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DISPOSITION OF CERTAIN LANDS IN MINNESOTA.

FEBRUARY 18, 1897.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT.

[To accompany H. R. 10248.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 10248) providing for the disposition of certain lands in Minnesota which have been or may be damaged by the United States in the construction of dams and reservoirs in aid of navigation, and for other purposes, having considered the same, report it back to the House with the recommendation that it be passed with the following amendments:

Strike out all after the word "title," in line 9, page 2, of the printed bill, and add another section, as follows:

SEC. 3. That the provisions of an act entitled "An act to authorize the President of the United States to cause certain lands, heretofore withdrawn from market for reservoir purposes, to be restored to the public domain subject to entry under the homestead law, with certain restrictions," approved June twentieth, eighteen hundred and ninety, are hereby extended to and shall govern and control in the disposal of all other lands, in the States of Minnesota and Wisconsin, than those embraced within the provisions of an act entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January fourteenth, eighteen hundred and eighty-nine, which have at any time been withdrawn from market and sale as subject to damage by overflow by reason of the construction, operation, and maintenance by the United States of dams and reservoirs in aid of navigation at the head waters of the Mississippi, Saint Croix, Chippewa, and Wisconsin rivers.

The bill as amended provides:

That all the lands thus damaged and liable to damage by overflow shall at all times remain subject to the right of the United States to construct and maintain dams for the purpose of creating reservoirs in aid of navigation, and no claim or right of compensation shall accrue from the overflowing of said lands on account of the construction and maintenance of such dams and reservoirs.

SEC. 2. That the Secretary of War shall furnish the Commissioner of the General Land Office a list of such lands, with the particular tracts appropriately described, and in the disposal of each and every one of said tracts, whether by sale, by allotment in severalty to individual Indians, or otherwise, under the provisions of the aforementioned act of Congress of January fourteenth, eighteen hundred and eighty-nine, the provisions of the above section one of this act shall enter into and form a part of the contract of purchase and transfer of title: *Provided*, That title to said lands, as well as all other lands in Minnesota and Wisconsin that have been or may be withdrawn as subject to damage by overflow by reason of the construction, operation, and maintenance by the United States of dams and reservoirs in aid of navigation at the head waters of the Mississippi River, may be acquired by actual settlers, either by homestead entry under the act of January fourteenth, eighteen hundred and eighty-nine, or under general homestead laws: *Provided further*, That this provision shall not apply to lands on the Chippewa Indian Reservation which shall be classified as pine lands under the act of January fourteenth, eighteen hundred and eighty-nine.

In this connection we invite attention to the following letter from the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 26, 1897.

SIR: I have had the honor to receive, by Departmental reference under date of January 21, 1897, for report in duplicate and return of papers, a copy of House Document No. 133, Fifty-fourth Congress, second session, being "Letter from the Secretary of War, transmitting a communication from the Chief of Engineers, with an inclosure, recommending action for the protection of the interests of the United States in the sale and disposal of certain lands situated in the Chippewa Indian Reservation in the State of Minnesota;" also, a typewritten draft of a bill proposing to attach further conditions to the entry of certain Chippewa ceded lands, provision for the disposal of which has heretofore been made by the act of January 14, 1889 (25 Stat. L., 642), and to provide additional methods for entering lands now subject to entry under the act of June 20, 1890 (26 Stat. L., 169); a "memorandum" indicating the reasons why the proposed legislation is deemed necessary; and a report dated January 21, 1897, by the Commissioner of Indian Affairs, relative to the matter.

With the exception of the first proviso to section 2 of the proposed bill, the legislation suggested will affect only certain of the Chippewa Indian lands, and has the approval of the Commissioner of Indian Affairs. No additional report in regard thereto by this office appears necessary.

The said proviso is as follows: "That title to said lands, as well as all other lands in Minnesota and Wisconsin that have been or may be withdrawn as subject to damage by overflow by reason of the construction, operation, and maintenance by the United States of dams and reservoirs in aid of navigation at the head waters of the Mississippi River, may be acquired by actual settlers either by homestead entry under the act of January 14, 1889, by cash entry, or by preemption under existing laws."

Certain lands in the States of Wisconsin and Minnesota have been heretofore withdrawn because of the liability of their being affected by the construction and maintenance of dams and reservoirs for the improvement of the head waters of the Mississippi, St. Croix, Chippewa, and Wisconsin rivers.

The withdrawals were made by the following proclamations of the President: No. 859, dated March 22, 1880; No. 868, dated April 5, 1881; No. 872, dated November 28, 1881; No. 874, dated February 20, 1882; No. 957, dated August 27, 1892.

The act of June 20, 1890 (26 Stat. L., 169) restored the lands embraced in proclamations Nos. 859, 868, and 874 and made them subject "to homestead entry only," with a condition attached relieving the United States from any claims for damages by reason of the possible overflow of said lands caused by the construction of such reservoirs. The proposed legislation embodied in the proviso which I have quoted would make these lands, as well as any that may be hereafter withdrawn for a like purpose, and the Chippewa lands affected by the other portions of the proposed bill, subject to homestead entry under the act of January 14, 1889, to cash entry, or to preemption entry "under existing laws."

By reference to the "memorandum" accompanying the draft of the bill, it appears that the proposed legislation is prompted by the fact that many of the tracts, restored by the act of June 20, 1890, are so isolated that 160 acres of land can not be found in one body, and as a settler will not exhaust his homestead right upon a tract of from 40 to 60 acres, only the tracts valuable for pine timber have been taken under the present law, leaving the choice agricultural lands still untaken.

While it does not appear to be the intention to make the lands which were restored to the public domain by the act of June 20, 1890, subject to homestead entry under the act of January 14, 1889, yet the language of the proviso will bear that construction. As the act of January 14, 1889, applies only to Chippewa ceded lands, and for that reason contains a requirement for an additional payment not required by the general homestead laws, there appears to be no reason for the extension of the provisions of that act to the lands restored by the act of June 20, 1890, nor to any of the public lands which may hereafter be withdrawn for reservoir purposes.

Although the act of June 20, 1890, provides for the disposal of the lands restored thereby under the homestead law only, yet this office has held that such of said lands as are isolated or disconnected within the meaning of section 2455 United States Revised Statutes, as amended by the act of February 26, 1895 (28 Stat. L., 687) may be properly disposed of under the latter statute, and the same ruling has been made as regards ceded Indian lands, which are subject to disposal under provisions similar to those governing the disposal of the ceded agricultural Chippewa lands. It therefore follows that these reservoir lands, whether public or ceded Indian lands may be disposed of by cash entry if they are of the character contemplated by section 2455 United States Revised Statutes, as amended. The preemption law was repealed by the act of March 3, 1891 (26 Stat. L., 1095), and, therefore, to make any of these lands subject to "preemption under existing laws" would be meaningless.

The lands withdrawn by proclamations Nos. 872 and 957, however, have never been restored, and can not now be entered under any law.

Under date of July 5, 1892, the War Department recommended, in a letter addressed to this Department, that Congress be asked to extend the scope of the act of June 20, 1890 (*supra*), so as to include the lands embraced in said proclamations. It would be well, therefore, to make provision for the disposal of these lands, as well as any other which may hereafter be withdrawn for a like purpose.

I would therefore respectfully recommend that the two provisos to section 2 in the draft of the proposed bill be omitted and a third section added extending the scope of the act of June 20, 1890 (*supra*) so as to include all other lands in Minnesota and Wisconsin that have been withdrawn as subject to damage by overflow by reason of the construction, operation, and maintenance by the United States of dams and reservoirs in aid of navigation at the head waters of the Mississippi, Saint Croix, Chippewa, and Wisconsin rivers, with a proviso excepting the ceded Chippewa lands, which are fully provided for by sections 1 and 2 of the bill.

The papers are herewith returned.

Very respectfully,

S. W. LAMOREUX,
Commissioner.

The SECRETARY OF THE INTERIOR.