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Message from the President of the United States, transmitting an agreement made with the Creek Indians

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

An agreement made with the Creek Indians.

FEBRUARY 6, 1889.—Read and referred to the Committee on Indian Affairs and ordered to be printed.

To the Congress :

I transmit herewith for approval and ratification, a provisional agreement lately entered into between the Government of the United States and the Creek Nation of Indians through their duly authorized representatives, and which has been approved by the national council of said Nation, by which agreement the title and interest of the said Creek Nation of Indians in and to all lands in the Indian Territory or elsewhere, except such as are held and occupied as the homes of said Nation, are ceded to the United States.

The 8th section of the Indian appropriation bill, approved March 3, 1885, authorized the President "to open negotiations with the Creeks, Seminoles, and Cherokees for the purpose of opening to settlement under the homestead laws the unassigned lands in the Indian Territory, ceded by them, respectively, to the United States, by the several treaties of August 11, 1866, March 21, 1866, and July 19, 1866." This section also contains an appropriation in furtherance of its purpose, and requires that the action of the President thereunder should be reported to Congress.

The "unassigned" lands thus referred to should be construed to be those which have not been transferred by the United States in pursuance of the treaties mentioned in the section quoted.

The treaty with the Creeks is dated June 14, 1866. It was confirmed by a Senate resolution passed July 19, 1866, and was proclaimed August 11, 1866. (14 Stats., 785.)

The third article of the treaty makes a cession of lands in the following words:

In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line

running north and south; the eastern half of said Creek lands, being retained by them shall, except as herein otherwise stipulated, be forever set apart as a home for said Creek Nation; and in consideration of said cession of the west half of their lands, estimated to contain three million two hundred and fifty thousand five hundred and sixty acres, the United States agree to pay the sum of thirty (30) cents per acre, amounting to nine hundred and seventy-five thousand one hundred and sixty-eight dollars.

The provision that the lands conveyed were "*to be sold to and used as homes for such other civilized Indians,*" etc., has been steadily regarded as a limitation upon the grant made to the United States. Such a construction is admitted to be the true one in many ways, especially by the continual reservation of the ceded lands from settlement by the whites, by the sale of a portion of the same to Indians, by the use of other portions as the home of Indians, and also by various provisions in proposed legislation in Congress. Thus the bill now pending for the organization of Oklahoma provides for the payment to the Creeks and Seminoles of the ordinary Government price of \$1.25 per acre, less the amount heretofore paid.

The section of the law of 1885 first above quoted appears also to have been passed in contemplation not only of the existence of a claim on the part of the Creeks, but of the substantial foundation of that claim in equity, if not in law, and in acknowledgment of the duty of the Government to satisfactorily discharge the claim of the Indian people before putting the land to the free uses of settlement and territorial occupation by whites.

But it seems to have been considered that so far as the lands had been assigned they may fairly be taken to be such as under the treaty were "*to be sold.*" As to these, they having been assigned or "*sold*" in accordance with said treaty, the claim of the Creeks thereto has been entirely discharged, and the title from the United States passed unburdened with any condition or limitation to the grantees. This seems to be an entirely clear proposition.

The unassigned lands must be those which are unsold, because not only is that the fair significance of the term, as used technically in conveyancing, but because the limiting condition in the Creek treaty was that the lands should be sold to, as well as used as homes for, other Indians.

The total quantity of lands in the western half of the Creek Nation, and which were ceded in 1866, is.....	Acres. 3, 402, 428. 88
The assigned lands as above defined are in three bodies:	
1. The Seminole country, by the treaty of 1866	Acres. 200, 000. 00
2. The Sac and Fox Reservation, sold and conveyed by article 6 of the treaty of Feb. 18, 1867 (15 Stats., 495), amounting to.....	479, 668. 05

3. The Pawnee Reservation, granted by section 4 of the act of Congress of April 10, 1876 (19 Stats., 29), for which the Government received the price allowed the Creeks, 30 cents per acre Acres. 53,005.94

Making a total of assigned or sold lands of Acres. 732,673.99

And leaving as the total unassigned lands 2,669,754.89

Of this total quantity of unassigned land which is subject to the negotiations provided for under the law of 1885, there should be a further division made in considering the sum which ought fairly to be paid in discharge of the Creek claim thereto.

I. In that part of these lands called the Oklahoma country, no Indians have been allowed to reside by any action of the Government, nor has any execution been attempted of the limiting condition of the cession of 1866.

The quantity of these lands carefully computed from the surveys is 1,392,704.70 acres.

II. The remainder of these unassigned lands has been appropriated, in some degree, to Indian uses, although still within the control of the Government.

Thus, by three executive orders, the following Indian reservations have been created :

1. By President Grant, August 10, 1869, the reservation of the Cheyennes and Arapahoes, which embraces of this land Acres. 619,450.59
2. By President Arthur, August 15, 1883, the reservation for the Iowas, containing 228,417.67
3. By President Arthur, August 15, 1883, the Kickapoo Reservation, embracing 206,465.61
4. A tract set apart for the Pottawatomies by the treaty of February 27, 1867 (15 Stats., 531), followed by the act of May 23, 1872 (17 Stats., 159), by which individual allotments were authorized upon the tract, though but very few Indians have selected and paid for such allotments according to the provisions of that law. The entire quantity of the Pottawatomie Reservation is. 222,716.32

This shows the quantity of lands unassigned but to some extent appropriated to Indian uses by the Government amounting to 1,277,050.19

For the lands which are not only unassigned, but are unoccupied and which have been in no way appropriated, it appears clearly just and right that a price of at least \$1.25 should be allowed to the Creeks. They held more than the ordinary Indian title, for they had a patent in

fee from the Government. The Osages of Kansas were allowed \$1.25 per acre upon giving up their reservation, and this land of the Creeks is reported, by those familiar with it, to be equal to any land in the country. Without regard to the present enhanced value of this land, and if reference be only had to the conditions when the cession was made, no less price ought to be paid for it than the ordinary Government price. Therefore, in this provisional agreement which has been made with the Creeks, the price of \$1.25 has been settled upon for such land, with the deduction of the 30 cents per acre, which has already been paid by the Government therefor.

As to the remainder of the unassigned lands, in view of the fact that some use has been made of them of the general character indicated by the treaty of 1866, and because some portion of them should be allotted to Indians under the general allotment act, and to cover the expenses of surveys and adjustments, a diminishment of 20 cents per acre has been acceded to. There is no difference in the character of the lands.

Thus, computing the unassigned and entirely unappropriated land, being the Oklahoma country, containing 1,392,704.70 acres, at 95 cents per acre, and the remainder which has been appropriated to the extent above stated being 1,277,050.19 acres, at 75 cents per acre, the total price stipulated in the agreement has been reached—\$2,280,857.10.

But as it was desirable that the Indian title should be beyond all question extinguished to all parts of the land ceded by the Creeks in 1866, with their full consent and understanding, the agreement of cession has been made to embrace a complete surrender of all claim to the western half of their domain, including the assigned as well as the unassigned lands, for the price named. So the agreement takes the form in the first article of such a cession, and in the second article is stipulated the price in gross, of all the lands and interests ceded with no detailed reference to the manner of its ascertainment.

The overtures which led to this agreement were made by representatives of the Creek Nation, who came here for that purpose. They were intelligent and evidently loyal to the interests of their people. The terms of the agreement were fully discussed and concessions were made by both parties. It was promptly confirmed by the National Council of the Creek Indians and its complete consummation only waits the approval of the Congress of the United States.

I am convinced that such ratification will be of decided benefit to the Government, and that the agreement is entirely free from any suspicion of unfairness or injustice towards the Indians.

I desire to call especial attention to the fact that, to become effective, the agreement must be ratified by the Congress prior to the 1st day of July, 1889.

The draft of an act of ratification is herewith submitted.

GROVER CLEVELAND.

EXECUTIVE MANSION, *February 5, 1889.*

ARTICLES OF AGREEMENT.

Articles of cession and agreement, made and concluded at the city of Washington on the nineteenth day of January, in the year of our Lord 1889, by and between the United States of America, represented by William F. Vilas, Secretary of the Interior, by and under direction of the President of the United States, and the Muscogee (or Creek) Nation of Indians, represented by Pleasant Porter, David M. Hodge, and Esparhecher, delegates and representatives thereunto duly authorized and empowered by the Principal Chief and National Council of the said Muscogee (or Creek) Nation.

Whereas, by a treaty of cession made and concluded by and between the said parties on the fourteenth day of June, 1866, the said Muscogee (or Creek) Nation, in compliance with the desire of the United States to locate other Indians and freedmen thereon, ceded and conveyed to the United States, to be sold to and used as homes for such other civilized Indians as the United States might choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south, which should be surveyed as provided in the Eighth Article of the said treaty; the eastern half of the lands of the said Muscogee (or Creek) Nation to be retained by them as a home;

And whereas but a portion of said land so ceded for such use has been sold to Indians or assigned to their use, and the United States now desire that all of said ceded lands may be entirely freed from any limitation in respect to the use and enjoyment thereof, and all claims of the said Muscogee (or Creek) Nation to such lands may be surrendered and extinguished, as well as all other claims of whatsoever nature to any territory, except the aforesaid eastern half of their domain.

Now, therefore, these articles of cession and agreement, by and between the said contracting parties, witness:

I. The said Muscogee (or Creek) Nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation, lying west of the division line surveyed and established under the said treaty of 1866, and also grants and releases to the United States all and every claim, estate, right, or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muscogee (or Creek) Nation as lies east of the said line of division, surveyed and established as aforesaid, and is now held and occupied as the home of said Nation.

II. In consideration whereof, and of the covenants herein otherwise contained, the United States agree to pay to the said Muscogee (or Creek) Nation the sum of two million two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents, whereof two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents shall be paid to the national treasurer of said Muscogee (or Creek) Nation, or to such other person as shall be duly authorized to receive the same, at such time and in such sums after the due ratification of this agreement (as hereinafter provided) as shall be directed and required by the national council of said nation, and the remaining sum of two million dollars shall be set apart and remain in the Treasury of the United States to the credit of the said nation, and shall bear interest at the rate of five per centum per annum from and after the first day of July, 1889, to be paid to the treasurer of said nation, and to be judiciously applied, under the direction of the legislative council thereof, to the support of their government, the maintenance of schools and educational establishments, and such other objects as may be designed to promote the welfare and happiness of the people of the said Muscogee (or Creek) Nation, subject to the discretionary direction of the Congress of the United States: *Provided*, That the Congress of the United States may, at any time pay over to the said Muscogee (or Creek) Nation the whole, or, from time to time, any part of said principal sum, or of any principal sum belonging to said nation, held in the Treasury of the United States, and thereupon terminate the obligation of the United States in respect thereto and in respect to any further interest upon so much of said principal as shall be so paid and discharged.

III. It is stipulated and agreed, that henceforth especial effort shall be made by the Creek Nation to promote the education of the youth thereof and extend their useful knowledge and skill in the arts of civilization; and the said nation agrees that it will devote not less than fifty thousand dollars, annually, of its income, derived hereunder, to the establishment and maintenance of schools and other means calculated to advance the end; and of this annual sum at least ten thousand dollars shall be applied to the education of orphan children of said nation.

IV. These articles of cession and agreement shall be of no force or obligation upon either party until they shall be ratified and confirmed, first by act of the national council of said Muscogee (or Creek) Nation, and secondly by the Congress of the United States, nor unless such ratification shall be on both sides made and completed before the first day of July, A. D. 1889.

V. No treaty or agreement heretofore made and now subsisting is hereby affected except so far as the provisions hereof supersede and control the same.

In testimony whereof, we, the said William F. Vilas, Secretary of the Interior, on the part of the United States, and the said Pleasant Porter, David M. Hodge, and Esparhecher, delegates of the Muscogee (or Creek) Nation, have hereunto set our hands and seals, at the place and on the day first above written, in duplicate.

[SEAL.]

WILLIAM F. VILAS,
Secretary of the Interior.

[SEAL.]

PLEASANT PORTER.

[SEAL.]

DAVID M. HODGE.

[SEAL.]

ESPARHECHER, his x mark.

In presence of:

JOHN P. HUME.

ROBERT V. BELT.

A BILL to ratify and confirm an agreement with the Muscogee (or Creek) Nation of Indians in the Indian Territory, and for other purposes.

Whereas it is provided by section eight of the act of March third, eighteen hundred and eighty-five, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes," "that the President is hereby authorized to open negotiations with the Creeks, Seminoles, and Cherokees for the purpose of opening to settlement under the homestead laws the unassigned lands in said Indian Territory ceded by them respectively to the United States by the several treaties of August eleventh, eighteen hundred and sixty-six, March twenty-first, eighteen hundred and sixty-six, and July nineteenth, eighteen hundred and sixty-six; and for that purpose the sum of five thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated; his action hereunder to be reported to Congress;" and

Whereas William F. Vilas, Secretary of the Interior, by and under the direction of the President of the United States, on the part of the United States, and the Muscogee (or Creek) Nation of Indians, represented by Pleasant Porter, David M. Hodge, and Esparhecher, delegates and representatives thereto duly authorized and empowered by the Principal Chief and National Council of the said Muscogee (or Creek) Nation, did, on the nineteenth day of January, anno Domini eighteen hundred and eighty-nine, enter into and conclude articles of cession and agreement, which said cession and agreement is in words as follows:

Articles of cession and agreement made and concluded at the city of Washington on the nineteenth day of January, in the year of our Lord 1889, by and between the United States of America, represented by William F. Vilas, Secretary of the Interior, by and under direction of the President of the United States, and the Muscogee (or Creek) Nation of Indians, represented by Pleasant Porter, David M. Hodge, and Esparhecher, delegates and representatives thereunto duly authorized and empowered by the principal chief and national council of the said Muscogee (or Creek) Nation.

Whereas by a treaty of cession made and concluded by and between the said parties on the fourteenth day of June, 1866, the said Muscogee (or Creek) Nation, in compliance with the desire of the United States to locate other Indians and freedmen thereon, ceded and conveyed to the United States, to be sold to and used as homes for such other civilized Indians as the United States might choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south, which should be surveyed as provided in the eighth article of the said treaty; the eastern half of the lands of the said Muscogee (or Creek) Nation to be retained by them as a home;

And whereas but a portion of said lands so ceded for such use has been sold to Indians or assigned to their use, and the United States now desire that all of said ceded lands may be entirely freed from any limitation in respect to the use and enjoyment thereof and all claims of the said Muscogee (or Creek) Nation to such lands may be surrendered and extinguished, as well as all other claims of whatsoever nature to any territory except the aforesaid eastern half of their domain;

Now, therefore, these articles of cession and agreement, by and between the said contracting parties, witness:

I. The said Muscogee (or Creek) Nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation lying west of the division line

surveyed and established under the said treaty of 1866, and also grants and releases to the United States all and every claim, estate, right or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muscogee (or Creek) Nation as lies east of the said line of division, surveyed and established as aforesaid, and is now held and occupied as the home of said Nation.

II. In consideration whereof, and of the covenants herein otherwise contained, the United States agree to pay to the said Muscogee (or Creek) Nation the sum of two million two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents, whereof two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents shall be paid to the national treasurer of said Muscogee (or Creek) Nation or to such other person as shall be duly authorized to receive the same, at such times and in such sums after the due ratification of this agreement (as hereinafter provided) as shall be directed and required by the national council of said nation, and the remaining sum of two million dollars shall be set apart and remain in the Treasury of the United States to the credit of the said nation, and shall bear interest at the rate of five per centum per annum from and after the first day of July, 1889, to be paid to the treasurer of said nation and to be judiciously applied, under the direction of the legislative council thereof, to the support of their government, the maintenance of schools and educational establishments, and such other objects as may be designed to promote the welfare and happiness of the people of the said Muscogee (or Creek) Nation, subject to the discretionary direction of the Congress of the United States: *Provided*, That the Congress of the United States may at any time pay over to the said Muscogee (or Creek) Nation the whole, or, from time to time, any part of said principal sum, or of any principal sum belonging to said nation held in the Treasury of the United States, and thereupon terminate the obligation of the United States in respect thereto and in respect to any further interest upon so much of said principal as shall be so paid and discharged.

III. It is stipulated and agreed that henceforth especial effort shall be made by the Creek Nation to promote the education of the youth thereof and extend their useful knowledge and skill in the arts of civilization; and the said nation agrees that it will devote not less than fifty thousand dollars, annually, of its income, derived hereunder, to the establishment and maintenance of schools and other means calculated to advance the end; and of this annual sum at least ten thousand dollars shall be applied to the education of orphan children of said nation.

IV. These articles of cession and agreement shall be of no force or obligation upon either party until they shall be ratified and confirmed, first by act of the national council of said Muscogee (or Creek) Nation, and secondly by the Congress of the United States, nor unless such ratification shall be on both sides made and completed before the first day of July, A. D. 1889.

V. No treaty or agreement heretofore made and now subsisting is hereby affected, except so far as the provisions hereof supersede and control the same.

In testimony whereof, we, the said William F. Vilas, Secretary of the Interior, on the part of the United States, and the said Pleasant Porter, David M. Hodge, and Esparhecher, delegates of the Muscogee (or Creek) Nation, have hereunto set our hands and seals, at the place and on the day first above written, in duplicate.

[SEAL.]

WILLIAM F. VILAS,
Secretary of the Interior.

[SEAL.]

PLEASANT PORTER,

[SEAL.]

DAVID M. HODGE,

[SEAL.]

ESPARHECHER, his x mark.

In presence of:

JOHN P. HUME,
ROBERT V. BELT.

Whereas, the Muscogee (or Creek) Nation of Indians has accepted, ratified, and confirmed said articles of cession and agreement by act of its national council, approved by the principal chief of said nation on the thirty-first day of January, anno Domini eighteen hundred and eighty-nine, wherein it is provided that the grant and cession of land and territory therein made shall take effect when the same shall be ratified and confirmed by the Congress of the United States of America: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said articles of cession and agreement are hereby accepted, ratified, and confirmed.

SEC. 2. That for the purpose of carrying out the terms of said articles of cession and agreement the sum of two million two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents is hereby appropriated.

SEC. 3. The Secretary of the Treasury is hereby authorized and directed to pay out of the appropriation hereby made, the sum of two hundred and eighty thousand eight

hundred and fifty-seven dollars and ten cents, to the national treasurer of said Muscogee (or Creek) Nation, or to such person as shall be duly authorized to receive the same, at such time and in such sums as shall be directed and required by the national council of said nation, and the Secretary of the Treasury is hereby further authorized and directed to place the remaining sum of two million dollars in the Treasury of the United States to the credit of said Muscogee (or Creek) Nation of Indians to be held for, and as provided in said articles of cession and agreement, and to bear interest at the rate of five per centum per annum, from and after the first day of July, anno Domini eighteen hundred and eighty-nine; said interest to be paid to the treasurer of said nation annually.

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