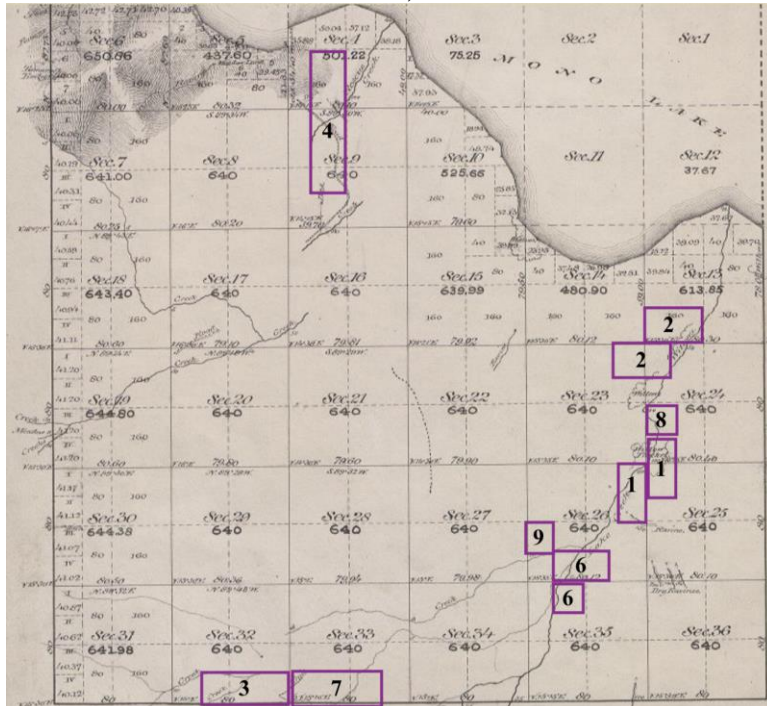
<sup>21</sup> D. S. Otis, *The Dawes Act and the Allotment of Indian Lands*, edited and with an introduction by Francis Paul Prucha (Norman, OK: University of Oklahoma Press, 1973), 32.

<sup>22</sup> See also McDonnell, *The Dispossession of the American Indian, 1887-1934*, op cit.

<sup>23</sup> “Act for the Allotment of Lands to Indians,” Feb. 8, 1887, 24 Stat 388. *Statutes of the United States of America Passed at the First Session of the Forty-Ninth Congress, 1885-1886* (Washington, DC: Government Printing Office, 1886), 388-391.

along Rush Creek or its tributaries and another for land along Lee Vining Creek; three more got allotments in the early 1920s (Map 4).

Map 4  
Paiute Land Allotments, 1907-1920



Key

1. John Cluette
2. Fee Foster
3. Bridgeport Tom
4. Henry Jameson
5. Joe McLaughlin (off the map to the south)
6. Louis B. Murphy
7. Indian George (Sam)
8. Young Charlie
9. Mike Williams
10. Captain John (off the map to the north)

Source: Author.

Although the first batch of patents was issued on the same date (September 23, 1907), that was the last step in a process that took 3-5 years to unfold, beginning with an application. Bridgeport Tom and his brother-in-law Indian George Sam, for example, filed their applications for adjoining 160-acre parcels on September 20, 1902, five years before their patents were issued.

The applications themselves came under the authorized Indian agent for the Mono Basin who was resident 60 miles south in Bishop, California. How these specific Mono Basin Paiutes became aware of the possibility of land allotments and the process for applying and receiving them is unclear. Most likely the Mono Basin allotments arose out of the work of a group of Protestant missionaries known as the Northern California Indian Association. Some of their work is documented in a couple of publications, the most important of which is *California and Her Indian Children*, written by Cornelia Taber and published in 1911.<sup>24</sup> This missionary group was active in southern and northern California establishing schools, mission churches, and stationing “Field Matrons” at various missions to provide on-going aid and advice to local Indians on the best ways to assimilate into White culture. They also did research into various problems affecting California Indians, collected and distributed data and information on

<sup>24</sup> Cornelia Taber, *California and Her Indian Children* (San Jose, CA: The Northern California Indian Association, 1911).

California Indians, and petitioned the federal and state governments for funds and programs to address these needs.

The most important work the Association did was to conduct a census of non-reservation Indians in Northern California. This census was conducted by Mr. C. E. Kelsey, a San José lawyer and member of the Northern California Indian Association who was appointed “Special Indian Agent for the California Indians with the charge of ascertaining the number and location of Indians living outside of reservation lands.”<sup>25</sup> Over a nine-month period, Kelsey personally visited and surveyed 36 counties, and collected data from other sources for another nine counties he could not visit. Despite not gathering marriage dates or the birth dates and gender of children and using white appellations instead of English surnames (e.g. “Fat Mike,” “Slim Jim,” or “Bodie Joe”) his census revealed both a larger population of California Indians than previously thought, and that the vast majority did not live on reservations and were landless. Of the total of 19,839 Indians in California that Kelsey enumerated, just over 5,000 were on reservations, with the vast majority of nearly 14,000 “non-reservation” Indians belonging to 257 bands in 36 northern California counties, including 536 individuals in Mono County, and 1,062 in Inyo County.

Among the issues that Kelsey’s Association focused on were the initial removal of California Indians from their land, the continuing evictions from lands they had resettled on when white homesteaders claimed the land, and the poverty arising from the resulting landlessness. As Tauber wrote in her 1911 overview of the NCIA: “From the American occupation [of California] in 1846, to the passage of the Indian Allotment Act [the Dawes Act] in 1887, it was impossible for an Indian in California to acquire land from the public domain, and in those forty years everything worth taking had been appropriated by white settlers, including in most cases the very lands the Indians were settled upon.”<sup>26</sup>

That situation led the Northern California Indian Association to address the problem of Indian landlessness with a “Land for the Landless” program since most of the 10,000 California Indians were too impoverished to purchase land. A 1906 petition campaign to Congress brought an appropriation of \$100,000, later increased to \$150,000 and given to special Government Agent C. E. Kelsey “to disburse the money.”<sup>27</sup> The Association claimed to have placed 5,500 Indians into secure homes.

Thanks to the scholarship of Khal Schneider cited at the beginning of this article, we now know that most of the government money that Kelsey used to buy land for non-reservation Indians was in Northern California on the westside of the Sierra Nevada mountains. For various reasons that Schneider examines, most or all of those expenditures were for land that undergirded collectively owned and operated “rancherias” composed of numerous Indian families and sometimes over 100 people. The land was owned not by individuals, but by the group or its founders, and held in trust for all. When two of the four original founding members of one rancheria near Ukiah died and their heirs petitioned a court to have the land in the trust divided among the surviving heirs, a superior court judge upheld the trust as an acceptable form of tribal—not individual—Indian

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<sup>25</sup> Robert Heizer introduction to Kelsey, *Census of Non-Reservation California Indians, 1905-1906*, 1.

<sup>26</sup> Taber, *California and Her Indian Children*, 9.

<sup>27</sup> *Ibid.*, 13.

land ownership.<sup>28</sup> Schneider interprets the Pomos in Northern California buying and holding land collectively as an example of them “wresting back tribal land” using the tools of the marketplace for land.<sup>29</sup>

There is no evidence that Kelsey or the Northern California Indian Association used any of the money from the U.S. government to help Piute/Paiute Indians in the Eastern Sierra to buy and hold land on the Pomo “rancheria” model. But the Association did help individual Paiute Indians to apply for allotments on their own. Tauber’s comments specifically on Inyo County around Bishop discuss the Indians living in scattered encampments after losing their land to white settlers who have “taken up the arable land and drawn off all of the water. To be sure, some Indians have secured allotments, mostly, however, without water rights.”<sup>30</sup> One missionary Field Matron in Bishop, Mrs. Randolph, “earnestly worked for the Indians, holding sewing classes, caring for the sick, helping them to get their allotments, and she has had the satisfaction of seeing these Indians advance decidedly in material things.”<sup>31</sup> The work of the Northern California Indian Association in Bishop thus is the most likely source of information and support to Paiutes in the Mono Basin about the availability of allotments and how to obtain them.

Field Matron Randolph may have prepared the applications, but the superintendent of the Bishop Indian School, Ross Spalsbury, signed them, and that agency brought the applications to the General Land Office (GLO) in Independence where they were filed. The GLO reviewed the applications, and with its approval they were forwarded to the Office of Indian Affairs which reviewed and approved (or not) the applications. With those approvals secured, the application then went to the Interior Department where a schedule of approved allotments was prepared, and the patents prepared for presidential signature. The physical patents were then sent back to the GLO in Independence, thence to the Bishop Indian School, and then by mail to the allottees where they could pick up the patent at one of two post offices in the Mono Basin.

#### Location of the Mono Basin Allotments

With two exceptions, the Paiute allotments in the Mono Basin were on Rush Creek and its tributaries, the major source of fresh water to Mono Lake and a major camping area for the Kutzadika<sup>a</sup> before the coming of white settlers. There they continued to have access to many sources of their traditional foods and materials, including willow shoots for basket weaving. One might argue that Rush Creek was the core of the Mono Basin Kutzadika<sup>a</sup> ancestral homeland. With Rush Creek bordering or running through their allotments, they also acquired riparian rights to the use of the free-flowing water, an issue that arises in an important 1913-16 court case that will be discussed below.

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<sup>28</sup> Schneider, “Making Indian Land in the Allotment Era,” 441.

<sup>29</sup> *Ibid.*: 449.

<sup>30</sup> Tauber, *California and Her Indian Children*, 63.

<sup>31</sup> *Ibid.*, 63, 65. For a case study of how the Field Matron program worked, see Lisa E. Emmerick, “Margeurite Laflesche Diddock: Office of Indian Affairs Field Matron,” *Great Plains Quarterly* 13 (Summer 1993): 162-171, and “‘Right in the Midst of My Own People’: Native American Women and the Field Matron Program,” in Frederick Hoxie, Peter Mancall and James Merrell eds., *American Nations: Encounters in Indian Country, 1850 to the Present* (New York: Routledge, 2001), chapter 7.

Of the two Paiute allottees with allotments not on Rush Creek, one (Henry Jameson) had his 160-acre allotment along the lower course of Lee Vining Creek, not far upstream from its mouth on Mono Lake. The other allottee was Captain John, whose 80-acre allotment was on the north side of Mono Lake and without any apparent source of water. Captain John had been the leader of the Mono Basin Paiutes, selected in the late 1870s over the reigning elders because he wanted to take a stronger stand against the incursions of white settlers into their homeland. His personal story, as related by Ella Cain,<sup>32</sup> shows that he was evicted at least twice from land on the southwest and then western sides of Mono Lake before taking up residence around 1890 on the arid north side of the lake where no white settler would ever want his land. After thirty years living on this marginal land, in 1919 Captain John filed an “Indian Allotment Application for Lands Outside of Any Indian Reservation.” After providing certificates and affidavits from others that he was indeed a Paiute Indian and thus “entitled to the benefits of the General Allotment Act,” on March 16, 1920, Captain John’s application for an allotment was approved.<sup>33</sup>

Two other allotment applications were not so quickly approved. Young Charlie first applied for an allotment of 40 acres on Rush Creek on October 7, 1913. After getting affidavits certifying that he was an Indian entitled to an allotment, the General Land Office needed reports from the U.S. Geological Survey that there were no valuable minerals on the land. Then in 1918 Young Charlie had to provide evidence in the form of affidavits attested to by the local justice of the peace that he had made improvements to the land: “The said Young Charlie took up his permanent residence, with his family on the aforesaid land in the Fall of 1916, and has done the following improvements: built a ‘Wickie up’ in which he and his family live, cleared and fenced about two acres on which he cut hay, dug ditches to irrigate the land and cleared about one acre more of Willows and Sage-brush.” Finally in 1922 Young Charlie’s application was approved and he received a land patent, nine years after making the application.<sup>34</sup>

Mike Williams, who filed his application for an allotment of 40 acres near Rush Creek in October 1914, had to jump through similar hoops. He was certified as an Indian, the land was cleared by the USGS, and he provided evidence that he in fact was living on the land and improving it. He took up residence in the spring of 1917, and attested that he “built a house, barn, chicken-house and other out buildings, cleared approximately twenty (20) acres ready to put in a crop and fenced about two (2) acres, on which a crop of potatoes was raised that year (1917), and have dug a ditch about a mile long to get water and constructed a wagon road to the land for a distance of about one fourth of a mile.” Then in 1918 he needed to get two more affidavits attesting to those facts. In early 1920 he was again asked to provide details of his use and improvement of the land. In that affidavit he added that he was “making use of all the land

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<sup>32</sup> Ella M. Cain, *The Story of Early Mono County: Its Settlers, Gold Rushes, Indians, Ghost Towns* (San Francisco, CA: Fearon Publishers, 1961), 117-129.

<sup>33</sup> Indian Fee Patent File #746482 (Captain John): “Indian Fee Patent Files, 1902-1952,” Entry UD 2297 (National Archives identified 5686941; Record Group 49), Records of the Bureau of Land Management: National Archives in Washington, DC.

<sup>34</sup> Indian Fee Patent File #887493 (Young Charlie): “Indian Fee Patent Files, 1902-1952,” Entry UD 2297 (National Archives identified 5686941; Record Group 49), Records of the Bureau of Land Management: National Archives in Washington, DC.

that I have water for. Other parts of my allotment which cannot be cultivated or irrigated are for grazing purposes, for my stock.” His application was finally approved on September 22, 1920.<sup>35</sup>

Another allottee, John Cluette, died just months before his patent was issued on September 23, 1907. His death raised the question of what would happen to his allotment, which was in his name, not his family’s. Both the State of California and the Office of Indian Affairs weighed in. Because Cluette had died before the patent was issued, it had a say in the disposition of his estate. The court finding is not available, but the findings of fact are, reciting when he died, and that he was a married man leaving a wife, five children, and two grandchildren.<sup>36</sup> The Office of Indian Affairs inquired of Field Matron Randolph if she had received patents to be delivered to Indians who had died. She reported two instances, one of which was John Cluette. She reported that he died in August 1907 while working at the Mono Mills lumber company. She too gave the details of the Cluette family, and reported that they had improved the land: “They have fenced the entire 160 acres and have built a small lumber house. Have four acres in potatoes, two in wheat, one in barley and ½ in garden. There is plenty of water and pasturage so that they are able to take in the horses of other Indians to pasture. There is also plenty of willow wood for fuel on the place and the family are anxious to remain in possession. I have inquired of whites who know the family and who say that they are capable of managing their own affairs.”<sup>37</sup> The allotment remained in their hands until son Hank sold it in 1929.

### Why These Mono Basin Paiutes, and Not Others?

Among the other unanswered questions about the Mono Basin allottees is why these ten heads of families received allotments, and not others? Data culled from census data provide some perspective on the question. I have already mentioned C. E. Kelsey’s 1905-1906 census. In addition to that one, I have collected census data from the Indian Census Rolls for Mono County for three time periods: 1914-16, 1927, and 1937.<sup>38</sup> For Mono County, the census data in the first two periods, 1914-1916 and 1927 helpfully note the area of the county where those counted lived, including “Mono Lake,” permitting a comparison with Kelsey’s 1906 data. The 1937 census is reported county wide with no notations as to where the enumerated lived. In the first two of these cases, the census was conducted by Office of Indian Affairs agents at the Bishop Agency. The 1937 census was conducted by the Carson Agency in Nevada.

That being said, the Indian Agency census data collected over three years from 1914 to 1916 reported 30 Paiute families accounting for 178 people in the Mono Lake area. Kelsey reports 28 families and 100 people, many fewer than were recorded just a decade later, leading me to think that Kelsey under counted. He may have not visited the Mono Basin at all but relied on a

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<sup>35</sup> Indian Fee Patent File #1028445 (Mike Williams): “Indian Fee Patent Files, 1902-1952,” Entry UD 2297 (National Archives identified 5686941; Record Group 49), Records of the Bureau of Land Management: National Archives in Washington, DC.

<sup>36</sup> “State of California and County of Inyo in Re Estate of John Cluette Indian Deceased.” Great Basin Indian Archives/Collections/Documents/Paiute documents/Mono Collection 6, document 12. Hereafter cited as e.g. GBIA Mono County 6-12. [https://www.gbcnv.edu/gbia/gbia\\_docs\\_paiutes.html](https://www.gbcnv.edu/gbia/gbia_docs_paiutes.html).

<sup>37</sup> Field Matron Randolph to Office of Indian Affairs, May 26, 1908. GBIA Mono County 6-12.

<sup>38</sup> National Archives (website), “Indian Census rolls, 1885-1940,” accessed Jan 29, 2022, <https://www.archives.gov/research/census/native-americans/1885-1940.html>.



population count kept by the Bishop Agency. In any case, it appears that the 1914-16 enumeration is more complete.

The 30 families recorded in the 1914-16 data include all ten of those I have identified from the GLO database as having received allotments in 1907. That means that 20 family heads did not receive allotments. Why not? That is not at all clear. Some of those who received allotments had large or extended families, perhaps indicating that they had greater resources available to them. In the 1910 census, there were 13 people in Bridgeport Tom's family, including a son with one or more wives as well as other children. Young Charlie's family numbered 15, including two wives. The largest family was Indian George (Sam)'s family: 19 people in at least three generations. These appear to be the largest of the 30 families enumerated in the 1914-16 census. On the other hand, two allottees and their wives (Fee Foster and Joe McLaughlin) were childless.

The 1927 census of Mono County Indians by the Bishop Agency shows 38 families accounting for 134 individuals. Of those families, six of the original ten allottees in the Mono Basin are listed. The four who were not listed included Captain John (who had died in 1923), Fee Foster, Henry Jameson, and Louis Murphy. By 1937, seven of the original ten families are enumerated: Young Charlie (the census notes he died on June 17, 1937), John Cluette's widow, Henry Jameson (who was not listed in the 1927 census), Joe McLaughlin's widow, Indian George Sam's family, Bridgeport Tom's family, and Mike Williams.

Five of the Mono Basin allottees—John Cluette, Henry Jameson, Bridgeport Tom, Young Charley, and Louis Murphy—all were listed in C. E. Kelsey's 1906 census as living on the Farrington Ranch. But if that was an important connection, and perhaps even Archibald Farrington or his son and daughter-in-law provided some support for making the applications, why those five and not the nine others who are listed too as at the Farrington Ranch? Was there a hierarchy that had emerged among the Farrington Paiutes? Probably. Four of the five had larger families. The nine "without land" were mostly childless couples.

There is evidence that two additional Mono Lake Paiutes had begun the process of getting an allotment, but for whatever reason did not complete the process or receive an allotment. Bridgeport Tom's daughter Lucy is mentioned in correspondence in the Bishop Indian Agency as having gotten a land allotment near her father.<sup>39</sup> She may have "entered" land sometime around 1913 that she intended to get an allotment for, but that never came to fruition, perhaps because she had married and she and her family relocated to Yosemite. The other applicant was George Sam's brother Frank, who is listed as having begun the process of getting an allotment by registering his entry (#05623) onto land near his brother on September 19, 1918.<sup>40</sup> Like Lucy Tom, there is no record that received an allotment.

All told, about one-third of the Piute families living in the Mono Basin applied for and received allotments of land from 1907 to the early 1920s. These allottees clearly worked hard on their land, farming and ranching for themselves and probably for export and sale to miners and

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<sup>39</sup> Louis B. Murphy to Ross Spalsbury (handwritten), June 11, 1915, GBIA Mono County 5-2.

<sup>40</sup> List of landholders in "Township Plat 1 South 26 East," James B. and Katherine M. Clover Papers, Huntington Library, San Marino, CA: Oversize folder #97.

loggers in nearby encampments. Those Paiutes who apparently did not apply for allotments, or who applied but were denied an allotment, labored for wages on Euro-American farms and ranches. Class distinctions among Mono Basin Paiutes had emerged.

### Twenty-five Years in Trust: Lessons from the Rush Creek Water Rights Case

Where the Euro-American patent holders owned their land outright (“in fee simple”), and could buy, sell, or mortgage it as they saw fit, the Indian allotments were to be held in trust by the U. S. government for 25 years, after which time the patent would be changed to “fee simple” ownership, provided the allottee could prove himself competent to manage his own affairs. But what did it mean in practice that the allotted lands were held in trust by the federal government? An interesting and important court case in the Mono Basin opens a window onto that question.

On Monday, July 28, 1913, the Mono County superior court served papers on allottees John Cluette, Fee Foster, Louis B. Murphy, and Joe McLaughlin saying they were being sued. At the end of the week, allottee Henry Jameson had been served as well. They were all named defendants in two water rights lawsuits filed just weeks earlier in Mono County Superior Court in which Archibald Farrington claimed he had the rights to all the water in the two streams that flowed through their properties, Lee Vining Creek in Henry Jameson’s case, and Rush Creek in the others. The Paiute allottees were not the only ones served—there were twenty more settlers named as defendants—but the allottees were the only Paiute Indians. By 1916, the adjudication of these two cases and one other, the Mill Creek case, clarified who had rights to the most important fresh water sources in the Mono Basin, enriching some and denying other access to water to others. The Rush Creek case in particular was the most important water rights case in the Mono Basin to come to trial.

When the four Paiutes with land on Rush Creek, and soon one more, Young Charlie, were named as defendants in the water rights case, it set off a large and far-reaching effort on the part of the U.S. government—reaching all the way to the Secretary of the Interior and the Attorney General of the United States—to protect the rights of these Indians. Their allotments were held in trust for them by the federal government for at least 25 years, and the Burke Act of 1906—passed just one year before they received their allotments—denied citizenship to Indian allottees. As a result, the Secretary of the Interior was given great authority over the lives of Indian allottees, including those named in the Mono County lawsuit. The Office of Indian Affairs through its Indian School in Bishop, California had jurisdiction over Mono County Indians, and was quickly and deeply involved with the Mono Basin lawsuits. This episode sheds light not just on the workings of the U.S. government with regard to the land ownership of the Indians under its jurisdiction, but also on water rights in the Western United States, economic development in the Mono Basin, and the lives of Paiute Indians who were caught up in the legal wranglings.

The lawsuits were first brought by the largest landowner in the Mono Basin, Archibald Farrington. In mid-July 1913, he filed two suits, one covered Rush Creek and another its tributary, Parker Creek, that the court soon consolidated into one case, the Rush Creek case. Farrington sought an injunction to stop all those on or near Rush Creek and its tributaries from diverting any water. Farrington claimed that “none of the defendants have any right or claim in the creek; that he now holds the right to the undisputed usufructuary right to divert and use

40,000 inches of the waters of Rush Creek.”<sup>41</sup> Farrington’s claim was basically for all the water in Rush Creek. If he were to prevail, he would have had all the water, and no one else, Paiute Indians included, could use any. A short time after filing that case, Farrington sold 2400 acres of his land to J.S. Cain, whose company the Cain Irrigation Company, then replaced Farrington as plaintiff in the lawsuit as the trial was proceeding in 1915.<sup>42</sup> Cain was a wealthy investor who was developing hydro-electric plants on the three streams involved in the lawsuits, and he aimed to protect his claims to the water in those streams.

The Bishop Indian School Superintendent, Ross Spalsbury, learned about the case not from the Paiutes who had been served, but from the lawyer the other Euro-American defendants had retained. In a seven-page letter to the U.S. Attorney for Northern California, Spalsbury explained that “These cases were first called to my attention by Attorney A. H. Swallow on Wednesday July 20<sup>th</sup>, with whom I had some conversation at the [railway] depot in Laws just before he started for that section [the Mono Basin] to investigate the case for his clients.” The matter was urgent: “[T]he use of this water to part of those Indians at least is extremely important at this time of year and during this season as they have crops of various sorts growing on their places which would all die if not irrigated and for the irrigation of which they must necessarily depend on the waters of this creek. The prevention of a temporary restraining order is very necessary to safeguard the rights and interests of the Indians.” Superintendent Spalsbury concluded: “I will be glad to help you in any manner that you may desire and the auto[mobile] of the government at this school will be placed at your disposal in preparing the case. I sincerely hope that you may be able to amply protect the rights of the Indians and secure them peaceable possession of their lands and water.”<sup>43</sup> Spalsbury’s letter placed the issue of Indian irrigation and water rights squarely in the lap of the U.S. federal government, and that machinery began to churn on behalf the Paiute allottees whose land and bodies were held in trust by the federal government.

Spalsbury’s letter then was taken up by Special Assistant to the Attorney General, John R. Truesdell, who had his office in Carson City, Nevada. Truesdell worked on the legal aspects of the case and submitted his findings in an October 18, 1913 memorandum to the Assistant United States Attorney in San Francisco, Walter E. Hettman, with a copy to Spalsbury.

“As I understand the law to be,” Truesdell wrote, “these allottees, because they did not receive their trust patents until after 1906, are not citizens of the United States, and are under the exclusive jurisdiction of the United States....Furthermore, the land embraced within these allotments is still the property of the United States and all riparian rights belong to the United States....[T]he land, including riparian rights, is now owned by the United States, and as the United States cannot be sued without its consent, these suits could not affect the title of the Government in this property.”

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<sup>41</sup> Ross Spalsbury, Superintendent of the Bishop Indian School, to the United States Attorney in San Francisco, August 4, 1914. GBIA Mono County 1-1.

<sup>42</sup> “Archibald Farrington, et al., Agreement with J. S. Cain,” February 18, 1913. Clover Papers, Box 3 folio 5. “On October 1, 1915, the following order was made by the Court in the course of the trial: ‘Order made that the Cain Irrigation Company be substituted in place of Archibald Farrington.’ John F. Kunz, “Memorandum to Mr. Clark,” p. 6. Clover Papers, Box 3 folio 5.

<sup>43</sup> Spalsbury, *op cit*.

Under the Burke Act of 1906, Truesdell continued, “these Indians are under the exclusive jurisdiction of the United States and cannot be made defendants in a civil suit, and that therefore the Court in these suits has obtained no jurisdiction over the persons of these Indians.” “Now the question is, what to do about these suits?”

Getting to his conclusion, Truesdell wrote, “Generally speaking, it is an advantage to have water rights determined, and here is a suit that seems to be meant for that purpose. The Government has no water rights in this instance that differ materially from the rights of private persons, so there would not be that objection to submitting its rights to the jurisdiction of a State Court.” Still, he concluded, it was “unwise” to do so.

Truesdell’s conclusion was that the U.S. Government should seek to get the case against the Indians dismissed by the plaintiffs. “If this method of disposing of the cases is not effective, it may be well to consider if the Government cannot, by bill in the Federal Court in the nature of a Bill of Peace, enjoin these plaintiffs from prosecuting” the suits against the Indian allottees.<sup>44</sup> Truesdell copied Bishop Superintendent Splasbury on the letter and memo, and asked his opinion. Splasbury replied that he agreed “in the main” with Truesdell, especially in seeking a dismissal as far as the Paiute Indian allottee defendants named in the suit were concerned. “My only interest in the matter is to see that the Indians’ rights are fully protected in every particular, and I am anxious to have all steps taken to this end...”<sup>45</sup>

Special Assistant Truesdell tried through the rest of 1913 and into 1914 to get the case against the Indian allottees dismissed. He brought his approach to his boss, the Attorney General of the United States, to get his approval for the plan. In his discussions with the plaintiffs’ lawyer, Truesdell said that “the Attorney General wrote me on December 1<sup>st</sup> approving the plan concerning these suits...and authorizing us to work it out.” The government, he said, “does not wish to submit its rights or the rights of the Indian defendants for determination in these suits. It therefore desires the suits dismissed as to the Indians.” He explained that the Indian allotments were federal land and “any waters that have been appropriated by the Indians for use upon these lands are beyond the reach of these suits.” “We...prefer to have you dismiss the cases as to the Indians. Will you kindly tell me whether you will do this.” If not, Truesdell threatened, the U.S. attorney will prepare “proper pleadings promptly.”<sup>46</sup>

Despite trying to get the plaintiff’s attorney to dismiss the suit against the Indian allottees, Special Assistant Truesdell failed and they continued as defendants in the Rush Creek lawsuit. Accordingly, Truesdell and Splasbury shifted gears. They would need to “make as good a showing on the merits as we can, and to do this we shall doubtless have to have evidence as to the irrigable area in each instance” as well as stream flows and “land already irrigated by the Indians.”<sup>47</sup> Coincidentally, the Office of Indian Irrigation was already at work in the Owens Valley

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<sup>44</sup> John R. Truesdell, “Memorandum Concerning Suits Against Indian Allottees in the Mono Basin, California,” October 18, 1913. GBIA Mono County 1-2, 1-3.

<sup>45</sup> Splasbury to Truesdell, October 27, 1913. GBIA Mono County 1-3.

<sup>46</sup> Truesdell to Patrick Parker, February 12, 1914. GBIA Mono County 1-3.

<sup>47</sup> Truesdell to Olberg, December 2, 1914, GBIA Mono County 1-4.

under the direction of one of the Office's Supervisors of Irrigation, Mr. C. R. Olberg.<sup>48</sup> Spalsbury told the Department of Justice that "Mr. Olberg has a party of engineers in this valley at present working on irrigation matters and he has advised me that we can use them as needed in preparing the case."<sup>49</sup>

Olberg not only had the surveys done, but he asked in addition that another Indian agency official "procure a census of the Indians affected. This should show the number, age and sex, with a short description showing the ability or lack of it to take care of the land. Show the number of cattle and horses they own, to give an idea of their advancement...It would also be advisable to procure of them if possible [the size] of the cultivated fields and other improvements. The status of the Indian land should also be definitely be given. Try and procure a history of the Indian in question...With respect to the map, I think we should also have some showing the location and extent of the land which the whites propose to irrigate, also the location of the proposed canals." The Supervisor of Irrigation was doing a thorough job and providing much evidence for the Department of Justice to use in defending the Mono Basin Indian defendants.

Documentation of what actually happened at the trial is not available because the transcript has been destroyed, but lists of exhibits and who testified do exist, as well as the presiding judge's 19-page opinion and the judgement and finding of facts. From these sources we know that the Paiute defendants were indeed represented before the court and at trial by Department of Justice lawyers, including John Truesdell.<sup>50</sup> The outcome of the Rush Creek case suggests that the government lawyers, as well as Mr. Olberg and his engineers who did the surveys of the Indian allottees' land and water usages, adequately represented the interests of the Paiute allottees. The "Findings and Decision" of the Rush Creek case state "That the [Paiute allottees]... are tribal Indians belonging to the Pah Ute Tribe, and are Indian wards of the United States residing in the State of California, and that over them the Government of United States had assumed and maintained control...That by stipulation of all the parties to this action in open Court, all defendants and plaintiff waived all priorities in favor of said Indian defendants and...that these rights are first rights to which the rights of plaintiff and each and all of the defendants, as hereinafter determined are subject and subordinate."<sup>51</sup> In other words, the Department of Justice lawyers succeeded in getting all parties to the case to waive their rights in favor of the Paiute allottees, and thereby secured for them "first priority" in the allocation of water rights so that their rights were assured. One member of the irrigation engineering team said that "I have looked over the decrees carefully in regard to the amount of water given to the Indians and find that, in the case of Rush Creek, the Indians have been granted practically the amount I recommended."<sup>52</sup>

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<sup>48</sup> For more on how and why the Office of Indian Affairs created an Office of Indian Irrigation, see Donald J. Pisani, "Irrigation, Water Rights, and the Betrayal of Indian Allotment," *Environmental Review: ER*, Vol. 10 No. 3 (Autumn, 1986): 157-176.

<sup>49</sup> Spalsbury to U.S. Attorney San Francisco, August 4, 1913. GBIA Mono County 1-5.

<sup>50</sup> Undated and unsigned handwritten list of exhibits, Clover Papers, Box 3 folio 5.

<sup>51</sup> Rush Creek Case No. 2091 "Findings and Decision," in Sterling T. Harding, *Report on Development of Water Resources in Mono Lake Basin*, Appendix J, p. 6.

<sup>52</sup> Palmer to Truesdell, July 23, 1918. GBIA Mono County 1-5.

After the trial, an assistant secretary reported to the Attorney General on the judicial decrees and the outcomes for the Indian defendants, quoting from a report written by Special Assistant Truesdell. “[T]he Indians have in each case been given enough water to irrigate all of the lands that they now have in cultivation and perhaps enough to irrigate all that is susceptible of cultivation. If the latter is the case, obviously the wise thing to do is to let the matter stand as it is.”<sup>53</sup> And the U.S. government did not challenge the Rush Creek Decree, letting it stand.

The Rush Creek case demonstrates clearly what it meant for the Mono Basin Paiutes to have their allotments held in trust by the U.S. government. On the one hand, government lawyers and agencies came to their defense and protected their water rights. On the other hand, the allottees were not U. S. citizens and their land was held in trust by the government—they did not have outright ownership of their allotment. The consequences of that limitation were felt soon afterwards by one of the allottees.

### Henry Jameson: The Painful Limits of Land Held in Trust

On September 30, 1919, the Cain Irrigation Company wrote a letter to Ray Parrett, who had succeeded Ross Spalsbury as Superintendent of the Bishop Indian Agency, saying that Mr. J. S. Cain had received a letter from allottee Henry Jameson, and asking Parrett what should be done about it.<sup>54</sup> Jameson’s letter to Cain is worth quoting in full:

I’m going to write to you just a few lines to you this morning and I want to know you want or going to buy this my land here at Mono Lake, did you find out about it yet or not? Please let me know about it just as soon as possible. If you already find out about this you willing to buy my land or not please let me to hear from you in short time, write letter to me soon as you can.

I want to take my sick boy to white doctor or Indian doctor, you know it cost so much money to travel to the doctor so I wish you could help me about this to give money, I want \$100.00 one hundred dollars, I never take my son to white doctor, now I am going to take my boy to white doctor they might cure my boy. You know I can sure pay you back the one hundred dollars next summer, this is all I’m thinking about for this time. I hear you will be here at Mono Lake in short time, and be sure to come over to my place I want to see you when come here. Be sure to answer me tonight.

Good-bye

Yours very truly

Henry Jameson

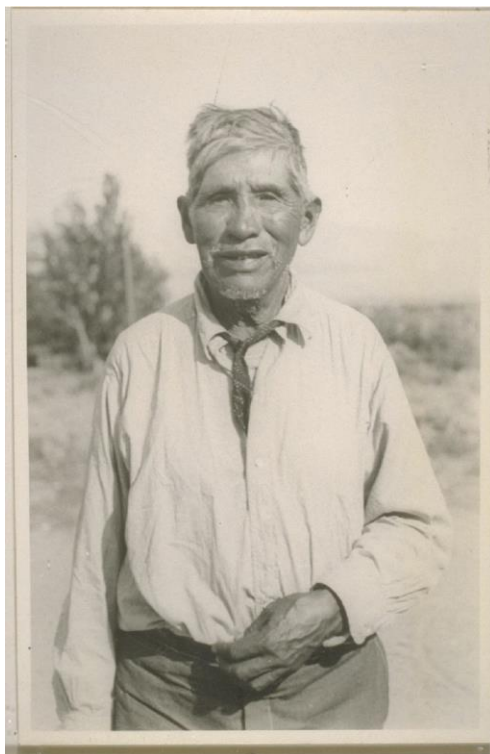
This letter is extraordinary on many levels, starting with the fact that it is Jameson’s rather pained voice that comes through. His son Harry is sick, and he needs money to get him to a doctor. We don’t know what ailed Harry, but the influenza pandemic that was killing millions around the world had spread into the Mono Basin. Henry also knows J. S. Cain personally,

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<sup>53</sup> Hopkins to Attorney General, July 11, 1918. GBIA Mono County 1-5.

<sup>54</sup> J. S. Bordwell, Cain Irrigation Company manager, to Ray R. Parrett, September 30, 1919. GBIA Mono County 3-1.

having already discussed with him selling his land to him, asking Cain to come to his place on Lee Vining Creek, and telling him “to answer me tonight.” The situation was urgent. He also does not have the cash available to take his son to the doctor and asks Cain to lend it to him. Cain’s company wants some guidance from Superintendent Parrett how to respond to Jameson, and asks whether Parrett will speak to Jameson about the matter. There are no documents to reveal what Parrett did or did not do.



Henry Jameson, ca. 1934

Source: “H. Jameson and family with C. Hart Merriam,” C. Hart Merriam Collection of Native American Photographs, ca. 1890-1938, X/23b/P4/8. Online Archive of California.

But the fact of the matter was that Henry Jameson did not own his land outright—it was held in trust for 25 years, and he could not sell it, mortgage it, or otherwise borrow against it. Whether J. S. Cain loaned Jameson the \$100 is also not known, but his son Harry did survive and on August 17, 1923 signed as witness to his father’s application to have his trust patent converted to a patent in fee so he could own his land outright. To do so, Henry Jameson needed to prove he was competent to have the trust lifted. In addition to his own application, he needed Superintendent Parrett to fill out and send a report on Jameson, which he did. Parrett sent Jameson’s application and his report to the Office of Indian Affairs, and in his cover letter attested that “Jamison is an Indian of good habits, is an industrious and intelligent Indian. While he cannot write his own name still he has more than the average knowledge of proper business dealings and management.”<sup>55</sup>

Even more revealing is Henry’s own answer to the last question in his application that he “set forth fully your reasons for requesting a patent in fee:”

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<sup>55</sup> Superintendent to Commissioner of Indian Affairs, August 21, 1923, GBIA Mono County 3-1.



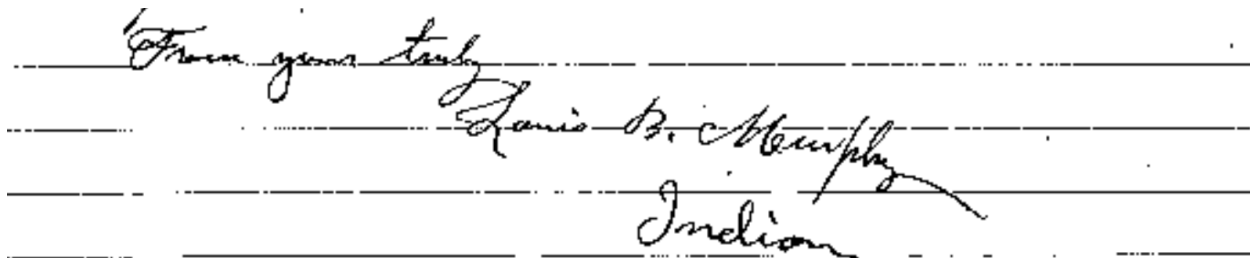
Want to have patent in fee in own name. Want to be free to manage own affairs.<sup>56</sup>

Henry Jameson wanted to be free.<sup>57</sup>

Louis B. Murphy: Remorse

At 21 years old in 1907, Louis B. Murphy was the youngest Paiute to receive a land allotment trust patent. He was not from the Mono Basin but was born just east in the Adobe Valley; he married a Mono Lake woman and by 1910 they had two children, one born in Crater (Farrington) and the other on Rush Creek, probably Louis's allotment. He was also the only allottee who was literate.

On May 1<sup>st</sup>, 1915, Murphy wrote a letter to Superintendent Spalsbury. Much like Henry Jameson's letter to J. S. Cain, Murphy's conveyed a sense of urgency. "I thought I'd drop you a few lines to let you know that I did not plant anything this spring. I wish you would come up and get this land....Well you said you might come up next week. I'll go over to Crater [at the Farrington Ranch]. I am going to wait for you over there at Farrington....When you get this letter you answer soon as you can as feasible."<sup>58</sup>



Spalsbury did not make it up to Mono Lake to see Murphy, but learned that another man who was in Benton, Samuel J. Alderman, had talked to Murphy. In addition to a letter from Alderman to Spalsbury, included in Murphy's file is an unsigned report, probably written by Alderman, who explained why Murphy had not planted anything that May, and why he wanted to exchange his allotment for another:

Prior to making claim to the land it had been occupied and part of it cultivated by other Indians, one whose Indian name sound like 'Manner-bow-o' [who] died

<sup>56</sup> Form 5-105 Application for a Patent in Fee, August 17, 1923. GBIA Mono County 3-1. Jameson's formalized application for a patent in fee is also in the National Archives: Indian Fee Patent File # 919281 (Henry Jamison): "Indian Fee Patent Files, 1902-1952," Entry UD 2297 (National Archives identifier 5686941; Record Group 49, Records of the Bureau of Land Management, National Archives in Washington, DC.

<sup>57</sup> Henry Jameson was the second allottee to apply to have his patent transferred into a "patent in fee." The first to apply to do so was Fee Foster whose patent in fee was approved on December 4, 1919. Indian Fee Patent File # 883219 (Fee Foster): "Indian Fee Patent Files, 1902-1952," Entry UD 2297 (National Archives identifier 5686941; Record Group 49, Records of the Bureau of Land Management, National Archives in Washington, DC.

<sup>58</sup> Louis B. Murphy to Superintendent Ross Spalsbury, May 1, 1915. GBIA Mono County 5-2.

twenty five years ago, leaving two daughters, one of them called Mary Charley and another called Rosie, both of whom have continued most of the time to cultivate and occupy the portion of [Murphy's] land lying to the Westward of Rush Creek....

The other Indian was called Joe-bow-go-ah, and he died about the time Louis Murphy got the land, leaving a daughter called Mary Schwager who as did her father, had occupied, cultivated, and claimed (Indian fashion) a portion of the land lying on the right bank of the said Rush Creek.

Wishing to surrender the land to these women, Louis Murphy has been trying to find an obtain another suitable tract.<sup>59</sup>

Murphy clearly did not want to evict these women from land they and their families had been cultivating, using, and claiming "Indian fashion" for decades. His land patent gave him the legal right to do so. Euro-American settlers in the Mono Basin had been evicting Kutzadika<sup>a</sup> from land that the U.S. government had transferred to them, dispossessing Kutzadika<sup>a</sup> of their land, rendering them landless.<sup>60</sup> Why these Paiute women, who clearly were already cultivating the land, had not applied for an allotment, is not known. The Dawes Act specifically mentioned women as being eligible to apply for an allotment, and as we have seen one of Bridgeport Tom's daughters, Lucy, had "entered" land and may have been pursuing an application for an allotment just as her father had done.

Unlike the Euro-American settlers who had evicted Captain John, Murphy recognized the legitimacy of the women's claims, "Indian fashion," to land that the U.S. government said was his, even if held in trust for 25 years. One wonders if Superintendent Spalsbury would have called into action the full force of the U.S. government against these women to protect Murphy's claim to the land as he did to protect allottee land and water rights in the Rush Creek case.

Murphy did not want to use those levers of the U.S. legal system to enforce his claims to the land against other Indians. He preferred to leave them in possession of the land, and to see if he could exchange that allotment for another elsewhere in the Mono Basin. This is where Murphy encountered a bureaucratic thicket that ultimately defeated him. He found land in the Mono National Forest near the allotments of Bridgeport Tom and Indian George Sam, had it surveyed, and involved the District Forest Ranger to get permission to claim that land. The Ranger denied it on the grounds that it was at 7500-foot elevation and could not support agriculture. Murphy protested that at a similar elevation Bridgeport Tom had the best farm in the area. The Ranger was unmoved. Murphy applied for another allotment nearby, and that application was rejected by the General Land Office on the grounds that he already had an allotment and could not file on another. Spalsbury tried to get the Office of Indian Affairs to agree to a transfer of allotments, but they said they could not do that. The only course of action for Murphy would be to apply for the trust allotment to be converted into a patent in fee (as Henry Jameson later did) so he could sell the land, and then reapply for another allotment.<sup>61</sup> Apparently that course of action was a bureaucratic dead end, and Murphy abandoned working his allotted land, ultimately selling it in 1929 to a J. S. Cain company.

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<sup>59</sup> Undated and unsigned typescript note. GBIA Mono County 5-2.

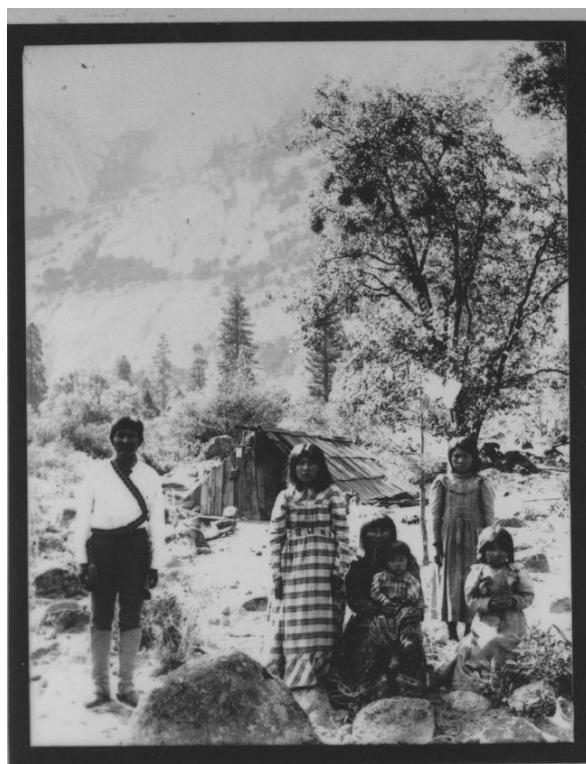
<sup>60</sup> Cain, *The Story of Early Mono County*, 117-129.

<sup>61</sup> Documents in GBIA Mono County 5-2.

Other allottees did work their land, including Bridgeport Tom, who Murphy pointed to as having a very successful farm and ranch.

### Bridgeport Tom: Successful Rancher, Farmer, Impresario

Bridgeport Tom and his family have left the most extensive documentary trail of their lives of any Mono Basin allottee, in part because of their extensive and long-term connections with Yosemite National Park.<sup>62</sup> In fact, his 160-acre allotment was near the entrance to Bloody Canyon, the trail going over the Sierra Mountains into Yosemite that had been traveled for millennia by Kutzadika<sup>a</sup> establishing close cultural and trade contacts between them and the tribes of Yosemite Valley.



Bridgeport Tom and Family ca. 1902

Source: J. T. Boysen, Yosemite National Park Collection, Negative No. RL-14, 215.

Although Tom chose his allotment because of its access to Yosemite, it turned out to be as well among the best land for farming and ranching in the Mono Basin. Walker Creek went through the middle of his allotment, providing water for excellent pasturage and fertile bottom land for crops. Tom's land allotment supported one of the most productive ranches in the Mono Basin. Nearly all of his 160 acres was either well-watered pasture for his horses and cattle, and eight acres were farmed. He not only grew wheat, barley, potatoes, onions, radishes, and lettuce (mostly for home use), but grew and cut alfalfa for his herds and for sale to others and raised

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<sup>62</sup>“The Fall of a Famous Tree,” *Yosemite Nature Notes* (Vol. XXXI, No. 8: August 1952).

enough wheat to take it to Bishop to be ground into flour for his family's use, and for sale to others.

In addition to ranching and farming his land, Tom sometimes leased some of it out for \$100 a season to sheep ranchers from Gardnerville (Nevada) or Bakersfield. Other sources of income came from working on the ranches of his White settler neighbors. In fact, Tom was known as one the best wranglers in the region. John Bingaman, a Yosemite Park ranger and documentarian of the history of Yosemite, wrote that Tom as “a young man...was a rider for a large cattle ranch near Bridgeport. He was industrious, bought land and cattle, and also raised fine horses to sell or trade...They had plenty to eat, which wasn't so with some of the Indians....When he killed a beef [cow] he would supply meat to the needy Indian neighbors.”<sup>63</sup>

Bridgeport Tom spent a considerable part of his life going back and forth from the Mono Basin to Yosemite Park. There, according to historian Boyd Cothran, he made money by “manipulating tourist expectations of what constituted Indian authenticity.” Parades, rodeos, foot races and other athletic competitions earned the participants prize money. One that Tom was involved in was tug-of-war. Apparently not satisfied with the limited tourist-oriented competition, Tom and others gambled on the outcome of games on their own. When they were caught at it and reprimanded for having an un-official match, they wrote a letter to a Park administrator explaining that in their view it was no different from the official matches and, by implication, should have been allowed.<sup>64</sup>

Tom was also well known among the Mono Basin Paiutes as a medicine man, although he claimed he was not. According to a Yosemite Ranger, “he is known even today [1948] by many of our modern Indians as a man of unusual ability...His healing powers were phenomenal according to [his daughter] Lucy, who tells of one of her cousins who was accidentally wounded with a shotgun while hunting. Bridgeport Tom was called after several white doctors had proclaimed the young man a hopeless case. The Medicine man prepared many concoctions and danced around the patient for several hours. Finally, when satisfied with the number of curious and faithful bystanders, Bridgeport Tom brought forth a tin pie pan, and, with a series of magic words, all of the lead pellets dropped from the wound with a great clatter, much to the satisfaction and glee of the onlookers.”<sup>65</sup>

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<sup>63</sup> “Bridgeport Tom,” *History and Genealogy of Mariposa County, California*.

<sup>64</sup> Boyd Cothran, “Working the Indian Field Days: The Economy of Authenticity and the Question of Agency in Yosemite Valley,” *American Indian Quarterly*, Vol. 34, No. 2 (Spring 2010): 210, 211.

<sup>65</sup> “Lucy Telles, Basket Maker,” *Yosemite Nature Notes* (Vol. XXVII, No. 4: April, 1948).



Bridgeport Tom (3<sup>rd</sup> from left) and some of his Family, ca. 1930

Source: Yosemite National Park Historic Photo Collection, Negative Number: RL\_14027

Following the lead of other allottees, in 1925 Tom applied to have his allotment transferred from a trust to a patent in fee. Bishop Indian Agency Superintendent Ray Parrett supported his application and valued his allotment at \$15,000. In his four-page “competency” application, Bridgeport Tom concluded by saying: “I think from my experience in farming and stockraising, and from the amount of property I have accumulated by my own efforts, that I am competent to manage my own affairs. I talk English fairly well and understand business transactions among men.” He was well off; he had accumulated property. He understood business. And that was not all.

If Henry Jameson wanted “to be free,” Bridgeport Tom asserted that he was equal to others: “I believe I am just as capable of managing my business affairs as my neighbors, both Indian and White.”<sup>66</sup> He sold his land in 1928 to neighbor Elizabeth Farrington, Archibald Farrington’s daughter-in-law, for an unknown amount but no doubt close to its \$15,000 valuation, about \$250,000 in current dollars.

But why were these allotments worth so much? The improvements to the land that the allottees made? Houses, barns, fences, fertilized farmland? The experience of Joe McLaughlin with the sale of his land allotment provides the answer.

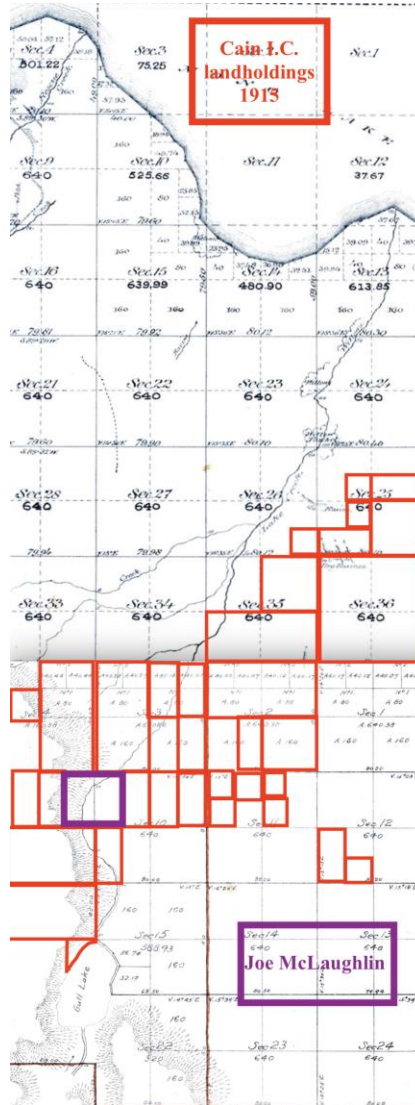
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<sup>66</sup> Bridgeport Tom, Application for a Patent in Fee, August 31, 1925. GBIA Mono County 6-5.

## Joe McLaughlin: In the Midst of a Bidding War

Joe McLaughlin is notable in the history of the Mono Basin mostly for the location of his land allotment, and for the contest over getting ownership of it waged between Cain Irrigation Co. and the City of Los Angeles from 1913 to 1923.

Map 5  
Joe McLaughlin's Allotment in Relation to Cain Irrigation Company Land on Rush Creek



Source: Author.

Like other allottees in the Mono Basin, Joe McLaughlin received his patent on September 23, 1907. And like most of the others, his allotment was on Rush Creek. Unlike others, his was so strategically located as to be desired by both J. S. Cain and the City of Los Angeles in their competition to control water rights in the Basin. His 160 acres straddled Rush Creek about a mile

below Grant Lake just east of where Parker Lake Road now intersects with CA 158. If there was a choke point on control of Rush Creek, his allotment was it. And control over Rush Creek water was at the center of the 1913-16 Rush Creek case discussed above.

During that trial, J. S. Cain bought not only Archibald Farrington's land, also his son James's which was critical to making and enforcing Cain's claims to all the water in Rush Creek.<sup>67</sup> Because of the strategic location of McLaughlin's land, Cain made an offer for it too. As can be seen by Map 5, McLaughlin's land straddled Rush Creek, and by the time the trial started it had become surrounded by Cain's land purchases.

Cain was determined to gain a monopoly on land and water rights in the Mono Basin, and he set his eyes on McLaughlin's allotment. The map clearly shows that McLaughlin's allotment was the missing piece in Cain's drive to own land along Rush Creek. Even as the Rush Creek case was moving forward in 1914, and after McLaughlin and the other Indian allottees had been served court papers, J. S. Cain's best friend and San Francisco lawyer, William Metson, approached McLaughlin and made an offer to buy his allotment. But how much was it worth?

As discussed in the section on what it meant for allotments to be held in trust by the federal government, all of the Paiutes in the Mono Basin were under the jurisdiction of the Bishop Indian Agency which at the time was under the direction of Superintendent Ross Spalsbury, who, as we have seen above, was intimately involved in the Rush Creek case. So Spalsbury was included in the negotiations Metson was opening up about acquiring McLaughlin's land. Spalsbury asked C. R. Olberg, the regional head of the Indian Irrigation Service, about the likely value of McLaughlin's land. Olberg did a study and said McLaughlin's land and water rights would be worth \$75 per acre, or \$12,000 for McLaughlin's 160 acres. So that McLaughlin would not be left landless, Metson "made a proposition to trade similar land for it. This will not deprive McLaughlin of his land."<sup>68</sup> This deal fell through, and the allotment remained in McLaughlin's hands.

In 1923 bidding resumed for McLaughlin's land, initiated again by a Cain company, this time the Southern Sierras Power Company which operated the hydroelectric plant on Rush Creek at Silver Lake. In January, the power company offered \$2800 for McLaughlin's allotment. McLaughlin informed the Bishop Indian Agency, by then overseen by Superintendent Ray Parrett, of the offer. Rather than accept it, Parrett told McLaughlin his allotment was held in trust by the federal government and could only be sold by an open bidding process. Parrett advertised the land for sale and received three bids. The highest was from the City of Los Angeles for close to \$5000.

That might have been the end of it, with McLaughlin's land going to the City of Los Angeles. But Parrett thought there were some irregularities in the bidding process and wanted to ensure that McLaughlin would get the most possible money for his land. In a September 4, 1923 letter to his superior, the Commissioner of Indian Affairs, Parrett wrote:

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<sup>67</sup> Marks, "Mr. Clover Goes to Washington:" 14.

<sup>68</sup> Spalsbury to Olberg, October 8, 1914; Olberg to Spalsbury, October 12, 1914. GBIA Mono County 1-3.



Inasmuch as we are primarily interested in the welfare of the Indians concerned, it would seem that he should derive the greatest possible benefit from the sale of his land. McLaughlin and his wife are old people and have no children, and the money derived from the sale should provide for the two during the remainder of their life. In consideration of the benefits to be derived, I would recommend the cancellation of all previous action taken...and return to the City [of Los Angeles their check for] \$4200.00, and a readvertisement for a period of thirty days at not less than \$5000.00, giving special notice to the City of Los Angeles, the Southern Sierra Power company and all others interested.<sup>69</sup>

Parrett approached the Cain companies to see if they would make such an offer. The answer came back in a letter from Cain's lawyer Henry Coil:

[Y]ou may state to the Commissioner that the McLaughlin allotment taken alone is not capable of or valuable for power purposes, but the water rights appurtenant thereto can be so utilized in connection with extensive holdings of this Company which surround the McLaughlin land on all four sides.<sup>70</sup>

So, McLaughlin's land was valuable, not as land per se but for its riparian water rights. According to Parrett, "A contest is being waged locally between the City of Los Angeles and the Southern Sierras Power Company for the acquisition of water rights, and it is really this condition that has brought about the offer of \$5000."<sup>71</sup> When all the negotiating was done, McLaughlin agreed to sell his land to the Cain Irrigation Company for \$7500.<sup>72</sup> And most astoundingly, when that transaction was complete, the Cain companies then bundled all of the land and water rights they had accumulated in the Mono Basin, Joe McLaughlin's now included, and offered to sell it all to the City of Los Angeles for \$5.5 million. That offer was not accepted<sup>73</sup>.

By 1929, all the Mono Basin allottees—with the exception of Captain John—had transformed their allotments from trusts to patents in fee simple and sold them. It is often assumed, and sometimes written, that the Mono Basin allottees sold their land to the City of Los Angeles. As Table 1 makes clear, that is not true. Cain companies bought seven of the nine allotments, and Archibald Farrington and his daughter-in-law Elizabeth purchased the other two. To be sure, in 1933 the Cain companies did ultimately sell their holdings to the City of Los Angeles, which by then included the Farrington lands.<sup>74</sup> But the Cain companies' contest with the City of Los Angeles to control the water rights in the Mono Basin is what increased the value of allotments there, to the benefit of the allottees.

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<sup>69</sup> Parrett to Commissioner of Indian Affairs, September 4, 1923. GBIA Mono County 4-1.

<sup>70</sup> Coil to Parrett, September 8, 1923. GBIA Mono County 4-1.

<sup>71</sup> Parrett to Commissioner of Indian Affairs, September 4, 1923. GBIA Mono County 4-1.

<sup>72</sup> Indian Fee Patent File #933027 (Joe McLaughlin); "Indian Fee Patent Files, 1902-1952," Entry UD 2297 (National Archives Identifier 5686941; Record Group 49, Records of the Bureau of Land Management; National Archives in Washington, DC).

<sup>73</sup> Marks, "Before Mulholland."

<sup>74</sup> Agreement for the Sale and Purchase between The Southern Sierras Power Company and Associated Companies, and Department of Water and Power of the City of Los Angeles, October 23, 1933. Mono Lake Committee, used with permission.

Table 1  
Sales of Mono Basin Allotments

<u>Allottee</u>	<u>Date sold</u>	<u>Buyer</u>
Joe McLaughlin	10/1/23	Cain Irrigation Co.
Fee Foster	8/10/26	Sierra Const. Co. (Cain)
George Sam	6/1/27	Sierra Const. Co. (Cain)
Bridgeport Tom	7/23/28	Eliz. Farrington
Henry Jameson	8/4/28	Sierra Const. Co. (Cain)
Young Charlie	3/1/29	Nev-Cal Securities (Cain)
Louis B. Murphy	3/1/29	Nev-Cal Securities (Cain)
John Cluette	3/1/29	Nev-Cal Securities (Cain)
Mike Williams	5/20/29	Arch Farrington

Sources: Various, including BLM/GLO records, records in the National Archives, and deeds in the Mono County Recorder of Deeds, Bridgeport, CA.

But why was Captain John’s allotment not sold to Cain companies along with all the others? The short answer is that his allotted land did not have any water rights. As we saw earlier in this article, he had been twice evicted from well-watered land and then took up residence on the north side Mono Lake. He then applied for and in 1920 received an allotment for 80 acres of land no one else would want. Captain John died in 1923, and his allotment remained on the books. In Captain John’s files held by the National Archives is a September 30, 1966 letter from the Sacramento Area Office of the Bureau of Indian Affairs to the Bureau of Land Management: “It is requested that a patent in fee be issued to John Torres, also known as Aualle Torres, non-Indian heir for an undivided interest in...the allotment of Captain John, deceased Public Domain Allottee No. Ind. 109.”<sup>75</sup>

### Conclusion

Dispossessed of the land that had sustained them over the millennia and through countless generations, by 1900 the Kutzadika<sup>a</sup> of the Mono Basin had become landless Paiute wage laborers, a new minority outnumbered by Euro-American settlers. Land and water became commodities, bought and sold by the rules of a monetized market system. And for a brief moment in the early twentieth century—before developers began to monopolize the land and water for their gain—it became possible for Paiutes recognized as non-reservation Indians to apply for allotments of 160 acres. However long the application process may have taken, in

<sup>75</sup> Indian Fee Patent File #746482 (Captain John): “Indian Fee Patent Files, 1902-1952,” Entry UD 2297 (National Archives identifier 5686941; Record Group 49), Records of the Bureau of Land Management: National Archives in Washington, DC.

1907 a small but appreciable share of the Paiute heads of families in the Mono Basin were allotted land to be held in trust for them by the U.S. government for 25 years.

Within a decade of receiving their allotment, these Paiutes—whose land was valuable precisely because it had riparian water rights on Rush Creek—soon became enmeshed in the struggles over water in the Mono Basin. As a result of the 1916 Hancock Decree deciding the Rush Creek case, the allottees had their rights to Rush Creek water legally recognized. And when Cain went about using his fortune to monopolize the land and water rights in the Mono Basin to protect his hydro-electric power operations, their allotments became even more valuable. If they could be sold.

The 25-year trust restriction led them to petition the Government Land Office, through the Office of Indian Affairs, to reissue their land patents not as trust allotments but in fee simple, which granted them outright ownership rights to alienate the land as they saw fit. Apparently the only restriction was that the land would have to be sold through a public auction with the sale going to the highest bidder. And the highest bidder was nearly always a Cain company.

By late 1923 when Cain had gotten what he considered to be enough of the land and water rights in the Mono Basin, his companies made an offer to sell them all to the City of Los Angeles. The City walked away from that offer, but the temptation was never far away, and its Department of Water and Power maneuvered to get the rights to the water of Mono Basin. Before that could be consummated, by 1929 Cain companies had moved to buy out the Paiutes' landownership. In 1933, the Cain companies bundled all their land and water rights—those purchased from Euro-American homesteaders and Paiute allottees alike—and sold them to the City of Los Angeles.

To be sure, those handful of Paiute allottees were dealing with massive forces that could, and did, remake the landscapes not just of the Mono Basin, but of California and the United States. The regimes and rules governing land ownership and water rights were overseen and enforced by state and federal laws, and those in turn were embedded in the workings of the capitalist world system that increasingly had the United States at its core. Working within those systems thus required considerable knowledge, and several Paiutes of the Mono Basin succeeded in doing that even as they sold their land to Cain companies. By 1930 Paiutes in the Mono Basin were landless again. Nonetheless, they benefitted from the sale of their allotments, and took the money offered them. Dispossessed again, but with money in their bank accounts.

Still, the choices that the Paiutes made, and the actions they took to secure land ownership, showed that even though their allotments went to them as individual heads of households, they were still Kutzadika<sup>a</sup>. The land they had selected for their allotments was mostly along Rush Creek, the heart of the Kutzadika<sup>a</sup> historic homeland, Kootzagwae.<sup>76</sup>

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<sup>76</sup> The Kutzadika<sup>a</sup> have been trying to gain federal tribal recognition, and a bill was introduced in Congress for that purpose. Louis Sahagun, "Congressman plans legislation to recognize struggling Native American tribe in Mono Lake Basin," May 29, 2021, *Los Angeles Times*.