

*The establishment of national forests in California affected nonreservation Native Americans in what was then called District (now Region) Five of the U.S. Forest Service. Their attempts to secure homesteading permits within the national forests encountered several obstacles—not the least of which was misguided thinking on the part of advocates within the federal government.*

# NATIVE AMERICAN LAND OWNERSHIP

*IN CALIFORNIA'S NATIONAL FORESTS*

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**W**hen President Theodore Roosevelt reserved nearly twenty million acres of California's timberlands as national forests, his progressive conservation vision undermined the agenda of reformers working to secure land for the nonreservation Native Americans of northern California. The reformers

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had viewed the forests as prime targets for more Indian home sites, but the lands' new status as national forests seemed to lock out Indians and other settlers.

In 1906, when agricultural land in the forests was opened to citizen settlers, noncitizen Indians who were living in California's national forests lacked legal status. Their homes had been included inside national forest boundaries; now they were subject to displacement by whites participating in a final homesteading rush. Protecting thousands of Indians under threat seemed urgent to Office of Indian Affairs and Forest Service officers in the field, yet a decade later only 137 Indian households had been secured.

## **ESTABLISHING NATIONAL FORESTS IN CALIFORNIA, 1891–1910**

Through most of the nineteenth century, federal policy was to dispose of public lands by grants and sales to states, corporations, and individuals. An inkling of change occurred with the creation of several national parks, and then in 1891 a new law drastically altered federal land policy. The Forest Reserve Act authorized the president to set aside public lands containing timber as forest reserves. The reserves would be owned by the nation to serve the interests of all people. Although "'reserving' anything in the way of large amounts of public domain was simply

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**BY LARISA K. MILLER**



Charles H. Shinn of the U.S. Forest Service took this undated photo on the Sierra National Forest. The original caption to it read “Indian ‘Wickiup’ in North fork country.” Shinn wrote in 1908, “We have it in our power to help them in perfectly simple, direct, and practical ways free from sectarianism or sentimentality.”

revolutionary,” as one historian of the Forest Service has characterized it, the law was enthusiastically applied in California.<sup>1</sup> By the end of the century the state had nine forest reserves totaling nearly nine million acres. Roosevelt created fifteen more national forests (as the forest reserves were renamed in 1907) and enlarged existing ones. By 1909 the gross acreage of national forests in California was almost twenty-eight million acres—accounting for a quarter of the state and much of California’s remaining public domain lands.<sup>2</sup>

Forest Service chief Gifford Pinchot observed that “public sentiment about the Forest Reserves varied according to the occupations of the people” and that California’s farmers, city dwellers, and progressives were “staunch” friends of forestry who wished to protect resources essential for drinking water, irrigation, and energy.<sup>3</sup> For decades, private logging, mining, and grazing interests had exploited California’s publicly owned forests. These industries caused severe erosion of forest soils in the mountain watersheds, which could no longer hold and slowly release the water on which farms and cities relied. Because use of the new reserves promised to be scientifically controlled and sustainably managed, the national forests represented a means to safeguard water supplies vital to prosperity and growth.

Most westerners expected free access to the forage, timber, and mineral resources on lands in the public domain. The economic loss they experienced with the creation of the reserves fueled their hostility toward Roosevelt and the Forest Service. The reserves also represented a loss for advocates for the northern California Indians: they had eyed the unreserved public lands as permanent homes for the state’s many landless Indians, and now creation of the reserves pulled the rug out from under their plan.

#### DOCUMENTING LANDLESS CALIFORNIA INDIANS, 1905–1906

The northern California Indians were the surviving remnant of a once dense and diverse population. Eighteen treaties with California Indians had been signed in the 1850s, but the U.S. Senate refused to ratify them. Instead of reserving lands via treaty, the government created Indian reservations by executive action. But some reservations were blocked and others were moved or dissolved by whites who coveted the land. Eventually some thirty small, scattered reservations were established for Indians in southern California, but in northern California there were only three reservations in 1900. Most Indians lived outside the reservations, where their means of subsistence diminished as they were unrelentingly forced toward marginal lands. They had virtually no legal rights, protections, or government support.

The federal government investigated the conditions of the California Indians in 1905–1906. It tapped C. E. Kelsey, a lawyer and advocate for fairer treatment of Native Americans, to perform the work. Kelsey prepared a census of 11,755 Indians in northern and central California and reported that most were “without land.”<sup>4</sup> He recommended that they be given small land allotments but noted that “it would be necessary to buy a considerable amount of the land, as there is very little land in the public domain left to allot them. Almost everything relied upon for this purpose has been included in the forest reserves.”<sup>5</sup>

California’s federal forest reserves were a moving target during the investigation. More than 4.5 million acres were added to them in 1905–1906, the fiscal year when Kelsey was working.<sup>6</sup> The expanding reserves engulfed ever more Indian homes, but Kelsey was not deterred. He counted 1,181 Indians and 125 “mixed

**Table 1. Indians on Forest Reserves in Northern California, 1905–1906, Compiled by C.E. Kelsey**

County	Indian Heads of Families	Indians	Mixed-Blood Heads of Families	Mixed bloods
Fresno	26	69	3	11
Humboldt	43	188	0	0
Kern	41	169	0	0
Mariposa	14	49	0	0
Madera	64	276	5	12
Siskiyou	118	430	15	102
<b>Total</b>	<b>306</b>	<b>1,181</b>	<b>23</b>	<b>125</b>

bloods” living in forest reserves in six counties (Table 1). On his typed census, Kelsey indicated these families with his pen, marking groups of names as “forest reserve.”

Most of these people did not live in deep woods. Rather, the forest reserves were established so rapidly and imprecisely that agricultural lands—and their Indian residents—were often included. In addition, even extensive forests had “many small valleys and isolated tracts of grazing lands... which provide ideal spots for Indian homes, and on many of these tracts the Indians have settled and erected improvements.”<sup>7</sup> On the Sierra National Forest, for example, Indians lived in groups of ten to one hundred in nineteen places. According to forest supervisor Charles H. Shinn, “The little Indian homes are scattered here and there, wherever a spring can be found and a little pasturage for a few horses.”<sup>8</sup> Another official wrote, “They have made their living at such labor as they could get in that locality, and by limited placer mining on their own account. They have taken up little pieces of land where a small tract was available for agriculture, where they produced a good garden, have some fruit trees, and have fairly comfortable homes.”<sup>9</sup>

Kelsey counted these Indians separately because he made a distinct recommendation for them. They had “no title to the land they occupy, and since the establishment of the forest reserves, it is uncertain whether the lands within the boundaries can legally be allotted to them.” However, it was not necessary to obtain land for these Indians because “the Forest Reserve Officials do not seem to object” to their presence. Kelsey therefore recommended that “no action be taken in respect to Indians on the forest reserves until action seems more necessary than at present.”<sup>10</sup>

### FOREST HOMESTEAD ACT OF 1906

While Congress considered Kelsey’s report in the spring of 1906, a new bill called the Forest Homestead Act threatened his sanguine assessment. The legislation opened agricultural lands within the forest reserves to settlement under the Homestead Act of 1862. The act gave citizens 160 acres on the unreserved public domain if they lived on the land for five years, cultivated and improved it, and paid a minimal filing fee. The new bill was both a backlash against the forest reserves and their seeming interruption of western growth, and evidence of the insatiable demand for land in this period. Measured in acreage, new applications for public lands peaked in 1910.

Kelsey sounded the alarm to the commissioner of Indian Affairs within weeks of submitting his report. The legislation applied to citizens but overlooked Indians. Stressing that “these Indians practically all live upon agricultural land of the character which the

bill opens for settlement,” he urged that “some provision be made whereby the Indians shall not be molested when found to be occupying land of the character which it is proposed to open.” Moreover, the number of Indians affected was increasing as the forest reserves expanded. The “recent establishment of the Yuba and Lassen Peak reserves and the enlargement of the Tahoe reserve adds about 200” individuals to those he had tallied.<sup>11</sup>

Forest Service staffers were also concerned. They “began to make inquiries as to what would happen to the unallotted Indians in the national forests if the Homestead Act went into effect.”<sup>12</sup> Shinn was among them, writing that “the Indians will lose their little claims, unless they are considered first.”<sup>13</sup> He had been recommending “a system of leases... as early as 1904”<sup>14</sup> and was “taking, under ‘special privileges,’ requests of various Indians here for not to exceed 40 acres where their little cabins are built, or where they have hitherto camped.”<sup>15</sup>

As Kelsey followed the bill’s progress, he wrote again to the commissioner. An amendment excluding much of southern California was “almost wholly useless” because it exempted only one of the six counties listed in his census as having Indians on the forest reserves. If the bill passed, Kelsey called for “executive action to prevent the sale of lands occupied or claimed by Indians.”<sup>16</sup>

Days after Kelsey wrote that letter, on June 11, 1906, the Forest Homestead Act became law. It instructed the secretary of Agriculture to examine lands within the forest reserves “which are chiefly valuable for agriculture” and which “may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes.”<sup>17</sup> Such lands would be opened for settlement.

Beyond requiring an agricultural evaluation, forest homesteads differed from homesteads on the unreserved public domain in other ways. Rather than using the standard rectangular public survey, they were surveyed by metes and bounds. This allowed forest homesteads to hug agricultural land in river valleys. They also varied in acreage and could be smaller than the traditional 160-acre plots.

Under the law, “June 11th settlers,” as they came to be called, applied to have a tract examined by the Forest Service. The examination ascertained “whether the land is capable of producing cultivated crops, and in deciding this the soil, climate, altitude, and slope must be considered.” The process was based solely on the “fitness of the land for agriculture” without regard to the farming ability of the applicants or the viability of farms in remote locations. However, the Forest Service limited occupancy to “bona fide settlers” so that the land would go to “home makers” rather

than timber speculators. The Forest Service made a recommendation on each application and then the General Land Office (GLO) determined whether to open the tract for homesteading.<sup>18</sup>

Across the nation, June 11th settlers submitted thousands of forest homestead applications each year. The Forest Service's District 5 office, in San Francisco, which oversaw forest reserves in California and western Nevada, received more than 150 applications per month.<sup>19</sup> Although the Forest Service publicly embraced homesteads as an aid to the "protection and development" of the reserves, in reality they were a major threat.<sup>20</sup> The agency "used every subterfuge available to prevent and delay homestead entries."<sup>21</sup> Even so, annual reports show that most of its recommendations favored the homesteader.

### PROTECTING THE CALIFORNIA INDIANS, 1906–1910

Ten days after the Forest Homestead Act became law, Congress responded to Kelsey's report by appropriating funds to purchase land for the California Indians. Kelsey was appointed to perform the work. He subsequently wrote "a good sized volume of letters" urging protection of the rights of the Indian occupants of the forest reserves, a situation he believed "peculiar to California."<sup>22</sup>

Kelsey worked for the Office of Indian Affairs, which was part of the Department of the Interior, as was the GLO. They were nineteenth-century agencies molded by political patronage, centralized control, and fraud. In contrast, the Forest Service was new and progressive. Pinchot shaped it to be independent, professional, and decentralized. Kelsey later proposed reorganizing

the Indian Office to match the Forest Service structure. Reinforcing its distinctiveness, the Forest Service was part of the Department of Agriculture rather than Interior, which was the primary land manager. Splitting the administration of the public lands between departments invited competition for control of those lands, but Roosevelt skillfully brought the departments into line.

At first Kelsey proposed that forest rangers examining forestlands for potential agricultural settlement be instructed "that tracts occupied by Indians shall not be subject to entry."<sup>23</sup> This spurred the secretary of the Interior to consult his counterpart in Agriculture, and they agreed "that Indians should be given first consideration in carrying out" the new forest homestead law.<sup>24</sup>

The spirit of agreement stalled at the point of determining the mechanism to protect the Indians. The Indian Office favored issuing trust patents because Indians valued the ownership that patents conferred. The Forest Service preferred issuing "free special-use permits covering long periods," which it felt "better conserved" Indian interests.<sup>25</sup>

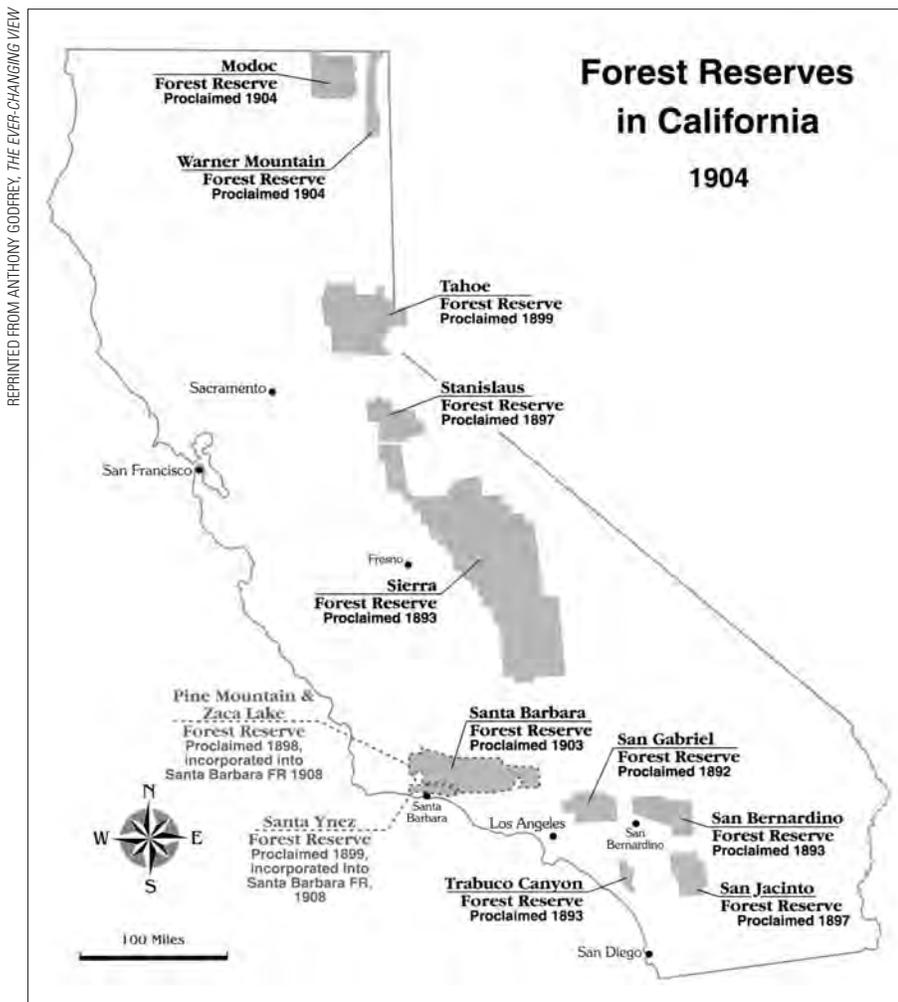
The Indian Office's approach called on an 1884 law that allowed homestead entries by Indians "to the same extent as may now be done by citizens."<sup>26</sup> Under this law, an Indian homesteader was given a patent, or title to the land, but it was held in trust by the government. Full title was given when the secretary of Interior was satisfied that the Indian was competent to manage his or her affairs. In this interpretation, the new Forest Homestead Act applied equally to Indians.

The Forest Service supported the long-term permit idea coming out of California. District Forester Frederick E. Olmsted argued that even if Indians were eligible for homesteads, their applications should be denied because the lands they applied for could not be considered agricultural. "No white man could begin to make a living upon them...the Indians really want it simply to eat and sleep upon. They want, also, the satisfaction of feeling that they own or have a right of some kind to the land they camp upon." If such applications were approved, it would be "the patenting of mere camp sites, and in my mind this would be an exceedingly bad precedent."<sup>27</sup>

Behind Olmsted stood Shinn, who insisted that permits protected Indians. Because the Indians were "dying off rapidly" and were "in the main under the control of squaw men and whiskey sellers," Shinn believed that if the Indians obtained patents, their forestlands would quickly pass to speculators.<sup>28</sup> Once the land was out of government hands, it would adversely affect timber production, water supply, and fire control.

In the resulting confusion and stalemate, Indians got the runaround. At first, Shinn submitted forest homestead applications from Indians in the Sierra National Forest to Olmsted

*The federal forest reserves in California as of 1904. The early reserves were created to protect watersheds and grazing lands as well as timber.*



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at the district office in San Francisco. Olmsted sent them to headquarters with his recommendation that they be denied. But the Washington office ignored his recommendation and passed the applications to Interior for action. The Indian Office got the upper hand by then sending letters to the Indian applicants suggesting they file homestead entries under the 1884 law. Shinn reported that “the Indians are coming here every day to show these letters and ask when they can get the land...they much prefer the Act of July 4, 1884.”<sup>29</sup>

By 1908, when Indians sought land in the Trinity National Forest, the Forest Service simply balked at approving their applications. Augustus Russ of the Redwood band applied to the Hoopa Valley Indian Agency for allotments in Trinity for himself and his daughter Mable. The local Indian agent told Russ to first contact the chief forester in Washington to have the lands listed for entry, just like an “ordinary” June 11th applicant.<sup>30</sup> Russ dutifully wrote to the chief forester and was informed that the agencies were creating a lease system, and until it was in place, nothing definite could be done. Russ persevered, submitting doctored June 11th applications modified by typewriter to refer to “leasing under the Indian [sic] allotment Laws,” to no avail.<sup>31</sup> More members of the Redwood and Winton bands applied, and in 1909 they were still being told by the Forest Service that a lease form was being developed.

The stalemate extended to others. A field matron assisting Indians at Bishop described a case she encountered. Jack was an Indian “who supposed that he had filed...on a piece of land fifteen years ago and has lived on that land and improved it all these years.” There was no record of his filing, and “the section where his land lies has been recently added to the Forest Reserve and is not now open to settlement.”<sup>32</sup>

Amid the impasse, Shinn appealed to his “fellow-workers” to protect the homes of Indians through a trade publication. “We have it in our power to help them in perfectly simple, direct and practical ways free from sectarianism or sentimentality.” He shared several stories to show “how safe are the homes of the Indians in this forest under Service management.” One involved a field cleared and fenced by “Bill Grant’s wife’s mother, an Indian woman” that was homesteaded by a white man. When Shinn heard about it, he dispatched a ranger on a two-day trip to the site. The ranger moved the white man off the land “with a terse warning to be good, or something worse would follow.”<sup>33</sup>

Kelsey attempted to spur action in Washington by increasing the scope of the problem. Since his 1906 report, the new and expanded forests “have more than doubled the number of Indians upon the National Forests.” His data

now showed 2,590 inside national forest boundaries, and the proposed “extension of the lines of Sierra Forest...will increase the number to a little in excess of 3,000.” Having come around to the idea of permits even though they provided no true fixity of tenure, Kelsey argued for their adoption. Permits gave “the Indian a right to his home” and bought time for the Indian Office and Forest Service to “arrange a modus operandi” without involving Congress. As Kelsey saw it, “The land is in [the] charge of the Forestry Bureau. The Indians are in [the] charge of the Indian Bureau. It seems proper that the two bureaus should unite.”<sup>34</sup>

In California, officers of the two bureaus did come together. Kelsey and Olmsted agreed on “a fifty-year lease, once renewable,” but the plan was rejected in Washington by the secretary of the Interior.<sup>35</sup> Whether driven by duty, doubt, or delay, he first wanted to know from the Forest Service how many Indians were eligible for these permits. Pooling data from his forest supervisors, the district forester in San Francisco reported in May 1909 that some two thousand Indians lived on national forest lands, reservations within national forests, and adjacent lands.<sup>36</sup>

In October 1909 Kelsey went to Washington, where “the entire matter was threshed out and talked out, and it was decided to ask

Form 257

FOREST SERVICE District No. 5. OPERATED BY UNITED STATES DEPARTMENT OF AGRICULTURE Referred to FOREST SERVICE MAR 12 1909

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FOREST SERVICE District No. 5. OPERATED BY UNITED STATES DEPARTMENT OF AGRICULTURE Referred to FOREST SERVICE MAR 6 1909

FOREST SERVICE District No. 5. OPERATED BY UNITED STATES DEPARTMENT OF AGRICULTURE Referred to FOREST SERVICE MAR 6 1909

APPLICATION UNDER ACT OF JUNE 11, 1906.

FOR INDIAN ALLOTMENT LAWS.

THE FORESTER,  
WASHINGTON, D. C.

I hereby make application for the examination and leasing under the Indian allotment Laws, under the Act of June 11, 1906, of the following-described lands in the Trinity National Forest, S.W. 1/4 Sec. 35, Twp. 33, R. 27 E., H.M.

(If the land is surveyed, give each smallest legal subdivision and the section, township, and range. If the land is unsurveyed, describe it by reference to natural objects, streams, or improvements, with boundary lines sufficiently definite to identify the land, so that the examiner may easily locate it. When convenient, submit sketch of the land on the township plat, last page.)

I am entitled to make entry under the ~~homestead laws and the Act of June 11, 1906.~~ Allotment Laws. I have actually been upon the land above described and believe it to be chiefly valuable for agriculture, having settled upon it (or examined it) Examined Mar 1, 1908.

(Give the date of settlement or the date of the examination, the character of the improvements, if any, and the amount of cleared land.) 85 to 90 acres open grass land. Considerable remaining portion scattered Oak timber. No improvements on the land.

My present address is Autumn Trinity Co., California.

Augustus Russ, Applicant.

NOTE: If the applicant, upon the request of the Forest officer detailed to examine the land, will accompany him, it will usually facilitate the examination.

79 Trinity

8-670

NATIONAL ARCHIVES

Augustus Russ’s application under the Act of June 11, 1906, had typed changes that refer to “leasing under the Indian [sic] allotment Laws.”

Congress for legislation permitting Indian allotments within the National Forests.<sup>37</sup> Indian allotments were similar to Indian homesteads, with the government holding the land in trust for an extended period.

The secretary of the Interior submitted a draft bill allowing Indian allotments in national forests to Senator Moses E. Clapp, chairman of the Committee on Indian Affairs. Upon assurance that Indians were not receiving preferential treatment—that whites had the same right to settle in the national forests—the bill passed its initial hurdles in the Senate before stalling.<sup>38</sup> With passage uncertain, the Indian Office asked the Forest Service to issue permits to the Indians for forest lands that “will ultimately be allotted to them.”<sup>39</sup>

Permits proved unnecessary when the provision passed unexpectedly as part of an omnibus measure in June 1910. The new law authorized allotments “to any Indian occupying, living on, or having improvements on land included within any...national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof.” The secretary of Agriculture should receive applications and “determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon,” and if so, the secretary of Interior should make the allotment.<sup>40</sup>

At about this time the national forests also stopped expanding and engulfing Indian home sites. Some two million acres were added to California’s national forests in the 1908–1909 fiscal year, and none the next. In 1912 California was added to the list of states named in the Agricultural Appropriation Act of March 4, 1907, within which only Congress could establish or expand national forests. With this, the national forests entered a period of steady reduction as their acreage was classified and those areas better suited for agriculture were opened to settlement. Now Indians could also take advantage of those openings, at least theoretically.

### THE ALLOTMENT PROCESS AND OUTCOMES, 1910–1916

Reviewing the new law, the chief forester in Washington swiftly decided that “the Commissioner of Indian Affairs will take the initiative in making allotments under this Act. The Forest Service will cooperate and render all assistance it can.”<sup>41</sup> The commissioner seemed equally willing to defer to the Forest Service, but courtesy masked friction. The earlier shared understandings between Roosevelt’s Interior and Agriculture departments were now strained, a victim of President William Howard Taft’s dismissal of Pinchot in January 1910 for publicly criticizing the secretary of Interior. Years of bureaucratic foot-dragging ensued, and deeper problems surfaced. Applying the law proved complicated, performing the work stretched resources, and determining the scope of the law was difficult.

On the ground, the Forest Service continued to shield Indians from June 11th applicants. Furthering this effort, and perhaps protecting his own agency, Pinchot’s successor, Henry Graves, took one proactive step. Graves ordered his staff to list the Indians occupying California’s national forests, with legal descriptions of their

land, at the time the law was enacted. The earlier report had not listed Indians by name or indicated the status of the land on which they resided. As a Washington staffer explained, “It may be some time before the Indian Office actually makes allotments under the act, and when the work is done the Forest Service should be in a position to show what Indians were actually occupying land at the time the law was enacted as well as the lands they were occupying.”<sup>42</sup>

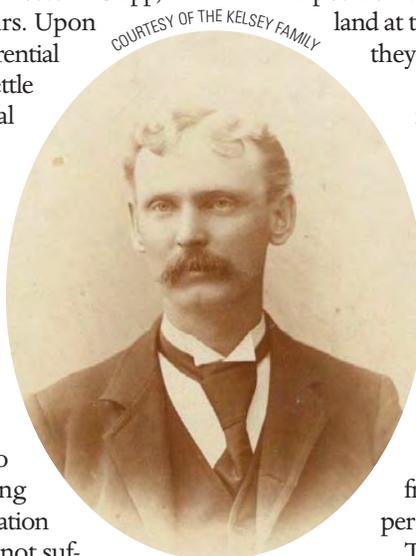
National forest staff dutifully sought this new information but warned that “on some forests there will be at least 100 allotments on unsurveyed Forest lands. To locate these will require a metes and bound survey...a very large amount of extra work.”<sup>43</sup> Kelsey went to the Forest Service district office in San Francisco several times to offer assistance, including “the names, by heads of families, of about 3,600 Indians who are living within the present boundaries of the National Forests.” Since he lacked the precise coordinates of their tracts,<sup>44</sup> Olmsted instead gathered data directly from his field staff, but only as “other duties will permit, and after the danger from fire has passed.”<sup>45</sup>

That fieldwork revealed the complexity of the task. Several forest officers remarked on the difficulty of determining exactly where an Indian lived because many of them moved about frequently to find work

and make visits. “These Indians are to a certain extent nomadic. They visit each other for such long periods it is often very difficult to be able to say just where an indian [sic] does live,” a ranger at the Sequoia National Forest reported.<sup>46</sup> The Klamath National Forest supervisor noted that there were “quite a few...Indians that move about continually, feeding off their friends in the country, and have no special place to live.”<sup>47</sup>

Some Indians already had some sort of legal hold on their land. Juan Forestero had “entered a homestead as a citizen” in the Santa Barbara National Forest, and three Indian families, the Encinals, Moros, and Quintanas, lived on land they had patented in the Monterey National Forest.<sup>48</sup> At the Sequoia National Forest “many of the Indians have patented homesteads, and there are now 5 June 11 Indians.”<sup>49</sup> The latter Indians had homesteaded land under the earlier Forest Homestead Act, which ostensibly excluded Indians. On the Trinity National Forest only three Indians were thought to be eligible under the law; though there were many others in the forest, “almost all of them either have their allotments of land or are living on their homestead lands.”<sup>50</sup> The supervisor of the Cleveland National Forest believed that seven Indian families occupying forest lands were amply provided for “on some one of the numerous Reservations in this section.”<sup>51</sup>

Questions surfaced about who was eligible under the law. In the Trinity National Forest, Aaron F. Willburn, who was part Indian, claimed land on behalf of his minor children Martina and Emma, and Eva Hoaglin claimed a tract adjoining the land on which she and her family lived.<sup>52</sup> An officer at the Sequoia National Forest described the circumstances of “Indian Charley,” who had been scared off his place by settlers; Frank Jackson, who had abandoned his land; and Pete Burris, who was serving time for murder and whose land was claimed by his father-in-law.<sup>53</sup> Were these individuals entitled to allotment?



C. E. Kelsey,  
in an undated photo.



Surveying the allotments presented difficulties, too. Backed by the county surveyor, Wilson questioned the legitimacy of the Klamath National Forest survey plats, which “in no way fit the ground.” It was more difficult to allot Indians to legal subdivisions referencing the “very, very poor” surveys than if the land was unsurveyed.<sup>62</sup>

Though Wilson’s protest got no traction in Washington, practical realities took precedence and most allotments were surveyed by metes and bounds, which accommodated odd shapes with six to twelve corners. This bypassed the “fraudulent” surveys and recognized the actual boundaries within many native communities, which took the form of “fences or irrigation ditches” that “never coincide with legal subdivisions.”<sup>63</sup> Such surveys demanded more physical work and paperwork. A ranger wryly described his single-handed effort to run lines through dense pines while “acting as axe man, transit man, flag man, chain man, level man, rod man, cook and packer.... This might not seem difficult for an all-around acrobat like a ranger but the real difficulty is holding an umbrella to protect the notebook while performing the other operations.”<sup>64</sup>

In 1912, Lewis A. Barrett in the Forest Service’s San Francisco district office expressed his frustration with the Indian Office. He furnished “a complete list of all the unallotted Indians on each forest,” wrote numerous letters, and held many meetings, yet the work was incomplete because the Indian Office had not “taken the trouble to investigate the individual cases and file an application for an allotment.” He noted that “there are from 150 to 200 Indians in this District, living on public land within the National Forests, who are presumably entitled to an allotment.... In justice to the Indians some definite action should be taken in all of these cases without further delay.” Complications could arise “between the Indian claimants and June 11 applicants, mineral claimants, power propositions, and other Forest uses,” Barrett asserted, whereas “a competent man” could “visit the Indians in question and settle the entire matter in one field season.”<sup>65</sup>

Field staff of the Indian Office were also frustrated. Kelsey pushed to make the allotments “without delay as white men are making filings in the Forests and the Indians should be given their homes before any more whites move in.”<sup>66</sup> In Reno, Nevada, Special Agent Calvin H. Asbury, who was responsible for Indians scattered across central California, notified the commissioner of the “comparatively large number of Indians living within national forests who have not received allotments.”<sup>67</sup> Relayed from the Interior secretary to his counterpart at Agriculture, this concern made its way back to the Forest Service district office in San Francisco as orders to inform the commissioner of those Indians in the national forests who were eligible for allotment. Yet this is precisely what the district had done nearly two years earlier.

In May 1913 Randolph finally met forest officers along the Klamath River to process allotment applications. They handled seventeen and awaited several more. Randolph had expected no more than thirty-five applications along the Klamath and Salmon rivers, but this was fewer than anticipated. The nature of many tracts excluded them from allotment: some were not agricultural. Randolph reported that “there is very little land along these rivers that can ever be cultivated... upon a strict construction it is doubtful if any of it could be called non-mineral, as there is of course more or less gold everywhere, but parts of it is probably more valuable for agriculture.”<sup>68</sup> A dozen families lived near the mouth of the Salmon River, where a power site withdrawal took precedence over any homestead. Finally, one of the largest Indian settlements,

at Siwillup, sat on land that belonged to the state rather than federal government.

Beyond the character of the land, Randolph found that many individuals were not eligible for allotment. Some did not meet the requirements of being the head of a family or a single adult, and occupying and improving the land. He also found mixed-blood Indians who were already citizens and voters and did not want to revert to Indian status by seeking allotment. Some Indians already had homesteads, and one was caught in bureaucratic limbo due to his inability to pay for a survey required by his June 11th application. Others lived on mining claims to which they did not have rights.

As the allotting process limped along, the agencies held several conferences to change the procedures. In 1915 they informally agreed that the Forest Service would not perform an agricultural examination until the applicant provided a certificate from the Indian Office that he was entitled to allotment.<sup>69</sup> Now the Indian Office would be involved near the start of the process.

Eligibility questions also needed resolution. Was the law limited to Indians who occupied land before it was withdrawn to create a national forest, or before the act was passed? The GLO required a statement that settlement occurred prior to the passage of the act, and some allotment claims lacking it were returned as incomplete. By 1915 the solicitor of the Interior Department was informally interpreting the law to apply to occupancy made after 1910.<sup>70</sup> The departments eventually agreed that Indians could occupy land after the national forest withdrawal and after 1910, as long as the occupancy conformed to lawful procedures. This was meant “to place the Indian upon exact equality with the white man.”<sup>71</sup> This interpretation was formally approved by a legal decision in 1918.<sup>72</sup>

Because of the elastic nature of national forest boundaries in this period, some Indians were caught in bureaucratic loopholes. Jack Roan and Frank Hamond filed applications for land in the Sierra National Forest, only to see the tracts in question included in acreage that was eliminated from the forest in 1915. Anticipating the boundary change, “action on the applications... was withheld by the Forest Service.”<sup>73</sup> After the change was finalized, the Forest Service rejected the applications and the two had to apply all over again, this time for allotments on the public domain.

The entire situation remained under the public radar. Only one citizen took an interest. Mary E. Arnold, a former field matron for the Indian Office, had lived and worked among the Indians along the Klamath River. Prodded by her lobbying, the commissioner of Indian Affairs demanded a more systematic effort to ensure that all eligible Indians within national forests applied for allotment in 1915. Indian agents in California pushed back, insisting that nearly all such Indians had been allotted. Asbury had handled eighty or ninety cases in the Kern, Plumas, and Sierra national forests. That fall Wilson worked with the superintendent of the Indian School at Greenville to allot Indians in the Plumas, and Special Agent John J. Terrell would allot the Indians on the Klamath in spring 1916.

These actions did not quiet complaints from Forest Service officers in California. Barrett bitterly complained to Washington again in 1916. His district had “consistently endeavored to secure the cooperation of the Indian Office through its local representatives in allotting land to all Indians on the National Forests who are entitled to the privileges of that Act.” From the start “we have had to do practically all of the work and take all of the blame if

**Table 2. Indian Allotments Acted On by Forest Service District 5 Office, as of February 1, 1916<sup>76</sup>**

National Forest	Applications	Acres Applied For
California	1	80.00
Cleveland	3	319.62
Inyo	6	616.54
Klamath	32	459.34
Modoc	1	80.00
Mono	4	400.00
Plumas	10	711.00
Sequoia	5	559.52
Shasta	1	160.00
Sierra	68	5,938.13
Tahoe	1	18.37
Trinity	5	559.61
<b>Total</b>	<b>137</b>	<b>9,902.13</b>

anything went wrong,” while “the local representatives of the Indian Office appeared absolutely ignorant of the intent of the law or how to apply it.” The district had supplied Indian agents with a complete census, but even so they “were stalling around, claiming they had no time...or no money.” In spite of this, rangers had cleaned up 85 percent of the cases in the district “by constant agitation of the subject.”<sup>74</sup>

Barrett pushed to complete the work so that the status of national forest lands could be settled, conflicting rights of Indian and white claimants would not fester, and Indians would not claim rights under the law that they did not have. He sought information about the allotments already handled, intending to clean up all remaining cases by year’s end. Headquarters sent him a list of 137 allotments acted on by February 1, 1916 (Table 2). The allotments ranged from 1 to 160 acres, with 62 acres being the average. Most were along the Klamath River and around North Fork.<sup>75</sup>

By the end of the year the district forester notified forest supervisors in California that no more individual examinations would be made. Rather than having homesteaders trigger an examination, national forest lands would be systematically examined and classified to define the areas that were chiefly valuable for agriculture, and the potentially agricultural lands would be listed for settlement. Indians and whites alike would have to wait for this listing.

### ANALYSIS OF THE INDIAN FOREST HOMESTEAD ACT

After a decade of effort to protect Indians living in California’s national forests, the results were less than reformer C. E. Kelsey anticipated in 1905. He had initially enumerated 1,300 Indians in the forests. As the forests were expanded, his count swelled to 2,590 in 1908 and 3,600 in 1913. Because forest allotments were made to heads of families, he thought 500 allotments would meet the need.<sup>77</sup>

Forest supervisors reported 2,000 Indians in their forests in 1909, which was 600 less than Kelsey had counted the previous year. In 1910 rangers learned the particulars of the Indian forest homestead law and made a list of Indians residing on national forest lands, finding 311 adults and families who might be eligible for allotment.

Less than half this number of allotments were made. By February 1916, the Forest Service had processed 145 allotments and the Indian Office had approved 137 of them. Barrett figured that this was 85 percent of the allotments to be made in California. He believed “that with possible exceptions on the Lassen and Plumas, and a few very probable cases on the Trinity, Klamath and Sierra, the Indian allotment work on the District 5 Forests is cleaned up.”<sup>78</sup> A dozen years later Barrett reported that 138 allotments had been recommended—only one more than in 1916.<sup>79</sup>

Why were so few Indians allotted in the national forests of California? Several factors may have been at work. They include limitations inherent in the law, bureaucratic failures in implementing the law, turnover in Native occupancy of the forests, and the practical realities of living in a national forest.

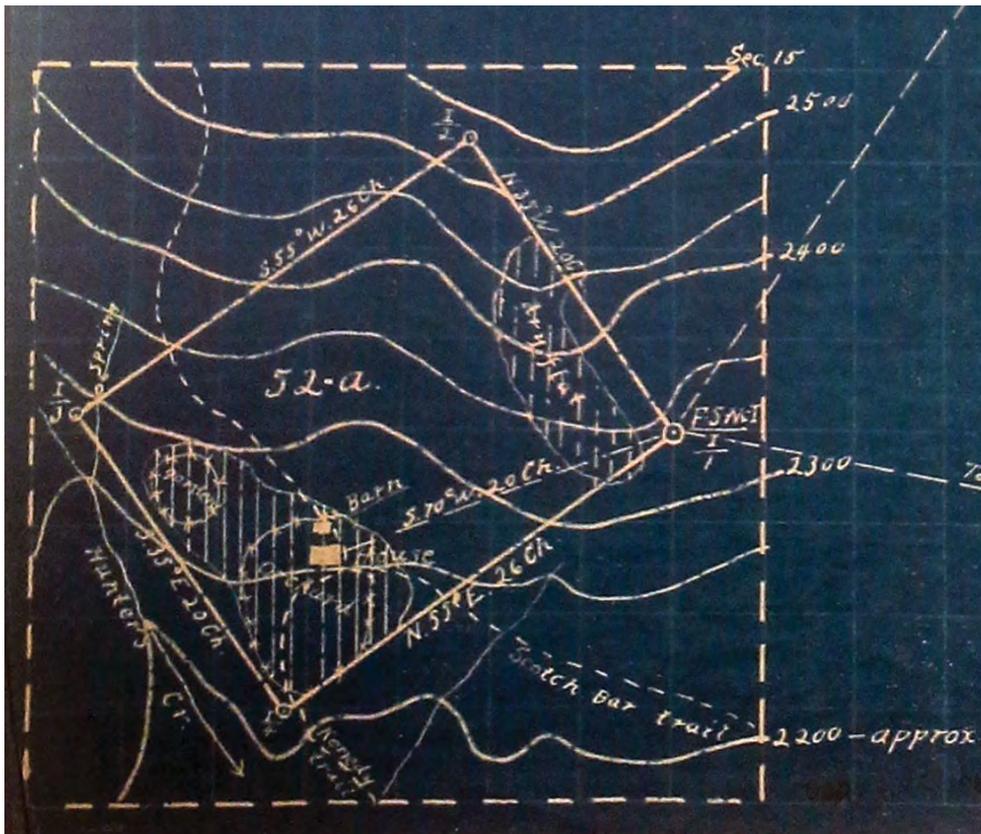
The law placed restrictions on both the applicants and the tracts. Anyone already having an allotment was not eligible, so Indians with a prior claim to their land were excluded. Prior claims could be difficult to establish, however. Eligible applicants had to show that they had settled on or improved forest land that was primarily agricultural, but some Indians lived on plots that the Forest Service could not classify as farmland.

The homesteading procedures were cumbersome, involving three agencies in two departments and multiple offices in California and Washington. The departments struggled over procedures and coordinated poorly. Compounding this, the law became murky in application, especially when added to the array of existing land laws. The bureaucracy took so much time to process applications that it may have failed to assist some who were eligible, or some applicants may have abandoned the effort. Other Indians may have declined to submit to this process at all.

Some itinerant Indians may not have wished to permanently settle in the forests. Several forest supervisors remarked on the migratory habits of Indians and the resulting difficulty of counting forest occupants. On the other hand, Kelsey reported that the forest “bands have mostly been in their present location from time immemorial,” and allotment case files often confirm long-term residency.<sup>80</sup> Of James Edwards’s allotment in the Sierra National Forest, Asbury wrote, “These Indians have lived in the same general locality for generations, so far as we know it was their original native home.”<sup>81</sup>

There was a tremendous turnover of Indians occupying the forests in this period. Kelsey enumerated 329 families in the forest reserves in 1906. Five years later, the Forest Service list named 311. Only about 75 names appear on both lists. This is a 75 percent change in occupancy. Only 32 names on Kelsey’s census, and 47 on the 1911 Forest Service list, are among the 137 allottees in February 1916. Moreover, only 25 names are on all three lists. When comparing lists, one must consider caveats of scope, form of name, and demographic change as individuals reached adulthood, married, moved, or died. Even so, the rate of turnover seems exceptionally high.

The turnover could indicate that some Indians struggled with the same problems as whites living in the national forests. White settlers abandoned their forest homesteads at high rates. In 1921 half of California’s June 11th homesteads were already abandoned, and a decade later more than 80 percent were no longer used for agriculture.<sup>82</sup> After Kelsey left his post in 1913, Asbury and Wilson “made an investigation of the conditions on the National Forests and [found] that it will be impossible to allot as large a number as 3000 Indians, or anything like that number.” They did not



A detail from the allotment map for James Edwards on the Plumas National Forest. The Scotch Bar Trail, which passes through the property, is noted on both the map and in the field notes.

dispute Kelsey's count, but they questioned the capacity of the national forests to provide homes to the Indians.<sup>83</sup> The remote location of the homesteads—recall the challenges government clerks like Watson C. Randolph faced in traveling to and through the forests—would have discouraged settlers from staying.

In the end, the idea of forest homesteads turned out to be wishful thinking because the national forests offered marginal environments for homesteading. Settlers "could not compete in farming with agriculturists on the more accessible valley lands, where the conditions of climate, soil, irrigation, and transportation are more favorable."<sup>84</sup> Native forest occupants may not have been competing in that farming economy, but they had to adjust to the economy and society, starting with the regulatory structure of the national forests. A forest home might supply their material needs but would provide little cash income, which was increasingly important. Perhaps as the national forests became societal institutions, some Indian occupants were forced to adapt and ultimately to leave. □

Larisa Miller is an archivist at Stanford University. Her interest in C. E. Kelsey began with an attempt to locate his papers. After determining that they did not survive, she began studying and writing about Kelsey and his work on behalf of California Indians.

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