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Hudson Reservoir and Canal Company.

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HUDSON RESERVOIR AND CANAL COMPANY.

MAY 28, 1896.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 9029.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 9029) to grant to the Hudson Reservoir and Canal Company the right of way through the Gila River Indian Reservation, having had the same under consideration, make the following report:

The grantee, the Hudson Reservoir and Canal Company, proposes to construct a storage reservoir in the Tonto Basin, in Arizona, for the purpose of impounding and storing the surplus and flood waters of the drainage basin of the upper Salt River, the same to be used in irrigating the Salt River and Gila valleys. To utilize all the waters of this reservoir the grantee finds it advisable to construct an irrigating canal across the Gila River Indian Reservation, so as to reach the public lands south thereof. This canal will likewise be available, under proper arrangement, for a supply of water to the Indians on the reservation for irrigation purposes—a fact of much importance. This reservation is known as an “Executive order” reservation, but the Honorable Secretary of the Interior holds that the act of March 3, 1891, granting to reservoirs the right of way over the public lands, does not apply to this reservation; hence the necessity of this bill.

The committee having referred the bill to the Honorable Secretary of the Interior for his opinion thereof, with a request that he make suggestions as to any desirable amendment, the Honorable Secretary has transmitted to this committee, with his approval, a recommendation of the Honorable Commissioner of Indian Affairs that the bill be amended by inserting at the end of section 8 the following proviso:

Provided, That the rights herein granted are upon the express condition that the grantee thereof, its successors or assigns, shall at all times during the continuance of the grant furnish the Indians located under its canal along said right of way with water sufficient for all domestic and agricultural purposes and purposes of irrigation on such just and reasonable terms and under such rules and regulations as shall be prescribed by the Secretary of the Interior.

The committee recommend that the bill be amended as suggested, by the insertion of the said proviso, and that it do pass.

The correspondence on the subject had with the Department of the Interior is appended.

DEPARTMENT OF THE INTERIOR,
Washington, May 13, 1896.

SIR: I acknowledge the receipt of your letter of this date relative to the wish of the Hudson Reservoir and Canal Company, of Arizona, to run a canal across the

Gila River Indian Reservation, with a view to reaching the public lands lying south of the Gila River, and also with the idea that you may hereafter be in position to arrange with the Government to supply water to the Indians on the reservation for irrigation purposes.

You state that you have been advised by the Indian Bureau that it holds that the act of March 3, 1891, does not empower reservoir companies to take a right of way across Indian reservations, but inasmuch as this reservation is an Executive order reservation, you ask whether the ruling applies.

This reservation was established by the act of February 28, 1859 (11 Stat. L., 401), and additions were made thereto by subsequent Executive orders.

The Department held, March 8, 1892, that it was not intended by the act of March 3, 1891, to grant the right of way for canals and ditches through Indian reservations, and it would seem, therefore, that your only relief is in Congress.

Very respectfully,

HOKE SMITH, *Secretary.*

SIMS ELY, Esq.,

Secretary Hudson Reservoir and Canal Company, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, May 21, 1896.

SIR: I have the honor to acknowledge the receipt of your communication of 19th instant and accompanying H. R. 9029, "A bill to grant to the Hudson Reservoir and Canal Company the right of way through the Gila River Indian Reservation."

In response thereto I transmit herewith copy of a communication of 21st instant from the Commissioner of Indian Affairs, to whom the matter was referred.

The Commissioner states that by the bill the rights of the Indian occupants seem to be fully protected, but that grants of this character usually contain a provision requiring the grantee to furnish the Indians located under a proposed canal with water sufficient for domestic purposes and for purposes of irrigation on such terms and under such rules and regulations as may be prescribed by the Secretary of the Interior, and he recommends that the bill be so amended.

I concur with the Commissioner, and if the bill is so amended I see no objection to its passage.

Very respectfully,

HOKE SMITH, *Secretary.*

Hon. CHARLES CURTIS,

Of the Committee on Indian Affairs, House of Representatives.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 21, 1896.

SIR: I have the honor to acknowledge the receipt of Department reference for early report of a communication from Hon. Charles Curtis, of the Committee on Indian Affairs, House of Representatives, dated May 19, 1896, in which he incloses H. R. 9029, "A bill to grant to the Hudson Reservoir and Canal Company the right of way through the Gila River Indian Reservation," and states that the committee would be glad to have your opinion thereon, with any suggestions as to amendments you think proper.

The first section authorizes and empowers the Hudson Reservoir and Canal Company, a corporation created and existing under the laws of Arizona, to locate, construct, own, maintain, and operate its main line of canal through and across what is known as the Gila River Indian Reservation, occupied by the Pima, Maricopa, and Sacaton Indians, from a point on the northerly line of said reservation, running thence by the most practicable route to the southerly line of said reservation, and to construct, own, maintain, and operate such aqueducts, flumes, siphons, bridges, and other structures as may be necessary for the conveyance of water, where the same can not be conveyed in the canal itself, and the development, utilization, and transmission of any power derived from the water so carried.

The second section grants a right of way 50 feet in width on each side of the main canal: "Provided, That no part of the lands granted shall be used except in such manner and for such purposes as shall be reasonably necessary for the construction and convenient operation of said canal and other structures; and that whenever any portion thereof shall cease to be so used, such portion shall revert to the Indians; or in case they have ceased to occupy the same, to the United States: *Provided further, That when any such lands shall be so taken the consent of the occupants thereof shall be obtained in a manner satisfactory to the President of the United States.*"

The third section provides that before said canal or other structure shall be constructed through any lands held by individual occupants according to the custom of the said Indian tribes, full compensation shall be made to such occupants for all property taken or damage done by reason of such construction, the amount of such compensation to be ascertained and determined in such manner as the Secretary of the Interior may direct, and to be subject to his approval.

The fourth section requires the company to cause maps showing the route of its located line through said Indian reservation to be filed in the office of the Secretary of the Interior, and that said location shall be approved by said Secretary before any grading or construction upon any section or part of said located line shall be begun: "Provided, That said canal and other structures shall be located and constructed with a due regard for the rights of the Indians, and especially so as not to interfere with their irrigating ditches."

The fifth section authorizes the officers, servants, and employees of said company necessary to the construction, maintenance, management, and operation of the structures authorized to reside while so engaged upon the lands granted, subject to the provisions of the Indian intercourse laws and such rules and regulations as may be established by the Secretary of the Interior in accordance with said laws.

The sixth section gives the company the right to survey and locate its canal immediately after the passage of the bill.

The seventh section gives the company the right to erect, maintain, and use a telegraph or telephone line, or both, and other appliances reasonably necessary or convenient for the construction, maintenance, and operation of the canal and its appurtenances, but only within and upon the limits of the right of way.

The eighth section provides that the company shall accept the right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither aid, advise, nor assist in any effort looking toward changing or extinguishing the present tenure of the Indians in their lands, and will not attempt to secure from the Indian tribes any further grant of land or its occupancy than is provided in the bill.

The ninth section provides that Congress may at any time alter, add to, or repeal the act.

The tenth section provides that the act shall be in force from its passage.

The Gila River reservation as at present existing was established by the Executive order of November 15, 1883. It is about 45 miles in length and about 14 in width. The want of sufficient water for irrigation, both upon the reservation and the surrounding country, has been a great drawback to the Indians and a hindrance to the development of the country.

If this company can develop a water supply sufficient to irrigate a portion of this reservation, as well as the country above and below, I do not think that any impediment should be placed in its way. The rights of Indian occupants seem to be fully protected.

As it is an Executive order reservation, I do not consider the consent of the Indians generally for the passage of the canal to be necessary.

Grants of this character usually and, so far as I can ascertain, invariably contain a provision requiring the grantee to furnish Indians located under a proposed canal with water sufficient for domestic purposes and for purposes of irrigation on such terms and under such rules and regulations as may be prescribed by the Secretary of the Interior.

I understand the object of this requirement to be to secure to the Indians a supply of water upon just and reasonable terms, not exceeding those charged to others than Indians, but not to extort from the grantee a supply of water at such rates as would be unreasonable or unremunerative.

Following the precedent in such cases, I would recommend that the bill be amended by the insertion of the following proviso at the end of section 8:

"Provided, That the rights herein granted are upon the express condition that the grantee thereof, its successors or assigns, shall at all times during the continuance of the grant furnish the Indians located under its canal along said right of way with water sufficient for all domestic and agricultural purposes and purposes of irrigation on such just and reasonable terms and under such rules and regulations as shall be prescribed by the Secretary of the Interior."

I return the papers and inclose a copy of this report.

Very respectfully, your obedient servant,

THOS. P. SMITH, *Acting Commissioner.*

The SECRETARY OF THE INTERIOR.