

Chief Clerk.

COMPTROLLER GENERAL OF THE UNITED STATES

Washington

A-25696

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 \$3,000 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 Bracehiglione and Maria Bracehiglione, 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 Fitzsimons 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.

*File
47751-26-300
S. W. M.*

In letter dated September 28, 1928, the Commissioner of Indian Affairs states that the matter was taken up with the Sacramento Agency and that a report had been received explaining the existing status of the matter. The report in question has not been made a part of the record and is, therefore, not available to this office for consideration in connection with this claim. The letter further states:

"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 13, 1928, supra.

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

Respectfully,

(Sgd.) J. R. McCarl,
Comptroller General
of the United States.