

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1879.—Ordered to be printed.

Mr. GROVER, from the Committee on Public Lands, submitted the following

REPORT:

[To accompany bill S. 1486.]

*The Committee on Public Lands, to whom was referred the bill (S. 1486) to adjust the claims of the owners of lands within the limits of the Klamath Indian Reservation in the State of Oregon, report as follows:*

By an act of Congress approved July 2, 1864, there were granted to the State of Oregon certain lands "to aid in the construction of a military wagon-road from Eugene City, by way of Middle Fork of Willamette River, and the most feasible pass in Cascade range of mountains, near Diamond Peak, to the eastern boundary of the State." The grant was *in presenti*, and under the uniform rulings of the Supreme Court it vested in the State an *immediate* title in all the lands subject to its operation. The general route of the road was fixed with geographical certainty in the act of Congress, and there was no requirement for filing maps, nor other evidence of location. Along the route indicated the grant extended to the amount of alternate sections specified, and the only exception was as to "lands heretofore reserved to the United States by act of Congress or other competent authority." The lands were pledged exclusively to the construction of the road; the State was authorized to sell not exceeding thirty sections as fast as each section of ten miles of road was completed, and the road was to "be and remain a public highway for the use of the Government of the United States, free from tolls or other charge upon the transportation of any property, troops, or mails of the United States."

This grant was duly accepted by the State of Oregon, and her legislature designated the Oregon Central Military Wagon Road Company as the company to receive the grant and construct the road. In January, 1870, the governor of Oregon certified to the Secretary of the Interior his acceptance of the road as completely constructed, and thereafter the bulk of the lands were certified by the Interior Department to the State and by the State conveyed to the company. Still later, and for valuable consideration, the lands were sold to a number of parties resident in California, who purchased apparently for purposes of colonization, and who made large preliminary expenditures to that end.

In due time these subsequent purchasers proceeded, through leases and sales, to put emigrants upon these lands and otherwise to enter upon the actual possession of their purchase.

It then transpired that a portion of their grant was in the occupancy of sundry Indian tribes by authority of a certain treaty with the United

States entered into and ratified *subsequent* to the aforesaid grant to the State of Oregon. At the urgent request of the United States Indian agent, the company refrained from taking possession of that part of their property, it being represented to them that such proceeding would be followed by an Indian war, and that steps would soon be taken either to remove the Indians or to indemnify the owners of the land. This will appear from the letters of November 6, 1874, from N. Luning, chairman of executive committee of owners, to L. S. Dyar, Indian agent at Klamath Reservation; from B. J. Péngra, agent of owners to the Commissioner of Indian Affairs, under date of December 28, 1874, and from the correspondence between the Indian agent and the Commissioner of Indian Affairs, to be found among the exhibits accompanying this report.

The history of the Indian occupancy is as follows:

On the 14th of October, 1864—over three months subsequent to the grant of July 2, 1864, to the State—a treaty was negotiated between the United States and the Klamath and Modoc tribes, and the Yahooskin band of Snake Indians, and by article 1 thereof it was stipulated, that “until otherwise directed by the President of the United States,” a tract described by natural boundaries should “be set apart as a residence for said Indians and held and regarded as an Indian reservation.”

This treaty was proclaimed on the 17th February, 1870. It does not appear at what precise date the Indians were put in actual occupancy of the reservation, except as may inferentially appear from the fact that the survey thereof was not reported by the surveyor-general to the Department until November 22, 1871. Of the lands granted to the State by the prior act of Congress, 130,377 acres fall within this reservation, the constructed line of the wagon-road passing directly through same. The particular sections of the road which run through the reservation were accepted by the governor of the State as early as 1866, four years prior to the ratification of the treaty referred to.

From the foregoing statement of facts it appears that a complication of title to these lands has grown out of the conflicting action of the legislative and the treaty-making branches of the Federal Government. On the one hand, Congress *granted* these lands to the State upon the presumption of unincumbered ownership, to aid in constructing a wagon-road which should open up Southeastern Oregon; and the conditions of the grant having been fully and seasonably complied with by construction of the road, the lands have been honestly earned by the beneficiary under the State. On the other hand, the treaty-making branch of the government has almost *pari passu* stipulated to reserve these same lands for certain Indian tribes. On the one hand, the General Land Office has executed the prior act of Congress by conveyance of the lands granted; and on the other, the Indian Office has executed the *subsequent* treaty by surveying the boundaries of the reservation and putting the Indians in the occupancy thereof.

This matter has been the subject of previous consideration by Congress. A similar bill in the Forty-fourth Congress passed the House of Representatives and was favorably reported to the Senate by the committee. It was discussed by the Senate but did not reach a vote. That discussion has, however, advised the committee, with unusual fullness, both of the objections to the bill and of the arguments in its favor; and the objections have been examined with great care. They were in part directed to the validity of the titles held by the Wagon Road Company, and in part to the policy of the proposed adjustment.

After careful investigation, we report that, in our opinion, the grantees of the State have the title to these lands. The present owners pur-

chased under an opinion in 1872 as to the title from a leading law-firm at Portland, Oreg., Messrs. Mitchell & Dolph. Same is hereto attached as an exhibit, and the concluding parts are as follows:

Your company has unquestionably the absolute right to dispose of the whole or any portion of its lands under said grants, at such times, in such manner, and upon such terms as the company may determine, and the purchaser will acquire the same right of selecting and listing the unsurveyed portions of the grant that your company now has.

As fast as the road was completed and accepted, and the governor's certificate of acceptance filed in the Department of the Interior of the United States, the condition of the grant was complied with, and your company took the absolute fee to such lands as it was entitled to receive under the grant, with the immediate unqualified right of disposal.

The Indian Office seem also to have concurred in the validity of this title, for in his letter of September 17, 1873, to Agent Dyar, the Commissioner of Indian Affairs says:

The wagon road has the unquestioned title to these lands, and their acquisition for the benefit of the Indians would be impracticable.

And we find the validity of the title to be clearly sustained by the decisions of the United States Supreme Court in similar cases. It was suggested to the committee that the decision of that court in Leavenworth, &c., Railroad Company vs. United States (92 U. S., p. 733), was fatal to this title. The relevant portions thereof were as follows:

We held that they attached only to so much of our national domain as might be sold or otherwise disposed of, and that they did not embrace tracts reserved by competent authority for any purpose, or in any manner, although no exception of them was made in the grants themselves. Our decision confined a grant of every alternate section of land to such whereto the complete title was absolutely vested in the United States. \* \* \*

The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws. That they were so employed in this instance is evident from the fact that to them alone could, on the location of the road, the order withdrawing lands from pre-emption, private entry, and sale apply.

The argument, as drawn from the decision, seemed to be, that as the general Indian occupancy title had not been formally extinguished in Oregon at date of the act of Congress of July 2, 1864, therefore these Klamath lands were not "public lands" within the meaning of that grant. If that argument is sound, then it necessarily follows, in any aspect of this case, that the State could take nothing *anywhere* under this grant; and Congress would have induced the construction of the road by a false promise incapable of fulfilment. And this because all southeastern Oregon, and probably the whole State, was in the same condition as to the non-extinguishment of the title of roaming bands of wild Indians. Furthermore, the logical result of this doctrine would be to invalidate *all* titles of whatsoever character acquired from the United States prior to the conclusion of the Indian treaty and affecting any lands within its cession. That cession embraced about one-quarter of the entire State of Oregon. Indeed, so far as the committee are advised, a similar state of facts would be applicable to the rest of the State, and all titles therein be subject to a like infirmity. We are reluctant to accept a doctrine so pregnant with evil to the titles of an entire State, and we do not find it necessary to do so, as we shall presently seek to show.

Another objection was that the title of the State could attach to no particular lands until maps of location were filed in the Interior Department; and that as the Klamath Indian Reservation had been provided for by treaty prior to such location, the State could take nothing as to these lands.

We are of opinion that these objections are not well taken. The decision of the Supreme Court in Leavenworth, &c., Railroad Company vs.

United States (92 U. S.) has been modified and explained by its later decision in *Beecher vs. Wetherby* (95 U. S., pp. 525 and 526). Speaking of the Indian tribes that occupied various portions of Wisconsin and roamed over nearly the whole of it, the court held that the right of the Indians was only that of occupancy, and that the fee was in the United States, to be "transferred by them whenever they chose." And thereupon it was decided:

In the construction of grants supposed to embrace lands in the occupation of Indians, questions have arisen whether Congress *intended* to transfer the fee or otherwise; but the *power* of the United States to make such transfer has in no instance been denied.

After deciding that by the grant of "section numbered sixteen in every township of the *public lands* in said State" (section 7, act August 6, 1846), Congress *intended* to vest the fee in the State, the court further said:

The greater part of the State was at the date of the compact occupied by different tribes, and the grant of sections in other portions would have been comparatively of little value. Congress undoubtedly expected that at no distant day the State would be settled by white people, and the semi-barbarous condition of the Indian tribes would give place to the higher civilization of our race; and it contemplated by its benefactions to carry out in that State, as in other States, "its ancient and honored policy" of devoting the central section in every township for the education of the people. Accordingly, soon after the admission of the State into the Union, means were taken for the extinguishment of the Indian title. In less than eight months afterwards the principal tribe, the Menomonees, by treaty ceded to the United States all their lands in Wisconsin, though permitted to remain on them for the period of two years, and until the President should give notice that they were wanted.

In the Oregon act it is clear, in our opinion, that Congress *intended* to grant the fee to the State. On the 25th of March, 1864 (13 Stat., 37), Congress authorized the President to conclude a treaty with the Klamath, Modoc, and Snake Indians in Southeastern Oregon for the purchase of the country occupied by them, and appropriated \$20,000 to effect that purpose. Having thus provided for the extinguishment of this occupancy claim, Congress on the 2d of the succeeding July made the grant to the State, over this identical country, and excluded therefrom only "lands heretofore reserved to the United States by act of Congress or other competent authority." None of these lands were so reserved, and they clearly passed by the grant.

The second objection heretofore recited is, in our opinion, equally without merit. The act of July 2, 1864, did not require, either in terms or by implication, the filing of maps of location. But if it had done so, the law applicable to the attachment of the grant is well settled. Its latest exposition is in No. 65 of the present term of the Supreme Court (*Missouri, Kansas and Texas Railway Co. vs. Kansas Pacific Railway Company*). We quote the relevant facts of the decision:

The act of January 1st, 1862, passed to the company a present interest in the lands to be designated within the limits there specified. Its language is, "that there be and is hereby granted" to it the odd sections mentioned—words which import a grant *in presenti*, and not one *in futuro*, or the promise of a grant. Similar terms in other acts of Congress granting lands have uniformly received this interpretation, unless accompanied with clauses restraining their operation. They were so interpreted in *Schulenberg vs. Harriman*, after full consideration of previous adjudications on their import; and the ruling there was followed in *Leavenworth, Lawrence and Galveston Railroad Company vs. United States*, 92 U. S., 733. It is true that the route of the road, in this case as in those cases, to aid in the construction of which the act was passed, was to be afterwards designated; and until designated, the title could not attach to any specific tracts. The grant was of sections to be afterwards located, and their location depended upon the route to be established. When that was settled, the location became certain, and the title that was previously imperfect acquired precision and attached to the lands.

It is always to be borne in mind, in construing a Congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties. To the validity of such transfers it may be admitted that there must exist a present power of identification of the land; and that where no such power exists, instruments, with words of present grant, are operative, if at all, only as contracts to convey. But the rules of the common law must yield in this, as in all other cases, to the legislative will.

As to the intent of Congress in the grant to the plaintiff there can be no reasonable doubt. It was to aid in the construction of the road by a gift of lands along its route, without reservation of rights, except such as were specifically mentioned, the location of the route being left, within certain general limits, to the action of the plaintiff. When the location was made, and the sections granted ascertained, the title of the plaintiff took effect by relation as of the date of the act, except as to the reservations mentioned, the act having the same operation upon the sections as if they had been specifically described in it. It is true the act of 1864 enlarged the grant of 1862, but this was done, not by words of a new and an additional grant, but by a change of words in the original act, substituting for those there used, words of larger import. This mode was evidently adopted that the grant might be treated as if thus made originally; and, therefore, as against the United States, the title of the plaintiff to the enlarged quantity, with the exceptions stated, must be considered as taking effect equally with the title to the less quantity as of the date of the first act. (*U. S. vs. Burlington and Mo. R. Co.*, 4 Dillon, 305.)

The construction thus given to the grant in this case is, of course, applicable to all similar Congressional grants, and there is a vast number of them; and it will tend, we think, to prevent controversies between the grantees and those claiming under them, respecting the title to the lands covered by their several grants, and put an end to struggles to encroach upon the rights of others by securing an earlier location. Our judgment is that the title of the plaintiff, attaching to the lands in controversy by a location of the route of the road, being followed by a construction of the road, took effect by relation as of the date of the act of 1862, so as to cut off all intervening claimants except in the cases where reservations were specially made in that act, and the amendatory act of 1864.

But even if it should be held that there are technical defects in the legal title of the present owners, they have, in the opinion of your committee, such equitable rights as entitle them to consideration. It was undoubtedly the intention of Congress, by the act of July 2, 1864, to grant, for the purpose of aiding in the construction of this road, the alternate sections, for three sections in width on each side thereof, throughout its entire length; in other words, three sections of land for each mile of road.

With this understanding the Wagon Road Company undertook the work, and seasonably and properly constructed the road. It cannot be denied that, as so constructed, it is and has been of great benefit, not only to the State, but to the general government. It has opened up a large tract of country to settlement and cultivation; it furnishes a principal means of communication between Eastern and Western Oregon and the mining settlements of Southwestern Idaho. Enjoying its use free from tolls, the government is, by its means, enabled to supply its several military posts along its line. Both the State and the general governments are now in the full enjoyment of all the benefits that could ever be expected to flow from the building of the road, and for which the entire grant of lands was deemed but a just equivalent. Had it been understood at the time the grant was made and accepted that it was to be curtailed by the amount now falling in this reservation, the road could not have been built; for we are advised that the cost of its construction was largely in excess of any amount that can reasonably be expected to be realized from the balance of the grant.

There is a passage in the opinion of Chief-Justice Marshall, rendered in the case of *Huidekoper's lessee vs. Douglass* (3 Cranch, p. 1), which seems to your committee quite apposite. It was a question concerning

the construction of a grant of land made by the State of Pennsylvania; and it was said:

This is a contract; and, although a State is a party, it ought to be construed according to those well-established principles which regulate contracts generally.

The State is in the situation of a person who holds forth to the world the conditions on which he is willing to sell his property.

If he should couch his proposition in such ambiguous terms that they might be understood differently, in consequence of which sales were to be made and the purchase money paid, he would come with an ill grace into court to insist on a latent and obscure meaning which should give him back his property and permit him to retain the purchase money.

It seems to your committee that this is the case here. The road has been built. It has been built with the money of this company, and on the strength of the grant unimpaired. The United States and the State of Oregon have obtained all they ever looked to from the grant. Shall we now say, "We have got our purchase money; we have got what we bargained for, to wit, the road; but there is an ambiguity in the grant which will enable us to retain the lands and the purchase money too"?

Your committee is clearly of the opinion that the present owners of these lands under the grant are entitled either to possession of them or to a just equivalent for them.

Naturally they would prefer that the Indians should be removed, and that they should be given the possession to which they are entitled, for we are advised that the Klamath Reservation covers the best portion of the land passing under the grant, and that the lands conveyed within the reservation comprise the best portion of the reservation. In fact the Indian agent states that, if these lands should be taken from the possession of the Indians, it would be impracticable to longer maintain them at that point. But it is stated by both the former and present governors of Oregon, by the governor of California, and by the Indian agent, in their several letters appended hereto, that any attempt to interfere with the possession of these lands by the Indians would certainly lead to a bloody and expensive Indian war.

Appreciating this fact, and at the urgent solicitation of the government officers, the owners of these lands have thus far refrained from demanding possession, or in any way interfering with the occupancy of the Indians, although they have regularly paid the taxes thereon to the State. It is represented that the Indians have recently become suspicious that some claim existed to these lands adverse to their own, and have on that account become restive; so that it is strongly urged that some solution of the matter should be speedily arrived at, to prevent a threatened outbreak with all its fatal consequences.

It is desirable, therefore, to adjust the matter in some other manner, if it can be properly and satisfactorily done, rather than to disturb the possession of the Indians, to the maintenance of which they understand the faith of the government to be pledged.

Under these circumstances, the owners of these lands propose to reconvey them to the United States, asking only that they shall be allowed to select a like quantity of public lands, not mineral, elsewhere, and that scrip should be issued to them to facilitate such selections. Your committee deem this proposition on their part not only equitable, but commendable, and as furnishing a satisfactory solution of the question. It is but scant justice to them, and will enable the government to keep its faith with the Indians, and probably avoid the expense, in blood and treasure, of an Indian war.

We see no substantial objection on the score of policy to the passage of the bill. It has been customary for Congress to authorize similar is-

sues of scrip in evidence of floating rights of selection of public land granted to individuals. The precedents are numerous. The amount of scrip proposed to be issued (about 130,377 acres) is not comparatively large, and would undoubtedly soon be absorbed. In our judgment the bill under consideration presents the readiest and most satisfactory means of settling the matter and doing justice to all parties concerned, and we therefore recommend its passage, amended so as to meet more justly the circumstances of the case, which is presented in the form as substitute for the bill.

SCHEDULE OF EXHIBITS.

1. Certificate of secretary of state.
2. Opinion of Mitchell & Dolph, attorneys, on title.
3. Letter Commissioner of Indian Affairs to L. S. Dyar, Indian agent, September 17, 1873.
4. Letter L. S. Dyar to Commissioner Indian Affairs, September 20, 1873.
5. Letter L. S. Dyar to Commissioner Indian Affairs, October 16, 1873.
- 5½. Letter L. S. Dyar to Parks & Belcher, August 17, 1874.
6. Letter L. S. Dyar to Indian inspector, September 23, 1874.
7. Letter Commissioner Indian Affairs to Commissioner General Land Office, October 17, 1874.
8. Letter Commissioner General Land Office to Commissioner Indian Affairs, November 4, 1874.
9. Letter N. Luning, agent of company, to L. S. Dyar, Indian agent, November 6, 1874.
10. Letter L. S. Dyar to Commissioner Indian Affairs (submitting No. 9), November 18, 1874.
11. Letter B. J. Pengra to Commissioner Indian Affairs, December 28, 1874.
12. Letter Commissioner Indian Affairs to Commissioner General Land Office, February 8, 1875.
13. Letter Mitchell and others to Secretary of the Interior, February 18, 1875.
14. Letter of L. F. Grover to Secretary of the Interior, October 22, 1875.
15. Letter of William Irwin to Secretary of the Interior, January 28, 1876.
16. Letter of S. F. Chadwick, December 4, 1878.
17. Petition of citizens.

1.

EXECUTIVE OFFICE,  
Salem, Oreg., January 25, 1872.

UNITED STATES OF AMERICA,  
State of Oregon, ss:

I, S. F. Chadwick, secretary of state of the State of Oregon, hereby certify that certified transcripts of the following lists of lands, inuring to the State of Oregon under acts of Congress approved July 2, 1864, December 26, 1866, and March 3, 1869, and granted to the Oregon Central Military Company by the act of the legislative assembly of the State of Oregon approved October 24, 1864, duly approved by the Secretary of the Interior, have been transmitted by the Department of the Interior of the United States to the governor of this State, and now remain on file in the executive office, to wit:

	Acres.
List No. 1, containing.....	19, 153.73
List No. 2, containing.....	167, 633.57
List No. 3, containing.....	23, 475.66
List No. 4, containing.....	113, 504.91
List No. 5, containing.....	9, 641.14

Making an aggregate of..... 333, 409.01

In witness whereof I have hereunto set my hand and affixed the seal of the State of Oregon this 26th day of January, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.]

S. F. CHADWICK,  
Secretary of State.

PORTLAND, OREG., January 23, 1872.

SIR: In accordance with your request, we have carefully examined the abstract of the title submitted to us of The Oregon Central Military Road Company to the lands granted to the State of Oregon by the act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Eugene City to the eastern boundary of said State," approved July 2, 1864, and by an act of Congress amending said act, approved December 26, 1866; and from such examination we arrive at the following conclusions as to the construction of the several acts of Congress under which your company claims its land-grant:

By the said act of Congress of July 2, 1864, there was granted to the State of Oregon alternate sections of public lands designated by odd numbers for three sections in width on each side of a military wagon road from Eugene City to the eastern boundary of the State, being three sections of land for every mile in length of the road; and by the amendment of said act, approved December 26, 1866, there was granted to the State of Oregon such odd sections or parts of odd sections not reserved or otherwise legally appropriated, within six miles on each side of said road, to be selected by the surveyor-general of the State, as should be sufficient to supply any deficiency in the quantity of said grant as made by the said act of July 2, 1864, occasioned by any lands sold, reserved, or to which the rights of pre-emption or homestead had attached, or which, for any reason, were not subject to said grant within the limits designated in said act.

This amendatory act is intended to supply or make up any deficiency in the amount of three full sections to the mile of the road arising from any former reservations, as specified in the act, and also from any deficiency arising from rights of settlers attaching prior to the passage of that act, or the location of the road under the homestead and pre-emption or other laws of the United States, as it was only, of course, the then title of the United States that could pass by the grant. As fast as it is ascertained that any such deficiency exists within the three-mile limits, the company has the right to select such indemnity lands within the six-mile limits provided by the amendatory act.

These grants being in terms *in presenti* vested the title of the United States immediately in the State of Oregon. Such title to acquire *precision of locality*, as to the lands within the limits of the first grant, by the location of the road and the extension of the United States surveys, and as to the indemnity lands granted by the amendatory act by their selection by the surveyor-general of the State, as provided in the act. The title vests by virtue of the acts of Congress, and no patent is required. (8 Opinions Attorney-General, 247, 255; 9 Opinions Attorney-General, 41; Lessieur *et al.* vs. Price, 12 How. U. S. Rep., 59.) A grant is the highest muniment of title known to the law. (11 Opinions Attorney-General, 47.)

In our opinion, the only restriction placed upon the disposal of these lands by the State, was that they should be disposed of (that is, by the State) only as the road was completed, or not to exceed thirty sections in advance of the completion of the road, and if the road was not built within the time limited by the act of Congress, the lands for the uncompleted portions of the road were to revert to the United States. This time was, by the first act, five years from the passage of the act, and the time was extended by the amendment of March 3, 1869, until the 2d day of July, 1872.

It appears from the official letter of the Commissioner of the General Land Office, made part of your abstract of title, that the road has been accepted by the governor of Oregon within the time allowed by these acts of Congress, and the certificate of such acceptance filed in the Department of the Interior.

The act of the legislative assembly of the State of Oregon, made Exhibit D of your abstract, grants *in presenti* to your company all lands, right of way, privileges, and immunities theretofore granted to the State of Oregon, and grants and pledges such as should thereafter be granted to the State to aid in the construction of your road, subject to the conditions and limitations of the grant.

Our conclusion from the said several acts of Congress, and based upon the documents and statements of the abstract of title submitted, is that there was granted to your company the fee to the alternate sections of the public lands of the United States for three sections in width upon each side of your road as located, except such odd sections, if any, as were, before the date of said act, reserved to the United States, or to which, before the location of your road, prior rights had attached under the pre-emption, or homestead, or other laws of the United States; that the title so granted has acquired precision of location as to such portions of the lands as have been selected, listed, and approved, the right of the company to such lands as to the United States being adjusted by the Land Office by that process, and that the limits of the grant have been determined by the location of the road, but that the *precise location of the lands within the three-mile limits* will be fixed only by the extension of the government surveys, and that the title of your company to the indemnity lands not yet selected, if any, is a floating grant, nevertheless a grant *in presenti*, which will acquire



precision of location by the selection and listing of said lands, and the approval of such lists by the Secretary of the Interior of the United States.

Your company has, unquestionably, the absolute right to dispose of the whole or any portion of its lands under said grants, at such times, in such manner, and upon such terms as the company may determine, and the purchaser will acquire the same right of selecting and listing the unsurveyed portions of the grant that your company now has.

As fast as the road was completed and accepted and the governor's certificate of acceptance filed in the Department of the Interior of the United States, the condition of the grant was complied with and your company took the absolute fee to such lands as it was entitled to receive under the grant, with the immediate unqualified right of disposal.

Respectfully yours,

MITCHELL & DOLPH,  
Attorneys and Counselors at Law, Portland, Oreg.

W. S. LADD, Esq.,  
President of the Oregon Central Military Road Company.

STATE OF OREGON,  
County of Marion, ss:

I, J. N. Dolph, an attorney of the supreme court of the State of Oregon, and a member of the late firm of Mitchell & Dolph, certify that the within abstract was exhibited to me upon the 19th day of October, A. D. 1874, and at said date there were no liens or incumbrance upon the lands of the Oregon Central Military Road Company therein described; that the whole of said lands and land-grant have been conveyed to B. J. Pengru; an undivided half by deed of May 12, 1874, and an undivided half by deed dated October 12, 1874, excepting small portions theretofore sold, reserved in said deeds, not exceeding seven thousand acres.

Salem, October 19, 1874.

J. N. DOLPH.

STATE OF OREGON,  
County of Lane:

I hereby certify that there are no liens or incumbrances of record in this office upon any of the Oregon Central Military Road lands, one-half of which were conveyed by B. J. Pengru and his wife, C. E. Pengru, May 15, 1874, to G. W. Colby, John Boggs, N. D. Ridout, Edgar Mills, E. B. Pond, Nicholas Luning, W. H. Parks, W. C. Belcher, and T. B. Simpson, each an undivided one-tenth of the one-half, and to W. H. & R. F. Parks, jointly, one-tenth of one-half; the other one-half conveyed by said Pengru and wife, on the 15th day of October, 1874, to G. W. Colby, four-twentieths to Nicholas Luning, E. B. Pond, J. M. Peck, Isaac Allen, B. F. Baker, and M. P. Jones each two-twentieths, to C. H. Holbrook, W. C. Belcher, N. D. Ridout, and Isaac Lohman each one-twentieth, excepting the reservations in said deeds made, not exceeding seven thousand acres.

Witness my hand and official seal this 22d day of October, A. D. 1874.

[SEAL.]

JOEL WARE,  
County Clerk of Lane County, Oregon.

STATE OF OREGON,  
County of Jackson, ss:

I hereby certify that there are no liens or incumbrances of record in this county upon any of the Oregon Central Military Road lands, as conveyed by B. J. Pengru and his wife, C. A. Pengru, on May 15, 1874, and October 15, 1874, to G. W. Colby and others.

Witness whereof I have hereunto set my hand and the seal of the county court of the county aforesaid this 24th day of October, 1874.

E. D. FONDSEY,  
County Clerk.

3.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, D. C., September 17, 1873.

SIR: Your attention is called to the present condition of the reservation for the Klamath and other Indians, provided for by the first article of the treaty concluded with said Indians, October 14, 1864, proclaimed February 17, 1870 (Stats. at Large, vol. 16, p. 708).

Under the provisions of the act of Congress, approved July 2, 1864, entitled "An act

granting lands to the State of Oregon, to aid in the construction of a military road from Eugene City to the eastern boundary of said State" (Stats. at Large, vol. 13, p. 355), there have been certified to the State for the aid of the Central Military Road out of this reservation, 96,312.29 acres.

The wagon-road has the unquestioned title to these lands, and their acquisition for the benefit of the Indians would be impracticable. This location of this road within the reservation, and the particular land acquired by it under the act, are delineated on the inclosed diagram.

You will submit to this office without delay your views in regard to this reservation, whether, in view of the acquisition of lands by the road, the Indians can be properly cared for within the limits of the reservation, or what steps in the premises are, in your judgment, best to be taken.

Very respectfully, your obedient servant,

E. P. SMITH,  
Commissioner.

LEROY S. DYAR, Esq.,  
United States Indian Agent, Farmington, Me.

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4.

FARMINGTON, ME., September 20, 1873.

SIR: In answer to your letter of 18th instant, inclosing diagram of lands belonging to the Oregon Central Military Road within the limits of Klamath Reservation, and requesting my views in regard to whether the Indians can be properly provided for on the reservation, and the steps best to be taken in the premises, I will say:

First. I deem it of the *first* importance that the department should understand fully that this is a matter that should be handled *very carefully* if trouble would be avoided.

When the treaty was made with these Indians, they understood that the reservation took in the whole of the arable portion of Sprague's River Valley, but the line was run some six miles to the west of where they understood the eastern line to be; thus leaving out a part of the best portion of the valley. This caused much dissatisfaction at first, but they concluded that they had enough still left, and became quiet. Now they understand that all the land within the limits of the reservation is theirs *by treaty*, and that the government is *bound* to make them secure in the possession of it.

Second. Should the lands of the company be occupied by white settlers endless difficulties will be the consequence. Some of the land claimed by the company is now occupied by the Indians, and also probably a part at least of the government farm at Yainax Station. If the Indians could be induced to remove to some place better adapted to agricultural purposes, it would be better for them perhaps, but I do not think it can be done.

Considering all the circumstances, I think the best thing to be done, if government cannot purchase *all* the land claimed by the company upon the reservation, is to purchase all that portion lying south of Sprague's River, amounting to about thirty-two sections. Should this be done, they can be subsisted with little difficulty within the limits of the reservation; otherwise there will be serious trouble.

If this can be accomplished, and the Indians pacified, it will be, in my judgment, very much the cheapest way out of the difficulty. Should the whites be allowed to settle along the south side of Sprague's River, the Indians there would have to be removed to the western portion of the reservation, which is impracticable.

Should my views change on my return to the reservation I will write you again.

Very respectfully, your obedient servant,

L. S. DYAR,  
United States Indian Agent.

Hon. E. P. SMITH,  
Commissioner of Indian Affairs, Washington, D. C.

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5.

KLAMATH AGENCY OREGON,  
October 16, 1873.

SIR: Having returned to the reservation and thought farther relative to the subject-matter of your communication of September 17, in regard to the lands of the Oregon Central Military Road Company, located on this reservation, I deem it proper to express more fully my views.

By the treaty of October 14, 1864, the Government of the United States pledged

itself in the most solemn way to secure this land to the Indians and their heirs forever. This was thoroughly explained to them, and has been repeatedly since, and their good feeling towards the government and its white citizens to-day rests in the conviction that this pledge will be conscientiously fulfilled.

Say to them, the government has deeded this land to the road company, and they will reply, "The government made a solemn treaty with us, giving us a title to all this land, only reserving the right of way for roads, nothing being said about the location of lands, and we cannot understand that this is not a scheme to take our country from us." They will look upon this as a violation of the treaty by which the government does positively give them an assurance of their permanent ownership of this identical land, and they will say, "If the government violates one pledge there is no certainty that it will fulfill any."

I do not thus express myself without having as fully considered the subject as I am capable of doing. I have also counseled with persons of sagacity and reliability, who are fully conversant with the feelings of the Klamath, Modoc, and Snake bands located on this reservation, and I will say that it is my honest conviction that if a public announcement were made to-day to the 3,000 white and red inhabitants of this section of the country, that we would stand upon the verge of a war, by the side of which the late difficulty with the renegade band of Modocs would be dwarfed into insignificance.

A combination of Klamaths, Modocs, Snakes, and Piutes could at a single stroke destroy the sparse settlements of Southeastern Oregon, and, taking refuge in the volcanic fields of this country, with the supplies of arms and subsistence secured by their success, would cost the government millions of money and a thousand lives before they could be subjugated.

Why will not the government in order to make its promises good to secure peace for both Indians and whites, and the civilization of the red men, procure a title to the lands for the Indians? The outlay would be insignificant as compared with the expenses of a war which, without the greatest care and caution, will result from this most unfortunate affair.

During the Modoc war there were always irresponsible parties ready to talk to these Indians and make them distrustful of both the reservation authorities and their government. Among other things they were told that as soon as the Modocs were subdued and taken from the country, the government would steal away the reservation lands and take them away. Although the Indians knew these parties were not much entitled to credit, there was at one time a great deal of excitement, and they could only be satisfied by assuring them that government would surely make its promises good and secure to them and their children forever all the lands of the Klamath Reservation. Suggest this thing to them now and the galling wound will be opened afresh, and they cannot be persuaded to believe that the government means to allow them justice. It is possible that with judicious management and the purchase of all the road lands south of Sprague's river, the Indians could be prevented from open hostility, but it is unmistakably true that nothing short of a title to the reservation would be justice.

I have expressed myself plainly and distinctly, knowing that you wish to know the actual facts in the case, and not that I wish to draw the picture with brighter colors than belong to it.

I would respectfully insist on the department sending out a man of sagacity and experience to inquire into this matter in all its bearings; some one in whom the department can repose entire confidence to make a report and suggestions in this case, which is one, perhaps, of greater consequence than any question now remaining unsettled among the Indians in this section of the Union.

Very respectfully, your obedient servant,

L. S. DYAR,  
United States Indian Agent.

Hon. EDW. P. SMITH,  
Commissioner of Indian Affairs,  
Washington, D. C.

54.

KLAMATH AGENCY, OREGON,  
August 17, 1874.

Sirs: By request of Mr. G. W. Colby, of Nord, Cal., who left here to-day, I inclose herewith a copy of a correspondence between Hon. Edw. P. Smith, Commissioner of Indian Affairs, and myself relative to certain lands within the limits of the Klamath Reservation owned by the Oregon Military Road Company.

All the lands within the bounds of the reservation were pledged to these Indians by

treaty, which they understand fully, and believing that when the matter could be properly brought before the department at Washington, and also fully understood by the road company, the necessary action would be taken to secure these lands to the Indians, I have studiously avoided introducing the matter to them, knowing that it would create great dissatisfaction if not open hostility. Messrs. Colby & Pengra have very wisely, I think, refrained from taking any action in regard to leasing or selling these lands, concurring with me in the belief that it would endanger all their interests in this section of country.

I earnestly hope that immediate steps may be taken to secure these lands to the Indians, being confident that this course is for the best interests of both the government and the road company.

Very respectfully,

L. S. DYAR,  
*United States Indian Agent.*

Messrs. PARKS & BELCHER.

6.

KLAMATH AGENCY, OREGON,  
*September 23, 1874.*

SIR: According to agreement, I wrote you very briefly relative to the lands claimed by the Oregon Central Military Road Company within the limits of the Klamath Reservation.

Treaty was concluded by the government with the Klamath, Modoc, and Yahooskin Snake Indians on October 4, 1864, but was not fully ratified by Congress and signed by the President until February 17, 1870. Meanwhile, between 1864 and 1870, a bill was passed by Congress, granting said company the right to build a road from near Eugene City, in the Willamette Valley, to the eastern boundary of the State, and granting also to the company every alternate section of land for three miles on each side of the road to aid in the construction of the same.

This road runs diagonally through the whole length of the Klamath Reservation, a distance of sixty miles or more, traversing the very best portions of the same; in fact, is so located as to embrace within the limits of the six miles in breadth more than one-half of all the land upon the reserve suitable for cultivation or for winter grazing.

I am informed by the Commissioner of Indian Affairs of the decision that the road company has the prior right to these alternate sections upon the reserve.

Now, if Sprague River Valley be taken from these Indians, the only hope of their ever becoming self-supporting is removed, for they must depend on stock-raising in the future as their only means of subsistence, and Sprague River Valley, nearly all of which is embraced in this claim, is the only reliable winter pasturage upon the reservation.

Unless some action be taken by which these lands are secured to the Indians, the most serious results are inevitable.

I hope you with the Indian commissioners will induce the Commissioner of Indian Affairs to furnish funds for the Indians at Yainax, sufficient to keep them from starvation.

I have been obliged to close my school for want of means to support it. This I very much regret, but no other course is possible.

Mr. Werden returned to-day all right.

Very respectfully, your obedient servant,

L. S. DYAR,  
*United States Indian Agent.*

Hon. WM. VANDEVER,  
*United States Inspector.*

7.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, D. C., October 17, 1874.*

SIR: An act of Congress, approved July 2, 1864, granted to the State of Oregon, to aid in the construction of a military wagon-road from Eugene City, by way of Middle Fork of Willamette River, and the most feasible pass in the Cascade Range of mountains near Diamond Peak, to the eastern boundary of the State, alternate sections of public lands, designated by odd numbers, for three sections in width on each side of said road.

Subsequently on the 14th October, 1864, a treaty was concluded between the United States and the Klamath and Modoc tribes, and Yahooskin Band of Snake Indians, by

the terms of the first article of which the United States recognize the existence of the Indian title or claim to the region of country therein described, by having the Indians cede and relinquish their right, title, and claim thereto to the United States, with the proviso "that the following-described tract, within the country ceded by the treaty, shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, and held and regarded as an Indian Reservation, to wit: Beginning upon the eastern shore of the Middle Klamath Lake, at the Point of Rocks, about twelve miles below the mouth of Williamson's River; thence following up said eastern shore to the mouth of Wood River; thence up Wood River to a point one mile north of the bridge at Fort Klamath; thence due east to the summit of the ridge which divides the Upper and Middle Klamath Lakes; thence along said ridge to a point due east of the north end of the upper lake; thence due east, passing the said north end of the upper lake, to the summit of the mountains on the east side of the lake; thence along said mountain to the point where Sprague's River is intersected by the Ish-tish-ee-wax Creek; thence in a southerly direction to the summit of the mountains, the extremity of which forms the Point of Rocks; thence along said mountains to the place of beginning."—(Stats. at Large, v. 16, p. 708.)

This office is informed that the State of Oregon claims the lands granted in the act first above mentioned along the entire route of the wagon-road, and as the line of the road passes through the tract of country above described as reserved for the Indians, I would respectfully request to be informed at as early a day as practicable what action, if any, has been taken by the General Land Office relative to the claim of the State of Oregon, under said act, so far as the alternate sections within the limits of said Indian Reservation are concerned.

Very respectfully, your obedient servant,

H. R. CLUM.

The Hon. COMMISSIONER OF THE GENERAL LAND OFFICE.

8.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., November 4, 1874.

SIR: I have the honor to acknowledge the receipt of a communication from your office dated 17th ultimo, respecting the action of this office touching the lands in what is known as the Klamath Indian Reservation in Oregon, embraced in the limits of the grant of July 2, 1864, for the Oregon Central Military Wagon Road.

In reply I have to state that the odd sections falling within said reservation have been approved to the State for the benefit of the road, within the three and six mile limits, as follows:

	Acres.
April 21, 1871 .....	51,248.56
December 8, 1871 .....	37,414.51
April 2, 1873 .....	4,487.34
Total .....	93,150.41

The treaty creating the reservation not having been ratified until 1870, and not having been brought to the attention of this office until after the approval of the lands, no formal decision upon the rights of the State has been promulgated, the question not having been examined with reference to the force of the reservation, made subsequent to the date of the grant, to take the lands out of its operation.

Very respectfully,

S. S. BURDETT,  
Commissioner.

Hon. E. P. SMITH,  
Commissioner of Indian Affairs.

9.

SAN FRANCISCO, November 6, 1874.

DEAR SIR: Some time in August last you were waited upon by Messrs. Colby and Pengra, agents of the parties in interest, who own the grant of land made to the State of Oregon, and known as the Oregon Central Military Road grant, which extends through and embraces a portion of the Indian reservation. You were informed by them that under our instructions they were authorized to take possession of and to lease or sell said lands to actual settlers, and that it was their intention to at once

proceed to do so to parties applying for the same. They report that you, as agent of the government, earnestly protested against such action, and requested us to delay action until you could lay the matter before the department at Washington, urging as a reason that the Indians knew nothing of our ownership of the land, and that any action in the matter, as indicated by us, would inevitably cause great discontent among the Indians, and end in another Indian war. You also informed them that the department were in correspondence with you on the subject, and would probably soon take some action in the matter.

As we are in constant receipt of applications for the lease or purchase of these lands, we most respectfully ask you to inform us what action, if any, the department has taken in the matter, and if none has been had please forward this to the department.

We would also represent that the agency has occupied the land for several years, while we have been paying large sums for taxes annually, and that we now desire to get possession of the lands, in order that we may dispose of them to actual settlers.

Very respectfully,

N. LUNING,  
Chairman Executive Committee of Owners.  
R. F. PARKS,  
Secretary.

Hon. L. S. DYAR,  
Indian Agent, Klamath Reservation, Jackson, Oregon.

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10.

OFFICE KLAMATH AGENCY,  
Oregon, November 18, 1874.

SIR: Inclosed is a communication from N. Luning, esq., relative to the settlement of lands within the Klamath Reservation, claimed by the Oregon Central Military Road Company.

In a letter dated October 16, 1873, I gave you my opinion in the matter quite fully, and I have no reason to change that opinion.

By solemn treaty the United States Government gave all the lands within the limits of the reservation to the Indians, and must make that promise good or else commit a positive breach of faith, which, I fully believe, will cost many times more than the price of the lands in question.

These lands embrace the valley of Sprague River, which is the *only* safe winter pasture on the reservation, and the only reliance of the Indians in case of a hard winter. Gen. William Vandever, United States Indian inspector, understands the situation quite well, and I would respectfully refer you to him.

This matter demands *prompt attention*, and especially so as the Oregon Branch of the Central Pacific Railroad is located very nearly on the exact line of the wagon-road, and will, doubtless, be built at an early day.

Very respectfully, your obedient servant,

L. S. DYAR,  
United States Indian Agent.

Hon. E. P. SMITH,  
Commissioner of Indian Affairs.

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11.

WASHINGTON CITY, D. C., December 28, 1874.

SIR: By an act of Congress approved July 2, 1864, there was granted to the State of Oregon, to aid in the construction of a wagon-road from Eugene City, by way of the middle fork of the Willamette River, and the most feasible pass in the Cascade Mountains near Diamond Peak, to the eastern boundary of the State, alternate sections of public lands, designated by odd-numbered sections, for three sections in width on each side of said road. Said lands were by the legislative assembly of the State of Oregon, in September following, granted to the Oregon Military Road Company, and have, so far as the public surveys have extended, been located and approved to said company by the State and by the United States. Said lands conveyed and belonging to said wagon-road company by virtue of said acts have recently been conveyed by said company to B. J. Pengra, of Oregon, and by B. J. Pengra to Nicholas Luning, Edgar Mills, N. D. Rideout, W. H. Parks, G. W. Colby, W. C. Belcher, John Boggs, and others, of the State of California.

Since making said grant, the Government of the United States, by its authorized agents, have located what is known as the Klamath Indian Reservation, by treaty approved February 17, 1870, which reservation includes within its limits a portion of the lands belonging to said grant, and is occupied by the Klamath and Modoc tribes and Yahooskin band of Snake Indians.

Acting as the authorized agent of the above-named parties in California, to whom said entire grant now belongs, myself and G. W. Colby, one of the parties in interest, went upon said company's lands within the limits of the reservation, in August last, for the purpose of leasing the same to the parties applying therefor. Upon our arrival at the office of L. S. Dyar, the local Indian agent, we were informed by him that the Indians on the reservation had never been informed as to our title to that portion of the grant included in the reserve; that a knowledge of said ownership had been carefully kept from them for fear of difficulty and renewed war by them; that the subject was "undergoing investigation between himself and your office, as to how the matter could be treated, so as to avoid difficulty with the tribes occupying the reservation;" and urgently requested us to desist from leasing the lands to parties to become occupants, as we were doing with our lands outside the reservation.

As an evidence that the matter was then under advisement, and that steps would soon be taken to remove the Indians or indemnify the owners of the land, your letter of September 17, 1873, in which you state "the wagon-road has the unquestioned right to these lands," and other correspondence following, was shown us. Upon this evidence, and the earnest request of the agent, Mr. Dyar, we withheld action, so as to give time to mature a plan of settlement without causing trouble to the Indians.

The parties owning these lands have waited patiently to the present, expecting that some measure would be devised by your office looking to a peaceable settlement of the matter. Up to this date we are not advised of any steps being taken looking to necessary legislation or otherwise.

I have, therefore, to inform you that I am instructed by the owners of the grant to propose to your office, as an equitable settlement of the matter, and to indemnify them for the lands taken by the government, that Congress pass an act at its present session allowing said owners to locate, in lieu of their lands embraced in the Klamath reservation, an equal number of acres of any vacant government lands elsewhere, and authorizing the Secretary of the Interior to issue such certificates as will enable them to make such locations.

To the end that this matter be now attended to, I have respectfully to request that the above proposition be presented, with your special recommendation, to Congress.

Very respectfully, your obedient servant,

B. J. PENGRA,  
*Agent Parties in Interest.*

Hon. E. P. SMITH,  
*Commissioner of Indian Affairs.*

12.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
February 8, 1875.

SIR: In reply to the inquiry contained in your letter of the 6th instant, relative to Senate bill 1164, entitled "A bill to adjust the claim of the owners of land within the limits of the Klamath Indian Reservation in the State of Oregon," what, if any, action may have been had by me or under my sanction relative to the subject-matter of the bill, and requesting an expression of office views respecting the same, I would respectfully state that the bill referred to has not been submitted for the views of this office.

A report was made to the honorable Secretary of the Interior on the 7th ultimo (copy herewith), which contained the views of this office on the subject-matter of the bill. I would further state that it is deemed very important and desirable that the Klamath Indian Reservation in Oregon should remain intact, as contemplated by the treaty of October 14, 1864 (Statutes at Large, vol. 16, p. 707), and that such action be taken as will best enable the accomplishment of this end.

Very respectfully, your obedient servant,

E. P. SMITH,  
*Commissioner.*

Hon. COMMISSIONER GENERAL LAND OFFICE.

13.

WASHINGTON, D. C., *February 18, 1875.*

SIR: It has come to our knowledge that circumstances connected with the location of the Klamath Indian Reservation upon a part of the grant of lands to the State of Oregon, of July 2, 1864, and the continued occupation thereof works so great a hardship on the present owners that some action will necessarily have to be had at once to avoid a most certain serious Indian difficulty again in that country.

Understanding that two propositions have been made to your department by the owners of the lands, looking to an adjustment of ownership and occupation, and believing that a moneyed appropriation would be difficult to obtain, and should be avoided, as contemplated in one proposition, and understanding that the adjustment contemplated in form of a "floating grant" of scrip is thought to be objectionable by your office, we ask whether you would concur in the issue of a class of scrip to be located on any surveyed and unappropriated public lands? If so, will you please recommend the same upon the immediate attention and action of Congress, as the case seems to require?

Respectfully, &c.,

J. H. MITCHELL,  
*United States Senator.*  
J. K. KELLY,  
*United States Senator.*  
JAS. H. NESMITH.  
J. K. LUTTRELL.

The Hon. SECRETARY OF THE INTERIOR.

14.

STATE OF OREGON, EXECUTIVE OFFICE,  
*Salem, October 22, 1875.*

SIR: By act of Congress approved July 2, 1864, certain public lands were granted to the State of Oregon "to aid in the construction of a military road from Eugene City to the eastern boundary of said State." By an act of the legislative assembly of the State of Oregon, approved October 24, 1864, this grant was conferred by the State upon the Oregon Central Military Road Company. The road contemplated by said act of Congress has been completed, and, by my predecessor, was examined and certified as constructed and completed throughout its entire length, according to the terms of the grant, on January 12, 1870. The treaty with the Klamath Indians, of 1864, was ratified February 17, 1870. (Statutes, 16, p. 707.) The line of the wagon-road passes through Klamath Lake Basin, and the Klamath Indian Reservation, as established subsequent to the listing of the wagon-road lands to the State for the use of said wagon-road company, embraces 130,377 acres of said lands belonging to the wagon-road company.

The Klamath Indian Reservation was finally confirmed as such without notifying the Indians for whose use it was set apart that any portion of it was at that time the property of said wagon-road company. The entire wagon-road grant has been transferred by sale to a number of prominent capitalists, chiefly of the State of California, as I understand, without notice that the Klamath Indians claimed to hold the lands of the grant listed to the State within said reservation as belonging to them by virtue of the treaty.

The wagon-road company and their successors in interest have paid taxes upon said reservation lands from the time when they were segregated to said company. The present owners now desire to dispose of these lands to settlers; and persons are ready to become purchasers. But the Klamath Indians lately discovering that said company claimed these lands by virtue of the grant mentioned, resist the claim and threaten to resist the occupancy of any portion of their reservation by settlers.

I am informed that the owners of this grant are willing to take a money indemnity or lieu lands on any just basis for the surrender of all of these lands falling within said reservation.

I desire to make special presentation of this fact, that the Klamath Indians occupy the same region of country which was the home of Captain Jack and his band of less than a hundred warriors, whose hostility cost the general government and this State so many lives and so much money, and to urge upon the attention of your department the vital importance of early action on the part of the general government in adjusting this matter. From my experience of nearly twenty-five years upon the Pacific borders, I do not hesitate to say that if this question of title to lands within the Klamath Reservation remains for any considerable period unadjusted, the



most serious Indian hostilities will occur, disastrous to the settlements in Southern Oregon and Northern California, as well as expense to the general government in an amount far exceeding any cost of present settlement of the matter.

Could the reservation be vacated and the Klamath Indians be removed to other lands I presume it would be the most satisfactory solution of the question, as far as the owners of these lands are concerned; but if this cannot be done, it would appear but common justice and fair dealing that other lands of equal value be given in release of these, or that a fair money compensation be made for the same.

I have the honor to be, sir, very respectfully, your obedient servant,  
L. F. GLOVER,  
*Governor of Oregon.*

The SECRETARY OF THE INTERIOR,  
*Washington, D. C.*

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15.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,  
*Sacramento, Cal., January 28, 1876.*

SIR: I am informed that by an act of Congress, approved July 2, 1864, certain lands were granted to the State of Oregon to aid in the construction of a military road from Eugene City to the eastern boundary of the State, and that by an act of the legislature of Oregon, approved October 24, 1864, this grant was conferred on the "Oregon Central Military Road Company." I am further informed that the proposed military road was completed according to the terms of the act of Congress making a grant of land in aid of the construction thereof, and the lands granted were listed to the State; also, that at a date subsequent to the transfer of these lands to the State of Oregon, a treaty was ratified with the Klamath and other Indians, by which a portion of the lands already donated for the purpose above named was set apart for an Indian reservation.

The Oregon Central Military Road Company, on which the grant was conferred by the State of Oregon, has since sold the land to other parties, and it is now owned by a company of capitalists, most of whom, as I am informed, are citizens of this State. The portion of it embraced within the Klamath Indian Reservation, about 130,000 acres, they are unable to make use of for purposes of settlement and cultivation; though, as I am informed, they pay taxes on it annually, under the laws of Oregon, for State and county purposes. Holding title to this land from the Federal Government, and paying taxes on it under the laws of the State, they naturally desire to obtain possession of it, so that they may use it; or failing in this, that they may receive the value of the land, either in cash or in other lands elsewhere, and I think in this respect their desires are only just and reasonable, and are entitled to consideration from the government.

There are other considerations, growing out of the relation of the reservation Indians to these lands, which make it a matter of very great importance that the rights of these parties should be adjusted on some satisfactory basis at as early a day as possible.

The Indians on the reservation are jealous and warlike, and if they come to understand that citizens have a title to a portion of the land embraced in their reservation, and which they have heretofore regarded as exclusively their own, by a title resting on the good faith of the government, it is not probable that they will contemplate the situation with complacency. On the contrary, it is to be feared that the discovery of such fact by them would be the signal for them to commence hostilities. And while it cannot be doubted what the ultimate result of such action on their part would be, the loss of life and property consequent on the outbreak of the Modoc, in the same section, is too recent to allow us to regard lightly the prospect of another occurrence of the same kind.

The rights, therefore, of the citizens owning these lands, the good faith of the government pledged to the Indians in solemn treaty, and the safety and welfare of the settlers in the vicinity of the reservation, all conspire to demand that the government shall take prompt steps either to put the citizens in possession of the land which they hold by title from the government, or to extinguish their title to the lands by giving them an equitable consideration therefor. To place them in possession of their lands would involve the breaking up of the reservation and the removal of the Indians to some other locality; that this ought to be done, I am not prepared to say. But if it is thought best to retain the reservation where it is—and the question of its removal deserves very serious consideration before its determination in the affirmative—I certainly think the citizens in question are entitled to relief in the other manner suggested.

Trusting that this matter will receive your early attention, I have the honor to be, sir, very respectfully, your obedient servant,

WILLIAM IRWIN,  
*Governor of State of California.*

Hon. Z. CHANDLER,  
*Secretary of the Interior, Washington, D. C.*

16.

SALEM, December 4, 1878.

SIR: I desire to call your attention to the unsettled condition of a matter of much importance, involving the asserted claims of reservation Indians at the Klamath Agency, in Oregon, to lands embraced within the limits of that reservation which were listed to this State, for the legal purpose of vesting the title to them in the Oregon Central Military Road Company, for constructing and completing a military road under the act of Congress approved July 2, 1864, from "Eugene City to the eastern boundary of the State." This road was completed and the Oregon Central Military Road Company accepted the grant of land for constructing the same. In October, A. D. 1864, the legislative assembly of this State conferred the grant mentioned in the act of Congress aforesaid upon the Oregon Central Military Road Company. The claims of these reservation Indians are based on a treaty which was ratified after the lands in question had passed to the Oregon Central Military Road Company.

During the fall of 1877, I made it a part of my official duty to visit Southeastern Oregon and the agency at Klamath. At this time I learned very much of the temper of the Indians there in reference to their understanding of the treaty with the general government touching the extent or limit of the reservation. An Indian does not understand a mistake when made against him by whites. He is decided, and to him the mistake is a "lie," to use his own words; and when in this temper there is danger. In this condition of these Indians I learned of promised trouble over this treaty. The agent felt much concern over the future of this mistake, and informed me he should call the attention of the proper authorities to the Indians' view of the case. I was told that these Indians were determined to resist, at all hazards, every encroachment made upon the lands by the whites, which under the treaty the Indians were to hold in quiet possession.

There is great reason to fear another Indian outbreak in Eastern Oregon in 1879. The efforts of two years past to conquer a peace have failed. One circumstance follows another to destroy confidence between the whites and Indians and to intensify the spirit of the Indian for open revenge. The Klamath Indians should be friendly and kept so. Their influence over other tribes or example when friendly is the main dependence of settlers in times of trouble. I refer to the Modoc war for example, and also to the great alarm last summer, fearing that the Klamaths would seek that opportunity for revenge. As governor of this State during the outbreak of 1878, I respectfully requested by letter (dated June 27, 1878), of Maj. Gen. Irvin McDowell, that troops stationed at Fort Klamath should not be removed. There should be no open question of bad faith with Indians who are to be held in subjection by promises. As fast as they lose confidence in whites revenge manifests itself.

As between those gentlemen who have purchased these lands and the government it is not for me to advise. I would merely suggest, in view of the facts and surroundings, that an early settlement of this question should be made between all parties. It is well known that another war covering the ground of the Modoc war would extend to the settlements in Eastern Oregon and Northern California, and would be attended with all the horrors and great expense of an unmerciful Indian raid.

These Indians will not give up their reservation. It would be well for the country if they were removed from it, but this is their home and has been the habitation of their ancestors for ages. It would be difficult to remove these Indians from the Klamath Basin. The integrity of the grant of land to the Oregon Central Military Road Company should be maintained, and all the interests of the company protected by the government, thereby preventing a conflict of title to these lands. This company has paid taxes on these lands for years; it has complied with laws under which this grant was made, and is doing all it can to promote the interests of the southern portion of our State. If under all the circumstances peaceable possession of these lands cannot be secured to the road company, a fair compensation should be paid for them by the government. The government would pay no price it could not realize upon a resale of the lands.

From my experience in these troubles on our borders and from observation I am convinced that every consideration of justice to settlers and the State demands that a permanent settlement of this matter be made at the earliest moment.

I am, very respectfully, your obedient servant,

S. F. CHADWICK.

To the honorable Commissioner of Indian Affairs, Washington, D. C.:

The undersigned respectfully represent that they are settlers and citizens living in the vicinity of Klamath Reservation, Oregon and California, and being well acquainted with the character and past history of the various tribes of Indians upon that reservation, induces them earnestly to solicit an immediate settlement of the private land-claims within the boundary of the reservation, as they fully believe if it were known by the Indians that they had not full and complete right to the whole reservation, and that the government hesitated in protecting that right, the consequences would be most alarming, and, before relief could be had, the whole of Southeastern Oregon and Northern California would be depopulated.

S. B. CRANSTON,  
*United States Register, Linkville.*  
GEO. CONN,  
*United States Receiver, Linkville.*  
A. F. LEWILLING,  
*County Commissioner, Lake County.*  
E. C. MASON,  
*County Judge, Lake County.*  
GEORGE NURSE.  
THOMAS MULHOLLAND,  
*Sheriff, Lake County.*  
N. HOPKINSON,  
*County Clerk, Lake County.*  
J. P. ROBERTS,  
*County Commissioner.*  
L. B. APPLGATE.  
JACOB BALES.  
J. THOMPSON.  
SAML. D. WHITMAN.  
A. D. BUCK.  
ROBT. TAYLOR.  
L. S. BALL.  
WM. ROBERTS.  
W. J. SMALL.  
H. M. THATCHER.  
JOHN T. FALKNER.  
CAPT. D. J. FERREE.  
C. J. PHILLIPS.  
R. B. HATTON.  
JOHN DICK.  
ASA S. HARRON.  
F. W. SMITH.

There are several other petitions before the department.

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STATE OF OREGON, EXECUTIVE OFFICE,  
*Salem, December 11, 1873.*

DEAR SIR: Permit me to urge upon you the importance of an adjustment of the matter in relation to the appropriation by the United States for the Klamath Indian Reservation of a portion of the lands granted to the State of Oregon by the act of Congress approved July 2, 1864, to aid in the construction of a military road from Eugene City to the eastern boundary of the State, afterwards granted by the State to the Oregon Military Road Company, and subsequently sold to a company of capitalists, the most of whom reside in the State of California.

The United States clearly divested itself of title to this land by the Congressional grant above referred to, subject only to the conditions therein specified, which having been subsequently performed by the State, and its grantee, the Road Company, the title of the company became indefeasible, and the company of capitalists, of course, acquired an absolute title thereto; but the United States has pledged the use and occupancy of certain of these lands to the Indians, and hence a conflict of title has arisen between the two parties which is, at all times, liable to cause difficulty. Our Indian troubles in this State have been of such a serious character that our people are anxious to have every cause liable to create disturbance removed; besides, as a matter of justice, the owners of the land in question should be compensated on account of their deprivation of it. A permanent appropriation may not have been contemplated, but whether it is or not, the United States should pay for it, or at once

surrender the possession. The bare legal title without any prospect of enjoying the use of this land, until the Klamath tribe of Indians shall become extinct, strips it of all value, and effectually deprives the owners of their property.

The necessity of a speedy settlement of this matter is too obvious to require further comment.

Yours, with great respect,

W. W. THAYER,  
*Governor of Oregon.*

The Hon. SECRETARY OF THE INTERIOR,  
*Washington, D. C.*

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