

1894-2

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Report of the Commissioner of Indian Affairs relative to the failure of the Utah and Northern Railway Company to compensate certain Indians for right of way.

DECEMBER 9, 1884.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, December 5, 1884.

SIR: I have the honor to transmit herewith copy of report of 2d instant with inclosures from the Commissioner of Indian Affairs, in relation to the failure of the Utah and Northern Railway Company to compensate the Indians upon the Fort Hall Reservation in Idaho for the right of way, and lands taken and used for the purposes of its road constructed through the said reservation from the north to the south thereof.

The United States laws relating to the construction of the road, and the treaty stipulations with the Indians, are cited by the Commissioner, and reference made to the action taken by Congress in similar instances in making compensation to the Indians for their lands taken and used for railroad purposes.

It is not presumed by this Department that the law of Congress granting the right of way to the Utah and Northern Railway Company was intended to authorize the construction of their road across the lands of these Indians without any compensation therefor. The matter is therefore respectfully submitted for the consideration of the Congress, and such action as it may find to be right and proper.

Very respectfully,

H. M. TELLER,
Secretary.

The PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 2, 1884.

SIR: I am in receipt of your letter of the 24th September last, relative to the failure of the Utah and Northern Railway Company to compensate the Shoshone and Bannock Indians for the right of way and

lands of the Fort Hall reservation in Idaho, taken and used for the purposes of its road constructed from north to south through said reservation, and directing the preparation of papers relating to the subject for presentation to Congress in the usual manner at its ensuing session for such action as may be deemed advisable by that body, with a view to determining whether it was the intention of the act of Congress of June 20, 1878, to grant a right of way through an Indian reservation without compensation to the Indians located thereon.

I have the honor to report thereon as follows:

The first section of the act of Congress approved March 3, 1873 (17 Stat., 619), entitled "An act granting the right of way through the public lands to the Utah Northern Railroad Company," provided—

That for the purpose of enabling the Utah Northern Railroad Company, a corporation organized under the laws of the Territory of Utah, to build and extend its line by way of Bear River Valley, Soda Springs, Snake River Valley, and through Montana Territory, to a connection with the Northern Pacific Railroad by the most advantageous and practicable line to be selected by said company, the right of way through the public lands in the Territories of Utah, Idaho, and Montana is hereby granted to said company. Said right of way hereby granted to said company is to be the extent of 100 feet in width on each side of the central line of said road where it may pass over the public lands. There is also hereby granted to said company all necessary ground, not to exceed 20 acres for each ten miles in length of the main line of said railroad, for station buildings, workshops, machine-shops, switches, side tracks, turn-tables, and water stations.

Section 4 of the act required the company to locate the route of said road and file a map of such location within one year in the office of the Secretary of the Interior, and to complete the railroad within ten years after the passage of the act.

Section 5 reserves to Congress the right to alter, annul, or repeal said act whenever in its judgment the interest of the people may require it. The route prescribed by this act did not affect the Fort Hall reservation.

By a subsequent act of Congress approved June 20, 1878 (20 Stat., 241), it was provided—

That the right of way through the public lands of the United States and other privileges heretofore granted by law to the Utah Northern Railroad Company are hereby modified and regranted so as to enable the Utah and Northern Railway Company and its assigns to build their road by the way of Marsh Valley, Port Neuf River, and Snake River Valley, instead of by the way of Soda Springs and Snake River Valley, as originally granted.

Under this last-mentioned act the Utah and Northern Railroad Company, on the 10th May, 1881, filed in the Department a series of fifteen maps of definite location of its road from the boundary of Idaho to a point in Montana, eleven of which, as indicating the route through the public lands, were approved by the Secretary of the Interior March 6, 1882. The remaining four maps, showing the line of route running north and south through the Fort Hall Reservation, were disapproved by the honorable Secretary for the reason (as appears from his letter to the Commissioner of the General Land Office dated March 27, 1882) that the consent of the Indians to the road had not been formally obtained.

By the tenth article of the treaty with the Shoshones and Bannocks July 3, 1868 (15 Stat., 673), creating a reservation for those Indians, subsequently established and defined by executive orders dated June 14, 1867, and July 30, 1869, respectively, it was provided—

No treaty for the cession of any portions of the reservations herein described which may be held in common shall be of any force or validity as against the said Indians

unless executed and signed by at least a majority of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him, as provided in article six of this treaty.

It appears from the records of this office that on the 10th September, 1878, this office, in a report to the Department of that date, transmitting certain letters and telegrams received from the then agent for the Fort Hall Indians relative to the intention of the Utah and Northern Railroad Company to build its road through the Fort Hall Reservation, after reciting the provisions of the treaty with the Shoshones and Bannocks, with reference to the reservations to be set apart for said Indians, their right to severalty allotments thereon, and the stipulation as to cession of any part thereof, hereinbefore cited, took the ground that the lands within the Fort Hall Reservation were not "public lands" within the meaning of the said acts of Congress of 1873 and 1878, the same having been withdrawn from the public domain and set apart as a reservation for said Indians, in accordance with treaty stipulations, prior to the passage of said acts; and hence that the acts of Congress in question granting the right of way through the public lands to the Utah and Northern Railroad Company could not be construed as a grant through an Indian reservation, which it was contended is not "public land" under the thoroughly established signification of that term.

It was further contended that under the stipulations contained in the treaty with the Shoshones and Bannocks, it was absolutely necessary that the consent of the Indians holding in common, as also of those holding in severalty, should be obtained before the said railroad company could build its road across the reservation, and it was recommended by this office to the Department that the then agent be instructed to negotiate with the Indians for the necessary right of way through the reservation upon payment by the company of full compensation for all lands required for such right of way, station purposes, &c., and for resulting damages to farms of individual Indians, or lands connected with the agency, the amount of such compensation and the persons to whom payable to be determined by the agent, or by a commission appointed by the Secretary of the Interior.

On the 1st October, 1878, the following telegram was sent direct by the honorable Secretary of the Interior to Agent Danilson at the Fort Hall Agency:

You are directed to assemble your Indians in council immediately on receipt of this dispatch, to ask whether they will consent to yield the right of way to the Utah and Northern Railroad Company to build their road through the reservation. The construction of the road will be a public benefit, and we should put no obstacle in the way of its completion. The consent of the Indians is deemed very desirable. Take no further steps to stop the work.

To which Agent Danilson replied, under date October 2, 1878, as follows:

Am I to understand by your dispatch of yesterday that the company are to be allowed to cut timber on reservation for construction of road; also, that the present terminus and town can be moved to Black Rock, a central point on reservation?

By telegram dated October 3, 1878, this office replied as follows:

The Secretary hopes that the railroad company will not attempt to cut wood or build a town upon the reservation, and that the terminus will be removed beyond the reservation as speedily as possible.

On the 23d October, 1878, Agent Danilson wrote this office as follows:

In compliance with telegraphic instructions of the Hon. Secretary of the Interior, dated the 1st instant, I have the honor to report that the Indians are willing to yield the right of way to the Utah and Northern Railroad Company to build their road through the reservation for the consideration of 500 head of good stock cattle.

For some unexplained reason the matter appears to have here rested, as I do not find that any further action was had by this office or by the Department in the matter until June 9, 1881, when the company having filed its maps of definite location the Hon. Secretary addressed a letter (copy herewith marked A) to Sidney Dillon, Esq., President of the Union Pacific Railroad Company, calling his attention to the fact that no compensation had been made to the Indians for the lands taken under the act of June 20, 1878, and requesting to be furnished with a statement in detail, showing the quantity of land taken for right of way and station purposes, together with an early proposition for settlement, in order that the same might be submitted to the Indians for their consideration.

On the 11th June, 1881, Mr. Dillon replied, stating that he had written to Omaha for a map of the line of road through the reservation and for other information called for by the Department, and would transmit the same when received to the Department, with such further answer to the Hon. Secretary's letter as he should then be prepared to make (copy letter herewith marked B).

On the 12th June, 1884, Messrs. Shellabarger & Wilson, attorneys for the Utah and Northern Railroad Company, transmitted to the Department "for filing and approval under the right-of-way act of March 3, 1875," the undermentioned maps, viz:

1. Station grounds and water reservation at Inkom, on the Fort Hall Indian Reservation, Idaho.
2. Station grounds at McCammon, on the same.
3. Station grounds and water reservation at Sage Creek, on the same.
4. Station grounds at Calvin, on the same.
5. Station grounds at Ross Fork, on the same.
6. Station grounds at Arimo, on the same.
7. Station grounds at Port Neuf, on the same.
8. Station grounds at Pocatello, on the same.

Also a map showing the line of the Utah and Northern Railroad from Black Foot River, the north boundary of Fort Hall Indian Reservation, to the south boundary thereof, including the station grounds and water reservations above named.

Upon reference to this office of said maps and examination thereof, it was found that they were wholly unauthenticated, and with office letter of the 30th July last they were returned to the Department with the recommendation that the necessary affidavits by the proper officers of the railroad company in verification be supplied, in order to entitle them to consideration by the Department.

I also took occasion in said letter to call the attention of the Department to the fact that there appeared to be nothing of record in the Department to show that the Indians had ever been compensated by the said railroad company for the lands taken for right of way and station purposes, although the road through the reservation had long since been constructed and operated.

Judging from the map filed, and approximately speaking, the road-bed and right-of-way of the railroad in question from north to south through the Fort Hall Reservation, calculated on the scale indicated on the map, and an average width of two hundred feet, would yield an area of about 1,670 acres.

For eight stations, according to the maps filed, the company has appropriated no less than 456.77 acres, viz :

	Acres.
1. Inkom	29.97
2. McCammon	29.76
3. Sage Creek	23.39
4. Calvin	19.91
5. Ross Fork	20.00
6. Arimo	19.28
7. Port Neuf	15.15
8. Pocatello	299.31
<hr/>	
Total	456.77

making, with the right of way, an aggregate of 2,126.77 acres taken on the reservation.

In this connection especial attention is invited to the unusual and extraordinary quantity, nearly 300 acres, of land taken by the company for Pocatello station alone.

Under the agreement negotiated with these same Indians by Mr. J. K. McCammon on behalf of the United States, July 18, 1881, for the relinquishment of their title to lands required for the purposes of the said Utah and Northern Railroad Company in the construction of a line of road running east and west through the Fort Hall Reservation, the United States agreed to pay to said Indians the sum of \$6,000, being at the rate of \$7.77 per acre, for 670 acres, right of way, and 102 acres station grounds, making in all 772 acres or thereabouts of reservation lands relinquished.

Section 2 of the act of Congress of July 3, 1882 (22 Stat., 148), ratifying and confirming said agreement, appropriated the sum of \$6,000 to carry the same into effect, and section 3 of the same act made it a condition precedent to the use of the lands relinquished that the Utah and Northern Railroad Company, its successors or assigns, should, within ninety days from the passage of the act, pay into the United States Treasury the said sum of \$6,000, thereby appropriated, which condition was duly fulfilled by the company.

Other instances may be cited in which Congress has recognized the right of the Indians to compensation for lands relinquished for railroad purposes, notably the cases of the Crow Indians and the Northern Pacific Railroad, act of Congress July 10, 1882 (23 Stat., 157); the Choctaw and Chickasaw Indians and the Saint Louis and San Francisco Railroad, act of Congress August 2, 1882 (22 Stat., 181); the Papago Indians and the Arizona Southern Railroad, act of Congress August 5, 1882 (22 Stat., 299); the Flathead Indians and the Northern Pacific Railroad, act of Congress July 4, 1884 (Pamph. Laws U. S., 48th Congress, 1st sess., p. 89); and in nearly every case, where the right of way has been provided for by treaty and further action by Congress has not been deemed necessary, the Indians have been compensated for the loss of their lands by the railway company interested.

There appears to be no reason why the Indians of the Fort Hall Reservation should not be compensated for the lands taken by the Utah and Northern Railroad Company in the construction of its road north and south through the reservation, in the same manner as for the lands taken for the east and west road.

The acts of Congress of 1873 and 1878 grant a right of way through the *public lands* only, and it is clear that the term "public lands" cannot apply to an Indian reservation. By decision of the Supreme Court of the United States the principle has always been held and maintained that lands once reserved for any purpose cannot be relieved from such reservation until by competent authority it has been removed.

Whensoever a tract of land shall have been once legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; and no subsequent law, proclamation, or sale should be construed to embrace or operate upon it, although no reservation were made of it. (*Wilcox v. Jackson*, 13 Pet., 498.)

Every tract set apart for special uses is reserved to the Government to enable it to enforce them. There is no difference in this respect, whether it be appropriated for Indians or for other purposes. (*Leavenworth, Lawrence and Galveston R. R. Co., v. United States*, 2 Otto, 733.)

The right of way cannot be claimed under the general act of March 3, 1875 (18 Stat. 482), even admitting that section 5 of that act brings Indian reservations within its operation, as no provisions for railroads is to be found in the treaty under which the reservation is set aside.

In accordance with your instructions the matter is now submitted for the consideration and action of Congress.

Very respectfully, your obedient servant,

The SECRETARY OF THE INTERIOR.

H. PRICE,
Commissioner.

A.

DEPARTMENT OF THE INTERIOR,
Washington, June 9, 1881.

SIR: It having been represented to me that no compensation has been made to the Indians upon the Fort Hall Reservation for the land taken for the construction of the Utah and Northern Railway through said reservation under the right-of-way act of June 20, 1878 (20 Stat. 241), and finding no evidence in this Department of payment by your company for said lands, I have to request that you will submit, at as early a day as practicable, a proposition for the settlement of this matter, which, if deemed reasonable by this Department, will be submitted to the said Indians for their consideration.

I desire to be informed specifically as to the length of the said road inside said reservation, the number and location of the stations therein, the width of the strip of land taken for the use of the road, and the amount of land in addition thereto taken for depot and other purposes, in order that the quantity of land in acres may be ascertained. To this end a map of your line through the reservation would be desirable.

I trust you will see the justice of a demand for the payment of a fair price for the land taken by your company in the reservation, and the necessity for prompt action on your part relative to the matter.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

SIDNEY DILLON, Esq.,
Pres. U. P. R. R. Co., 78 Broadway, New York City.

B.

[The Union Pacific Railway Company Law Department. John F. Dillon, general solicitor, office 78 Broadway.]

NEW YORK, *June 11, 1881.*

MY DEAR SIR: I have the honor to acknowledge the receipt of your favor of the 9th inst., in respect of the construction of the Utah and Northern Railway through the Fort Hall Reservation. I will cheerfully cause your Department to be furnished with the information desired as far as it is in my power to do so. I shall have to send to Omaha to enable me to furnish such information, as the records, books, and papers of the company are at that place. I have written to Omaha for the map of the line of road through the reservation and for the other facts about which you wish to be informed. When received, I will transmit the same to your Department, with such further answer to your letter as I shall then be prepared to make.

I have the honor to be, very respectfully, your obedient servant,

SIDNEY DILLON.

Hon. S. J. KIRKWOOD,
Secretary of Interior, Washington, D. C.