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Letter from the Secretary of the Treasury and the Secretary of the Interior, transmitting an agreement containing a compromise, adjustment, and settlement between the United States and State of Arkansas under power and authority conferred by the act of Congress approved August 14, 1894, with draft of bill and a report relating to the matters involved.

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IN THE SENATE OF THE UNITED STATES.

L E T T E R

FROM

THE SECRETARY OF THE TREASURY AND THE
SECRETARY OF THE INTERIOR,

TRANSMITTING

An agreement containing a compromise, adjustment, and settlement between the United States and State of Arkansas under power and authority conferred by the act of Congress approved August 14, 1894, with draft of bill and a report relating to the matters involved.

FEBRUARY 23, 1895.—Referred to the Committee on Public Lands and ordered to be printed. To accompany S. 2802.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 22, 1895.

SIR: We herewith transmit an agreement in writing containing a compromise, adjustment, and settlement, and the basis therefor, between the United States and the State of Arkansas made by us with the governor of Arkansas under the power and authority conferred by the act of Congress approved August 14, 1894 (28 Stat., 229).

The papers in the case have been sent to the Speaker of the House of Representatives.

We also inclose the draft of a proposed bill, approving this compromise, and recommend its passage.

J. G. CARLISLE,
Secretary of the Treasury.

HOKE SMITH,
Secretary of the Interior.

The PRESIDENT OF THE SENATE.

AGREEMENT.

CITY OF WASHINGTON,
District of Columbia, ss.

This indenture, made this 23d day of February, 1895, between John G. Carlisle, Secretary of the Treasury, and Hoke Smith, Secretary of the Interior, under the power and authority conferred by an act of Congress approved August 4, 1894, entitled "An act to authorize a compromise and settlement with the State of Arkansas," parties of the first part, and James P. Clark, governor of the State of Arkansas, act-

ing under the power conferred by the general assembly of the State of Arkansas, approved April 8, 1889, party of the second part, witnesseth:

That for and in consideration of the agreements and acts of the party of the second part, hereinafter more fully set forth, the parties of the first part by these presents hereby make the following agreement, subject to the approval by Congress:

1. To surrender to the party of the second part for cancellation 500 six per cent coupon bonds of \$1,000 each, numbered from 1 to 500 inclusive, dated January 1, 1838, and matured October 26, 1861, issued by the State of Arkansas to secure a loan from the Smithsonian fund, and now held and owned by the United States.

2. To surrender the coupons attached thereto, representing the unpaid accumulated interest on said bonds, amounting to the sum of \$436,303.61.

3. To surrender similar bonds of the State under same date (38 in number) of \$1,000 each, numbered 282 to 294, inclusive, 359 to 373, inclusive, and 401 to 410, inclusive, issued to secure a similar loan from the same fund, and matured January 1, 1868, and now owned by the United States.

4. To surrender the coupons attached thereto, representing the unpaid interest thereon to date of maturity, \$59,280.

5. To surrender three bonds of \$1,000 each, being State of Arkansas 5 per cent registered bonds, acquired for the Chickasaw orphan fund, with interest thereon from the date of default to date of maturity, January 1, 1887, \$5,700.

6. To surrender 92 of the 252 new six per cent coupon bonds, \$1,000 each (Nos. 2099 to 2190, inclusive), issued by the State of Arkansas January 1, 1874, under the adjustment of the Chickasaw national fund, and maturing January 1, 1900, and now owned by the United States; also all coupons attached to said bonds, representing the accrued interest to January 1, 1895 (21 years), and amounting to \$115,820.

7. To surrender for cancellation all the unpaid coupons to January 1, 1895, on the remainder of the 252 new six per cent (\$1,000 each) Arkansas bonds, being 160 in number, and numbered from 2191 to 2350, inclusive, issued January 1, 1874, under the adjustment of the Chickasaw national fund, amounting in unpaid interest to \$201,600.

In consideration of the surrender by the parties of the first part to the party of the second part the bonds, coupons, and accumulated amounts of interest herein above set forth, the party of the second part, by virtue of the powers aforesaid conferred upon him, hereby makes the following agreement, conditioned on the approval thereof by Congress, namely:

1. To cause to be paid into the Treasury of the United States the sum of \$572 within thirty days after the approval by Congress of this settlement.

2. To cause to be paid, at or before their maturity (January 1, 1900), the remaining Arkansas bonds, being 160 in number, of \$1,000 each, and all coupons attached thereto, as they severally come due, all coupons on said bonds to January 1, 1895, being surrendered for cancellation, under the terms of this agreement, as above set forth. If the State elects to pay such bonds before their maturity, the payment of all interest accrued thereon to that date shall be accepted in full satisfaction of all the coupons attached thereto, and the same may be surrendered with the bonds.

3. As a further consideration for the surrender of the aforesaid bonds, coupons, etc., the party of the second part hereby relinquishes and quitclaims to the United States all claims or demands, adjusted or

unadjusted, growing out of the act of September 28, 1850, known as the swamp-land act; also, all land or cash indemnity growing out of the acts of March 2, 1855, and March 3, 1857; also, all claims for indemnity school lands; the residue of the salt-spring lands; the residue of the lands under the court-house and jail grant (act June 15, 1832); the residue of lands under act of September 4, 1841, for internal improvements; the residue of the grant under the acts of March 2, 1831, and June 3, 1836, for public buildings, and all other claims or demands of whatever nature or character.

The parties hereto agree that the lands now patented, approved, or confirmed to the State of Arkansas under the acts of September 28, 1850, March 2, 1855, and March 3, 1857, shall constitute the full measure due the State under the said swamp-land acts, except, however, that the lands described in the following lists shall be patented to the State, namely: List No. 1, containing 12,640 acres, denominated "Approved, but not listed;" and list No. 2, containing 4,960 acres, denominated "Confirmed, but not listed," which lists were transmitted to the Secretary of the Interior on November 17, 1894, by letter "M" of the Commissioner of the General Land Office.

It is also agreed that any person who has heretofore filed a declaration of preemption, resides on, cultivates, or has purchased, under the laws of the State of Arkansas, any selected and unconfirmed swamp land hereby relinquished to the United States, his heirs or assigns shall have the preference right for one year from this date to purchase such land from the United States at the minimum price for public lands, under such rules and regulations as may be prescribed by the Secretary of the Interior.

Nothing in this settlement and agreement is intended to or shall in any connection be held to prejudice the right of the State of Arkansas to assert and establish her title to any lands which were granted or confirmed to her by the said acts approved September 28, 1850, March 2, 1855, and March 3, 1857, in so far as the same is disputed by those claiming under any subsequent grant made or claimed to have been made, the scope and purpose of this settlement being hereby declared to be the adjustment of all disputes between the United States and the State of Arkansas, and to leave undisturbed incidental controversies between said State and other parties in which the United States is not beneficially interested.

But it is agreed by the party of the second part that any person who has heretofore entered any such patented, approved, or confirmed swamp lands, under the homestead or other law of the United States, shall have the preference right for one year, from this date, to purchase such land from the State, at the minimum price fixed by law for such land, upon exhibiting to the commissioner of State lands the patent, receiver's receipt, or certificate issued by the United States for such land.

In testimony whereof we have hereunto subscribed our respective names the day and year first above written.

J. G. CARLISLE,
Secretary of the Treasury.

HOKE SMITH,
Secretary of the Interior.

Governor of Arkansas.

NOTE.—The governor did not sign this duplicate agreement because it had not been copied when he was here, but he signed an exact duplicate sent to the Speaker of the House of Representatives, with the other papers in the case.

REPORT OF BURTON T. DOYLE, REPRESENTING THE SECRETARY OF THE TREASURY, AND GEORGE C. ROSS, REPRESENTING THE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, February 18, 1895.

GENTLEMEN: In pursuance of your respective designation or appointment of us as your representatives or agents under the act of Congress entitled "An act to authorize a compromise and settlement with the State of Arkansas," approved August 4, 1894, we have the honor herewith to submit our report.

Hon. J. G. CARLISLE,
Secretary of the Treasury, and
Hon. HOKE SMITH,
Secretary of the Interior.

We find that the United States now own, in their own right, bonds of the State of Arkansas in the sum of \$793,000, and the interest accrued thereon from the date of default in payment thereof by the State to the maturity of said bonds amounting in the aggregate, bonds and interest, to \$1,611,803.61. (Interest on these bonds is not computed from and after the date of their maturity under the authority of the Attorney-General of the United States. See opinion filed herewith, dated February 14, 1895.) And that the State of Arkansas has various claims against the United States under the public-land laws of the United States for lands and indemnity claimed by her, and never allowed by the United States, which she offers as offset or counterclaim. The claims and counterclaims between the two governments are succinctly set forth in the form of a debit and credit account accompanying this report, marked "Account," in which the claims of the Government are given on the debit side of the account and the allowances conceded on the counterclaims made by the State are shown on the credit side of the account; and we desire to call your attention to this account, and make our report in the form of a narrative explanation of the items in it.

Soon after the admission of the State of Arkansas into the Union the legislature thereof authorized the issue of \$2,000,000 in 6 per cent interest-bearing coupon bonds of that State to run thirty years; and the United States, as the trustee of the Smithsonian fund, invested \$538,000 of that fund in said bonds, getting 538 of said bonds at \$1,000 each. The State of Arkansas defaulted in the payment of the interest on these bonds January 1, 1842; but as the State was entitled under the act of June 23, 1836 (5 Stat. U. S., 58) to 5 per cent of the net proceeds of the sale by Congress of lands lying within its borders, the United States withheld these 5 per cent net earnings under the joint resolution of March 3, 1845 (5 Stat. U. S., 801, carried into the Revised Statutes of the United States as section 3481), to be applied to the liquidation of the interest on these bonds which the State had defaulted in paying.

On December 31, 1860, there had been so withheld by the United States \$148,279.72, which the Secretary of the Treasury applied to the redemption of overdue interest coupons on 134 of the 538 bonds of the State held for the Smithsonian fund, which coupons were surrendered as follows: Thirty-seven coupons each from bonds numbered 1 to 133, inclusive, each coupon representing \$30 (4,921 coupons, amounting to \$147,630), which paid the interest on these 133 bonds to January 1,

1860; 21 coupons from bond No. 134 (\$630), which paid the interest on that bond to January 1, 1852, and left \$19.72 over, which remainder was credited on the next coupon left attached to said bond No. 134.

Since that application no moneys so withheld by the United States have been actually applied to the payment of the interest accrued on any of these bonds, leaving accrued interest due on 366 of them from the date of default in payment by the State, January 1, 1842, to the date of their maturity, October 26, 1861; on 38 of them from date of default, January 1, 1842, to January 1, 1868; on 133 of them from the time to which that application paid it, January 1, 1860, to the date of maturity, October 26, 1861; and on 1 of them from the date to which that application paid the interest, January 1, 1852, to the date of maturity, October 26, 1861, less \$19.72 credited on one of the retained coupons, making, in the aggregate, accrued and unpaid interest on these 538 bonds, \$495,583.61; but there has been withheld and not yet applied \$55,116.20, which is entered on the credit side of the account in favor of the State in this adjustment.

The United States, as the trustee of the Chickasaw fund, also invested \$90,000 of that fund in the bonds of the State of this same issue; and the State defaulted in the payment of interest and principal; and the Secretary of the Interior, under the authority of the act of December 13, 1872 (17 Stat. U. S., 397), made an adjustment with the State of Arkansas in 1874, in pursuance of which the State of Arkansas funded these bonds and interest accrued thereon and issued, under date of January 1, 1874, 252 new 6 per cent coupon bonds, maturing January 1, 1900, on which no interest has been paid, leaving unpaid interest accrued and over due on these 252 new bonds from January 1, 1874, to January 1, 1895, amounting to \$317,520.

The United States also hold three 5 per cent registered bonds of that State purchased out of the Chickasaw orphan fund, with interest accrued thereon from the date of default to the date of maturity, January 1, 1849, to January 1, 1887, amounting to \$5,700, making in all, bonds and interest, the aggregate above named, \$1,611,803.61, which completes the debit side of the account.

CREDIT SIDE OF ACCOUNT.

Among other credits insisted on by the State are: 1. Five per cent of 16,676,465.85 acres, being, as alleged, "all the public lands then (1836) undisposed of within her borders," on the ground that the United States promised, on the admission of the State into the Union, "to turn over to the State 5 per cent of the proceeds of all public lands then undisposed of within her borders.

We do not think this contention of the State is tenable. The third section of the act for the admission of the State into the Union (5 Stat., 58) provides for the payment to the State of only "5 per cent of the net proceeds of the sale of lands lying within the State, and which shall be sold by Congress."

The claim, therefore, that the State was promised 5 per cent of the proceeds of "all public lands then undisposed of" is erroneous, for the admission of the State into the Union was upon her express agreement that she "shall never interfere with the primary disposal of the soil within the same by the United States," and we do not think that the agreement to pay to the State 5 per cent of the net proceeds arising from the sale of lands carried with it any obligation, either express or implied, that the United States should not thereafter extend to the citizens of that State the privilege of acquiring free homes upon the public domain within its borders under the beneficent provisions of

the homestead act, or the privileges accorded in the location by warrants and scrip.

Again, to admit the justice of this contention would establish a precedent by which other States, similarly organized, could rightfully claim the same considerations.

2. The State claims cash indemnity "for all lands sold by the United States which rightfully belonged to the State under the swamp-land act."

Independently of the fact that there is no law for the allowance of the claim, so stated, we do not think the precedent made by its allowance a good one, even on a compromise. To carry out the intention of Congress for a "just and equitable" settlement we have submitted for your approval the following credits, upon the basis of certain land claims adjusted and unadjusted.

UNADJUSTED CLAIMS.

The unadjusted claims are such as have been made by the State as inuring thereto under the swamp-land act and other acts supplemental thereto. In most cases lists of selections have been filed under the claim that the field notes of the public surveys show that the lands included in these lists were swamp and overflowed within the meaning of the act of September 28, 1850, the State having elected to accept the showing made by the field notes. The United States, not having yet verified the claims of the State as to the showing made by these field notes, is not in a position at this time to dispute their justness.

Lists for land indemnity and cash indemnity under the acts of March 2, 1855, and March 3, 1857, being supplementary to the act of September 28, 1850, have also been filed, the justness of which, for like reasons, we are not prepared to dispute.

An allowance of claims for land indemnity under said acts, as also for school-land indemnity (hereinafter referred to), gives the State the right ipso facto to select lands of equal acreage from the public domain within the State. In such case the State would have the right to select from the residue of the public lands the most valuable nonmineral lands. From the list aforesaid and other claims for the residue of lands under special acts (below mentioned), the State claims that she has the right to select 132,434.27 acres of land to make up for losses sustained by the State.

The relinquishment of the right to select these lands, leaving the title thereto undisputed in the United States, carries with it an obligation on the part of the United States to give credit to the State for their present actual value. This we have endeavored to do by taking the sworn statements of more than sixty-five reputable people in various parts of the State, all well informed as to the value of Government lands within their respective counties. Many of the affiants were members of the present general assembly. From these statements it is found that the average valuation of the Government lands within the State is \$1.25 per acre, and that the lands subject to selection are worth \$5 per acre. Many of the affiants place the last-named lands at \$10 per acre. The affidavits taken by us accompany this report.

We accordingly recommend the following credits, upon these facts:

1. The sum of \$156,250, being the value of 125,000 acres of land at \$1.25 per acre (Exhibit No. 3) listed and filed by the State as inuring thereto under the act of September 28, 1850, and shown by the Government field notes of the public surveys to be swamp and overflowed within the meaning of said act.

2. The sum of \$452,000, being the value of 90,400 acres of land (Exhibit No. 4) selected and filed as a basis of land indemnity under acts of March 2, 1855, and March 3, 1857, the claim of which is to be relinquished to the United States at \$5 an acre.

4. The sum of \$79,900, being the value of 63,920 acres of land (Exhibit No. 7) claimed to be swamp by the evidences of the field notes, and disposed of by the United States subsequent to the passage of the indemnity acts (*supra*) reclaimed, at \$1.25 per acre.

5. The sum of \$150,000, the same being for 30,000 acres of indemnity school land, at \$5 per acre, to make up for deficiencies to the granted section (16) by reason of fractional townships and natural causes, that is, the existence of rivers, lakes, etc., within the granted section. The basis of this claim is an affidavit (Exhibit No. 9) filed by Thomas G. Riley, agent of the State, showing the reason for the failure to file proper lists. A careful investigation of this claim leads us to believe that it is just. Besides, the State has had only 2,345.37 acres of land of this character heretofore patented. (See also Exhibit No. 8.)

3. The sum of \$148,450, the same being for 118,760 acres of land (Exhibit No. 4), listed and filed upon the showing made in the field notes of the public surveys that the land therein described was swamp and overflowed, and therefore passed to the State by the act of September 28, 1850, and thereafter sold by the United States prior to March 3, 1857, thus using the same as a basis for cash indemnity under the act of March 3, 1857, at \$1.25 per acre.

13. The sum of \$348,544.06, the same being for 278,835.248 acres of swamp lands in place and as a basis of land and cash indemnity at \$1.25 per acre. This sum is made up by the allowance of about one-fourth of the amount claimed by the State through its agent, Thomas G. Riley, who has listed 506,260 acres of lands, the same not yet being filed in the swamp division. Mr. Riley states in his affidavit (see Exhibit No. 10) that he has not yet finished the examination of the field notes of the State and that it is his opinion, from a careful estimate of the amount and character of the lands in the State, the field-notes of which he has not yet examined, that there remained, over and above said lists of 506,260 acres, other swamp lands never yet listed or applied for to the amount of 400,000 acres, including about 50,000 acres of what are known as "sunk lands" heavily timbered, and not yet surveyed. This claim of 906,260 acres, not having been formally asked for by filing the lists in the proper division, we are not prepared to admit, as a whole; but on a careful examination into the merits of the same for the purpose of an equitable adjustment of the whole swamp-land claims of the State, we recommend, as above shown, the allowance of the claim to the extent above mentioned.

LAND CLAIMS ADJUSTED AND ADMITTED.

6. The sum of \$8,964.25, the same being for 1,792.85 acres of indemnity school land (Exhibit No. 8) at \$5 per acre, a list of which has been filed and officially reported as "apparently valid."

7. The sum of \$800, the same being for 160 acres of land at \$5 per acre (Exhibit 8, Table 3), being the residue of the grant under the act of June 15, 1832, entitled "Court-house and jail grant."

8. The sum of \$554.85, the same being for 110.97 acres of land at \$5 per acre (Exhibit 8, Table 3), being the residue of the lands granted by the act of September 4, 1841, for internal improvements.

9. The sum of \$31,116.55, being for 6,223.31 acres of land at \$5 per

acre (Exhibit 8, Table 3), being the residue of the seminary lands due the State under section 5, act of June 23, 1836.

10. The sum of \$80.05, being for 16.01 acres of land at \$5 per acre (Exhibit 8, Table 3), the same being the residue of lands due the State under the act of March, 2, 1831, for the erection of public buildings.

11. The sum of \$255.65, the same being for 51.13 acres of land at \$5 per acre (Exhibit 8, Table 3), being the residue of land granted under section 4, act of June 30, 1836, for the completion of public buildings.

12. The sum of \$19,200, the same being for 3,840 acres of Salt Spring lands at \$5 per acre (Exhibit 8, Table 3), being six sections not yet certified to the State under section 2 of the act of June 23, 1836.

According to the report of the Commissioner of the General Land Office for the year ending June 30, 1894, there have been patented to the State of Arkansas 7,673,565.16 acres of swamp lands.

Arkansas is one of the States which elected to take its swamp lands upon the evidences contained in the field notes of the public survey. A very large part of the State was surveyed prior to the date of the swamp land grant (September 28, 1850), and without reference thereto; it results therefrom that the surveys do not always accurately indicate the character of the lands, as do the surveys made subsequent to the date of its passage.

Many of the States have received large sums of cash and land indemnity under the acts of March 2, 1855, and March 3, 1857; these sums were paid under the terms of said acts on satisfactory proof being made by the State that the Government had sold lands which passed to the States under the swamp land act. Illinois and Iowa have each received over \$500,000 of such indemnity; other States received smaller sums; but Arkansas has never received any amount either of cash or land indemnity under these acts.

This may be in part accounted for on the ground that the sales and locations of swamp lands in Arkansas prior to March 3, 1857, were less than in other States which received generous amounts of cash and land indemnity. Again, the amount of swamp lands certified to the State, while vastly less than the amount asked for, is still greatly in excess of Illinois, Iowa, and other States receiving large indemnity.

Making these credits against the debit side of the account leaves \$160,572 balance due from the State, which we recommend that the State meet by protecting 160 of her 252 new bonds—\$1,000 each, and paying \$572 within thirty days after the approval of this compromise; and we have prepared and herewith submit an agreement carrying into effect the provisions of this compromise, when duly signed by you and the governor of Arkansas and approved by Congress.

We have faithfully endeavored to arrive at a just and equitable settlement of the long-standing differences between the United States and the State of Arkansas. The time at our disposal was necessarily limited, but we believe the foregoing explanations will serve to make clear the basis of the proposed settlement.

Respectfully submitted.

BURTON T. DOYLE,
Representing the Secretary of the Treasury.

GEORGE C. ROSS,
Representing the Secretary of the Interior.

Approved:

J. G. CARLISLE, *Secretary of the Treasury.*

HOKE SMITH, *Secretary of the Interior.*