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(6054-u)

DEPARTMENT OF THE INTERIOR
 January 31, 1929.
 respectfully referred to the
 Solicitor of the Department,
 for information ~~and~~


~~XXXXXXXXXX~~

COMMISSIONER GENERAL OF THE UNITED STATES

Washington

A-25695

Jan 30 1929

The Honorable
 The Secretary of the Interior.

Sir:

There has been presented to this office for consideration and settlement the claim of Louis Alpers for \$2,000 representing the purchase price of 70 acres of land purchased for landless Indians in California.

The conveyance of the land is evidenced by a deed executed by the claimant and his wife purporting to grant to the United States all that real property described in the instrument. The deed has been recorded and is accompanied by a policy of title insurance in which it is shown that the property is subject to an agreement dated December 18, 1923, executed by Batista Bracchiglione and Maria Bracchiglione, his wife, in favor of J. J. Morris, et al, providing, among other things, for the sale by first parties to second parties of mineral rights upon the Fitzsimmons Ranch, which comprises the property here in question.

It would appear that the land purchased from Mr. Alpers is subject to mineral rights he does not own and which, therefore, he could not convey to the United States. It is noted in this connection that the solicitor of your department, in an opinion dated February 14, 1928, advised that in order to avoid the possibility of a claim being asserted for the minerals underlying the land proposed to be purchased, efforts be made to secure a relinquishment from the purchasers in the form of a quit claim deed to the United States of such rights as they might have in the land involved.

We wish to again invite attention to the fact that the Indians for whose benefit the purchase is to be made have lived on the land for a long period of years; that the 70-acre tract has been investigated for minerals and found not worthy of mining; and that operations with respect to this land have been abandoned. Therefore, the possibility that mining operations will prevent undisturbed use of the land by the Indians is extremely remote. As it is now apparent that the minerals cannot be acquired with the land, and as the Indians have constantly occupied the surface without any known disturbance through mining activities, it is the belief of this office that the purchase should be completed, notwithstanding the minerals do not accompany the land. There are twenty or more Indians on this tract, and it is greatly to their interest to have the land established as a permanent home for them. As the matter now stands, they are on privately owned property and are subject to removal at any time by the owner thereof."

By decision of this office dated December 15, 1928, A-25156, you were advised that under an appropriation providing for the purchase of land for, and industrial assistance to, certain Indians, there was no authority for the purchase of land subject to reservations of the timber thereon and mineral interests in the land.

The same principle is applicable in the present case and payment of the claim for the purchase price of the land is not authorized unless a relinquishment of the mineral rights shall have been obtained, or such facts, not now before this office, are presented, as will justify an exception to the rule as set forth in the decision of December 15, 1928, supra.

Final action on the claim will await your further administrative report in the matter.

Respectfully,

(Sgd) J. H. McCann

Comptroller General
of the United States.

Amount \$ 300.00

Application No. 25-744 Spec

Renewal of No.

Title Insurance and Guaranty Company

ESTABLISHED 1848 INCORPORATED 1902

SAN FRANCISCO - - - CALIFORNIA

BY THIS POLICY OF TITLE INSURANCE

Title Insurance and Guaranty Company, herein called the Company, does hereby insure

UNITED STATES OF AMERICA

herein called the Insured, against all loss or damage not exceeding the sum of

THREE THOUSAND AND NO/100 ----- (\$3000.00) ----- Dollars

which the Insured shall sustain by reason of any incorrect statement in this policy concerning the title to the real property hereinafter described, herein called the insured property; or by reason of any defect in, or lien or encumbrance upon, the title of the vestee to said property, excepting only such defects, liens or encumbrances and other matters to which said property is subject, as are hereinafter specified; subject to the exceptions and conditions herein contained.

This Policy shall and does expressly insure any Insured mortgagee, trustee or beneficiary against any defect or invalidity, existing at the time of the record thereof, in any mortgage or deed of trust to which said property is subject as herein set forth, in which said Insured shall have an interest, and shall and does expressly insure the priority as herein set forth of any such mortgage or deed of trust; subject always to the Exceptions and Conditions herein specified.

The Title to the insured property is vested in:

UNITED STATES OF AMERICA

Subject to the following:

- 1st. Reservations contained in United States Patent.
- 2nd. State and County Taxes for the fiscal year 1927-28, now a lien but not yet payable.
- 3rd. Agreement dated December 16th, 1925, executed by Battista Bracchiglione and Maria Bracchiglione, his wife, in favor of J. J. Norris, Andrew Darling, William J. Darling, A. W. Darling, Jesse Darling and W. M. Darling, providing, among other things, for the sale by first parties to second parties, of minerals upon the Fitzsimons Ranch, which comprises this and other property.
Said agreement contains other provisions and conditions, reference being hereby made to the record for the same. Recorded in Vol. 1 at page 554.
- 4th. Existing roads and water rights.