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Altamonte Water Company.

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ALTAMONTE WATER COMPANY.

AUGUST 13, 1894.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 7956.]

The Committee on Indian Affairs, to which was referred H. R. 6022, has had the same under consideration, and hereby reports the same back by substitute, with recommendation that it do pass.

The purpose of the bill is to permit the Altamonte Water Company, a corporation organized under the laws of the State of Minnesota for the purpose of erecting a certain dam, or dams, across the St. Louis and Cloquet rivers in the State of Minnesota, to furnish water and water power to the city of Duluth and other places, and to increase the navigability of said streams, and for that purpose to overflow, condemn, and pay for all lands overflowed by reason thereof, on the Fond du Lac Reservation in the State of Minnesota.

Your committee has had the matter under consideration at several meetings and has given all persons interested a full and fair hearing. The sole question to be determined by Congress is the interests of the Indians that may be affected by the overflow from that dam. Other questions, more or less remote and contingent, were discussed at length, not because they were material, but in order that the committee might have all the facts before it.

It is proposed to erect a dam more than 700 feet in thickness at the base, and tapering at both ends to 100 feet wide at the top, at a height of about 100 feet. The point selected is about 12 miles directly west of the city of Duluth. Between the city of Duluth and the point selected for the location of this dam, there is a fall in the river of about 600 feet.

The project involved in the erection of this dam is to supply the city of Duluth with water for domestic and manufacturing purposes. It is estimated that by means of this dam the company can furnish the city of Duluth and other places over 600,000 horse power. If successfully carried out, it will make Duluth, West Superior, and other tributary points the greatest manufacturing centers in the West. The passage of the bill is strongly urged by the business men and the business interests of the city of Duluth. As a whole it involves the largest project ever undertaken in the West.

The dam will flow the water back about 60 miles, but will cover a small area of country, by reason of the high and generally steep banks on both sides. It will make a reservoir varying in width from 1 to 3 miles. The Fond Du Lac Indian Reservation is bounded on the easterly and westerly sides by the river, and will consequently be affected

by the overflow. The land on the reservation that will be affected is of a bluff nature, and the merchantable timber has long since been cut off. The land is of little or no value for agricultural purposes. It is estimated from the preliminary survey that there will be from 5,000 to 6,000 acres of the Indian reservation affected.

The bill proposes that the Secretary of the Interior shall cause all such lands to be estimated, and that the said water company shall pay the price so fixed upon them, and the money be paid into the Treasury of the United States for the use and benefit of the Indians. The bill has been submitted to the Interior Department, and by the Department was referred to the agent in charge of those Indians. He reports that he spent nearly a week on the reservation, and submitted to the Indians the proposition of selling so much of their land as would be affected by the overflow, and that the tribe consented thereto. Lieut. W. A. Mercer, the agent in charge, reports that he attended a full meeting of the tribe; that they discussed the question among themselves, and as a result of their discussion several changes were made in the bill. As to the manner in which the council was called and the proceedings taken to obtain the consent of the Indians the letter of Lieut. Mercer is very explicit, and so much of it as affects the rights of the Indians is as follows:

U. S. INDIAN SERVICE, LA POINTE AGENCY,
Ashland, Wis., April 16, 1894.

SIR: In compliance with instructions contained in your communication of March 31 (Land, 12209, 1894), I have the honor to report that I have had the matter under investigation since the 5th instant. I have conferred with the president and general manager of the Duluth and Winnipeg Railroad, the general manager of the Duluth, Missabi and Northern Railroad, and the representative of the Altamonte Water Company, Mr. Jenison, and together we visited the reservation. I personally examined that portion of the reservation adjacent to the St. Louis River for a distance of 27 miles to a point west of the junction of the Cloquet and St. Louis rivers and reliably informed myself of the topographical nature of the ground west of Stony Brook, and, so far as it was practicable, posted myself as to the nature of the ground in the interior that would probably be flooded. * * *

Under six days' notice I called a council of the Indians, which was, under existing circumstances, well attended, and included the intelligent and most progressive members of the band.

On the afternoon of the 11th instant I called together the chiefs, headmen, and several of the more intelligent Indians and explained the whole subject to them and sent them among the Indians to explain to the others. On the morning of the 12th, in open council, I again, clearly and fairly, by the aid of a large map of the reservation, went over all the ground, answered all questions as far as was possible, and after four hours' discussion among themselves they announced their wishes as I have expressed them briefly below. Any other interests than those of the Indians were not considered.

I inclose herewith an outline map of the reservation, with explanatory marginal notes.

DESCRIPTION OF THE LAND.

The purple line on the inclosed map approximately shows the flood line on the land along the river which, as thus shown, will be flooded. The land is covered with a growth of scrub cedar, balsam, poplar, spruce, and some tamarack. All white pine and other merchantable timber has been cut and removed. That remaining is of no value, except the tamarack, which will make railroad ties. Some of the other timber could be utilized for telegraph poles, but cord wood, from the class of timber referred to, is a drug on the market; there is no sale for it in the vicinity of the reservation. The land is worthless for agricultural purposes, and can not be classed as timber land, and would have no monetary value as such. The Indians would never select it for allotment, and so it appears that it would finally come under the head of that land which, under the terms of the law of January 14, 1889, would be finally disposed of to white settlers. I believe the Indians would expect to receive a far better price than the one contemplated under the law referred to. If allowed to cut the tamarack timber and make ties, they could, I am sure, realize several thousand dollars. This was explained to them, and Mr. Jenison, the Altamonte Water Com-

pany's representative, promised them that "the company would willingly pay a good price for the land and then give them all the timber on it; that in fact they would be glad to get rid of the timber and would like to have them cut it off."

Now, while the flood line along the high ground next the river was easily determined, I do not know how far the water would go back into the interior through the depressions, such as "draws," or creek valleys. I believe, however, it would not back very far except up Stony Creek, and along that valley, where it would probably back up some miles, but will be confined pretty well to the creek valley. Undoubtedly some of the low meadow lands from which the Indians obtain hay would be flooded, and for such lands they would expect to be well paid. The Indian burying ground I found would be flooded by from 5 to 10 feet.

The water company's representative was not prepared to make definite arrangements with the railroad people, so I could obtain no official designation of a new right of way. The inclosed map shows the probable new line, and was thus shown and explained to the Indians.

No lands containing pine or merchantable timber will be flooded. But very few allotments will be affected either by flood or new right of way, unless the water runs back into the reservation further than now appears from the examination I was able to make. It was difficult to get about, as there was snow on the ground to the depth of 15 inches.

The water company promised the Indians work on the dam at fair wages.

DECISION OF THE INDIANS.

(1) No objection to right of way.

(2) New burying ground must be prepared and fenced, and remains of Indians disinterred and reburied in new ground at the expense of the water company, and in accordance with the wishes and under the supervision of a committee of two Indians, to be appointed in open council.

(3) The fulfillment of the company's promise to allow the Indians to cut poles, ties, and cord wood from any of the lands purchased from them by the company.

(4) That they have a voice, through their agent, in determining the price to be paid for all tribal lands, and the patentee the same for his land, or a new allotment given him.

(5) Subject to the above conditions they are willing to have a bill passed and a dam erected.

In conclusion I have but to say that I have not allowed the interests of the Altamonte Water Company, or that of its rival—the Minnesota Canal Company—or the railroad interests to in any way affect the interests of the Indians, or to bias me in presenting the matter to them clearly and fairly.

I believe the sale of the lands along the river within the purple lines, corrected by a careful survey, would be of advantage to the Indians, and certainly will never be of any other use to them. While they can spare such other land as may be flooded, there may be portions of it, such as hay meadows, with which they should not be compelled to part, except at a good price. Owing to the existence of the bill of January 14, 1889, the Fond du Lac Indians are in a position to look upon the whole project with a more favorable eye than would probably be the case were not the sale of these surplus lands already determined upon.

I have given the matter much thought in all its bearings, and believe that the best interests of the Indians are set forth in their own decision. I withheld my own opinion until after they had decided for themselves.

Very respectfully,

W. A. MERCER,
Lieutenant, U. S. Army, U. S. Indian Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

The present right of way of the Duluth and Winnipeg Railroad Company is along the river bank through the reservation. The bill provides that said railroad company may change its roadbed so as to permit the overflow of the present location; it gives said company the right of way through the reservation upon other ground, and provides for the payment of all damages to the railroad company as well as to the Indians. All damages for right of way and the purchase of the lands are to be paid in advance.

The Secretary of War has already authorized the erection of this dam, according to law, and this bill neither adds to nor detracts from the

authority so given. The right to flow the lands is predicated upon the the right to build the dam, as given by the Secretary of War.

The permit to erect the dam, given by the Secretary of War, requires the dam to be so constructed as to always and at all times permit water equal to double the minimum flow of the river to pass.

The said St. Louis and Cloquet rivers are navigable in the sense that they are used for floating and rafting timber and logs, and as such the dam must be built so as not to interfere with the rights of others pursuing that line of business. But that is a matter to be governed by the laws of the State.

The Commissioner of Indian Affairs, in his letter to the Secretary of the Interior of April 25, 1894, after discussing the letter of Lieut. Mercer, and the rights of the Indians in the matter, concludes as follows:

Because of the complications above mentioned, the office can not recommend the passage of any bill looking to the reduction of the Fond du Lac Reservation in the manner proposed by the bill in question. If, however, Congress deems it not prejudicial to the interests of the Indians to erect such a dam as is proposed, this office must acquiesce therein. The present bill, it seems to me, is wholly inadequate to rightly protect the interests of the Indians, and in case of the passage of any bill authorizing the construction of dams across the St. Louis and Cloquet rivers, this office would respectfully recommend the substitution of the inclosed bill for the bill in question.

The bill or substitute as recommended by the committee is the one prepared by the Commissioner of Indian Affairs, with some slight amendments made by the committee, to perfect the bill.

VIEWS OF THE MINORITY:

[To accompany H. R. 7956, which is reported in lieu of H. R. 6022.]

This bill contemplates the granting of a franchise to the Altamonte Water Company to condemn and purchase lands of the Fond du Lac Indian Reservation and lands now occupied by the tracks, stations, and other premises of the Duluth and Winnipeg Railway Company. By its title and by implication it also contemplates the granting of a franchise to the Altamonte Water Company, authorizing the construction of certain dams across the St. Louis and Cloquet rivers.

The preamble of the bill recites—

Whereas the Altamonte Water Company, a corporation organized under the laws of the State of Minnesota, proposes to erect certain dams across the Saint Louis and Cloquet rivers in said State, for the purpose of creating a reservoir to furnish water and water power for the city of Duluth and other places, and to increase the navigability of said streams, and said company has obtained the permission of the Secretary of War of the United States, pursuant to the statutes in such cases made and provided, to erect said dams.

The first section of the bill provides, *inter alia*—

That said Altamonte Water Company, pursuant to the authority given by the Secretary of War to erect a dam across the Saint Louis River above the town of Cloquet, Minn., is hereby authorized to take and use for the purpose aforesaid, and for no other purpose, such lands of the Fond du Lac Indian Reservation, in said State of Minnesota, adjacent to said Saint Louis River as shall be overflowed and which shall be necessary in the construction and maintenance of said dam, according to the permission granted by said Secretary of War.

There is room for serious doubt whether the Secretary of War has any authority or jurisdiction in cases like this, and whether the Altamonte Water Company is entitled to construct the proposed dam, under the permission granted by him, without first obtaining that of Congress. The authority of the Secretary of War is derived from the act of July 13, 1892 (27 Stat. at L., 110, sec. 3). Congress thereby delegated its right to authorize the construction of certain works in certain navigable waters of the United States, but expressly limited the authority thus delegated by a proviso as follows:

Provided, That this section shall not apply to any bridge, bridge draw, bridge piers, and abutments the construction of which has been duly authorized by law, or be so construed as to authorize the construction of any bridge, drawbridge, bridge piers, and abutments or other works under an act of the legislature of any State, over or in any stream, port, roadstead, haven or harbor, or other navigable water not wholly within the limits of such State.

It appears that the jurisdiction of the Secretary of War is thus limited to navigable waters which are wholly within the limits of a single State, while Congress reserves the right to regulate the construction of such works in all navigable waters "not wholly within the limits of a single State."

The most casual examination of the official maps will show that the St. Louis River lies in part in the State of Minnesota and in part within the State of Wisconsin—not wholly within the State of Minnesota, as set out in the title of the bill.

If, under the act of 1892, and without further authority from Congress, the Secretary of War has power to authorize the construction of a dam across the St. Louis River, it is difficult to see where such

power could end, and why it would not extend to the construction of a bridge across the Hudson River at New York City.

From the statements made before the committee, with regard to the flow of the river, there likewise seems to be great doubt as to whether the St. Louis River can be classed as a navigable water of the United States. If it is not such, then it is clear that no authority or jurisdiction in connection with it passed to the Secretary of War under the act of 1892.

We also consider it a most significant fact that, during the present session of Congress, an act was passed entitled "An act to authorize the construction of a steel bridge over the St. Louis River between the States of Wisconsin and Minnesota," approved April 24, 1894, and also that a bill providing for the amendment of this act was introduced and passed by both the House of Representatives and the Senate. It is most improbable that interested parties would have appealed to Congress for authority to construct the bridge described in the act and bill referred to, if the authority vested in the Secretary of War by the act of 1892 gave him jurisdiction in such cases and constituted him the only proper person to whom application should be made for permission to construct such a bridge. Nor is it likely that the matter would have received the favorable consideration of both Houses of Congress if their interpretation of the act of 1892 had led them to believe that that act relieved them of the burden of inquiring into the merits of such matters.

It has been shown by statements made by citizens of Cloquet (*see* Appendix A) and other owners of property situated upon the St. Louis and Cloquet rivers, that their interests would be destroyed or greatly prejudiced by the construction of this dam, which, in fact, would give the Altamonte Water Company a monopoly of the riparian privileges from those rivers. The present owners represent large lumber and other industries, which are at present in successful operation and which are dependent upon the use of the riparian rights naturally appurtenant to property situated upon the St. Louis and Cloquet rivers. Moreover, it is these interests which provide a livelihood for a population of more than 4,000 persons owning homes upon the banks of those rivers.

Perhaps more important than the destruction of property is the danger which would be incurred by the erection of the proposed dam and its menace to the inhabitants of Cloquet and other places lower down on the rivers. Experience has shown that such works, although often considered to be perfectly secure, when subjected to extraordinary freshets have given way and caused appalling disaster. A notable case is that of the flood of Johnstown, Pa., which was caused by the giving way of a dam that had stood for many years and which was considered by able engineers to be perfectly safe.

The Altamonte Water Company, according to the plans approved by the Secretary of War, has undertaken an enormous task, namely, to construct a dam some 700 feet in thickness at the base, 100 feet high, and 20 feet in thickness at the top, in fact, a small mountain. Many thousand acres of land are to be overflowed, and, of course, must be paid for before being taken. Again, to utilize the enormous water power developed by the construction of the dam the Altamonte Water Company would have to construct a series of canals or conduit pipes to the city of Duluth, distant about 26 miles. The estimated cost of the dam alone, independent of the sums paid for lands, damages, canals, conduits, etc., is \$400,000.

We do not feel satisfied of the ability of the Altamonte Water

Company to accomplish its undertaking with the means at its command, and do not feel warranted in granting the franchises asked without a greater assurance of such ability than a capital of \$50,000—one-eighth of the company's own estimate of the cost of a relatively small part of the undertaking.

Some of the great capitalists of the country have been interested in the development of the water power of the St. Louis and Cloquet rivers for many years past and have invested large sums in the purchase of property and its improvement. In view of the recent depression they have done all that could be expected of them in furthering the welfare of the region tributary to the said rivers. It does not appear, from the statements made to this committee, that the interests of this region would be advanced by granting what would be in effect a monopoly of the riparian privileges to the Altamonte Water Company, nor does it appear that the Altamonte Water Company has reason to anticipate greater financial success than the older companies.

If the Altamonte Water Company should fail to secure the capital required, and for that reason should be unable to proceed with its undertaking, the fact that it was authorized to construct the proposed dam would operate as a menace and work injury to other interests. It was stated by the delegation from Cloquet that appeared before this committee that the construction of the proposed dam would drive the inhabitants of their town and its vicinity from their homes. It follows that its authorization would depreciate the value of all property in that region. Certainly, as long as the Altamonte Water Company remained in a position to imperil life and property whenever it saw fit no one could be induced to hazard capital in other enterprises.

We are not satisfied with regard to the responsibility of the Altamonte Water Company, nor with regard to its ability to make good the damages that other interests would sustain, if the proposed dam were constructed. In the present case the grantee's responsibility is limited to the sum of \$50,000, while the damages sustained by others, and for which it would be liable, would amount to a far greater sum. The parties injured would, therefore, be unable to obtain adequate relief at law.

It does not appear to us that there is any public or general necessity for so great a development of the water power of the St. Louis River at the present time. The aggregate water power used at the head of Lake Superior, in places accessible to the St. Louis and Cloquet rivers, now amounts to 20,000 horse power. This includes the power used in industries of all kinds, such as electric lighting, propulsion of street cars, manufacturing, etc. A careful canvass of these industries shows that only about 6,000 additional horse power could be used advantageously, if the supply were unlimited in amount and most reasonable in cost.

In our opinion, the plan of the Altamonte Water Company has not the appearance of a sound business enterprise, but has, on the contrary, many of the unstable features of a "boom," which, if carried out, would end in destroying confidence in the resources of that section of country, and would materially retard its progress.

For the reasons indicated, therefore, the undersigned dissent from the report of the majority, and recommend that the bill do not pass.

O. M. KEM.

A. C. HOPKINS.

JNO. L. WILSON.

CHARLES CURTIS.

J. S. SHERMAN.

APPENDIX A.

PETITION OF THE PEOPLE OF CLOQUET, MINN.

The people of Cloquet, Carlton County, Minn., most earnestly and strenuously object to the scheme of the Altamonte Water Company, a company which proposes to build on the St. Louis River just above the village of Cloquet, a dam 80 feet high, and holding back an artificial lake of that depth and from 1 to 3 miles wide and 60 miles long.

As a part of this scheme, it appears that it is necessary to obtain the sanction of Congress to allow one end of this dam to rest on the Fond du Lac Indian Reservation and to allow the overflow of certain lands on said reservation. A bill to give such permission has been introduced in the House of Representatives by Mr. Baldwin, of Minnesota. The citizens of Cloquet have signed a petition to Mr. Baldwin objecting to this bill.

The gross wrong that is sought to be inflicted on this community, will, we think, be evident to all minds not blinded by personal interest, on reading the following statements of facts:

Cloquet, Carlton County, Minn., is a town of about 4,000 inhabitants, built up and sustained by the lumber manufacturing industry. It is located in the valley of the St. Louis River at the head of what is generally called the "Dalles of the St. Louis." High bluffs bound the river valley on either side at this point, the distance between them being from one-half mile to 2 miles. The village lies on the low ground on each side of the river, where are located 4 large sawmills, 3 planing mills, the extensive lumber yards attached to the sawmills, with the sheds, ware-houses, barns, boarding houses, and other structures required to carry on large manufacturing enterprises. On the same general level is also the town proper containing 4 churches, 3 schoolhouses, several brick blocks, a large number of other business houses, municipal and other halls, and the homes of 4,000 people.

The capital invested in sawmill plants alone represents nearly \$1,000,000, while at certain seasons, when stocks are full, nearly another million dollars are in the manufactured articles, lumber, laths, shingles, etc., piled in the yards and sheds of the companies doing business here. Several extensive bridges span the river at this point, and these, with the public and private structures in the village, also represent a large investment in the aggregate.

All this property will be greatly depreciated in value and a large portion of it rendered practically worthless by the erection of the dam proposed to be built by the Altamonte Water Company.

First. The proposed dam and flowage would render the work of getting logs to the mills at Cloquet so expensive and uncertain as to paralyze the lumber business here.

Second. The presence of such a dam would ruin the water power below its location on the St. Louis River, upon the utilization of which the town must depend in the future, not distant, when the lumber manufacturers will give place to her manufacturing interests.

Third. The presence of such a dam with such enormous head of water hanging over us would forever prevent the location of any new business enterprises in Cloquet; would force away those now here as fast as they could close up their affairs, and would drive out all citizens not bound by property interests. Those who were obliged to remain would see the value of their homes dwindle to nothing, although acquired by years of self-denial and patient industry.

Fourth. Last, but not least, if such a dam should break an immense loss of life and property would be swift, sure, and irremediable. With a head of water 80 feet high extending back 60 miles the disaster would be one unparalleled in the history of this continent. No engineering skill can insure against such a calamity. The suspense and dread of each recurring season of high water would be intensified by the feeling that the lives of thousands were at stake, and that our existence depended not on our own exertions, but on the skill and care exercised by a foreign corporation in a matter in which no amount of care and skill can insure absolute safety.