

6-6-1882

Uncompahgre and White River Ute Indians

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Recommended Citation

H.R. Rep. No. 1304, 47th Cong., 1st Sess. (1882)

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UNCOMPAHGRE AND WHITE RIVER UTE INDIANS.

JUNE 6, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. HASKELL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6022.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 6022) relating to lands in Colorado, lately occupied by the Uncompahgre and White River Ute Indians, having carefully considered the same, respectfully submit as their report:

That this bill in all its provisions meets the approval of the Department of the Interior, as shown by the letter of the honorable Secretary of the Interior, under date of May 10, 1882, and appended hereto; and has also received the careful consideration of the Senate Committee on Public Lands, as appears in Senate Report No. 186, Forty-seventh Congress, which report clearly sets forth the whole subject-matter of this bill. And inasmuch as the House bill under consideration is the same as Senate bill No. 698, the committee adopt the Senate report thereon, fully concurring therein, and append the same as part of this report.

Your committee, therefore, respectfully recommend the passage of the bill.

[Senate Report No. 186, Forty-seventh Congress, first session.]

The Committee on Public Lands, to which was referred the bill (S. 698) "relating to lands in Colorado, lately occupied by the Uncompahgre and White River Ute Indians," begs leave to submit the following report:

By an agreement entered into by the several bands of Ute Indians, which was ratified by an act entitled "An act to accept and ratify the agreement submitted by the confederate bands of Ute Indians in Colorado, for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriations for carrying out the same," approved June 15, 1880, the Uncompahgre Utes were to remove to and settle upon agricultural lands on Grand River near the mouth of the Gunnison River in Colorado, if a sufficient quantity of agricultural land should be found there; if not, then upon such other unoccupied agricultural lands as may be found in that vicinity and in the Territory of Utah; and the White River Utes agreed to remove to and settle upon agricultural lands on the Uintah Reservation in Utah.

The commissioners appointed under the provisions of the second section of said act, upon examination of the lands on the Grand River and in its vicinity, found that there was not the quantity of agricultural land there which was required by the agreement, and therefore sought for other lands in the Territory of Utah. They finally selected lands for the Uncompahgre Indians in the valley of Green River above and below its junction with White River.

Their action in selecting these lands having been submitted to the Secretary of the Interior, and having been approved by him, the commissioners proceeded to erect

agenc. buildings and to remove the Indians to their new home. On the 28th day of August all the Indians of this band left their reservation in Colorado and moved to the place selected for them in Utah. About the same time the removal of the White River Utes to the Uintah Reservation, also in Utah, was effected.

The report of the commissioners, dated the 21st of November, 1881, fully sets forth the fact that the lands selected are in all respects the most favorable that could be found, and that in quantity and quality they meet the requirements of the agreement. The report also represents that the Indians have expressed themselves as well pleased with the lands so selected for them.

On the 5th of January of the present year, a reservation having an area of 3,200 square miles was set apart by order of the President for the use of the Uncompahgre Indians, within which the permanent allotments for said Indians are to be made. This reservation contains much more than the amount of land required by the act of 1880 to provide for the allotments of lands in severalty to each and every Indian of this band. Section 3 of the said act provides:

"That the Secretary of the Interior be, and he is hereby, authorized to cause to be surveyed, under the direction of said commissioners, a sufficient quantity of land in the vicinities named in said agreement, to secure the settlement in severalty of said Indians as therein provided, and upon the completion of said survey and enumeration herein required, the said commissioners shall cause allotments of lands to be made to each and all of said Indians, in quantity and character as set forth in the agreement above mentioned, and whenever the report of the proceedings of said commissioners, as required by this act, are approved by the President of the United States, he shall cause patents to issue to each and every allottee for the lands so allotted, with the same conditions, restrictions, and limitations mentioned therein as are provided in said agreement; and all the lands not so allotted, the title to which is, by the said agreement of the confederated bands of the Ute Indians and this acceptance by the United States, released and conveyed to the United States, shall be held and deemed to be public lands of the United States, and subject to disposal under the laws providing for the disposal of the public lands, at the same price and on the same terms as other lands of like character, except as provided in this act." * * *

It is clear that by the terms of this act the lands formerly occupied by the Uncompahgre and White River Utes cannot be held to be public lands, subject to disposal, without further legislation, until the lands of the new reservation shall have been surveyed, and the allotments to the Indians shall have been made and patents issued, &c. As some of these Indians are opposed to accepting their lands in severalty, it may be several years before the work of making the allotments will be completed. Under the most favorable conditions, it probably cannot be done in less than two years.

Since the time of the removal of the Uncompahgre and White River Indians from the State of Colorado, a steady tide of immigration has poured into the reservation, and already a large portion of the best lands in the valleys have been settled upon. Were it not for the influx of settlers from Colorado and other States, this great tract of country, embracing nearly ten million acres of land, would be entirely uninhabited. There are many law-abiding citizens of the United States who desire to make their homes upon these lands, but who will not enter upon them until they can do so under authority of law. Justice to this class requires that the lands should be thrown open to settlement without further delay.

The Commissioner of the General Land Office, in a report accompanying this bill, says:

"If the Indian rights of allotment within the limits of the reservation formerly occupied by the Uncompahgre and White River Utes have been satisfied, or if by the definitive removal of all of said Indians from the reservation, the duty of the Secretary of the Interior to make such allotments has legally ceased, I know no objection to the proposition contained in the first and second sections of this bill."

No claim is made by the Indians that they still retain an interest in the lands of their former reservation; and, as stated by the Commissioner of Indian Affairs, in his report to the Secretary of the Interior on this bill, "There is no reason for awaiting the completion of the surveys, and the action of the commissioners in allotting lands, &c., in Utah, before proceeding to the disposition of the lands in Colorado from which the Indians have forever been removed."

The third section of the bill under consideration is designed for the protection of persons who settled upon lands near the eastern border of the reservation in good faith; supposing that they were without the limits of the reservation.

In 1879, the boundary line of the reservation not having been established by a survey, a large number of well-disposed citizens, attracted by the reputed existence of rich mineral deposits, went upon lands which were afterwards found by survey to be upon the reservation. They established homes, built houses and churches, constructed roads, and expended many thousand dollars in prospecting for and in developing mines. The Government of the United States, at that time, recognized the lands upon which

these improvements were made as lying without the boundary of said reservation, and lawfully open to settlement; and upon application by citizens then occupying the land, and upon payment therefor, caused the same to be surveyed and subdivided, and received applications at the United States land office for patents for portions of said lands. The Indians themselves disclaimed any right to these lands.

By an order of the Commissioner of the General Land Office, in 1881, certain portions of said lands were declared to be part of the Indian reservation and withdrawn from sale, and no filings or applications to purchase were allowed to be received at the local land office for any of the lands.

Your committee is of the opinion that some provision should be made for the protection of the interests of these settlers.

Accompanying the letter of the Secretary of the Interior is a bill, which was submitted by him in part for this purpose. Your committee adopts a portion of the bill thus submitted as an amendment to the third section, and recommends the passage of the bill as thus amended.

The several communications from the Secretary of the Interior, the Commissioner of the General Land Office, the Commissioner of Indian Affairs, and the Attorney-General, are submitted as part of this report as follows:

DEPARTMENT OF THE INTERIOR,
Washington, February 6, 1882.

Hon. P. B. PLUMB,

Chairman Committee on Public Lands, United States Senate:

SIR: I have the honor to acknowledge the receipt by reference from your committee with request for the opinion of the department thereon, under date of 9th ultimo, of Senate bill No. 698, "relating to lands in California lately occupied by the Uncompahgre and White River Ute Indians."

Reports have been called for both from the General Land Office and the Office of Indian Affairs, and I inclose herewith for your information copies of reply from each, dated, respectively, the 17th and 21st ultimo, in relation to the subject-matter of the bill.

Both before and soon after the commencement of the present session of Congress, application was made to this department to declare all that portion of the Ute Reservation lately occupied by the Uncompahgre and White River Utes to be public lands of the United States and subject to disposal as such, and the question whether this could be lawfully done was submitted to the Attorney-General.

It will be seen by his letter of the 17th ultimo, herewith, that in his opinion this cannot be done under existing law; hence, if it be done at all additional legislation, such as is proposed in Senate bill 698, is necessary.

The facts bearing upon this question, so far as they are in the possession of this department from official and unofficial sources, are substantially these: By reason of the time necessarily consumed by the Ute commission in examining lands in the reservation in Colorado to ascertain if such lands as are provided for in the agreement could be had therein for these Indians, and the time necessarily consumed in examining the lands in Utah when it was ascertained that suitable lands could not be found in their old reservation, and the time then necessarily consumed in removing them to their present location in Utah, it was impossible to make to them in Utah the allotments of land and to do for them during last year other things agreed to be done for them in consideration of the cession of the reservation in Colorado.

Before the east line of the Ute Reservation in Colorado was established, it was understood by both the Indians and the whites that that line would be some miles west of where it was subsequently ascertained to be. Many white settlers, acting on this understanding, and without objection on the part of the Indians, settled upon a strip of land which, when the true line was established, was found to be within the reservation; they made valuable improvements thereon, are still there, and are naturally very anxious to have the validity of their claims duly established. This information is derived mainly from unofficial sources, but is confirmed by the Senators from Colorado, who are familiar with the facts.

The Uncompahgre and White River Indians, who have been recently removed to Utah, like people of all races newly settled in a strange country, are to some extent restless and dissatisfied; and the department has information that evil-disposed men are tampering with them and increasing their discontent.

I feel constrained therefore to say, that in this condition of affairs I seriously doubt the propriety of passing the proposed bill. Its passage, before the Indians shall have received all they are to receive, as the consideration for the surrender of their former reservation, may tend to increase still further their present discontent, and may be used by mischievous men to that end.

I therefore suggest that, in lieu of the present bill, a substitute be offered and passed, the effect of which will be to secure to present settlers on the eastern portion of the

reservation, formerly occupied by the Uncompahgre and White River Utes, valid titles to their claims so soon as the United States shall have fully complied with the terms of the agreement with the Utes, and that in the mean time they shall be permitted to remain thereon unmolested.

A draft of a bill of the character above indicated is herewith presented for the consideration of the committee.

I also transmit herewith as bearing upon the case, and conveying further information upon the object of the bill, the full report of the Ute Commission and copies of correspondence therewith during the year 1881.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

A BILL relating to certain lands in Colorado within the reservation lately occupied by the Uncompahgre and White River Ute Indians.

Whereas a strip of land not exceeding ten miles in width, on the eastern side of and within that part of the Ute Indian Reservation in the State of Colorado lately occupied by the Uncompahgre and White River Ute Indians, was regarded by both the United States and said Indians as public lands lying outside said reservation, and was in part surveyed, and to some extent occupied by settlers and for mining purposes; and

Whereas, by the recent location on the ground of the line of the 107th meridian of longitude west from Greenwich, it is found that the said strip lies within said reservation: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all duly-qualified persons who have in good faith made entries, settlements, or locations under any law of the United States upon a strip of land extending northerly and southerly, not exceeding ten miles in width, within that part of the Ute Indian Reservation in the State of Colorado lately occupied by the Uncompahgre and White River Ute Indians, and bounded on the east by the one hundred and seventh meridian of longitude west from Greenwich, are hereby authorized to continue in the possession of the land so entered, settled, or located, in the same manner and to the same extent as if the lands were public lands of the United States; and upon the release of said lands from reservation such entries, settlements, or locations shall legally date from the time they were respectively made, and the rights of said persons shall be in all respects the same as if the lands had been legally subject to their claims when the same were initiated: *Provided, however,* That if homestead entries have been made on said strip, the lands so entered shall be paid for in cash after proof which would be satisfactory under the pre-emption laws: *And provided further,* That none of said lands shall be disposed of for any consideration other than cash, nor for a less price than one dollar and twenty-five cents per acre.

SEC. 2. That upon the completion of the allotments of lands to the Ute Indians as provided for in "An act to accept and ratify the agreement submitted by the confederated bands of the Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriations for carrying out the same," approved June 15, 1880, the President of the United States shall by proclamation declare that on and after a certain day, which day shall not be less than thirty nor more than sixty days subsequent to the date of such proclamation, all the lands within said reservation formerly occupied by the Uncompahgre and White River Utes, and not so allotted, shall be open to settlement, occupation, and disposal as other public lands of the United States, subject only to the limitations of said act of June 15, 1880.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 17, 1882.

Hon. S. J. KIRKWOOD,
Secretary of the Interior:

SIR: In compliance with your personal request I have the honor to report relative to Senate bill No. 698, entitled "A bill relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians," as follows:

If the Indian rights of allotment within the limits of the reservation formerly occupied by the Uncompahgre and White River Utes have been satisfied, or if, by the definitive removal of all of said Indians from the reservation, the duty of the Secretary of the Interior to make such allotments has legally ceased, I know of no objection to the propositions contained in the first and second sections of the bill, which, as I understand them, are designed, first, to provide for opening the upper portion of

the reservation to disposal in accordance with the provisions of the third section of June 15, 1880, without awaiting the allotment of lands in the lower portion to the Southern Utes, or the removal of the last-named Indians to other lands on the La Plata River; and, second, to establish the line that may properly be considered as defining what portions of the reservation should be recognized as having formerly been occupied by the Uncompahgre and White River Utes.

The third section of the bill presents some difficulties to which I would respectfully call your attention.

The third section of the act of 1880, accepting and ratifying the Ute Indian agreement as amended by said act, provides for the disposal of the unallotted lands exclusively for cash, and only in accordance with existing laws, and subject to the special exceptions and restrictions of said amended agreement, which amended agreement I understand to have been accepted by the Indians parties thereto.

Under the provisions of this section I apprehend that the mineral lands would be subject to entry under the mineral laws whenever opened to entry in the proper manner.

The non-mineral lands would, I also conclude, be subject to pre-emption entry before or after being offered, and also to town-site entry, but would be subject to ordinary private cash entry only after having been proclaimed and offered for sale at public auction.

The provisions of the third section of the act of 1880, that the unallotted lands should be "subject to cash entry only in accordance with existing law," and the further provision that the proceeds of the lands when sold "shall be first sacredly applied to reimbursing the United States for all sums set apart under this act for the benefit of said Indians, and then to be applied in payment for the lands, at one dollar and twenty-five cents per acre, which may be ceded to them outside of their reservation in pursuance of this agreement," and the further provision that the remainder of said proceeds, if any, "shall be deposited in the Treasury as now provided by law for the benefit of said Indians, in the proportion hereinbefore stated, and the interest thereon shall be distributed annually to them in the same manner as the funds provided for in section two of this act," and the further provisions for the appraisement and public sale of the subdivisions upon which the improvements of any member or members of the Ute Nation are located, and the reservation of the same "from occupation or claim until so sold," are severally stipulations of the agreement to be held in view in the consideration of the third section of the proposed bill.

This section confirms absolutely "all settlements, locations, and entries made by persons or corporations in good faith" upon the lands mentioned in the bill, "subject, however, to the provisions, restrictions, and limitations of the first section" of the bill, which first section provides for the disposal of the lands "in accordance with the provisions and under the restrictions and limitations" of the third section of the act of 1880. I therefore understand the third section of the bill to propose the confirmation only of such "settlements, locations, and entries" as were authorized to be made, at a proper time, by the provisions of the act of 1880. In other words, that the proposition is to confirm the possessory claims of mineral locations, and pre-emption settlers who may have gone upon the lands prior to the time when their locations or settlements could legally have been authorized, and also perhaps to confirm projected town sites that may have been initiated in the same manner.

Some misapprehension may, however, exist in respect to the precise meaning of this section, and to the extent of the confirmations thereunder, which may lead to future embarrassments in the adjudication of the confirmed claims, and in respect of the nature and classes of the settlements, locations, and entries that may be claimed or held to have been thus confirmed.

The liability of such misapprehension may be further increased by the provision that "all sums of money heretofore paid upon such entries shall be applied, disbursed, or credited" in the manner stated. It may perhaps be claimed that this provision recognizes settlements, locations, and entries of a different character than those allowed by the act of agreement, or intended to be confirmed by the proposed bill.

I would respectfully suggest that the bill should be so amended as to leave no doubt of the legislative intention, and, also, that in my opinion it would be more expedient to provide for securing the preference right of making entry at the proper time and in the proper manner to the particular classes of possessory claimants whom it may be designed to protect, instead of providing for the confirmation of unadjudicated claims.

I am not informed whether there are or are not any improvements on the lands in question which belong to the United States in contradistinction to the Indian improvements protected by the act of 1880. If there be any such, I think special provision should be made for the appraisement and public sale of the same, together with the land on which they are situated.

Copy of Senate bill No. 698 is herewith returned.

Very respectfully, your obedient servant,

N. C. McFARLAND,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 21, 1882.

The honorable SECRETARY OF THE INTERIOR :

SIR: I had the honor, on yesterday, to acknowledge the receipt, by department reference, of Senate bills Nos. 27, 621, and 938, referred by the Senate Committee on Public Lands, for the opinion of the department thereon, and to make report, at the same time, upon the former (No. 27), which was returned therewith.

I have now to submit the opinion of this office, as follows, upon the last above mentioned, No. 698, being "A bill relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians."

The object of the bill appears to be, briefly, to anticipate, in the disposition of the lands lately occupied by the Uncompahgre and White River Utes, certain prerequisites, as the survey and allotment of lands, the rendition of the report of the Ute commissioners, the approval of the President, &c., prescribed in the third section of the Ute agreement act (approved June 15, 1880) therein referred to; to establish a line between the said lands and those now occupied by the Southern Utes; and finally to protect such persons as have, in good faith, made settlements, locations, and entries upon any of the lands that shall be made subject to disposal by the provisions of the bill.

As to the first point mentioned, I have to say that the Ute agreement act contemplated the settlement of the Uncompahgres upon the lands on Grand River, near the mouth of the Gunnison (within the reservation then occupied by them), if a sufficient quantity of land could be found there for the purpose; hence the precautionary provision in the third section, requiring the surveys, allotments, &c., necessary to the purpose, as a prerequisite to the disposal of the unallotted lands remaining thereafter. But it appearing that a sufficient quantity of land to meet the terms of the agreement could not be found in the locality named, the Indians (Uncompahgres) were, under a further express provision of the agreement, removed into the Territory of Utah, off their old reservation altogether.

Lands have there been selected for them in accordance with the terms of the agreement, and a reservation, embracing an area of some 3,200 square miles, has recently been set apart by executive order (January 5, 1882) for their use and occupancy, within which their permanent allotments are to be selected.

The Indians are reported as having expressed themselves well pleased with the lands so selected for them. (See Report of Ute Commissioners dated Nov. 21, 1881.)

The White River Utes have all been removed to the Uintah Reservation, also in Utah Territory, where they will have allotments in severalty, as provided in the agreement.

The Southern Utes are not lost sight of in the consideration of this matter, but their relations thereto will be discussed further on in this report.

In view of the above facts, I see no good reason for awaiting the completion of the surveys, and the action of the Commissioners in allotting lands, &c., in Utah, before proceeding to the disposition of the lands in Colorado, from which the Indians have been forever removed.

The second point to be considered is the proposed definition by the Secretary of the Interior of the line between the lands lately occupied by the Uncompahgre and White River Utes, and those now occupied by the Southern Utes—2d section of the bill.

Manifestly the determination of such a line is necessary to the proper execution of the first section of the bill, and, while it may be said that the three several bands held a common interest in the entire reservation by the terms of the treaty under which it was established, yet the same reasons exist in respect of the Southern Utes, for not awaiting the surveys, allotments, &c., before the lands formerly occupied by the two other bands are made subject to disposal, as do in the case of those bands. They have had lands selected for them on the La Plata, and in its vicinity, in accordance with the terms of the agreement, and the necessary surveys are nearly completed. Indeed the Southern Utes are almost as far removed from the great body of the lands formerly occupied by the Uncompahgre and White River Utes as these latter are themselves. They are to have no lands allotted to them anywhere in the neighborhood of the lands formerly occupied by the Uncompahgres and White Rivers, and it is not seen that any rights or interests of theirs would be disturbed by the enactment proposed.

The third point to be discussed (being the 3d section of the bill), is the protection extended to settlers, locators, and such persons as have in good faith made entries on any of the lands declared to be public and subject to disposal by the terms of the bill. And here an amendment to the bill is suggested and strongly urged for the reason that, in the view of this office, the government would stultify itself by the enactment of any law that might be construed as affording protection to those who, in direct and flagrant violation of law, and in spite of the persistent efforts of the department to prevent them, have gone on and made settlement and location upon the lands in question.

There are a very large number to whom these remarks apply directly. They are scattered all over the ceded lands, and such was the disorder and rapacity of their conduct during the negotiations and final removal of the Indians as to seriously endanger the peaceful and successful work of removal.

They crowded in upon the Indians ere they had fairly vacated the lands they so dearly prized. Indeed, so close upon them that they must have witnessed, possibly not without some degree of shame, the touching evidences of the peculiar attachment of these people for their homes and country. It is related that when they had finally set out on their long march to their new homes in Utah, many of them repeatedly turned back, and kneeling, kissed the ground, no doubt bitterly lamenting their voluntary banishment.

The amendment proposed is as follows:

In line 2, section 3, after the word "faith" and before the word "upon" insert the following words, to-wit: "Supposing that they were acting in accordance with law, but under mistake as to the boundaries of the reservation."

Such amendment will not withhold any protection intended to reach a more worthy class of settlers, and others who by reason of the dispute in respect of the location of the eastern boundary line of the reservation have made entries, &c., in good faith, upon lands within the limits of the reservation.

With the amendment above suggested, this office recommends the passage of the bill.

A copy of this report is inclosed, and the bill returned.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

DEPARTMENT OF JUSTICE,
Washington, January 17, 1882.

Hon. S. J. KIRKWOOD,
Secretary of the Interior:

SIR: Your letter of the 12th instant presents for my consideration the following case and questions:

"By section 3 of the act of June 15, 1880 (21 Stat., 203), it is prescribed that whenever the report and proceedings of the Ute Commissioners therein provided for 'are approved by the President of the United States, he shall cause patents to be issued to each and every allottee for the lands so allotted, * * * * and all the lands not so allotted, the title to which is by the said agreement * * * released and conveyed to the United States, shall be held and deemed to be public lands of the United States, and subject to disposal under the laws providing for the disposal of the public lands, at the same price and on the same terms as other lands of like character, except as provided in this act,' &c.

"By the agreement in question it was contemplated that two of the three classes of Indians named, viz, the Southern Utes and the Uncompahgre Utes, would be provided for and receive allotments within the bounds of Colorado, if suitable lands could be found therein, and the White River Utes were to remove to the Uintah Reservation in Utah; and that the residue of lands in the old reservation not required for such allotment would be left for release to and disposal by the United States, in which event, according to the terms of the statute just recited, I understand that the condition that the same shall be deemed public land would only take effect from the date of the completion and approval of the allotments, and the direction to issue patents thereon.

"In the work of the commission, recently reported, it was found impracticable to locate the Uncompahgre Utes upon the proposed lands on Grand River, and they were accordingly removed to a new reservation in Utah, which has, by executive order of the 15th ———, been set apart for their use, with the purpose of making allotments to them in severalty therein.

"The White River Utes have also been removed to the Uintah Reservation in Utah, but no allotments have yet been made to them.

"The Southern Utes yet retain a separate portion of the original reservation.

"By resolution of the Senate of the United States on the 10th instant, I am directed to transmit to the Senate any information in my possession touching the opening for settlement, under the pre-emption laws of the United States, that part of the late reservation in the State of Colorado not assigned to the Southern Ute Indians by the provisions of the act of June 15, 1880.

"To enable me to give intelligent answer to the request, I desire an authoritative opinion whether or not, the Indians having been entirely removed therefrom as stated, said lands can by executive authority be declared open for settlement and disposal, under the act, prior to the making and approval of the allotments in severalty

contemplated in the agreement as confirmed thereby; or whether, in case it be deemed advisable to open the lands to immediate settlement and disposal, it will not be necessary to invoke further legislative action."

In reply, I have the honor to state that the lands of the Ute Indian Reservation in Colorado, to which your inquiries refer, cannot, in my opinion, be declared open for settlement and disposal, under the act of June 15, 1880, before the allotments in severalty are made as provided by that act. The language of the act is "and all the lands *not so allotted* * * * * shall be held and deemed to be public lands of the United States, and subject to disposal under the laws providing for the disposal of public lands," &c. As the lands *not allotted* cannot be precisely known until after the allotments are made—which takes place, in contemplation of the statute, when the report and proceedings of the commissioners are approved by the President, and not before—it results *ex necessitate* that previous to that period the provision just quoted can have no effect upon the lands within the reservation. In accordance with these views I am further of opinion that if, under the circumstances stated in your letter, it is thought advisable that any lands within the reservation be open to immediate settlement and disposal, additional legislation will be necessary to enable this to be done.

I am, sir, very respectfully,

BENJAMIN HARRIS BREWSTER,
Attorney-General.

DEPARTMENT OF THE INTERIOR,
Washington, May 10, 1882.

SIR: I have your letter of the 9th instant, inquiring as to my opinion of the propriety of the passage of Senate bill No. 698, relating to lands in Colorado lately occupied by the Uncompahgre and White River Utes. Under the act of June 15, 1880, it was proposed to settle the Uncompahgre Indians at the junction of the Uncompahgre and Grand Rivers, in Colorado. The Ute commission provided for under that bill found that land at this point was unsuitable for the Indians, being neither adapted to agricultural nor pastoral pursuits; and as they might do, under said bill, removed said Uncompahgre Indians to the Territory of Utah. The White Rivers had been previously removed under the provisions of that bill. The act of June 15, 1880, contemplated the allotment of land to the Uncompahgre Indians in Colorado on the said reservation, and therefore it was not provided that the reservation should become public land until after such allotments were made. No allotments can now be made in Colorado to the Uncompahgre Indians.

The Department of Justice has held that the said reservation will not become public land until there shall be further legislation with reference thereto, and as the Indians will not occupy it, having received lands in Utah in lieu of those that they were to have held in Colorado, they have no further claim on the reservation, as it was provided in the act of June, 1880, that all land not occupied by the Indians should be disposed of for their benefit.

With the departure of the Indians for Utah, a great number of settlers went on to said reservation, and are now living on the same; farms have been opened; towns laid out and built; and as such occupation in no wise interferes with the Indians, and is not in derogation of their rights, it appears to be to the interest of the settlers as well as the Indians that the occupants should be allowed to make proof of settlement and pay for the land at an early day.

The third section of the bill is intended to protect the occupation of a large number of people, who, believing that the east line of the Ute Reservation was several miles west of its real location, settled within the limits of the reservation.

The Indians did not claim that the settlement so made was within the reservation, and the officials of the United States, supposing it to be without the reservation, allowed applications to be filed for the entry of mineral lands, which were duly surveyed by the surveyor-general of the State of Colorado. It was not discovered until after the passage of the act of June 15, 1880, that this settlement was in fact on the reservation.

Much confusion has arisen since with reference to titles in that vicinity, and the third section is to protect the bona fide occupants in the improvements made under the circumstances before mentioned.

The bill is a proper one, and ought to pass.

Very respectfully,

H. M. TELLER,
Secretary.

Hon. DUDLEY C. HASKELL,
Chairman of Committee on Indian Affairs, House of Representatives.