
KLAMATH INDIAN RESERVATION LANDS.

JANUARY 28, 1879.—Recommitted to the Committee on the Public Lands and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 6247.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 5295) 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 (U. S. Stats., vol. 13, p. 355), the United States granted certain lands 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 Cascade Range of mountains, near Diamond Peak, to the eastern boundary of the State." The language used, viz, "That there be, and is hereby, granted," created an immediate interest and imported a grant *in presenti*. No conditions subsequent were imposed upon the grant, except that the road was to be constructed in a stated time, and it was to "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."

The State was empowered to sell these lands to the extent of thirty sections for each ten miles of continuous construction. Such consecutive sections were from time to time completed by the Oregon Central Military Wagon-Road Company and accepted by the State, until, in January, 1870, the governor of Oregon certified to the Secretary of the Interior that the construction of said road for its entire length had been completed and accepted. Thereupon the lands were duly listed by the General Land Office to the State, by the State were deeded to the wagon-road company, and by the wagon-road company have, for valuable considerations, been sold to numerous individual purchasers.

The government had then granted three sections of land per mile to aid in construction of this wagon-road, the road had been seasonably completed and accepted, and both the equitable and legal title to the lands had vested in the grantees and had been by them sold to third parties. The lands would seem, then, to have been absolutely reduced to private ownership, and to have passed beyond federal jurisdiction.

But it transpires that in February, 1870, a treaty with the Klamath Indians was ratified, wherein it was agreed that a large tract should, "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." At some subsequent date the government took possession of

the reservation and put the Indians upon it. This tract includes 130,377 acres of the *same* lands which had been granted to the wagon-road by the previous act of July 2, 1864, which had been earned in 1866 by actual construction, and for most of which the wagon-road company or its assigns held the proper evidence of title from the United States. It was a case of inadvertent conflict between the action of Congress in making a grant of public lands to be administered through the Land Office, and the subsequent action of the treaty-making branch of Congress in making a reservation to be administered by the Indian Office.

It has seemed obvious to your committee that the present grant of the fee of these lands by the act of July 2, 1864, followed up by construction and acceptance of the wagon-road, divested the United States of subsequent power, whether of sale or reservation, and was an assurance to the grantees that the granted premises should be enjoyed without adverse interference by or through the United States. It follows that when the government has, through error or misinformation, thus adversed the rights of its grantees, it should be prompt to offer an adequate remedy.

The remedy in this case would *prima facie* be the removal of the Indians from this private property and the delivery of the same to its lawful owners, with just compensation for the past arbitrary use.

Inasmuch as the same constitutes the most fertile and valuable part of the wagon-road grant, the owners thereof have naturally made such demand upon the government; but apprehensions of serious conflicts with the Indians have prevented affirmative action. These reservation Indians are jealous and warlike. They made their treaty with the United States in good faith, they were without notice of any prior grant, and they naturally regard the title to the reservation as exclusively their own by virtue of the treaty of 1870. If they are made to understand that the United States had granted to individuals the title to these lands six years before it was stipulated by solemn treaty to set the same apart for them, their confidence in the government will be impaired, and attempted removal will occasion most serious conflicts. It may be conceded that an attempt to remove the Indians would be so dangerous to the peace of Southern Oregon and Northern California that less violent measures of settlement should be adopted, if the same can be lawfully found.

A mass of official correspondence has been submitted to the committee and is hereto attached. Same is from various officers in the Indian service, from governors of the States of Oregon and California, and from similarly reputable sources. The general intent of this correspondence is to deprecate the continuing danger of an Indian outbreak from the cause above stated, and to urge a settlement of this individual title by cash purchase or by an indemnity grant.

The present owners of these lands deprecate trouble with the Indians, and appreciate the difficulty (however unjust) of enforcing their right of possession against the United States. With a view to a speedy settlement, they have indicated a willingness to deed to the United States all their title in the reservation provided Congress will grant them a right to an equivalent of public lands elsewhere, both in quantity and quality.

After careful consideration of the entire matter, the committee believe that a grant of a right to indemnity will most readily secure a fair and equitable adjustment, and to that end this bill is urged to a favorable consideration.

The accompanying exhibits, petitions, and communications, of an official character, fully sustain the view taken by the committee, as will also the fact that a similar bill has heretofore passed the House of Representatives.

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 road arising from any former reservation 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 was 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 Howe 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.

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 4, 1864, proclaimed February 17, 1870. (Statutes at Large, vol. 16, p. 708.)

Under the provisions of the act of Congress, approved July 12, 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" (Statutes at Large, vol. 13, p. 357), 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. The 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 provided 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,

EDWD. P. SMITH,

Commissioner.

LEROY S. DYAR, Esq.,

United States Indian Agent, Farmington, Me.

FARMINGTON, ME., *September 20, 1873.*

SIR: In answer to your letter of 17th instant, inclosing diagram of lands belonging to the Central Military Company 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 that 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 included the whole of the arable portion of Sprague River Valley, but the line was run some six miles 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, 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. Should the lands of the company be occupied by white settlers, endless difficulties would 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 and improvements 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 could be done.

Considering all the circumstances, I think the best thing to be done, if the government cannot purchase all the land claimed by the company upon the reservation, is to purchase all that portion lying south of Sprague 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 River, the Indians then 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.

KLAMATH AGENCY, OREGON, *October 16, 1873.*

SIR: Having returned to the reservation and thought further 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 feelings toward the government and its white citizens to-day rests on 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 the 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.

KLAMATH INDIAN RESERVATION LANDS.

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 consequences 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.

STATE OF OREGON, EXECUTIVE OFFICE,
Salem, May 5, 1874.

I, L. F. Grover, governor of the State of Oregon, do hereby certify that the following lists of lands granted to the State of Oregon by the acts of Congress approved July 2, 1864, December 26, 1866, and March 3, 1869, "to aid in the construction of a military road from Eugene City to the eastern boundary of said State," have been approved by the Secretary of the Interior to said State for said purpose as set forth in the acts of Congress above referred to, and are now on file in this office.

	Acres.
List No. 1, embracing	19, 153. 73
List No. 2, embracing	167, 633. 57
List No. 3, embracing	23, 475. 66
List No. 4, embracing	113, 504. 91
List No. 5, embracing	9, 641. 14
List No. 6, embracing	23, 458. 48
List No. 7, embracing	4, 559. 94

In testimony whereof I have hereunto set my hand and caused the seal of the State of Oregon to be affixed, this day and year first above written.

[SEAL.]

L. F. GROVER,
Governor of Oregon.

Attest:

S. F. CHADWICK,
Secretary of State.

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. Edward 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 hostilities. Messrs. Colby and 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 and BELCHER.

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.

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.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS,
January 7, 1875.

SIR: I have the honor to call your attention to the claim asserted for lands within the Klamath Indian reserve in Oregon by said State, under act of Congress granting alternate sections of the public lands to aid in the construction of wagon-roads. The

attention of the department was called to this subject by communication from this office on the 11th November last. A brief statement is as follows:

By an act of Congress approved July 2, 1864 (United States Statutes at Large, vol. 14, p. 355), there was 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 of October, 1864, a treaty was concluded (ratified February 17, 1870) (United States Statutes at Large, vol. 16, p. 707) between the United States and the Klamath and Modoc tribes and Yahooskin band of Snake Indians, by the terms of which the United States recognized 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 an Indian reservation." Then follows a description of the tract of country reserved.

This office being in receipt of information that the State of Oregon claimed the lands, granted in the act first above named, along the entire route of the wagon-road (which passes through the tract of country reserved, as aforesaid, for Indian purposes), under date of the 17th of October last addressed a letter to the General Land Office requesting to be advised what action, if any, had been taken by that office relative to the claim of said State, so far as the alternate sections within the limits of the said Indian reservation, were concerned. A reply was received to this letter, dated the 4th of November last, in which it was stated "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
	93,150.41"

All since the date of the ratification of the treaty. In consequence of this state of facts, this office submitted for the consideration and decision of the department—

"First. If the Indian title had not been extinguished, and was in existence, the same being recognized, to the region of country in question by the treaty of October 14, 1864, did the grant to the State of Oregon, made by the act of July 2, 1864, which is confined to public lands, attach to any of these lands?"

"Second. If the grant to the State of Oregon by the act of July 2, 1864, did not attach, it is respectfully submitted whether steps should be taken to have the approval of the lands to the State annulled?"

"Third. If an annulment of such approval is deemed impracticable, ought not the Indians to be reimbursed, by an appropriation by Congress of the value of the lands within their reservation which have been approved to the State?"

Other questions were also submitted relative to this matter.

Under date of the 28th ultimo, Mr. B. J. Pengra, agent for the parties in interest, in a communication to this office, states that the lands granted to the State of Oregon by the act of July 2, 1864, were, by the legislative assembly of said State, in September following, granted to the Oregon Military Road Company, and, so far as the public surveys have been extended, have been located and approved to said company by the State and by the United States, and that said lands belonging to said Oregon Road Company by virtue of said acts have recently been conveyed by said company to B. J. Pengra, of Oregon, and by said 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.

Mr. Pengra further states as follows:

"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."

In view of the questions involved and the difficulties that might attend an annulment of the approval of the lands to the State within said reserve, and as affording a possible solution thereof, I would respectfully recommend that the proposition made by Mr. Pengra in behalf of the parties in interest be recommended to Congress, with

the request that such action be taken by that body as shall, in its judgment, be deemed proper and necessary to permanently settle the question.

Very respectfully, your obedient servant,

E. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

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 (16 Stat. at L., 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.

FEBRUARY 18, 1875.

To _____,
Department of the Interior:

SIR: It has come to our knowledge that circumstances connected with the location of the Klamath Indian Reservation upon part of the grant of lands to the State of Oregon of July 2, 1864, and the continued occupation thereof, work 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. D. KELLY,
United States Senator.
JAS. H. NESMITH.
J. K. LUTTRELL.

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 the 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. GROVER,
Governor of Oregon.

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

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 rest-

ing 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 considerations 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.

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. LEWLLING,
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. APPELEGATE.
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, but I have no copy of them.
G. W. C.

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 vested 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, 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 word. 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.