

RIGHT OF WAY THROUGH PUYALLUP INDIAN RESERVA-
TION.

JULY 19, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. WILSON, of Washington, from the Committee on Indian Affairs,
submitted the following

REPORT:

[To accompany H. R. 7762.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 7762) to ratify and confirm the agreement between the Puyallup Indians and the Northern Pacific Railroad Company for right of way through the Puyallup Indian Reservation, and granting said railroad company additional right of way for a spur through said reservation, report:

The Northern Pacific Railroad Company, acting through J. W. Sprague, general superintendent of its Pacific division, entered into an agreement on the 21st of November, 1876, with the Indians occupying said reservation, acting through R. H. Milroy, then agent in charge of said reservation, under the terms of which said Indians granted said railroad company the necessary right of way for the construction of its Cascade branch through said reservation, upon consideration of the railroad company's paying the Indians reasonably for all damages incurred by reason of such construction, and upon the further consideration of the railroad company's constructing at some convenient point within the limits of said reservation a switch and side track, and warehouse or depot adjoining said side track, at which said railroad company should stop its trains for the purpose of receiving freight and passengers for transportation.

This agreement was approved by the Indians November 23, 1876, as evidenced by a memorandum in writing signed by the chiefs and headmen of the Puyallup tribe of Indians (which is on file in the office of the Commissioner of Indian Affairs).

It was also approved by the Commissioner of Indian Affairs December 14, 1876, and by the Secretary of the Interior April 13, 1877, and a copy of the agreement as approved was transmitted to Indian Agent R. H. Milroy, April 16, 1877.

We find the following letter written by Agent Milroy:

OFFICE UNITED STATES INDIAN AGENT
FOR THE PUYALLUP, NESQUALLY, AND OTHER INDIAN TRIBES,
Olympia, Wash., April 27, 1887.

DEAR SIR: I have the honor to acknowledge the receipt of yours of the 23d instant (night before last), inclosing eight vouchers in duplicate, which I herewith return, received by me, for \$848.55, in full for all money due the Puyallup Indian

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Reservation and Indians for damages, etc., occasioned by the construction of the Puyallup Branch of the Northern Pacific Railroad. Said vouchers contained the itemized information for which I wrote you in my last.

Very truly, yours,

R. H. MILROY,
United States Indian Agent.

Gen. J. W. SPRAGUE,
Superintendent Pacific Division Northern Pacific Railroad Company.

July 9, 1887, Indian Agent Eells, in charge of the Puyallup Indian Reservation, wrote the Commissioner of Indian Affairs that the stipulations of the agreement under which the Northern Pacific Railroad Company acquired right of way across the Puyallup Indian Reservation for its Cascade Branch had been carried out with one exception, viz: That the railroad company had not constructed the warehouse or depot provided for in the agreement.

Since that time the railroad company has constructed a suitable depot and the stipulations of the agreement have therefore all been carried out.

With regard to the additional right of way desired for a spur from a point on the Cascade Branch of said railroad, as now constructed, through the reservation to the western boundary thereof, the Puyallup Indian Commission, appointed under an act of Congress approved August 14, 1890, make the following report:

At the same time he desired the Commission to make an expression in their report with regard to granting that company (Northern Pacific) the right of way for additional tracks through the agency grounds. In our opinion it would be reasonable and just to make the grant, and as it would be a benefit to the Indians as well as to the city of Tacoma, we did not deem it out of place so to say in this report. We refer to Exhibit E for the grounds on which the company rests its claim for additional tracks. (Report Puyallup Indian Commission, p. 24.)

Exhibit E, referred to in said report, is a letter from the counsel of the western division of the Northern Pacific Railroad Company stating the serious difficulty under which said railroad company labors in consequence of its inability to construct a spur connecting its freight yard at the head of Commencement Bay with its main line, and the great inconvenience to which the shipping and traveling public are subjected on this account.

On June 1, 1887, Indian Agent Eells recommended that said railroad company be granted a right of way 60 feet in width for said spur, upon the following conditions, viz:

(1) That they should erect a good lawful fence on both sides of the track so as to protect the field in which it runs from stock.

(2) That they should put in a waste gate to allow the water to escape where the road should cross the track, and at the same time keep out the salt water from coming in during high tide.

(3) They should put in gates on each side of the track and make a crossway so as to allow the hauling of hay and produce from across the track to the buildings.

(4) They should pay for the land so taken at the rate of \$700 per acre.

These conditions are all imposed upon said railroad company in the bill granting said additional right of way.

Your committee therefore recommend the passage of the bill with the following amendments:

In line 22, after the word "approved," add

Provided, The said company shall comply with all the terms and stipulations of said agreement, and maintain in proper condition all buildings, structures, and ways provided for therein

In line 12, after the word "erect," insert "and maintain," so as to read, "That said railroad company shall erect and maintain," etc.

In line 15, after the words "put in," insert the words "and keep in order," so as to read, "that the company shall put in and keep in order a water gate," etc.

In lines 26 and 27 strike out the words "at the rate of seven hundred dollars per acre," and insert, after the word "spur," "such sum as may be determined by the Secretary of the Interior to be right and proper."

And as thus amended your committee recommend the passage of the bill.

DEPARTMENT OF THE INTERIOR,
Washington, July 15, 1892.

SIR: By your reference I have received a bill to ratify an agreement heretofore made between the Northern Pacific Railroad Company and the Puyallup Indians, relative to the right of way of said company through the reservation of those Indians. The bill was sent to the Commissioner of Indian Affairs for examination, and herewith is sent a copy of his report thereon, in which he declines to recommend the passage of the bill in so far as it grants additional rights of way through the reservation (H. R. 7762).

The first section of the bill proposes to ratify an agreement whereby it was purported to grant to the company the right of way for a portion of its road through the Indian reservation. This agreement was approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and the price agreed upon has been paid. The part of the road thus authorized has been constructed and accepted and is now an important portion of the Cascade branch of the main line of the Northern Pacific Railroad.

The second section of said bill proposes to grant to said company, on certain conditions, a further right of way through the reservation for a spur or cut-off of 1,378 feet in length, branching off from said Cascade branch near the western boundary of the reservation and connecting with the company's road outside and west thereof. Four conditions are specified on which this additional grant is made.

In a communication, dated August 24, 1888, from the Acting Commissioner of Indian Affairs to my predecessor (see Senate Ex. Doc. No. 34, Fifty-second Congress, first session, p. 87), the legislation now proposed is discussed. Attention is called to the omission from the agreement proposed to be ratified of language defining the width of the right of way, and it is suggested that it be restricted to 60 feet. I think the suggestion a proper one and that the bill should be so amended. As a consideration for said agreement the company stipulated to do certain things, and, it is asserted, it has not complied with all its stipulations. It is also observed that, whilst the agreement provides for the erection of a warehouse, fence, etc., by the company, it is not expressly required that they shall be maintained in proper condition by the company, as was undoubtedly intended. It would seem proper to guard against dispute on this point.

I therefore suggest there be added to said first section a proviso to the effect that the ratification of the agreement for the right of way is upon the condition "the said company shall comply with all the terms and stipulations of said agreement, and maintain in proper condition all buildings, structures, and ways provided for therein." With such amendments I recommend the adoption of the first section of the bill.

In regard to the "spur" proposed to be allowed by the second section, it is noted that its length is stated in the bill to be 1,387 feet, whilst, according to the letter of the Commissioner of Indian Affairs herewith and also in the executive document, it appears that the application originally was for 1,225 feet only. Attention is called to this discrepancy that, if found to be a mistake made in the preparation of the bill, it may be corrected.

The first three conditions upon which the right of the "spur" is given appear with substantial correctness in the bill. I suggest, however, that the words "and maintain" be inserted after the word "erect" in the twelfth line of said section, so as to read, "That said railroad company shall erect and maintain on either side," etc. Also that there be inserted in line 15 of said section the words "and keep in order" after the words "put in," so as to read that the "company shall put in and keep in order a water gate," etc.

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In regard to the price named in the fourth condition as to the amount to be paid by the company for the land taken, in view of the report of the Puyallup Commission and of Indian Agent Eels, in the executive document referred to, as to the value of the lands in that reservation, I hardly think the amount is sufficient. The price was fixed in 1887, five years ago. Owing to their surroundings these lands have since then increased largely in value, probably 100 per cent. What may be their actual value at this time I am unable to state.

But considering all the circumstances, so far as I am able to form judgment from them, I recommend that either the price to be paid be increased to \$1,500 per acre or that the fourth condition be so changed as to require the company to pay such sum as may be determined by the Secretary of the Interior to be right and proper.

If the bill be amended as herein suggested, I recommend its enactment into law, *but not otherwise.*

Herewith I return the bill.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. JOHN L. WILSON,
Chairman Subcommittee of Indian Affairs, House of Representatives.

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