

apply for other land.

Under date of November 16th, 1914, Forest Supervisor, Thomas J. Collins, writes special Agent Asbury reviewing the Hooper case stating that Hooper writes him that he does not want the land and he, Collins, will recommend to the District Forester that the case be closed. It appears that it was never possible for Special Agent Asbury to visit Hooper nor inspect the land he filed upon or the source of the water he desired.

About this time Mr. H.H. Atkinson of the law firm of Humphrey & Atkinson, Tonopah, Nevada, appears to have called at the Reno Office during the absence of Special Agent Asbury and raised the question with the Clerk as to whether or

not a half breed Indian could receive an allotment upon the public lands. This visit was the occasion which called for several letters discussing this subject. If at this time, Mr. Atkinson, who later on appeared as attorney for the United Cattle & Packing in the informal hearing in re case No. 4376 held in Tonopah before the State Engineer on June 20th, 1917, had been frank at the outset and stated the case of his client's directly, naming Tim Hooper and his client setting forth the situation in full without resorting to the round about course, which appears to appeal to the average lawyer, and had then arranged with this office for a representative of it to meet with one from his company and Tim Hooper on the ground where the situation could have been thoroughly understood by all, I firmly believe that an arrangement could have been made between the company and Hooper for him to relinquish his land for a valuable consideration and take up other land of which there was plenty in the neighborhood, what has now grown to be a very serious and complicated matter, might have been settled once and for all without any hard feelings and all the expense incurred up to the present and which may be incurred later on by all parties, would have been saved.

The Pine Creek Ranch has changed hands quite often; it consists of several parcels or tracts some of which are quite widely separated. It appears through the oversight of someone connected with the management of the affairs of either the United Cattle & Packing Co., or its predecessors that it was the first annual proof of a Desert Land Entry, made by one Kelly covering the land now held by Hooper was not made; on account of this failure the said Desert Land Entry was cancelled by the land office on August 22d, 1913, for and on account of the failure of Kelly or his assigns to make the said first annual proof. The date of Kelly's original filing was September 12th, 1911, therefore the land on account of

this cancellation and the land was actually vacant when Hooper filed upon the same. Beyond a doubt a previous owner of this ranch, one Marsh of Tenopah, who knew of this condition concerning this land instigated Hooper to file upon it and was able to give Hooper an accurate description in order that there was no mistake in his application. Marsh undoubtedly has a grudge against the present company and advised Hooper to file upon the water with the hope that both land and water could be secured through the help of the department and the Reno Indian office against any protest made by the United Cattle & Packing Co. I suspected the enmity of Marsh when I visited this Section early in June, 1917, with the Deputy State Engineer and Marsh. My suspicions have been verified by later developments. Apparently much of this land has been under cultivation and use since 1911 and possibly before. All, or practically all of it was under fence when Hooper filed on it. All of one forty and a part of another is sub-irrigated from irrigation and waste water applied to the company's land, which lie above the lands filed upon by Hooper. This land appears to be the best natural hay meadow covered by the waters of Pine Creek and naturally the company feels the loss of what they considered theirs very severely.

The land lies quite near the buildings of the Company. Its real value is of minor importance when compared with the constant menace to their interests and peace of mind. Should Hooper dispose of it to an enemy of the Company, almost anything might start conditions which would soon grow to be intolerable and unbearable. The families of "Spud", "Fisherman" and "Alec Mike," especially the latter are already suffering on account of Hooper's entanglement with the company. The application of Alec Mike for a part of the Waste Water of Pine Creek has already been protested by the Company for self protection on account of their controversy with Hooper. The increased activity of the Company combined with the extreme shortage of water the past season has deprived Alec of practically all the water he was using and seriously curtailed that used by Spud and Fisherman. At the same time the company has no grievance against these latter Indians but in its efforts to protect its water supply, they suffer from shortage on account of the volume of Waste Water from which they derive a supply, being seriously curtailed.

The lands of Alec join those of the company and those of Spud and Fisherman join Alec's. All depend upon Waste Water for irrigation after it leaves the boundaries of Pine Creek Ranch. Hooper cannot use any of this waste as the most of the Pine Creek Ranch slopes away from the land claimed by him. His source of supply being through sub-irrigation. The company applied for permission from the State Engineer to change a diversion point of a part of the waters of Pine Creek to other lands after Hooper's application for land had been approved and have diverted it from the lands claimed by him as far as possible. Hooper is

apparently making his fight on the grounds that the water which had been used to develop the land he claims should not be diverted but he still be allowed to apply the water as previously used.

The United Cattle & Packing Co. protested the application of Tim Hooper for a portion of the waters of Pine Creek under date of April 24th, 1917, and an informal hearing was held before the State Engineer at Tonopah, Nevada, June 20th, 1917; and by your request I represented you on behalf of Hooper. An official transcript of the proceedings is submitted herewith marked Exhibit "A". The decision of the State Engineer was that a suitable weir should be installed in Pine Creek at the expense of the government in order that the flow of the stream might be accurately determined. After this can be differently known, his intention undoubtedly is to call for an accurate survey of the lands of the Pine Creek Ranch and adjust the water to which it is legally entitled, and if a surplus is found to exist Hooper would have been entitled to it.

Upon my return from the hearing I requested of Mr. E. W. Deitz, Superintendent of Irrigation of this district funds for the purchase of materials to install this weir, which request was allowed, and I proceeded to get bids for material. I notified the Verdi Lumber Co., at Tonopah, Nevada, that its bid was accepted and to send the bill to Mr. Deitz at Salt Lake City, holding the material until such time as the Pine Creek Ranch employees could haul it to the ranch, which service had been kindly offered by Mr. Ira Murdoch, the Company's manager. In the latter part of October I met Mr. Murdoch in Reno and we agreed to meet in Tonopah or Goldfield, and go to the ranch and install the weir. He stated that the lumber would be in readiness upon our arrival. I left Yerington, Nevada, October 29th for Goldfield, when I arrived there the following day I met Mr. Murdoch and arranged for the trip. We left Goldfield for Pine Creek Ranch by auto on the morning of October 31st, arriving there late in the evening. Early the next morning I met Ales Mike, Spud, Fisherman and Tim Hooper at the ranch house. I explained to them the decision of the State Engineer and what we were about to do, stating at the same time that this work was being done on account of the controversy between Tim Hooper and United Cattle & Packing Co., for the purpose of determining the amount of water in Pine Creek which could best be done by means of the structure he proposed to install. That while there had been no trouble between Ales Mike, Spud and Fisherman and the United Cattle & Packing Co., yet as they had made applications for water from Pine Creek, and were using its waters after they had passed the boundaries of the Pine Creek Ranch, they were therefore vitally interested. They readily volunteered to work without pay.

To my surprise Tim Hooper refused absolutely to do anything whatever in the installation of this wier or to have anything to do with the waters of Pine Creek, stating that he never wanted at any time water from Pine Creek but did want water from Andrews Creek, and that only. He charged the State Engineer with substituting the name of Pine Creek for Andrews Creek. Mr. Wm. Kearney, who was then State Engineer, when his filing was made, but who later appeared as attorney for United Cattle & Packing Co., at the water hearing in Tonopah, which may have prejudiced Hooper. Fortunately I had with me the transcript of all testimony taking at the said hearing referred to as Exhibit "A". I read him his own testimony and much of the other showing that in this hearing no mention whatever was made of Andrews Creek. Only Pine Creek, at that time nothing in the testimony could be found other than what referred to Pine Creek, and I have never heard of Andrews Creek until he mentioned it sometime the past summer during a visit to the Reno office. I stated further that I had only authority to install a wier in Pine Creek and could not do anything whatever relative to Andrews Creek.

Spud, Fisherman, Ales Mike and I joined by Mr. Ira Murdoch, who furnished two laborers, then proceeded to install the Wier. Considerable time was spent in survey in order to find the most favorable location. We finally settled upon a spot about 20 feet above the small wooden gate through which a portion of the waters of Pine Creek are diverted and conveyed through a small ditch for a distance of about four miles northwest of this point to a white sage flat upon lands held by the company and known locally as the "Barley Field."

The wier is located above all the diversion points on Pine Creek and therefore the whole volume of Pine Creek will necessarily pass through the opening of the wier. The Company has done everything in its power to assist me in this work as will appear in all its acts from the day that the decision was rendered up to the time the work was finished. The relations of the Indians, myself and the Company's employees throughout were of the most cordial and friendly character. I cannot commend the attitude of the Foreman and employees too highly.

It now rests with the State Engineer to appoint someone to keep such record of the flow of the stream as he

desires. I have submitted a report to him, a copy of which is enclosed herewith marked Exhibit "B". When the wier was completed there was approximately one second foot passing over its crest and the entire volume of water was confined to the regular channel of Pine Creek. It is worthy of note that the water barely reached the road at the ranch house, thus showing nearly one second foot of loss between the two points covering a distance of approximately one mile and a half. In order to be absolutely fair to the Company, another wier should be installed at the point where the Creek enters their meadows and cultivated lands. A comparison of the measurements shown by the two wiers would thus show the loss of water before any irrigation was attempted. Mr. Murdoch, the manager, stated that he planned to do this at the expense of the Company for his own satisfaction. At the date of the installation of the wier there was approximately one second foot of water passing through the opening. The entire volume of water was running down the main channel, yet it barely reached the ranch buildings and disappeared, thus showing nearly one second foot of loss between the two points approximately one and a half miles apart.

The question naturally arises if the wier was ordered, installed on account of Tim Hooper, why proceed with the work, when he withdrew his claim to the waters of Pine Creek. Practically all the expense, except the labor of installation had been already incurred. I did this entirely in the interests of Spud, Fisherman, Alec Mike and their families, numbering possibly twenty people. These Indians need the assistance and guardianship of this office. The three mentioned have filings on Pine Creek for the waste and surplus water thereof after it passes through the Pine Creek Ranch. See Exhibit "D". While so far no friction has apparently developed between them and the Company, yet it is everything in their favor that the flow of Pine Creek should become a matter of record in the office of the State Engineer, and the same information be a part of our files. In water matters no one knows what the future may bring forth and a certainty is far preferable to guess work in irrigation.

These Indians above mentioned stand in a different light and relation to the Pine Creek Ranch and the United Cattle & Packing Company, than does Tim Hooper. So far as I have been able to learn, the Company has never raised the slightest objection to these Indians or their filings, nor interfered with the water which has been done in the case of Alec Mike whose application has been protested, until the water troubles arose between Tim Hooper and it. On the contrary these consider these Indians as an asset, and an

advantage to the ranch and the Company. Had they not taken up their allotments and put the waste water to beneficial use which passes through the ranch, white men might have done so who would not have made so pleasant or agreeable neighbors. They furnish a dependable source of labor for the Company when needed and when not employed by the Company their spare time can be employed upon their own lands. There is a mutual advantage, the Company needs their labor, while the Indian needs the ready money which is his main source of income. White labor is practically impossible to get in this section when needed.

As to the case of Tim Hooper the land upon which he filed was improved land almost in the heart of Pine Creek Ranch, which improvements had already been made by the predecessors of the United Cattle & Packing Company.

At the risk of some repetition I venture a review of the situation. September 12th, 1911, one H. James Kelly filed a Desert Land Entry for 160 acres, the identical land now held by Tim Hooper, and improved it afterwards disposing it to the predecessors of the United Cattle & Packing Co. The records of the Carson Land Office show that this Desert Land Entry was cancelled by a letter from the General Land Office, dated August 22d, 1918, on the grounds that neither Kelly or his assigns has made first annual proof. The status of this land was overlooked by the United Cattle & Packing Company in the transfer of the entire ranch and etc., to the Company from one of the banks in Tonopah. Tim Hooper filed on January 22d, 1915. - I understand from good authority that he did this at the instigation of one Marsh, a former owner, who held the ranch as a part of the firm of Stimler & Marsh, who failed and the bank took over the entire holdings, afterwards selling to the present owners. Marsh has been an enemy of the Company ever since. Hooper had a legal right to file upon the land but it was certainly unethical and under the conditions not conducive to peace and harmony. However, he is now in peaceable possession of the land. The improvements stated in his affidavit, are on the land and substantially correct, although not done by him and he is getting the benefit of much of the labor of others. At least sixty acres of his holdings is well set in wild meadow and sub-irrigated from the waters of Andrews and Pine Creeks and applied to the Pine Creek Ranch above his holdings. This condition will continue indefinitely so long as the present method of irrigation is kept up. From the appearance of Hooper's hay stack he has cut about twenty tons of wild hay this season, although water was short for all. The files of this office show that Hooper was throughout given all the encouragement and assistance possible on account of

the showing he made and affidavits supported by others. While he told the truth he did not tell the whole story. He carefully refrained throughout all of his correspondence from making any statement baring upon the previous status of this land, or that it was fenced and improved when he filed upon it. He insisted in several letters to Special Agent Asbury that he come to Pine Creek and visited this land but it appears that neither he nor any of his employees were able to do so, apparently on account of the pressure of other work.

Whiel Hooper had a legal right to file upon this land, and had the question been put up to me, I should have advised against it, and I think Special Agent Asbury, had he been able to get upon the ground, would have done so also. A glance at the situation would convince anyone that friction and ill feeling would certainly follow. After I became thoroughly familiar with all the circumstances and conditions, I advised Hooper to sell out to the Company, which I feel sure would then and would now pay him much more than the land is worth in order to clear up the situation and forced all farther trouble. This Hooper indignantly refused to do and left the office in a very bad frame of mind, saying repeatedly that he had been promised help and also advised by Special Agent Asbury in a general meeting at Eiko through his statements that he was here to help the Indians and they should take land wherever they found it was open, although it might be under fence by others and the Government would fight their battles. I am much inclined to think that this statement was badly twisted by Hooper to cover his own situation.

Hooper thinks he can get water from Andrews Creek doubtless by claiming that its waters were used upon the land he claims. This appears to me extremely doubtful, as I understand that the company holds a priority right on all the flow of Andrews Creek, which is a very small creek and at flood tide probably not flowing over two or three second feet as indicated from its banks. This flow undoubtedly rapidly decreases. The waters of Andrews Creek are diverted from the original channel at a point about one half mile above the mouth of the canyon and carried by an open ditch across the bench in a northeasterly direction for a distance of about two miles where, as indicated by the ditches, they are merged with a part of the waters of Pine Creek and applied to all the lands lying directly below. Undoubtedly the waters thus mixed were applied to the lands now held by Tim Hooper but no one knows how much was covered by the waters of Andrews Creek on account of the waters of Pine Creek being co-mingled therewith.

April 17th, 1917, Jacob B. Humphrey, Secretary of the Company applied to the State Engineer for permission to change the place of use of 422 second feet of Pine Creek

from the NW $\frac{1}{4}$ Sec. 20, Tp. 11, N. E. 45 E. to NW $\frac{1}{4}$ Sec. 21, Tp. 11, N. E. 46 E., which application has not yet been approved but from the evidence gained by observation on the ground I should say had been done in fact in advance of such permission. Evidently for the purpose of cutting off the water from the land now held by Hooper which was successful as Hooper complains that he has had no water for direct irrigation since and for some time before upon his land save what percolates through sub-irrigation on the wild meadow referred to above. While the United Cattle & Packing Company concede Hooper is legally in possession of the land, yet its representatives naturally feel sore over the situation and deny that he has any right to any water whatever. They contend that water is short, which is painfully evident from the amount of hay cut this year, although at other times it is very abundant. See Exhibit "A". Naturally they keep all the water on their own land as much as possible and are determined to resist of all Hooper's attempts to secure any legal right to either the waters of Andrews or Pine Creek. It must not be inferred from what is said above that the Company or any of its present employees are persecuting Hooper or have any bad blood against him; they are simply defending their legal right. This is partly evidenced by the fact that Hooper works for them when he wishes to and I found his son employed by the Company, when I made this visit.

After I finished the wier and made a survey of Spad, Fisherman and Alee Miko's lands, I called on Tim Hooper, just before leaving the Pine Creek ranch. I told him that I had no authority to install any wier or interfere whatever with Andrews Creek, and since he had withdrawn from Pine Creek I could afford him no relief. I had no authority to bind your office and told him that he could continue his correspondence with the Reno Office, but gave him my individual opinion unsupported by any authority, that he had no chance of getting any irrigation waters from Andrews creek; that he had a legal right to his land and could hold it, but it would be far better for him to sell out to the Company for a good price and take up other land. He became quite angry and accused me of bad faith with him and asked me why I couldn't help him as though I was helping the other Indians referred to above. He stated also that the next day he would go to Tonopah and get a lawyer to fight his case independent of the government.

He has about twenty head of cattle now, quite a number of horses and has taken quite a bunch of cattle on shares to care for. In my opinion he now stands good to lose what he has if he follows the course he states he should take.

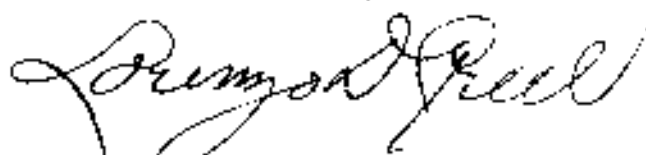
In view of all the facts and circumstances which have been given at length in detail in the body of this report

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and exhibits attached thereto, in my opinion, this case should be closed as far as Tim Hooper is concerned, and he be allowed to fight his own battles, as I can see nothing further which can be done by this office, especially in view of the fact that such a multitude of deserving cases are waiting your attention, and the Indians are losing their rights through lack of sufficient help and funds to reach their cases. However, the other Indians mentioned in this report and their interests should be kept under careful observation.

Trusting that this matter has been handled in such a way as to meet with your approval, I am

Yours very sincerely,

A handwritten signature in cursive script, appearing to read "L. J. Reel".

SPECIAL SUPERVISOR.