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Midland Pacific Railroad Co.

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IN THE SENATE OF THE UNITED STATES.

MAY 31, 1892.—Ordered to be printed.

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

REPORT:

[To accompany S. 443.]

The Committee on Indian Affairs, to whom was referred the bill (S. 443) granting to the Midland Pacific Railroad Company the right of way through the Crow Creek Indian Reservation in the State of South Dakota, having considered the same, respectfully report:

The bill has been submitted to the Interior Department, and the communication of the Secretary of the Interior, accompanied by a communication from the Commissioner of Indian Affairs, approving the bill in general and suggesting amendments, is hereto appended.

Your committee have, however, thought other amendments should be made, and herewith submit thirteen several amendments, and recommend that the bill when so amended be passed.

In line 3, after the word "that," the first word in said line, insert the words:

With the consent of the Indians, obtained in such manner as the President of the United States shall direct, and to be returned to and filed with the Secretary of the Interior.

Insert the word "public" before the word "lands" in line 10 of section 1.

In lines 14 and 15 of the first section strike out the words "twenty acres" and insert "three hundred feet in width and three thousand feet in length."

In line 16 strike out the word "six" and insert the word "ten".

In line 5 of section 2, after the word "tribe" insert the words:

Who have selected lands for allotment in severalty, or who hold any lands in severalty under the United States, for right of way through such severalty lands, and.

In line 7 of section 2 strike out the words "way of," so that it will read: "but no right of any kind shall vest," etc.

In line 12 in section 2, before the word "approved," insert the words "filed with and".

In line 1 of section 3, before the word "forfeited" insert the words "and hereby are wholly".

In line 2 of section 3 strike out the word "is" and insert the words "shall be".

In line 3 of section 3 strike out the word "five" and insert the word "three".

Add to section 3 as written in the bill the words:

And no further legislative act shall be requisite to entirely divest said company of any and all rights, claims, and privileges under this act. No assignment or transfer of any right or privilege granted by this act shall be of any validity whatever if made before the said road shall be completed through the reservation, as against the United States.

SEC. 4. This act shall in no particular, except in so far as it confers authority to enter upon the reservation for the purpose of surveying and locating the grantee's line of railroad, take any effect whatever until the Secretary of the Interior shall certify in duplicate writings (one copy whereof shall be delivered to the said company and one copy filed in the office of said Secretary) that the said company has so far graded its line of railroad and constructed its track upon the same as that, in the due and proper prosecution of the work, it has become necessary for the said company to proceed to grade and construct its road upon the lands within said reservation, and that he is satisfied that the company intends in good faith and with reasonable diligence to proceed to the completion of said road across the reservation and put the same in operation for public use.

Strike out the word "railroad" where it occurs in the bill and the title to the bill in the name of the grantee and insert "railway," so that it will read "Midland Pacific Railway Company."

DEPARTMENT OF THE INTERIOR,
Washington, May 26, 1892.

SIR: I have the honor to acknowledge the receipt of your communication of 17th instant and accompanying S. 443, "A bill granting to the Midland Pacific Railroad Company the right of way through the Crow Creek Indian Reservation, in the State of South Dakota."

In response thereto I transmit herewith copy of a communication of 25th instant from the Commissioner of Indian Affairs, to whom the matter was referred.

The commissioner suggests certain amendments to the bill, in which the Department concurs.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
United States Senate.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 25, 1892.

SIR: I am in receipt by Department reference for report of a communication of Hon. Henry L. Dawes, inclosing Senate bill 443, a bill granting to the Midland Pacific Railroad Company the right of way through the Crow Creek Indian Reservation, in the State of South Dakota, in which he states that he desires to obtain the views of the Department relative to the passage of the same. The bill provides:

"That there is hereby granted to the Midland Pacific Railroad Company, a corporation organized and existing under the laws of the State of South Dakota, and its assigns, the right of way for the extension of its railroad through the Crow Creek Indian Reservation, in said State of South Dakota, such right of way to be fifty feet in width on each side of the center line of said railroad; and said company shall also have the right to take from the lands adjacent to the line of said road material, stone, and earth necessary for the construction of said railroad; also grounds adjacent to such right of way for station buildings, depots, machine shops, side tracks, turn-outs, and water stations, not to exceed in amount twenty acres for each station, to the extent of one station for every six miles of road constructed within the limits of said reservation.

"SEC. 2. That it shall be the duty of the Secretary of the Interior to fix the amount of compensation to be paid to the Indians for such right of way, and provide the time and manner for the payment thereof, and also to ascertain and fix the amount to be paid to individual members of the tribe for damages sustained by

them by reason of the construction of said road. But no right of way of any kind shall vest in said railroad company in or to any part of the right of way herein provided for until plats thereof, made upon actual survey for the definite location of such railroad, and including the grounds for station houses, depots, machine shops, side tracks, turn-outs, and water stations shall have been approved by the Secretary of the Interior, and until the compensation aforesaid shall have been fixed and paid, and the consent of the Indians on said reservation as to the amount of said compensation shall have been first obtained in a manner satisfactory to the President of the United States. Said company is hereby authorized to enter upon said reservation for the purpose of surveying and locating its line of railroad: *Provided*, That said line of railroad shall be located, constructed, and operated with due regard to the rights of the Indians and under such rules and regulations as the Secretary of the Interior shall prescribe.

"SEC. 3. That the rights herein granted shall be forfeited by said company unless the road is constructed through said reservation within five years.

"SEC. 4. That Congress may at any time amend, add to, alter, or repeal this act."

In reporting on this bill I have the honor to inform you that allotments of land in severalty have been made by special agent in the field to all the Indians of the Crow Creek Indian Reservation, under the provisions of the treaty of April 29, 1868 (15 Stats., 635), and the act of Congress approved March 2, 1889 (25 Stats., 888), proclaimed by the President February 10, 1890 (26 Stat., 1554). The schedule of allotments to said Indians is on file in this office, not having as yet been presented to you for approval. Each allottee, however, has the usual certificate of the allotting agent showing that he is entitled to a patent to the particular tract or tracts of land which he has selected upon the approval of the allotments.

With reference to the issuance of patents for these allotted lands and the status thereof, section 11 of said act of Congress of March 2, 1889, provides:

"That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the lands thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever, and patents shall issue accordingly. And each and every allottee under this act shall be entitled to all the rights and privileges and be subject to all the provisions of section six of the act approved February eighth, eighteen hundred and eighty-seven, entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.' *Provided*, That the President of the United States may in any case, in his discretion, extend the period by a term not exceeding ten years; and if any lease or conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such lease or conveyance or contract shall be absolutely null and void." * * *

The unallotted lands on said reservation are held by the tribe in common.

Section 12 of said act provides for the purchase of the unallotted lands by the United States at any time after allotments have been made to all the Indians of any tribe. Said section is as follows:

"That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held of such portions of its reservation not allotted as such tribe shall from time to time consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress." * * *

Attention is invited to the fact that the bill provides for stations not to exceed in amount 20 acres for each station, to the extent of one station for every 6 miles of road constructed within the limits of the reservation, and that the rights therein granted shall be forfeited by said company unless the road is constructed through said reservation within five years.

Both of these provisions are unusual in bills of this character, and in the opinion of this office the bill should be modified as hereinafter pointed out.

It is respectfully suggested that the bill be amended as follows: In line 3 of section 1, between the word "That" and the word "there," insert the words "with the consent of the Indians to be obtained in a manner provided by the President of the

United States;" strike out the remainder of section 1 after the word "amount," line 14 thereof, and insert in lieu of the words stricken out the words "three hundred feet in width and three thousand feet in length for each station, to the extent of one station for each ten miles of its road;" in line 5 of section 2, after the word "tribe" and before the word "for," insert the words "who have selected lands for allotment in severalty, for right of way through such selected lands and;" after the first word "of" in line 7 of section 2, strike out the words "way of," and that the word "five" in line 3 of section 3 should be stricken out and the word "three" substituted in lieu thereof.

If the bill be amended as herein suggested this office sees no objection to its passage. Senator Dawes's letter and the bill are returned herewith.

Very respectfully, your obedient servant.

R. V. BELT,
Acting Commissioner

The SECRETARY OF THE INTERIOR.

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