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### Blue Mountain Irrigation and Improvement Co.

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IN THE SENATE OF THE UNITED STATES.

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JULY 12, 1892.—Ordered to be printed.

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

**REPORT:**

[To accompany S. 3048.]

The Committee on Indian Affairs, having had under consideration the bill (S. 3048) granting to the Blue Mountain Irrigation and Improvement Company a right of way for reservoir and canals through the Umatilla Indian Reservation in the State of Oregon, respectfully report the same back with amendments, and as so amended recommend its passage.

The proposed company desires to take lands which belong in severalty to Indians, or which have been selected for allotment, for the purposes of their main reservoir, and this the committee think should not be granted as a right to them to do, except upon the terms which may induce the owners to sell; that no power of eminent domain, no compulsion on the part of the General Government, nor the appearance of any, should be given the company. The amendments have been drawn with reference to this idea and in accordance with the recommendations of the Commissioner of Indian Affairs, which appear in his communication hereto appended, and to make more certain the securing of proper compensation for rights taken and privileges enjoyed.

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DEPARTMENT OF THE INTERIOR,  
*Washington, June 18, 1892.*

SIR: I have the honor to acknowledge the receipt of your communication of the 5th ultimo, inclosing S. 3048, "A bill granting to the Blue Mountain Irrigation and Improvement Company a right of way for reservoir and canals through the Umatilla Indian Reservation, in the State of Oregon."

In reply thereto I transmit herewith copy of a communication of the 16th instant, from the Commissioner of Indian Affairs, to whom the matter was referred, wherein he recommends certain amendments to the bill before it becomes a law.

The inclosures of your letter are herewith returned.

Very respectfully,

JOHN W. NOBLE,  
*Secretary.*

The CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,  
*United States Senate.*

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, June 16, 1892.*

SIR: I am in receipt, by Department reference, of a communication dated May 5, 1892, from Senator H. L. Dawes, inclosing therewith copy of Senate bill No. 3048, granting to the Blue Mountain Irrigation and

Improvement Company a right of way for a reservoir and canals through the Umatilla Indian Reservation, in the State of Oregon, upon which he desires to obtain the views of this Department at its earliest convenience.

There is also inclosed with Senator Dawes' communication a letter dated April 27, 1892, from Lot Livermore, president, and Joe H. Parker, secretary of the said company, addressed to Senator J. N. Dolph, stating that they prepared the bill referred to, and requesting him to introduce the same into the Senate at the earliest possible date, in order that the same may become a law at the present session of Congress; that the said company has been acting under section 18 of the act of Congress approved March 3, 1891, supposing that its reservoir site and right of way would be confirmed to it under this act, until the receipt of the ruling made by this office and concurred in by the Department, which is to the effect that the reservations referred to in said section 18 do not include Indian reservations; that this decision was not only a great surprise to the officers of that company, but a great disappointment also, as they had expended quite a large amount of money in engineering and other work, and were arranging to commence active construction of the proposed reservoir and ditches the present season, so that at least a portion of the available lands could be watered early in the spring of 1893.

The said officers also state that under the present condition they can do nothing until after the passage and approval of the inclosed bill; that it seems to them there should be no opposition to it, inasmuch as it embodies the same conditions as embraced in the act approved February 10, 1891 ('6 Stat., p. 745), granting to the Umatilla Irrigation Company right of way on the same reservation; that failure of this bill to become a law at the present session of Congress will work a great hardship not only to their company, but also to a great number of people who purchased and are now residing upon lands that were sold at the reservation sale during April, 1891, the purchase of said lands having been made with the expectation that the same would be irrigated by the said company; and that in view of the fact that what they ask has already been granted to another company, there should not, as they believe, be great difficulty in securing available legislation upon the bill referred to.

I am also in receipt by Department reference for report under date of May 21, 1892, of a copy of the same bill referred to the Department by Senator Dolph, with request for an early report on the same.

In relation to this matter I have the honor to state that upon May 10, 1892, John W. Crawford, United States Indian agent of the Umatilla Agency, Oregon, was furnished with a copy of the said bill, and his attention was called to the fact that the said company desires to appropriate to its use a certain tract of land whose boundary commences at the corner of sections 1, 2, 11, and 12, in township 1 south, range 33 east, Willamette meridian, with certain descriptions therein set forth, containing 410 acres, more or less, with main ditch or canal commencing at a certain point on McKay Creek and running across the said Indian reservation to the city of Pendleton, Oregon, 50 feet wide on each side of the center line of said ditch or canal, together with the ground adjacent to the said right of way for distributing ditches, not exceeding 10 acres in the aggregate for every 10 miles of said ditch or canal.

Agent Crawford was also furnished with a tracing of the sketch of the reservoir as proposed to be constructed, which sketch accompanies

the said bill, with the statement from this office that 410 acres of ground for reservoir purposes appears to be a very liberal estimate, and that inasmuch as allotments are being made to the Indians of that reservation, the lands covered by the proposed reservoir might be occupied or already allotted to Indians, and, if so, the granting of the privilege asked for might be impracticable.

He was directed to investigate the matter and make early report to this office in the premises, together with his recommendation thereon.

I am now in receipt of a letter dated May 30, 1892, from the said agent, stating that the location of the proposed reservoir is in the southeast corner of the Umatilla diminished reservation; that at the junction of the North Fork and the South Fork of McKay Creek is a deep cañon, the bluff on either side being about 175 feet high, with a narrow valley between, covered mostly with gravel, rock, and bull pine; that of the land asked for (410 acres) not over 20 acres are tillable, the tillable portions being in small patches; that the reservoir to hold the water will cover about 200 acres, embracing all of the valley on the lands desired; that the dam will be over 400 feet long, 60 feet high, 280 feet at the bottom and 60 feet wide on the top, with a roadway across the same; that after the 200 acres desired are taken for reservoir purposes the fractions that are left are steep rocky bluffs, useless for any purposes, and that the part between the two McKay creeks above mentioned would be entirely shut off from the reservation if the land on the outside is ever sold and fenced.

Agent Crawford returns the tracing of the sketch of the proposed reservoir, indicating thereon that four 40's, marked with a red cross, have been allotted to certain Indians; that one 40, marked with a star, has been selected for an allotment, viz: The NW.  $\frac{1}{4}$  of the SE.  $\frac{1}{4}$ ; the SW.  $\frac{1}{4}$  of the SE.  $\frac{1}{4}$ ; the SE.  $\frac{1}{4}$  of the SW.  $\frac{1}{4}$ ; the SW.  $\frac{1}{4}$  of the SW.  $\frac{1}{4}$ ; and the NE.  $\frac{1}{4}$  of the SW.  $\frac{1}{4}$ , in Sec. 1, T. 1 S., R. 33 E., and embracing nearly one-half of the land sought to be appropriated for reservoir purposes by the said company, as shown by tracing thereof herewith inclosed.

Agent Crawford also states that the Indians, to whom allotments have been made, took the land covered thereby for wood and water; that the 40-acre tract was selected, as above stated, because there was a prospect of getting some money out of it, as the land is worthless; that should the dam be built these Indians would have plenty of water but no wood; that the reason for appropriating so much land for reservoir purposes is that water must be stored in the winter for July, August, and September irrigation, during which months the creek is very small; that the said company must have some room for buildings and ground from which to procure stone and earth for the construction of the dam; that part of this extra land adjacent to the dam is located very advantageously for this purpose, giving gravity as a water-power; that a roadway must be made on either side of the dam, as the road is in the valley now and forks, one branch going up each fork of McKay Creek; that in consequence of this fact the dam will be used as a bridge and the roadway constructed on the bluffs above, and that by granting the lands asked for it will leave no worthless fractions.

He accordingly recommends the granting of the 410 acres of land above described for reservoir purposes and the right of way for an irrigation ditch through the reservation, as the same passing over some 10 miles of the best land on the reservation will be of very much more value to the Indians than the small amount desired for reservoir purposes.

A comparison of the inclosed bill with the act of February 10, 1891 (26 Stat., 745), granting to the Umatilla Irrigation Company a right of way through the Umatilla Indian reservation, in Oregon, which bill embodies, as alleged by Messrs. Livermore and Parker, the same conditions contained in the act referred to, shows that the following provision contained in section 1 of the said act is omitted in the said Senate bill No. 3048.

The rights herein granted are upon express condition that, during their continuance, the grantees or their assigns shall furnish all occupants of lands of said reservation, so situated as to be capable of irrigation from any ditches constructed by them hereunder, with water sufficient for purposes of agriculture and domestic uses, and irrigation under such rules and regulations and on such terms as the Secretary of the Interior shall prescribe; and shall not divert or diminish the volume of water in said streams or exhaust either of them so far as to impair vested rights, or to hinder or prevent the occupants of lands on said reservation the full enjoyment of said streams either for power, irrigation, or domestic purposes.

Section 3 of the said bill provides that J. P. Bushee and J. B. Eddy, appointed by the Secretary of the Interior commissioners to allot the lands of the said Umatilla Indian Reservation under the provisions of an act approved March 3, 1885 (23 Stat., 340), be appointed commissioners to fix the amount of compensation to be paid the Indians for the right of way, etc.

As to this provision I have to state that the parties named, together with Mr. E. J. Summerville, were appointed by the Secretary of the Interior as commissioners to appraise the lands of the Umatilla Reservation for the purpose of carrying into effect the provisions of the act of March 3, 1885, above mentioned; that Messrs. Bushee and Eddy were appointed by the President to be special agents to allot lands, and that they are now engaged in that duty on said reservation.

Section 3 of the act approved February 10, 1891, provided for the appointment of the three parties above named as commissioners to fix the amount of compensation to be paid the Indians for the right of way through the Umatilla Indian Reservation, and I think the bill under consideration should contain a provision for the appointment of three commissioners for that purpose instead of two, as it now provides.

Section 5 of the Umatilla irrigation act, February 10, 1891, is also omitted from said Senate bill, which section is as follows:

That the right of immediate entry upon the lands of said reservation for the purpose of making surveys of the line of the ditch or canal of said company is hereby granted, but no right of any kind in or to any part of the right of way or other grounds above mentioned shall vest in said company until plats thereof, made upon actual survey for the definite location of said ditch or canal, including the points for dams, reservoirs, and distributing ditches, with the amount of ground requisite for such purposes, shall be filed with the Secretary of the Interior, and until the compensation for said lands and for the services of said Commissioners has been fixed and paid.

The said Senate bill in section 5 thereof omits also the following which is contained in section 6 of the said Umatilla act:

The Secretary of the Interior shall hold the moneys paid to him by said company for right of way and other grounds, as above provided, until such allotment in severalty shall have been perfected, and thereupon he shall pay over to the Indians to whom shall be allotted the lands traversed by said ditch or canal the amount of compensation assessed by the Commissioners as properly appertaining to the tract of land to each Indian allotted. Payments for improved or inclosed lands held by Indians prior to such allotment and damaged by the construction of said ditch or canal shall be made to the several Indians affected thereby immediately upon the appraisalment of said Commissioners being made.

In view of the foregoing facts I have the honor to recommend—

(1) That section 1 of Senate bill No. 3048 be amended by adding thereto these words:

The rights herein granted are upon express condition that, during their continuance, the grantees or their assigns shall furnish all occupants of lands of said reservation, so situated as to be capable of irrigation from any ditches constructed by them hereunder, with water sufficient for purposes of agricultural and domestic uses and irrigation under such rules and regulations and on such terms as the Secretary of the Interior shall prescribe, and shall not divert or diminish the volume of water in said streams or exhaust either of them, so far as to impair vested rights, or to hinder or prevent the occupants of lands on said reservation the full enjoyment of said streams either for power, irrigation, or domestic purposes.

(2.) That section 3 of the said Senate bill be so amended as to add a third commissioner to fix the amount of compensation to be paid the Indians of the Umatilla Reservation for the reservoir and right of way and other grounds which may be appropriated by the Blue Mountain Irrigation and Improvement Company, and that the word "were" be substituted for the words "have been" in the second line of said section; that the word "appraise" be substituted for the word "allot" in the third line of said section, and that the words "and are now acting as such commissioners," contained in the ninth line of said section, be eliminated therefrom.

Mr. E. J. Summerville, one of the Commissioners appointed for the purpose of carrying into effect the Umatilla act of March 3, 1885, was also designated in the act of February 10, 1891, as a member of the commission to fix the amount of compensation to be paid by the Umatilla Irrigation company for its right of way through the said reservation. I would therefore suggest him as the third commissioner if the law is to contain the names of any commissioners.

(3.) That section 5 of the said Umatilla irrigation act, February 10, 1891, be inserted in said Senate bill as section 5 thereof, which is as follows:

That the right of immediate entry upon the lands of said reservation for the purpose of making surveys of the line of the ditch or canal of said company is hereby granted, but no right of any kind in or to any part of the right of way or other grounds above mentioned shall vest in said company until plats thereof, made upon actual survey for the definite location of said ditch or canal, including the points for dams, reservoirs, and distributing ditches, with the amount of ground requisite for such purposes, shall be filed with the Secretary of the Interior, and until the compensation for said lands and for the services of said commissioners has been fixed and paid.

(4) That the following, to be known as section 6, be added to said Senate bill in lieu of section 5 thereof:

That whereas under the provisions of the act of Congress above mentioned the lands of the said reservation are now being allotted to the Indians belonging thereto in severalty, the Secretary of the Interior shall hold the moneys paid to him by said company for right of way and other grounds as above provided, until such allotments in severalty shall have been perfected, and thereupon he shall pay over to the Indians to whom shall be allotted the lands traversed by said ditch or canal the amount of compensation assessed by the commissioners as properly appertaining to the tract of land to each Indian allotted; and that payment for land held by the Indians in common, if any, damaged by the construction of said ditch or canal shall be made to the confederated tribe in common occupying the reservation upon the appraisalment of said commissioners being made.

The provision, "and vouchers for such payments attested by the agent in charge of the reservation, shall be filed by said company with the Secretary of the Interior at the time of filing its plat of location of said ditch or canal," contained in the latter part of section 6 of the act of February 10, 1891, is inoperative for the reason that it is impossible

for the payments to be made by the said company at the time of filing a plat of definite location. No payment can be made until the appraisal is made by the commissioners appointed for that purpose, and the appraisal can not be made until the maps of definite location have been filed in this office and approved by the Department and the consent of the Indians obtained to the right of way in such manner as may be required by the Secretary of the Interior.

The last-quoted clause should therefore be omitted from the present bill.

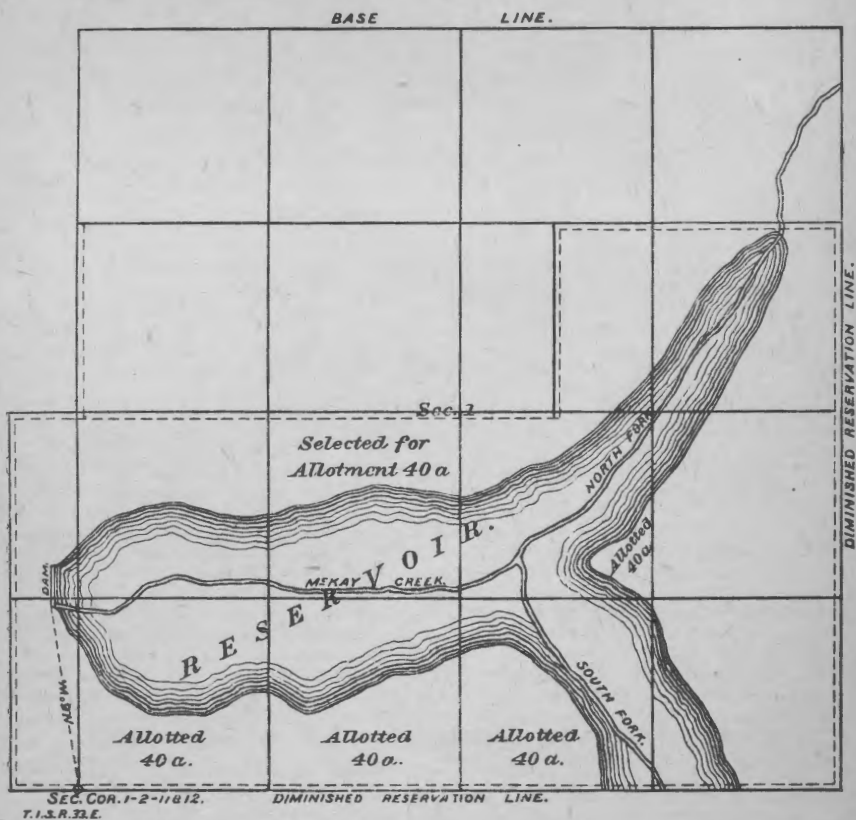
(5) That sections 6 and 7 of said Senate bill be numbered 7 and 8, respectively.

If the bill under consideration should be amended and changed in accordance with these recommendations, I can see no objection to favorable action upon the same by Congress, and would respectfully suggest that the Senate Committee on Indian Affairs be furnished with copy of this report herewith inclosed for that purpose. The papers in the case are herewith returned.

Very respectfully, your obedient servant,

\_\_\_\_\_  
Commissioner.

The SECRETARY OF THE INTERIOR.



This sketch is explanatory of the land asked for in the bill for the reservoir site.