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New York Indian Reserve in Kansas Territory. Letter from the Secretary of the Interior, in answer to a resolution of the House calling for information in regard to the condition of the New York Indian reserve in Kansas Territory

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NEW YORK INDIAN RESERVE IN KANSAS TERRITORY.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN ANSWER TO

A resolution of the House calling for information in regard to the condition of the New York Indian reserve in Kansas Territory.

MARCH 5, 1860.—Referred to the Committee on Indian Affairs, and ordered to be printed.

DEPARTMENT OF THE INTERIOR, *March 3, 1860.*

SIR: In compliance with the resolution of the House of Representatives, adopted February 27, 1860, requesting me to report the present condition of the tract of land west of the State of Missouri, set apart for the New York Indians, &c., &c., I have the honor to submit herewith a copy of the report of the Commissioner of Indian Affairs, to whom the resolution was referred, together with copies of the correspondence therein referred to.

With great respect, your obedient servant,
J. THOMPSON, *Secretary.*

Hon. WM. PENNINGTON,
Speaker of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, March 2d, 1860.

SIR: I have the honor to acknowledge the receipt, by reference from you, of a resolution passed by the House of Representatives on the 27th ultimo, in the following words, viz:

“*Resolved*, That the Secretary of the Interior be and he is hereby requested to report to this House the present condition of the tract of land west of the State of Missouri, set apart for the New York Indians by the second article of the treaty with them of January 15th, 1838; whether the same has been surveyed and brought into market as a part of the public domain, and if so, by what authority the same has been done; and also to furnish copies of any reports or decisions

which have been made by the Department of the Interior in reference to the right of the New York Indians to said lands."

In regard to the information called for by this resolution, I would respectfully suggest that the subject as presented in a report from this office of the 7th of March, 1859, which was approved by you, will indicate the action then contemplated by the department in connexion with the New York Indian reserve in Kansas Territory, and I herewith enclose a copy of the same marked "A," together with a copy of your reply, marked "B," from an examination of which it will be perceived that in consideration of the fact of Congress having failed to take any definite legislative action in the premises, it was deemed proper to execute the existing stipulations of the treaties of 1838 and 1842, by a careful investigation of which it was found that sufficient authority was given to justify the survey of the lands, and the taking of a census in order to ascertain who were entitled to participate in the allotments of the tract in question. Accordingly with your approbation the eastern portion of the reserve, embracing about seventy-two townships, has been surveyed under the direction of the General Land Office, and a special agent (Alden S. Stevens, Esq.) was appointed to take a census of the New York Indians residing in Kansas, and his report upon the subject is now undergoing an examination here with a view to ascertain the exact number of New York Indians who are entitled to participate in the beneficial provisions of the aforesaid treaties. When this has been done, it is contemplated to cause 320 acres of land to be assigned to each Indian so entitled, and the list of allotments when prepared will be submitted for your approval, before the surplus lands will be turned over to the jurisdiction of the General Land Office, as a part of the public domain.

In connexion with the particular points of inquiry suggested by the resolution of the House of Representatives, I would briefly but respectfully state, by way of recapitulation, in regard to the present condition of the reservation, that only seventy-two townships of land in the eastern part of the reserve have been surveyed, the approved plats of which are now on file in the General Land Office, and from the most reliable information I have been able to procure, there are but a few families of New York Indians residing upon the lands, as the greater portion of those who had been in possession of the same for many years were forcibly driven from their homes by the white citizens, who now occupy a considerable portion of the reservation. The aggregate number of white settlers thereon may be safely computed at 2,000 persons, probably a greater number, who claim by pre-emption the tracts they have improved.

A part of the reservation has been surveyed as aforesaid, but none of the land has yet been brought into market as a part of the public domain.

In this connexion I would respectfully refer to vol. 5, Senate Ex. Doc., No. 13, 3d session, 34th Congress, for information of an anterior date to the report herein referred to bearing upon the subject of the rights of the Indians under the aforesaid treaties.

I also transmit herewith a copy of a report from this bureau to you of the 8th of April, 1858, marked "C," together with a copy of

your communication of the 19th of the same month, addressed to me as the then chairman of the Committee on Indian Affairs in the House of Representatives, marked "D," which latter communication contains the views of the department respecting the rights of the New York Indians to lands in Kansas, which are regarded as pertinent to this subject.

Very respectfully, your obedient servant,

A. B. GREENWOOD,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

A.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, March 7, 1859.

SIR: In consequence of the termination of the session of Congress without any definite action having been taken by the Senate upon the bill which originated in the House of Representatives, relative to the assignment or allotment of lands to certain New York Indians, who have removed to Kansas under existing treaty stipulations, I deem it my duty, in view of the embarrassing circumstances which surround the Indians and the white settlers who are living on the reserve, by reason of the fact that the government surveys have not been extended over said tract of country, to respectfully solicit your attention to the consideration of the propriety of taking immediate action relative to the completion of the necessary surveys, (a portion of the tract having already been surveyed,) and the allotment of lands to the Indians entitled thereto, under the provisions of the second article of the treaty of 1838, and the second clause following the ninth article of the treaty of 1842, which, in the absence of more definite legislation, may, in my opinion, be regarded as conferring sufficient authority upon the department to warrant the survey of the reservation in Kansas, the assignment of three hundred and twenty acres of land to each Indian entitled to the same, and the opening up of the balance of the country to settlement and pre-emption.

Under the second article of the treaty of 1838 (see Statutes at Large, volume 7, page 551) it was provided that within the reservation therein described there would be three hundred and twenty acres of land for each soul of said Indians, as their numbers were then computed; to have and to hold the same in fee simple to the said tribes or nations of Indians, by patent from the President of the United States, issued in conformity with the provisions of the third section of the act, entitled "an act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi," approved on the 28th day of May, 1830.

The third section of said act of Congress is in the following language, viz: "That, in making of any such exchange or exchanges, it shall

and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guarantee to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same; provided always, that such lands shall revert to the United States if the Indians become extinct or abandon the same." (Statutes at Large, volume 4, page 412.)

By the second clause following the ninth article of the subsequent treaty of 1842 made with the Seneca Indians, it was provided that "the United States further consent and agree that any number of said nation who shall remove from the State of New York under the provisions of the above-mentioned treaty, proclaimed as aforesaid on the 4th day of April, 1840, shall be entitled, in proportion to their relative numbers, to all the benefits of said treaty."

This stipulation of said treaty so far changes the provisions of the former treaty of 1838 as to confer the benefits of the same upon the Senecas, as individuals, in contradistinction to their tribal capacity, under stipulations of an anterior date; consequently the subsequent treaty of 1842 confers upon the Seneca Indians who have removed to Kansas the right to select three hundred and twenty acres of land each, within the reservation, according to their relative numbers; and I conceive that an equitable construction of the treaty of 1838 would concede the same rights to the individual members of the other tribes specified, who have emigrated to Kansas in good faith, under the impression that they were entitled to participate in the division of the lands as individuals, and not as a tribe.

If you concur in the opinion herein expressed, I propose to cause a census to be taken of the Indians contemplated by the beneficial provisions of said treaties, and who removed to Kansas; and when the surveys are completed, to assign to each soul three hundred and twenty acres of land in severalty.

The destitute condition of many of the Indians who have been driven from their homes by the white settlers, and are dependent upon the charity of their friends of other tribes for a scanty subsistence, taken in connexion with the unsettled state of society in that portion of Kansas embracing the New York reserve, which is attributable to some extent to the fact that the lands have not yet been brought into market, induces me to respectfully suggest that the adoption of the course of action herein indicated would greatly tend to settle existing difficulties, and turn the attention of the unemployed and floating population from robbery and plunder to the cultivation of the soil and habits of industry, which exert an influence in favor of morality and virtue as certainly as idleness begets vice.

Under this view of the subject, I have the honor to request that you will give me such instructions in the premises as in your judgment may be deemed proper in consideration of existing circumstances.

Very respectfully, your obedient servant,

J. W. DENVER,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

B.

DEPARTMENT OF THE INTERIOR, *March 21, 1859.*

SIR: In reply to office report of the 7th instant, in relation to the New York Indian reserve in Kansas Territory, I have to say that the views therein expressed meet my entire approbation.

You will therefore appoint an agent to take a census of all the Indians entitled to allotments of land in Kansas, under the provisions of the treaties of 1838 and 1842, with the New York Indians, and instruct him to enter upon his duties at once. You will instruct him to place upon the roll the names of such New York Indians only as have actually removed to Kansas and are now residing there.

Instructions will be sent to the Commissioner of the General Land Office to have the reserve surveyed at the earliest period practicable, so that when the census is completed and approved you will be enabled to make the allotments without delay.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. CHARLES E. MIX,

Acting Commissioner Indian Affairs.

C.

DEPARTMENT OF THE INTERIOR,

Office Indian Affairs, April 8, 1858.

SIR: Referring to a communication from the Hon. A. B. Greenwood of the 11th ultimo, enclosing two memorials from citizens of Kansas, one pertaining to lands provided for the Christian Indians, and the other respecting settlements made on lands set apart for the New York Indians by the second article of the treaty of the 15th of January, 1838; the former having been considered in letters from this office of the 31st ultimo and the 7th instant, I will now present the facts in connexion with the latter, together with an expression of my views in relation to the subject.

On the 26th of December, 1856, your predecessor, in answer to a resolution of the Senate calling for information on this subject, communicated to that body a report from the late Commissioner of Indian Affairs, being a "statement of the condition of the title of the United States to all that portion of the Territory of Kansas designated as being set apart and assigned to the New York Indians, and the nature of the authority by which said tract has been assigned." (See vol. 5 of Senate Ex. Doc's, No. 13, 3d Session, 34th Congress.)

It will be perceived that in view of the interests of the Indians and of the citizens of Kansas, further legislation upon the subject of that reservation was suggested in said report as necessary under the existing circumstances of the case; and it may be proper to remark that the rapid influx of settlers into Kansas, and especially upon the reserve, since the date of that report, makes legislative action at this time still more urgent and necessary than at any former period.

Under the conviction of this necessity, your attention was called to the subject in the last annual report of this office, with a view to the

assignment in severalty to such of the New York Indians as had removed upon the reservation the three hundred and twenty acres of land to which each Indian settler is entitled under the provisions of the treaty of 1838, and for the purpose of bringing the remainder of the 1,824,000 acres "into market, for the benefit of our citizens who are so rapidly filling up the Territory."

In February, 1857, the Senate Committee on Indian Affairs submitted an amendment to the Indian appropriation bill as it came from the House of Representatives, providing for the survey of the tract and the allotment in severalty, in accordance with the provisions of the treaty of 1838, to such of the New York Indians as had emigrated to and settled thereon, three hundred and twenty acres of land to each, and constituting the residue of the reserve a part of the public domain, subject to existing laws governing the sale and pre-emption of such lands.

The bill was also amended so as to authorize the President, in his discretion, to adjust, by convention or otherwise, any right or claim of said Indians to said country, and it appropriated the sum of \$1,000 for this object. These amendments were adopted by the Senate, but the House refusing to concur, committees of conference were appointed by both Houses, and they failing to agree, the amendments were finally lost. It is understood, however, these propositions were not opposed in the House upon their merits, but by reason of the incongruity of introducing such provisions in the shape of amendments to the Indian appropriation bill.

If the amendment appropriating \$1,000 for the purpose of negotiating a treaty with the Indians had passed both houses of Congress, it would have been an insufficient sum to accomplish that object, and I would now respectfully recommend, in the event of your concurrence in the views herein expressed, that Congress be asked to take such legislative action as may be deemed requisite to authorize the negotiation of articles of convention and agreement with the aforesaid Indians, having a due regard to the rights and interests of those who have never emigrated to the reserve, as well as to that portion of the tribe who now reside thereon, or have been driven from the lands in question, and in consideration of the fact that the Indians are dispersed through several of the States and Territories of the United States, and the great distance which must necessarily be travelled by the commissioners who may be appointed to negotiate with them, I would suggest the appropriation of a sum not exceeding \$5,000 as necessary to cover all the expenses incident to the consummation of the object contemplated.

Very respectfully, your obedient servant,

CHARLES E. MIX,
Acting Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

D.

DEPARTMENT OF THE INTERIOR,
April 19, 1858.

SIR : I have the honor herewith to transmit a copy of a report addressed to this department on the 8th instant by the acting Commissioner of Indian Affairs, in relation to the memorial of certain citizens of Kansas, praying that the tract of land in that Territory known as the "New York Indian reserve" be opened for settlement, which was referred by you to this department with a request for the expression of its views.

Referring you to this report, and to a previous one on the same subject by the late Commissioner, (see vol. 5, Sen. Ex. Doc. No. 13, 3d sess. 34th Cong.,) for the views of the Indian office, I would suggest the propriety of providing by law, first, that the land be surveyed; second, that a patent for 320 acres of land be issued to each of the New York Indians who have removed to the reservation, in pursuance of the provisions of the treaties of 1838 and 1842; the selections to be made under the direction of the Commissioner of Indian Affairs, and to include any improvements made by the reservee; and, third, that the remainder of the land be declared a part of the public domain, and subject, as soon as the surveys have been approved, to existing laws governing the sale and pre-emption of the public lands.

The Indians who have failed to remove have, by the express terms of the treaty of 1838, forfeited their title to the reserve; and a due regard for the interests of the white population of Kansas would seem to require that this large and valuable body of land should no longer be withheld from settlement.

The memorial is herewith returned.

Very respectfully, your obedient servant,
J. THOMPSON, *Secretary.*

Hon. A. B. GREENWOOD,
Chairman of the Committee of Indian Affairs.