

2-15-1882

Letter from the Secretary of the Interior, transmitting a communication from Attorney-General and report of Commissioner of General Land Office, also report of Commissioner of Indian Affairs, in response to Senate resolution of January 10, 1882, calling for information touching the opening for settlement under the pre-emption laws of the United States of part of the Ute Reservation in Colorado

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#### Recommended Citation

S. Exec. Doc. No. 108, 47th Cong., 1st Sess. (1882)

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L E T T E R

FROM THE

SECRETARY OF THE INTERIOR,

TRANSMITTING

*A communication from Attorney-General and report of Commissioner of General Land Office, also report of Commissioner of Indian Affairs, in response to Senate resolution of January 10, 1882, calling for information touching the opening for settlement under the pre-emption laws of the United States of part of the Ute Reservation in Colorado.*

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FEBRUARY 15, 1882.—Referred to the Committee on Public Lands and ordered to be printed.

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DEPARTMENT OF THE INTERIOR,  
 Washington, February 14, 1882.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate of the 10th ultimo, as follows:

*Resolved*, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate any information in his possession touching the opening for settlement, under the pre-emption laws of the United States, that part of the Ute Reservation in the State of Colorado not assigned to the Southern Ute Indians by the provisions of the act of June 15, 1880; also, whether the land on which such Southern Ute Indians are, by the provisions of said act, to be placed is suitable as a permanent home for said Indians.

Touching the first subject of inquiry in the resolution, I have the honor to say that 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, in Colorado, 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, a copy of which is herewith, that in his opinion this cannot be done under existing law; hence, if it be done at all, additional legislation 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 the lands in the reservation in Colorado, to ascertain if such lands as are provided for in the Ute agreement could be found therein for these Indians, and the time necessarily consumed in Utah in the examination of lands there when it was found that suitable lands could not be obtained upon their old reservation in Colorado, and the time necessarily consumed in removing the Uncompahgre and

White River Utes 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 the 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.

The Uncompahgre and White River Utes 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 opening the lands in question at the present time. To take this action before the Indians shall have received all that they are to receive as a consideration for the surrender of their former homes, may tend to increase still further their present discontent, and may be used by mischievous men to that end.

If some measure could be adopted which would secure to those settlers on the eastern portion of the reservation, formerly occupied by the Uncompahgre and White River Utes, valid titles to their claims as soon as the United States shall have fully complied with the terms of the Ute agreement, and that in the mean time they should be permitted to remain thereon unmolested, such action would, in my opinion, be both wise and just.

Touching that portion of the inquiry in the resolution referring to the Southern Utes, I have to say that it appears, from the report of Hon. George W. Manypenny, the Ute Commissioner, who, during the last year's operations, had special charge of the operations of the commission touching the Southern Utes, that there is not sufficient land of the character required to carry out the stipulation with these Indians in the region of country now occupied by them; further, that such prejudice exists upon the part of the settlers in the country surrounding the valleys wherein the agricultural lands for their allotments would have to be selected, that conflicts would occur between them and the settlers whenever the latter should have gathered in their vicinity in any considerable number.

It is not at all unlikely that negotiations will have to be entered into with the Southern Utes for their removal from Colorado, and legislation is understood to be now pending before Congress looking to such end. This would then be an additional reason for withholding any legislation looking toward the opening up of their lands until such steps as Congress may see fit to take in relation to the final settlement of the Southern Utes is fully determined and completed.

I also inclose, for the further information of the Senate, a copy of report from the Commissioner of Indian Affairs, of the 26th ultimo, upon Senate Resolution No. 21, and Senate Bill No. 29, of the present session, which bears upon the subject of the inquiry of the resolution of the Senate herein replied to; also copy of letter of 17th ultimo, from the Commissioner of the General Land Office, on Senate Bill 698 of the

present session "for the disposal of Ute lands," which also bears upon the subject of the resolution.

The report of the Ute Commission before referred to is extremely voluminous, and a copy thereof has been furnished to the Senate Committee on the Public Lands. Instead, therefore, of further delaying to furnish a copy thereof, I beg respectfully to refer to the files of said committee.

Very respectfully,

S. J. KIRKWOOD,  
*Secretary.*

The PRESIDENT of the Senate.

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 land so allotted, \* \* \* and all the lands not so allotted, the title to which is by the said agreement, &c., 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 cited, I understand that the condition that the same shall be deemed public lands, 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 the 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 opened 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,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, January 27, 1882.*

The honorable the SECRETARY OF THE INTERIOR:

SIR: I have the honor to acknowledge the receipt, by department reference for report, of a letter from the Committee on Indian Affairs of the Senate, of the 17th instant, inclosing a copy of Senate resolution No. 21, a joint resolution "authorizing the commissioners appointed under the provisions of an act approved June 15, 1880, to conclude an agreement for an exchange of the land allotted to the Southern Utes in Colorado for land in Utah," and asking for facts with reference to "the lands allotted to the Southern Utes in Colorado," and an opinion as to whether the said lands should be exchanged for other lands, and whether the exchange proposed in the resolution has the approbation of the department as the best measure under the circumstances.

Accompanying the resolution is Senate bill No. 29, "To provide suitable agricultural lands for the Southern Band of Ute Indians in lieu of lands heretofore provided for allotments to them."

The committee state that this bill, with the resolution before mentioned, comprise all the propositions at present before that body concerning the matters to which they relate, and that they desire to know the views of the department before acting thereon.

In reply, I have to say that the facts in respect of the lands designed for allotment to the Southern Utes are, briefly, as follows:

Under the Ute agreement, ratified by act of June 15, 1880, the Southern Utes were "to remove and settle upon the unoccupied agricultural lands on the La Plata River in Colorado; and if there should not be a sufficiency of such lands on the La Plata River and in its vicinity in Colorado, then upon such other unoccupied lands as may be found on the La Plata or its vicinity in New Mexico."

In order to expedite the work of the commissioners charged with the execution of the said agreement on the part of the government a division of labor among the members of the commission was arranged, and

Mr. Mannypenny (chairman of the commission) was assigned to the work especially connected with the Southern Utes.

Mr. Mannypenny, accompanied by Agent Page, thereupon made a careful personal inspection of the lands designed for allotment to the Southern Utes, and made report of his observations to the commission on November 19, 1881.

It appears from his said report, and from subsequent conversations with Mr. Mannypenny, that he entertains grave doubts of the ability of the government to carry out fully the terms of the agreement in respect of the location of the Southern Utes, on account of insufficiency of agricultural lands on the La Plata and in its vicinity in Colorado and New Mexico, the locality named in the agreement.

In his report he says:

I visited, in the order named, the valleys of the Animas, Florida, Los Pinos, and Piedra, and inspected the lands in each, as well as the adjacent grazing lands.

I concluded that in all these valleys (including the La Plata) the average of arable land would hardly be sufficient to give each Southern Ute Indian the quantity specified in the agreement. On the highlands adjacent to the valleys, though not in a compact body, the requisite quantity of grazing land may, I think, be obtained, notwithstanding portions of these lands are absolutely barren.

Agent Page, of the Southern Ute agency, in his annual report for the year just closed, corroborates this view of the case. He says:

By including all the agricultural lands on the several streams running through the present reservation there is not a sufficient quantity to furnish the Indians the number of acres promised when said agreement was made.

While the possibility of failure to find a sufficient quantity of land to meet the terms of the agreement with these Indians in the locality contemplated in the said agreement has been a matter of deep concern to this bureau, it has not been the only cause of solicitude as regards their settlement upon the lands in question.

The strongest prejudice exists amongst the people in Southwestern Colorado, and on the other side of the line in New Mexico, against the permanent settlement of these Indians upon the lands selected for them. The impression seems to have gone abroad in the country there that, by the terms of the agreement, the Southern Utes were to be settled on the La Plata only (in Colorado and New Mexico), and great disappointment and displeasure have been exhibited on the part of the settlers on account of the presence of the government surveyors in the valleys of the Animas, Florida, Los Pinos, and Piedra, directly east of the La Plata. They are anxious and impatient to possess these fertile valleys on account of their proximity to the rich mining districts lying immediately north. The surrounding population, now large, is constantly increasing, and it is not likely that the Indians will be long suffered to live in peace under such conditions.

Referring to these valley lands, Mr. Mannypenny, in his report previously quoted from, says:

Under the terms of the agreement, there was no other land in Colorado that I could have selected, upon which to locate these Southern Utes. This I regard as a great misfortune, since their close proximity to the white settlements in the valleys of the streams upon which they are to be located, will subject the Utes, after their lands are assigned to them and patents issued, and the residue of their lands are open to occupation and settlement, to constant annoyance by evil-disposed persons.

The strip of land through which the streams flow, on which the Indians are to be located, is only fifteen miles wide (in Colorado). On these streams there are settlements in Colorado, north of the reservation, and in New Mexico, south of it. The population is increasing, and will continue to increase, and the prevailing and only sentiment among the people is, that the Utes should not be permanently settled on the lands selected for them. There will be on the highlands between these streams large bodies of land, much of it barren, that in due time will be open to such of our people

as may desire to go in, whether their errand be to dwell, prospect, or annoy the Indians. In such a condition of things, to assume that the Utes will not be disturbed, but permitted to dwell in peace, would be to nurture a delusion of the greatest kind.

I will state here that the surveys necessary to the settlement of the Indians upon their several allotments have been extended over the valley of the La Plata, and east over the valleys of the Animas, Florida, Los Pinos, San Juan, and Piedra, and are now being prosecuted in the valley of the Mancos, west of the La Plata. The Indians remain where they were at the date of the agreement, the most of them being in the immediate vicinity of the agency, on the Rio Los Pinos. The removal of the Uncompahgres and White Rivers to Utah, and the constant rumors that reach them of the possibility of their own ultimate removal, tend to keep them in a state of unrest and excitement; nevertheless they are thoroughly peaceable and well disposed.

Now, as to advisability of exchanging the lands designed for the settlement of these Indians by the terms of agreement for other lands, and whether the exchange proposed in the Senate resolution meets with the approbation of the department, I have to say, that under existing conditions as herein set out, this office is strongly inclined to the belief that the best interests of the Indians and of the Indian service in that section require that lands for the permanent settlement of the Southern Utes be given them elsewhere than as provided in the said agreement.

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Very respectfully, your obedient servant,

H. PRICE, *Commissioner.*

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

SIR: In compliance with your personal request, I have the honor to report relative to Senate bill No. 689, 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 the act 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 portion 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 Indian parties thereto.

Under the provisions of this section, I apprehend that the mineral lands could 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 appraisal 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 appraisal 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.*

S. J. KIRKWOOD,  
*Secretary of the Interior.*