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**Letter from the Secretary of the Interior, transmitting, in compliance with Senate resolution of December 4, 1883, copies of documents and correspondence relating to leases of lands in the Indian Territory to citizens of the United States for cattle-grazing and other purposes.**

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## MESSAGE

FROM THE

# PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*Letter of the Secretary of the Interior relative to pending legislation providing for the opening up to settlement of certain lands in the Indian Territory.*

JANUARY 30, 1885.—Read and referred to the Committee on Indian Affairs and ordered to be printed.

*To the Senate and House of Representatives :*

I transmit herewith a communication of 27th instant with inclosures, from the Secretary of the Interior, in relation to objections on the part of the Creek Nation of Indians to pending legislation providing for the opening up to homestead settlement of certain lands in the Indian Territory.

The matter is presented to the consideration of the Congress.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *January 29, 1885.*

DEPARTMENT OF THE INTERIOR,  
*Washington, January 26, 1885.*

SIR: I have the honor to acknowledge receipt, by Executive reference, for report, on the 23d instant, of the Senate resolution in the following words, viz:

Whereas the United States in 1866 acquired from the Creek and Seminole Indians by treaty certain lands situate in the Indian Territory, a portion of which have remained unoccupied until the present time; and

Whereas a widely extended belief exists that such unoccupied lands are public lands of the United States, and as such subject to homestead and pre-emption settlement, and pursuant to such belief a large number of citizens of the United States have gone upon them claiming the right to settle and acquire title thereto under the general land laws of the United States; and

Whereas it is understood that the President of the United States does not regard said lands as open to settlement, and believes it to be his duty to remove all persons who go upon the same claiming the right to settle thereon, and for that purpose has directed the expulsion of the persons now on said lands by the use of military force, and there seems to be a probability of a conflict growing out of the attempt to expel said persons so claiming right and attempting to settle: Therefore,

*Resolved*, That the President be requested to advise the Senate as to the status of the lands in question as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reason for the same, together with any other information in his possession bearing upon the existing controversy.

The matter having been referred to the Commissioner of Indian Affairs, I have the honor to inclose herewith his report thereon, dated the 26th instant, which recites fully the provisions of the treaties made with the Indian tribes, ceding the lands in question to the United States, showing the conditions and purposes expressed in said treaties regarding said lands.

The Commissioner's report shows to what extent said ceded lands are now occupied by friendly Indians, and the authority for such occupation, and also the extent to which said lands remain unoccupied by any lawful authority.

The status of these ceded lands was considered by one of my predecessors (Mr. Secretary Schurz), who held, in letter addressed to the Commissioner of Indian Affairs, dated April 25, 1879, as follows :

None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

This being the condition of things, it is clear that no authorized settlement could be made by any person in the Territory except under the provisions of the intercourse laws, such persons having first obtained the permission provided for in those statutes.

It may be further stated, that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty or by reservation for tribes thereon under Executive order, except that portion still claimed by the State of Texas, and lying between Red River and the north fork of the same. (See the various treaties, agreements, and Executive orders from 1866 to the present time.)

By section 2147, Revised Statutes, authority is expressly granted to the officers of the Indian Department to remove from the Indian country all persons found therein contrary to law, and the President is authorized to direct the military force to be employed in such removal.

This status of the lands as thus determined has been adhered to by this Department, and on April 26, 1879, February 12, 1880, and in July, 1884, proclamations were issued by the President warning unauthorized persons against going upon these lands.

One D. L. Payne, now deceased, and his followers have made determined and persistent efforts to occupy and settle upon said lands, but this Department has used all means in its power under the laws to keep intruders out of the Territory. In this the assistance of the military has been invoked and received.

No leases or licenses for grazing cattle upon said lands have been allowed by this Department.

No freedmen have at any time been settled upon the lands in question, and it is not probable that any will be so located thereon.

Small tribes of friendly Indians from time to time have been located on selected tracts of these ceded lands. At this time there are no Indians whose removal to these lands is contemplated, and it is not probable that the condition of any of the tribes outside of the Indian Territory will, in the near future, be so changed as to render practicable their removal and settlement in the Indian Territory.

That portion of the lands commonly known as the Oklahoma County, comprising 1,887,300.47 acres will continue to be a source of trouble while it remains in its present status.

The land is valuable for agriculture and stock raising, and it is difficult to satisfy the people desiring homes on the public lands, that it should not be treated as public lands and settlement allowed thereon.

The game having disappeared from the Indian country, there remains no longer any useful purpose for their roaming over immense tracts of unoccupied lands.

It is believed that there will be found at all times in the United States

a wholesome public opinion, that will demand of the Government that its contracts heretofore made with the Indians be respected in all cases where they do not conflict with the interests of the Indians and are not unjust to the people of the United States; but contracts or treaties impossible of execution, unjust and unfair to both whites and Indians, ought to be segregated or modified by legislative action. It is not beneficial to the Indians to have millions of acres of valuable land remain unoccupied around them.

There is a general sentiment that these lands should not be withheld from settlement, because they were included within the boundaries of the Indian Territory.

These lands are desirable for agricultural and grazing purposes, and every year the difficulty of keeping them from settlement will increase. That they can so be maintained for any considerable length of time is hardly possible. Objection will be made to the occupation of any part of the Indian Territory by others than Indians, on the ground that the Government set apart the Territory for the exclusive use of the Indians, and covenanted that no others should reside therein. It is not denied that the treaties so provide. It is, however, within the power of the Government, with the consent of the Indians interested, to change this provision of the treaties so that these desirable unoccupied lands may be placed within the lawful reach of settlers.

Steps should be taken at once to change the present condition of affairs in the unoccupied portion of the Indian Territory. It can be done without the violation of treaties or without subjecting the Government to the charge of bad faith. The power that made the treaties may in like manner abrogate or modify them. It is not proposed to despoil the Indians nor to compel them to accept less than the full value of whatever they surrender. It will not be wise to take an acre of this land needed by these Indians or by the coming generation of them; but the lands now owned by the Government for the purpose before mentioned may be opened to settlement with the consent of the civilized tribes, or segregated from the lands occupied and owned by the Indians, and then opened to settlement.

However, until the existing status of the lands shall have been changed by agreements with the Indians interested, or in such other manner as may be determined upon by Congress, the integrity of the treaties heretofore made with the Indians should be maintained, and the power of the Government, to the extent necessary, should be exercised to keep intruders and all unauthorized persons off of the lands.

Very respectfully, your obedient servant,

H. M. TELLER,

*Secretary.*

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,

*Washington, January 27, 1885.*

SIR: I have the honor to acknowledge the receipt, by your reference of 15th instant, of a communication addressed to you under date of 5th instant by the Creek Indian delegation resident in this city, inclosing a letter from Chief Perryman of the Creek Nation, addressed to the President and the Senate of the United States, and a communication from the delegation, addressed to the President and the Congress, protesting against the provisions of Senate bill No. 2144, and House bill 7598, now

pending, providing for the "opening up to homestead settlement certain portions of the Indian Territory."

The question presented by the Creek delegation was discussed in my letter of 26th instant returning Senate resolution of 23d instant, on the status of certain lands in the Indian Territory, and I inclose a copy of that letter herewith, and respectfully recommend that the matter may be presented for the consideration of the Congress.

Very respectfully, your obedient servant,

H. M. TELLER,  
*Secretary.*

The PRESIDENT.

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*January 20, 1885.*

SIR: I have the honor to acknowledge the receipt by Department reference of a letter dated the 5th instant, addressed to the President by the Creek delegates, inclosing a letter and petition signed by J. M. Perryman, Chief of the Creek Nation, also a petition and protest to the President and the Congress from the Creek delegates, against the passage of certain bills therein mentioned, being S. 2144, Forty-eighth Congress, first session, and H. R. 7598, Forty-eighth Congress, second session, relating to lands, &c., in the Indian Territory, and requesting the transmission thereof to Congress, for such action as may be deemed proper.

I inclose herewith duplicate copies of said papers and respectfully recommend that the same be transmitted to Congress in accordance with the request of the Creek delegates.

Very respectfully, your obedient servant,

H. PRICE,  
*Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

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WASHINGTON, D. C., *January 5, 1885.*

SIR: The undersigned delegates, representing the Creek Nation of Indians, beg leave to submit to you, and through you to the Congress of the United States, the accompanying letter and petition signed by Hon. J. M. Perryman, Chief of said Creek Nation, and also a petition and protest to the President and Congress from the undersigned against the passage of certain bills mentioned, relating to lands, &c., in the Indian Territory, and would respectfully request that said letter, petition, and protest be transmitted to Congress by your Excellency, for such action as may be deemed proper.

We have the honor to be, very respectfully,

LEQUEST C. PERRYMAN,  
E-FI-E-MAT-LA,  
*Creek Delegates.*

To his Excellency CHESTER A. ARTHUR,  
*President of the United States.*

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EXECUTIVE DEPARTMENT, MUSKOGEE NATION,  
*Okmulgee, I. T., December 29, 1884.*

GENTLEMEN: As chief executive of the Muskogee Nation, who cannot but feel a deep interest in the provisions of H. R. 7598, I desire to invite attention to the following protest:

So long as thirty years ago it became the well-defined and active policy of the

United States "to locate a tribe of Indians" within such limits as would not "at first or too suddenly change the modes and manner of hunter life for purely agricultural, yet at the same time compel the members to labor for subsistence." \* \* \* (See Ind. Commr. Report, 1860, p. 25.) In proof of this the Indian Commissioner, W. P. Dole, in 1864, emphasizes this necessity by declaring, "I feel that I cannot too strongly urge the importance of preserving the Indian country for the use of the Indians alone, and in all treaties or other arrangements which may hereafter be made with its former owners insisting, and if needs be enforcing such terms as will insure ample homes *within that country* for all such tribes as from time to time it may be found practicable and expedient to remove thereto." (See Ind. Com., p. 34.)

In consonance with this policy the Indian Bureau has removed from other portions of the country some fifteen or more tribes and located them upon portions of these lands, and the unanimous testimony of the Indian agents of the Government attest the efficiency, wisdom, and humanity of the system. Under the workings of this policy, the so-called Indian problem is gradually, but surely being solved. The bill H. R. 7598, for no just reason, however, proposes to interject a state of affairs in the Indian Territory which must surely obstruct the workings of this policy, and relegate the Indian problem back to the domain of mooted questions. Almost all Indian Commissioners and other Government officials conversant with the subject unite in indorsing the policy of holding the Indian Territory inviolate as a home for the Indians, and never yet has any objections or complaints arose against it, except such as have come from the agents of railway corporations, cattle syndicates, and irresponsible parties, misled by the late D. L. Payne, and like adventurers.

The policy is one suited to the preferences of the Indians already occupying the Territory, and it is questionable whether the Muskogees ever would have consented to a cession had it at the time been thought that the lands would ever in the future be affected by such provisions as those embraced in H. R. 7598. But it being expressly understood that the lands were to become the homes of other Indians, thus making the whole Territory an "Indian Territory" in fact as well as in name, the Muskogees, after much negotiation, ceded their right of occupancy. In view of the fact that the lands were to be occupied by neighbors who are Indians like themselves and not white people, and the fact that the Muskogees still held the right by treaty of objecting to their occupancy by people other than "Indians and freedmen," they ceded the lands for the palpably inadequate price of 30 cents per acre. (See Rev. Ind. Treaties, p. 116.) Had the Muskogees surrendered all future voice and interest in the ownership of those lands it is hardly to be supposed that they would have done so for so paltry a sum of money as 30 cents per acre. They would more likely have demanded at least the minimum price as fixed by the United States for her public lands. I protest therefore against the passage of the bill, because it is a palpable violation of the third article of the treaty of 1866, between the Muskogees and the United States, and will become a fruitful source of evil only, and benefiting no one unless it be cattle syndicate and railroad corporations, who in the shock and confusion that must inevitably ensue, may hope to reap the lion's share.

These lands, as is well known, are worth to-day, for grazing purposes alone, not less than \$2.50 per acre. The Muskogee Nation still possesses a certain interest in those lands ceded in 1866; and while I earnestly protest, in the name and behalf of the Muskogee Nation and people, against the enactment into a law of the bill, I hereby give notice to the President and Congress of the United States, that if it shall be determined to pass it over this protest and in plain violation of the provisions of the treaty of 1866, they will insist on full indemnity to them in money for such of the lands involved as were ceded by them in 1866, at a price per acre that shall be their full value, according to the price of such lands at the time of the passage of the bill.

I am, very respectfully,

J. M. PERRYMAN,  
*Principal Chief, Muskogee Nation.*

To the PRESIDENT and CONGRESS OF THE UNITED STATES, *Washington, D. C.*

WASHINGTON, D. C., December 29, 1884.

GENTLEMEN: We, the undersigned delegates, representing the Creek Nation of Indians, duly appointed and empowered in that behalf, would respectfully petition and represent to your honorable body—

That by article 3 of the treaty proclaimed August 11, 1866, the Creek Nation ceded and conveyed the west half of their lands in the Indian Territory to the United States, at 30 cents per acre, to be sold to and used as homes for freedmen and such civilized Indians as the United States might choose to settle thereon.

Said article 3 is as follows:

"In compliance with the desire of the United States to locate other Indians and

freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south, \* \* \* and in consideration of said cession of the west half of their lands, estimated to contain 3,250,560 acres, the United States agree to pay the sum of 30 cents per acre, amounting to \$975,168, in the manner hereinafter provided, &c. \* \* \*

"The United States agree to pay to said Indians, in such manner and for such purpose as the Secretary of the Interior may direct, interest at the rate of 5 per cent. per annum from the date of the ratification of this treaty on the amount hereinbefore agreed upon for said ceded lands." (14 Stat. 786.)

From this it will be observed:

(1.) That the said lands were ceded to the United States by the Creek Nation for a specific purpose, viz, to locate other Indians and freedmen thereon.

(2.) That the United States agreed "to pay the sum of 30 cents per acre" for the lands so ceded, with interest thereon at the rate of 5 per cent. per annum. Notwithstanding the fact that these lands were ceded to the United States at a nominal price, and for the special purpose mentioned, we find upon our arrival in the city that bills have been introduced and are now pending in both Houses of Congress which declare the lands so ceded to be public lands of the United States, and subject to settlement and entry under the homestead laws only. (See Senate bill 2144 and H. R 7598.)

And this, too, before the sum agreed upon has all been paid by the United States. The interest on the last payment, which, up to July 19, 1884, amounted to \$41,004.90, although repeatedly recommended and estimated for by the Department of the Interior, has never been provided for by Congress or paid by the United States.

A treaty is a contract as well as a law, and binds the United States as well as the Indians.

The Creek Nation owned the lands in question by title in fee-simple, and if it had been known that they were to be opened to settlement, or disposed of otherwise than as expressly provided in said treaty, they never would have ceded and conveyed on any terms, much less for the paltry sum of 30 cents per acre.

The purpose for which this land was bought by the United States, as expressed in the treaty, entered into and became an element of the contract, and it cannot now, in law or justice, be disregarded by either of the parties in interest.

At the date of the treaty mentioned, the lands in question could have been sold to individuals at a price averaging not less than \$1.25 per acre, and at the present time could be sold for several times that amount.

The difference between 30 cents per acre, the price stipulated in the treaty, and \$1.25 per acre, the real value of said lands at the date of the treaty, is \$3,262,308.96.

The aggregate amount of land sold was 3,402,430.48 acres, which, at 30 cents per acre, amounted to \$1,020,729.14. But at \$1.25 per acre—the minimum price at which Government lands are usually sold—it would amount to \$4,283,038.10, making a difference, as above stated, of \$3,262,308.96.

If, therefore, the lands so ceded are to be thrown open to settlement by the United States, contrary to the terms, provisions, and stipulations of the said treaty of 1866, then we ask, on behalf of the Creek Nation, that said lands shall be sold by the United States at their real value, which certainly is not less than \$1.25 per acre, and after deducting the expense of such sale, and the amount heretofore advanced, that the remainder of the proceeds of such sales be paid to the Creek Nation. Or if it be the purpose and intention of Congress to declare them to be public lands of the United States and subject to entry under the homestead laws only, then we ask that the matter may be adjusted according to principles of equity and fair dealing, and a reasonable price paid the Creek Nation for said lands.

The United States, we submit, cannot in honor do less than accede to one or the other of these propositions, especially since a part of the interest on the stipulated price of 30 cents per acre has not yet been paid.

The Creek Nation has observed with fidelity its treaty obligations. May we not expect the same good faith on the part of the United States?

To declare the lands mentioned public lands and subject to entry under the homestead laws of the United States, as proposed in the bills now pending, would not only be a violation of the treaty, as already stated, but an infraction of all treaties with other tribes or nations in the Indian Territory.

The manifest object of the legislation proposed is to open the Indian Territory to settlement; and that, in the opinion of the undersigned, means the total annihilation of Indian rights, titles, laws, customs, institutions, and governments, and, finally, the extermination of the Indians themselves.

Against all such legislation, therefore, we beg to offer our earnest and most solemn protest.

More than half a century ago the Creek people, at the instance of the Government of the United States, abandoned their homes and country east of the Mississippi



River, where they and their ancestors had lived from time immemorial, and migrated to the country they now own and occupy.

The same is substantially true of the Cherokees, Choctaws, Seminoles, and other civilized Indians in the Territory.

They are by right, and under a guarantee from the United States, embodied in treaties to the effect that they should never be included within the bounds or jurisdiction of a State or Territory without the consent of the Indians.

Now, in violation of all these treaties, comes the proposition to open a portion of the Territory to settlement; which means a Territorial Government, first for the district known as Oklahoma and next for the Indian Territory. And that means, as already stated, annihilation of Indian rights, laws, and governments, and the gradual extermination of the Indians themselves; because the two races cannot live together and prosper. The weaker and less skillful in managing their own affairs must yield to the stronger and more artful.

Your attention, therefore, is respectfully but earnestly invited to the whole subject, including treaties between the United States and the several tribes or nations in the Indian Territory, to the end that justice may be done to all parties in interest.

Respectfully submitted.

L. C. PERRYMAN,  
E-FI-E-MAH-LA,  
*Creek Delegates.*

To the PRESIDENT and the SENATE OF THE UNITED STATES.

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