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Calendar No., 464.

55TH CONGRESS, }
2d Session. }

SENATE.

{ REPORT
{ No. 420.

PAYMENT FOR LANDS TO INDIANS OF KLAMATH RESER- VATION, OREG.

JANUARY 10, 1898.—Ordered to be printed.

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

REPORT.

[To accompany S. 1996.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1996) providing for the payment to the Indians of the Klamath Reservation, in Oregon, for lands excluded from the treaty reservation of said Indians by erroneous survey, having had the same under consideration, report thereon as follows:

By a treaty between the United States and the Klamath and Modoc tribes and the Yahooskin band of Snake Indians, negotiated in 1864, amended by the Senate, and finally proclaimed February 17, 1870, said Indians ceded their right, title, and interest in and to a large area of territory in the States of Oregon and California, estimated to embrace about 20,000,000 acres, for a money consideration of \$115,000 and certain educational and industrial benefits, stipulated to continue, some for fifteen years and others for thirty years, all of which have heretofore ceased.

A tract within the ceded territory, bounded by lines run or indicated according to physical features of the country, all specified and described in the first article of the treaty, was reserved for the future use and occupancy of said Indians, who agreed and bound themselves to move and settle upon the reservation immediately after the ratification of the treaty, with which obligation they fully and promptly complied.

In 1871 the Commissioner of the General Land Office, under direction of the Secretary of the Interior, ordered a survey to be made of the said treaty reservation. While this survey was in progress the Indians manifested dissatisfaction therewith and opposed it, claiming that it did not conform to their understanding of the treaty. When the survey was completed, and while settlers began crowding in upon lands claimed by the Indians as belonging to the reservation, but which were excluded therefrom by the survey, the Indians realized that a great wrong was being done them. They complained to their agent, who quieted their fears by telling them that "the white people were only stopping for

awhile and would soon go away." They renewed their complaints, which appear to have received no consideration until the appointment, in 1877, of J. R. Rook as their agent. He investigated and reported to the Indian Office that their complaints were just and that large areas of land had been erroneously excluded from the reservation. He continued to urge the matter upon the Indian Office for adjustment, and his efforts were seconded by the officers of the Army serving in that section of the country. The Indian Office suggested to the Secretary of the Interior the probability of difficulty unless the matter was satisfactorily adjusted. The Department called upon the General Land Office for a report, which was made April 8, 1878, wherein the facts as to the survey are set out and the following statements made:

From an examination of the field notes of the survey in connection with the limits described in the treaty, it appears that the treaty lines on the east and south and a portion of the west sides of the reservation described as mountains, or ridges of mountains, were not followed by the surveyor, who, in running said lines, followed certain lines of the public surveys. * * *

From the foregoing it appears that the lines surveyed are not strictly in accordance with the boundaries mentioned in the treaty, but this office has not sufficient data to enable it to show how much the survey varies from the boundaries.

A resurvey was urged by the Commissioner of Indian Affairs, but want of sufficient appropriation for the purpose was stated by the Secretary of the Interior as making it impossible at the time. The Indians were encouraged to depend upon the good faith of the Government for the correction of any errors in the survey, and the matter was further investigated, resulting in showing that the wrong done to the Indians was far greater than had theretofore been reported or believed. Settlers had occupied much of the land in dispute. A resurvey was again recommended by the Commissioner of Indian Affairs in 1886, concerning which he states in his annual report for 1887 that—

Subsequently, upon information from the General Land Office that the survey of the eastern boundary would not be satisfactory, either to the Indians or settlers, until its location had been agreed upon by a commission, I directed the agent in charge of the reservation to make a full investigation of the matter and to take the evidence of all available witnesses. Upon receipt of this report, in view of the vague and indefinite description of the boundaries given in the treaty, and the fact that settlement had been made on lands east of the reservation, it was determined to reestablish the eastern boundary in accordance with the survey made in 1871, although the claim of the Indians seemed to be well substantiated. When the line is re-marked the military will be requested to protect the reservation from the encroachments of cattlemen, concerning which the Indians may have many complaints.

It is also my intention to present the claim of the Indians to Congress for an appropriation to compensate them for the lands lost by the location of the boundary line, if upon further consideration they appear to be clearly entitled to the same. (See Annual Report of Commissioner of Indian Affairs for 1887, p. LXXXVIII.)

There the matter was allowed to rest, receiving no further consideration until the Senate, by resolutions of March 31, 1894, and December 13, 1894, called upon the Secretary of the Interior to furnish the facts and papers on this subject, with "a careful estimate of the quantity of land lying between the boundaries of said reservation as surveyed under the direction of the Commissioner of the General Land Office and the treaty boundaries thereof as claimed by the tribes and marked upon the tracing or diagram furnished by the Commissioner of Indian Affairs and now on file in the General Land Office." The report of the Commissioner of the General Land Office gave the estimate of land as 909,990 acres; but if limited by a specified line on the north, the area was estimated to be 724,608 acres. The Commissioner of the General Land Office, after describing "The treaty boundary as understood by

the Indians and laid down on map No. 1," prepared by his office, stated that the area between the boundary thus defined and the surveyed boundary of the reservation was 682,240 acres. He also pointed out that the possible different location of certain physical features of the country might make the location of the treaty boundary lessen the excluded area of land to 159,520 acres.

The foregoing statements and facts will be found more fully set out in the reports and documents contained in the Senate Executive Documents Nos. 129, Fifty-third Congress, second session; 62, Fifty-third Congress, third session, and Senate Document No. 131, Fifty-fourth Congress, first session.

As the information thus presented was not such as to enable Congress to enact proper legislation for an adjustment of the matter, a clause was inserted in the Indian appropriation act approved June 10, 1896, providing for the appointment of a—

Commission to be composed of three persons, two of whom shall be practical surveyors, * * * to visit and thoroughly investigate and determine as to the correct location of the boundary lines of the Klamath Indian Reservation in the State of Oregon, the location of said boundary lines to be according to the terms of the treaties heretofore made with said Indians establishing said reservation; * * * ascertain and determine, as nearly as practicable, the number of acres, if any, of land, the character thereof, and also the value thereof, in a state of nature, that have been excluded from said reservation by the erroneous survey of its out-boundaries. * * *

The Commission appointed under this law has performed the duties required of it, and its findings have been submitted to the Congress by the Secretary of the Interior with his report of January 25, 1897, together with reports thereon by the Commissioner of the General Land Office and the Commissioner of Indian Affairs, which reports are as follows:

DEPARTMENT OF THE INTERIOR,
Washington, January 26, 1897.

SIR: I have the honor to transmit herewith copy of a report dated December 18, 1896, of the Klamath Boundary Commission, appointed under a clause in the Indian appropriation act of June 10, 1896 (29 Stat. L., 321).

The Commissioners find the area of lands which have been excluded from the reservation by the erroneous surveys of its outboundaries to be 617,490 acres, and determine the value of these excluded lands to be \$533,270.

The report in question has been carefully examined by the Commissioner of Indian Affairs, as shown by the accompanying communication dated 25th instant, who states that in his opinion a portion of the funds due the Indians should be made available for irrigation purposes for the benefit of the Indian allottees and the schools, and he recommends that the sum of \$350,000 be placed in the Treasury of the United States to the credit of these Indians to draw interest at the rate of 5 per cent per annum, which interest shall be paid to them annually per capita, and the remainder of the sum recommended by the Commission to be paid, after the payment of the legal fees of attorneys, be expended under the direction of the Secretary of the Interior in the drainage and irrigation of lands, and in the purchase of cattle, wagons, mowing machines, and agricultural implements, the erection of houses, and for such other purposes as he may deem for the benefit of the Indians.

The Commissioner submits an item for insertion in the Indian appropriation bill now pending, prepared in accordance with the above recommendations, and I have the honor to recommend that the matter receive early and favorable consideration by the Congress.

I also transmit herewith copy of a communication of 12th instant, from the Commissioner of the General Land Office, to whom the matter was referred.

Very respectfully,

D. R. FRANCIS, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 25, 1897.

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of the report of the Klamath Boundary Commission (Messrs. W. P. Coleman, R. P. Hammond, and I. D. Applegate), dated December 18, 1896.

This Commission was appointed under the following clause in the Indian appropriation act of June 10, 1896 (29 Stat. L., 321):

"That the President of the United States is hereby authorized to appoint a commission, to be composed of three persons, two of whom shall be practical surveyors, not more than two of whom shall be of the same political party, and not more than one of whom shall be a resident of any one State, whose duty it shall be to visit and thoroughly investigate and determine as to the correct location of the boundary lines of the Klamath Indian Reservation, in the State of Oregon, the location of said boundary lines to be according to the terms of the treaties heretofore made with said Indians establishing said reservation; and when the correct location of said treaty boundaries of said reservation shall have been so ascertained and determined, said commission shall ascertain and determine, as nearly as practicable, the number of acres, if any, of the land, the character thereof, and also the value thereof in a state of nature, that have been excluded from said treaty reservation by the erroneous survey of its outboundaries, as now existing and as shown and reported to have been made in reports of the Commissioner of Indian Affairs and of the Commissioner of the General Land Office, submitted to the Senate by the Secretary of the Interior, and as set out in Senate Executive Documents Numbered One hundred and twenty-nine, Fifty-third Congress, second session, and Numbered Sixty-two, Fifty-third Congress, third session.

"And said commission shall make report of the facts ascertained and of their conclusions and recommendations upon the matters hereby committed to them to the Secretary of the Interior, who is hereby directed to report the facts found and reported by said commission and their conclusions and recommendations in the matter, together with his recommendations thereon, to the next regular Congress for its action."

The contention regarding the location of the boundary lines of the Klamath Reservation and the erroneous survey thereof is so fully set out in the executive documents referred to in the above legislation that it is deemed unnecessary to further refer to the same.

The Commissioners report that after a careful review of the treaty, the notes taken by each Commissioner, and the testimony obtained, they determined the correct location of the boundary line of the reservation in accordance with the terms of the treaties with the Indians to be as follows:

"Beginning upon the eastern shore of the middle Klamath Lake, at the Point of Rocks, about 12 miles below the mouth of Williamsons River; thence following up said easterly shore to the mouth of Wood River; thence up Wood River to a point 1 mile north of the bridge at Fort Klamath; thence due east to the summit of the ridge which divides the upper and middle Klamath lakes; thence along said ridge northwesterly to Mount Scott (Tum sum ne); thence continuing on the same ridge to Cowhorn Mountain or Mount Theilson (His chok wal as); thence due east, passing north of the upper lake to Mount Francis (Chok chok lisk se), to the summit of the mountains on the east side of the lake; thence following said mountain southeast to its junction with Winter Ridge; thence south along said ridge to Gerhart Mount (Wal lok sik klas); thence southwest along a spur of Winter Ridge to the point where Sprague River is intersected by the Ish tish e wax Creek; thence in a southwesterly direction to We leej; thence northwest to the 118-mile post of the present boundary line and along the summit of the mountains, the extremity of which forms the Point of Rocks, the place of beginning."

They find the area of the lands which have been excluded from the reservation by the erroneous surveys of its outboundaries to be 617,490 acres, and that its character varies greatly.

"There are some limited tracts of good meadow and grazing lands, but the larger portion of the area is of inferior quality. With the exception of the meadows of the Sycan and Sprague River sections, which were the principal bone of contention, the greater part of the excluded land consists of rocky and sterile mountain ranges, producing very ordinary timber and little grass."

They determine the value of these excluded lands to be \$533,270.

Regarding the Indians and the disposition to be made of the value of the excluded lands they say:

"In our intercourse with the Indians on this reservation we observed that a very commendable spirit of progress has been awakened in them; they impressed us as

being of a higher type than the ordinary Indian; ambitious, industrious, and thrifty, they have already made great advancement in civilization.

"They have, with some exceptions, adopted the language, dress, and habits of the whites, and the children are few who are not inmates of the excellent schools provided by the Government; an eager desire for further and continuous progress seems to animate young and old alike. The admirable provisions of the Government to enable them to acquire land in severalty and to build houses and barns are highly beneficial; one step further would assure their self-support and independence of Government aid.

"This step is some assistance to enable them to utilize profitably the lands now being allotted to them.

"Grazing is the best and largely predominant resource of the reservation; therefore a few head of cattle as a start for each family would seem to be a prime necessity.

"We accordingly respectfully recommend that one-fourth of the amount determined to be due them be paid to the Indians per capita for the purchase of cattle, wagons, and mowing machines, and that the remaining portion be held in trust for them by the United States for such period as Congress may establish prohibitory of the disposal of the land now being allotted these Indians, the interest which the Congress of the United States may fix on the portion held in trust to be paid annually to the Indians per capita in like manner."

The Commissioners commend the patience of the Indians and their confidence in the justice of the Government during the thirty-two years in which they have considered themselves wronged by white settlements on lands they considered secured to them by the solemn pledge of the Government.

The Commission appears to have carefully investigated the true location of the boundaries laid down in the treaty, and I have no doubt that its conclusions as to the quantity and value of the land excluded by the erroneous surveys are correct.

As to their recommendations, I would suggest certain modifications.

A plan has been presented to this office for the drainage of a portion of Klamath Marsh which, it is claimed, would result in the reclamation of some 90,000 acres of valuable land.

In portions of the reservation irrigation is needed for the benefit of the allottees and the schools. I am of the opinion that a portion of the funds due the Indians should be made available for these purposes, and also that the money therefor and for the articles mentioned by the Commission should not be paid to them per capita, but should be expended for these purposes under the direction of the Secretary of the Interior.

I would therefore recommend that the sum of \$350,000 be placed in the Treasury of the United States to the credit of these Indians, to draw interest at the rate of 5 per cent per annum, which interest shall be paid to them annually per capita, and that the remainder of the sum recommended by the Commission to be paid, after the payment of the legal fees of attorneys, be expended under the direction of the Secretary of the Interior in the drainage and irrigation of lands, and in the purchase of cattle, wagons, mowing machines, and agricultural implements, the erection of houses, and for such other purposes as he may deem for the benefit and welfare of the Indians.

I inclose two copies of the report of the Commission, with the evidence taken by it. I also transmit the original map, as the making of copies would involve a delay of several weeks. It should be returned to this office.

I also inclose draft of legislation prepared in accordance with the above suggestions.

Very respectfully, your obedient servant,

D. M. BROWNING, *Commissioner*.

The facts in the long-standing complaint of the Indians of the Klamath Reservation have thus, at last, been brought before the Congress for its consideration and the enactment of appropriate legislation for its adjustment. The justice of the contention of the Indians has been made clear. They are shown to have borne the great wrong done them with patience and with confidence that the Government would sooner or later correct the mistake. The delay of adjustment has been long—thirty-two years. It has served to retard the progress of the Indians in the ways of civilization. They are not tribes who are receiving annuities from the Government, nor are they supported by the Government, beyond such little aid as is afforded by the small appropriation annually made of about \$5,000 for their support. The allotment of land to them individually is now being made on the reservation.

The money to be paid by the Government in the adjustment of this claim will aid and encourage them to engage more fully in those industrial pursuits whereby they have heretofore almost wholly provided for their own support.

Your committee therefore report back the bill (S. 1996) without amendment and recommend its passage.

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