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Report : Petition of W. Byers and Co.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1884.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 938.]

The Committee on Indian Affairs, to whom was referred the bill (S. 938) confirming to W. S. Byers & Co. the right to take and use water from the Umatilla River, on the Umatilla Reservation, in the State of Oregon, for manufacturing and other purposes, report:

That in July, 1870, permission was given by the Indian Bureau to certain parties, in the town of Pendleton, to take water from the Umatilla River, on the Umatilla Indian Reservation, in the State of Oregon, and convey the same to the town of Pendleton "for irrigating, manufacturing, and milling purposes"; that a ditch was constructed and water conveyed to said town a distance of something like a mile or more.

That subsequently W. S. Byers acquired the right of said water and constructed a mill at the town of Pendleton, for the manufacture of flour. That the said Byers, and those who have since been associated with him in said mill, have expended a large sum of money in the improvement of said mill and the addition from time to time of new and improved machinery, until the property is now valued at about \$100,000. That the machinery of said mill is adapted only to the use of water as a motive power, and without the water-power, derived as stated, the said mill and property would be practically useless and become nearly a total loss to said company.

The facts and circumstances connected with the permission to take water from the Umatilla River is clearly and forcibly stated by the Hon. H. Price, Commissioner of Indian Affairs, in a letter addressed to the Secretary of the Interior, of date January 31, 1884, in which he says:

The records of this office show that under date of April 23, 1870, the superintendent of Indian affairs for Oregon, Col. A. B. Meacham, transmitted a petition signed by Geo. A. La Dow, F. Coots, Lot Livermore, O. T. Thompson, and George W. Bailey, citizens of Pendleton, Oreg., praying for permission to construct a water ditch across a portion of said reservation (Umatilla) to the town of Pendleton, for irrigating, manufacturing, and milling purposes. Colonel Meacham recommended the granting of the petition, and accordingly, by letter dated May 18, 1870, he was authorized by this office to grant the privileges asked for, if it could be done without injury or detriment to the Indians or their property; and upon the express condition that no permanent rights should attach or become vested, and that any ditch or canal dug or constructed, and the use of the same, should be subject to the control of and to be discontinued at the pleasure of the Department.

In pursuance of this authority, Agent Boyle, the then agent at the Umatilla Agency, gave written permission to the parties to construct the ditch. His letter, a copy of

which is on file in this office, is dated July 7, 1870. It recites the conditions imposed by this office as follows:

"In granting this permission to construct the water ditch, it is upon the express condition that no permanent right shall attach or become vested, but that any ditch or canal dug or constructed, and the use of the same shall be subject to the control of and to be discontinued at the pleasure of the Department."

On the strength of the authority thus given, a very large sum of money has been expended by Byers & Co. in the construction of a flour and grist mill, and the purchase of machinery therefor.

The ditch has been in constant use since its construction, and the privilege has been of untold benefit to the people of Pendleton and surrounding country, and of no little service to the Indians themselves. I believe the right should be confirmed to Byers & Co., and I so recommend. No damages can result to the Indians thereby.

Your committee recommend that the bill be amended in line 13 by striking out the words "and other."

Amend also by striking out after the word "assigns," to the end of the bill and add as follows: "This act shall in no way impair or affect any existing right to a reasonable use of the water of said stream for agricultural purposes."

Amend also by striking out the preamble.

And when so amended your committee recommend that the same be passed.