

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Draft of a bill to ratify a certain agreement with the Indians of the Yakima Reservation in Washington.

FEBRUARY 9, 1892.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 6, 1892.

SIR: On December 21, 1885, the Executive transmitted to Congress a draft of a bill to ratify an agreement with the Indians of the Yakima Reservation in Washington for the right of way of the Northern Pacific Railroad across the said Yakima Reservation, and on January 4, 1888, this matter was again presented to Congress, as shown by Senate Ex. Doc. No. 45, Fiftieth Congress, first session, herewith.

I now have the honor to transmit copy of a communication of 4th instant from the Commissioner of Indian Affairs in relation to this agreement, with draft of bill to ratify the same, which is identical with S. 2217, introduced by the Senate committee on March 8, 1888.

As it is stated that the Indians are continually inquiring why the compensation moneys awarded them by the agreement are not made, and it is difficult to make them comprehend the reason of delay, I have the honor to recommend that this matter receive the early consideration of Congress.

I have the honor to be, very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 4, 1892.

SIR: I have the honor to submit herewith in duplicate, for the action of Congress, a draft of a bill prepared in the office of Indian Affairs, to accept and ratify an agreement made January 13, 1885, with the con-

federated tribes and bands of Indians occupying the Yakima Indian Reservation, in the State of Washington, for the relinquishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same, and respectfully recommend that the same be submitted to Congress for its consideration and action.

An abstract of the agreement will be found in office report to the Department of February 14, 1885, reprinted with accompanying papers in Senate Ex. Doc. No. 21, Forty-ninth Congress, first session. The full text of the agreement is incorporated in the bill herewith submitted.

At the first session of the Forty-ninth Congress a bill (S. 1211) for the purposes mentioned was passed by the Senate July 8, 1886, was referred to the House Committee on Indian Affairs, and by it reported adversely February 19, 1887. (See House Report No. 4138, Forty-ninth Congress, second session.)

The bill now submitted is, with the exception of the three concluding sections, amendments suggested by this office, identical with that passed by the Senate as above mentioned.

A full report of all the correspondence had and all action taken up to that time will be found in Senate Ex. Doc. No. 45, Fiftieth Congress, first session, duplicate copies of which are inclosed herewith.

[NOTE.—The map and plats accompanying this document are not reproduced.]

On March 8, 1888, the chairman of the Committee on Indian Affairs in the Senate introduced a bill (see Senate bill No. 2217, Fiftieth Congress, first session) identical with the bill inclosed herewith, but it does not appear that any action was ever taken thereon; likewise on February 6, 1890, Mr. Wilson, of Washington, introduced a bill (see H. R. bill No. 6466, Fifty-first Congress, first session) identical with the inclosed, which met the same fate.

It is the understanding of this office that the railroad has long since been constructed through the reservation, and the Indians are continually inquiring why the compensation moneys awarded them by the agreement are not paid. This is particularly the case with the individual claimants for damages, and it is difficult to make them comprehend the reason for the delay. Definite final action on this matter by Congress appears eminently desirable.

Very respectfully, your obedient servant,

T. J. MORGAN.

By R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

[Senate Ex. Doc. No. 45. Fiftieth Congress, first session.]

Message from the President of the United States, transmitting letter of the Secretary of the Interior relative to granting right of way to the Northern Pacific Railroad.

To the Senate and House of Representatives:

I transmit herewith a communication of 22d ultimo from the Secretary of the Interior, submitting, with accompanying papers, a draft of a bill to accept and ratify an agreement made with the Indians of the Yakima Reservation, in Washington Territory, for the right of way of the Northern Pacific Railroad across said reservation, etc.

The matter is presented for the consideration and action of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION,
January 4, 1888.

DEPARTMENT OF THE INTERIOR,
Washington, December 22, 1887.

THE PRESIDENT:

I have the honor to submit herewith in duplicate, for the action of Congress, a draft of a bill prepared in the Office of Indian Affairs, to accept and ratify an agreement made January 13, 1885, with the confederated tribes and bands of Indians occupying the Yakama Indian Reservation, in Washington Territory, for the relinquishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same. A copy of the letter of the Commissioner of Indian Affairs of the 29th ultimo upon the subject, with accompanying papers noted therein, is furnished with each copy of the bill.

The Commissioner reports that at the first session of the Forty-ninth Congress a bill (S. 1211) for the purposes mentioned was passed by the Senate (July 8, 1886), was referred to the Committee on Indian Affairs of the House of Representatives, and by it reported adversely February 19, 1887 (see House Report No. 4138, Forty-ninth Congress, second session, copy in duplicate herewith); that the bill now submitted is, with the exception of the three concluding sections, amendments suggested by his office, identical with that passed by the Senate as above mentioned. He also incloses copy of his office letter of May 6, 1887, addressed to this Department in reply to the objections to the original bill in House Report 4138, above referred to; and he concludes as follows:

"It is understood that the railroad has long since been constructed through the reservation, and as the Indians—particularly the individual claimants for damages—are continually inquiring why they are not paid the compensation moneys awarded to them under the agreement, and it is difficult to make them comprehend the reason for the delay, some definite and final action by Congress on this measure appears eminently desirable."

The views of the Commissioner have the concurrence of this Department.

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

L. Q. C. LAMAR,
Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 29, 1887.

SIR: I have the honor to inclose herewith, in duplicate, the draft of a bill to accept and ratify an agreement made January 13, 1885, with the confederated tribes and bands of Indians occupying the Yakama Reservation, in the Territory of Washington, for the relinquishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same, and respectfully recommend that the same be transmitted to the Congress for its consideration and action.

An abstract of the agreement will be found in office report to the Department of February 14, 1885, reprinted with accompanying papers in Senate Ex. Doc. No. 21, Forty-ninth Congress, first session, duplicate copies of which are also herewith inclosed. The full text of the agreement is also incorporated in the bill herewith submitted.

At the first session of the Forty-ninth Congress a bill (S. 1211) for the purposes mentioned was passed by the Senate (July 8, 1886), was referred to the House Committee on Indian Affairs, and by it reported adversely February 19, 1887 (see House Report No. 4138, Forty-ninth Congress, second session, duplicate copies herewith also inclosed).

The bill now submitted is, with the exception of the three concluding sections, amendments suggested by this office, identical with that passed by the Senate as above mentioned.

It is understood that the railroad has long since been constructed through the reservation, and as the Indians—particularly the individual claimants for damages—are continually inquiring why they are not paid the compensation moneys awarded to them under the agreement, and it is difficult to make them comprehend the reason for the delay, definite final action by Congress on this measure appears eminently desirable.

Copies of office letter of May 6, 1886, to the Department in reply to the objections of Mr. Hailey (House subcommittee) to the bill as framed are also herewith inclosed for the information of Congress.

Very respectfully, your obedient servant,

A. B. UPSHAW,
Acting Commissioner.

THE SECRETARY OF THE INTERIOR.

A bill to accept and ratify an agreement made with the confederated tribes and bands of Indians occupying the Yakama Reservation, in the Territory of Washington, for the extinguishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a certain agreement now on file in the office of the Commissioner of Indian Affairs, bearing date the 13th day of January, in the year of our Lord 1885, made between Robert S. Gardner, United States Indian inspector, on the part of the United States, duly appointed by the Secretary of the Interior in that behalf, of the one part, and the head chief, chiefs, headmen, and delegates of the Yakama and other confederate tribes and bands of Indians resident on the Yakama Reservation, in Washington Territory, of the other part, be, and the same is hereby, ratified and confirmed. Said agreement is in the words and figures following, namely:

"Whereas by section 1 of an act of Congress approved July 2, 1864, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route (13 Statutes at Large, page 365), the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, to some point on Puget Sound; and

"Whereas by section 2 of said act Congress granted to said company the right of way for the construction of said railroad and telegraph line to the extent of 200 feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations; and

"Whereas by said section 2 Congress provided that the United States should extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operation of this act and acquired in the donation to the road named in the act; and

"Whereas by treaty between the United States and certain confederate tribes and bands of Indians therein designated as the Yakama Nation of Indian concluded at Camp Stevens, Walla Walla Valley, June 9, 1885, duly ratified and proclaimed (12 Statutes at Large, page 951), a tract of land therein described, situate in the Territory of Washington, was reserved from the land thereby ceded, for the use and occupation of said confederate tribes and bands of Indians, as an Indian reservation; and

"Whereas by article 3 of said treaty it is provided that 'if necessary for the public convenience, roads may be run through said reservation, and on the other hand the right of way, with free access from the same to the nearest public highway, is secured to them, as also the right in common with citizens of the United States to travel upon all public highways;' and

"Whereas the said Northern Pacific Railroad Company did on or about the 20th day of October, 1884, file in the Department of the Interior a certified map showing the definite location of its line of railroad through the Yakama Indian Reservation, from the presumed southeasterly boundary of said reservation, on the right bank of the Yakama River, 8 miles below the mouth of Satass River, to its north boundary, near the mouth of the Atahnum River, all being in Washington Territory, as definitely fixed and determined in compliance with the several acts and resolutions of Congress relating to the Northern Pacific Railroad, and as approved by the board of directors of said company by resolution passed June 21, 1883; also, three several descriptive plats of grounds required by said railroad company for station purposes, designated as 'Satass,' 'Toppenish,' and 'Simcoe,' respectively, and severally containing an area of 20.60 acres, exclusive of a right of way of 125 feet in width on each side of the center line of said railroad; and

"Whereas the said Northern Pacific Railroad Company now desires to construct its line of railroad through the Yakama Reservation upon the route so designated, and claims the right by virtue of said recited act so to do:

"Now, therefore, in order to fulfill the obligations of the Government in the premises—

"This agreement, made at the Yakama Agency, Washington Territory, this 13th day of January, in the year of our Lord 1885, by and between Robert S. Gardner, United States Indian inspector, on the part of the United States, and the undersigned head chiefs, chiefs, headmen, and delegates of the Yakama and other confederate tribes and bands of Indians resident on the Yakama Reservation, in Washington Territory, and interested in the lands hereinafter described, witnesseth:

"That for the considerations hereinafter mentioned the said confederate tribes and bands of Indians do hereby surrender and relinquish to the United States all the es-

tate, right, title, and interest which they now have under and by virtue of the aforesaid treaty of June 9, 1855, in and to all that part of the Yakama Reservation, situate in the Territory of Washington, described as follows, viz:

"A strip of land not exceeding 250 feet in width; that is to say, 125 feet on each side of the line laid down on the map of definite location of the route of the Northern Pacific Railroad wherever said line runs through said reservation, entering the same at the presumed southeasterly boundary thereof, on the right bank of the Yakama River 8 miles below the mouth of Satass River, thence following through said reservation to the north boundary thereof, at or near the mouth of the Atahnum River, said strip of land being intended to be used by the said Northern Pacific Railroad Company, its successors, or assigns, as a right of way and roadbed, and containing 1,000 acres or thereabouts. A copy of said map of definite location was on the day of the date hereof produced and shown to said Indians in council assembled, and is hereto annexed, marked with the letter D, and made a part of this agreement.

"Also, in and to the three several pieces or parcels of land situate along and adjoining the said strip of land hereinbefore described, as the same are respectively delineated on the three several copies of plats or maps thereof also now produced and shown to said Indians and hereto attached and made a part of this agreement, marked, respectively, with the letters A, B, and C, and containing, respectively, the following areas—that is to say: Tract A ('Satass'), 20.60 acres; tract B ('Toppenish'), 20.60 acres, and tract C ('Simcoe'), 20.60 acres, the same being intended to be used by the said Northern Pacific Railroad Company for the purposes of depots, station houses, sidings, etc.

"In consideration of such surrender and relinquishment of lands as aforesaid, amounting in the aggregate to 1,061.80 acres, the United States agrees to pay to the said confederated tribes and bands of Indians the sum of \$5,309, being at the rate of \$5 per acre, to be deposited in the Treasury of the United States to the credit of the said confederated tribes and bands of Yakama Indians upon ratification of this agreement by Congress and necessary appropriations therefor, the aforesaid sum to be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct.

"And for the considerations aforesaid the United States further agrees, upon ratification of this agreement by Congress and necessary appropriations therefor, to pay to the individual members of said confederate tribes and bands, parties hereto, whose names appear in the schedule hereto annexed marked with the letter E, the reasonable value of all improvements, whether of buildings, fences, crops, cultivated fields, or otherwise, falling within the limits of the lands hereby agreed to be surrendered, as the same shall be appraised and determined by a board of arbitrators to be composed of the said Robert S. Gardner, party hereto on behalf of the United States, the agent for the time being on behalf of said Indians, and such other person as they two shall mutually agree upon, the amount of compensation so determined upon and hereby agreed to be paid to be expended for the benefit of such individual Indians, or paid to them in cash, in the proportions to which they may be severally entitled appearing on said schedule, as the Secretary of the Interior may direct.

"All provisions of existing treaties with the said confederated tribes and bands not affected by this agreement to remain in full force and effect, and this agreement to be subject to ratification by Congress.

"In testimony whereof the said Robert S. Gardner, United States Inspector, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year aforesaid.

"Robert S. Gardner, United States Indian inspector; Joe Stuire, his x mark; Eneas, his x mark; Chet-a-mau-mene, his x mark; Weallept, his x mark; George Locca, his x mark; Joseph Eysnuksa, his x mark; Cocca, his x mark; Snetups Colula, his x mark; Wachauca, his x mark; Thomas Pearn; Willi-pi-pi, his x mark; Willie Shuester, his x mark; William Wanto, his x mark; Thomas Simpson, his x mark; Thomas Cree, his x mark; George Waters; Tecumseh Takotowit, his x mark; Wehipoo, his x mark.

"Signed and sealed in presence of Virgil G. Bogue, Henry D. Cock, Walter J. Milroy, Charley Olney.

"YAKAMA AGENCY, WASH., January 13, 1885.

"I certify that the foregoing agreement was read and explained by me, and was fully understood by all the above-named Indians of the confederated tribes and bands constituting what are known as the Yakama Indians, before signing, and that the same was signed by said Indians in my presence.

"Witnesses:

"JAMES McNAUGHT,

"R. H. MILROY,

"United States Indian Agent."

"ANDREW RIDDLE, his x mark,

"Official Interpreter.

SEC. 2. That for the purpose of carrying the provisions of this act into effect the sum of \$8,295.80 is hereby set aside, out of any moneys in the United States Treasury not otherwise appropriated, \$5,309 whereof shall be deposited in the United States Treasury to the credit of the confederated tribes and bands of Yakama Indians, and be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct; and the balance, or sum of \$2,986.80, shall be deposited in the United States Treasury to the credit of the individual Indians, members of the said confederated tribes, whose names appear on the Schedule E referred to in said recited agreement, to be expended for the benefit of such individual Indians, or paid to them in cash, in the proportions to which they may severally be entitled appearing by said schedule, as the Secretary of the Interior may direct.

SEC. 3. That the right of way over the land relinquished by said agreement to the United States for the construction of the said Northern Pacific Railroad, and the use of the several parcels of land so relinquished intended to be used for depots, stations, sidings, and so forth, for said railroad, are hereby granted to the said Northern Pacific Railroad Company, its successors and assigns, for the uses and purposes in said agreement set forth: *Provided*, That the said Northern Pacific Railroad Company, its successors or assigns, shall, within sixty days from the taking effect of this act, pay to the Treasurer of the United States said sum of \$8,295.80 hereby appropriated to be paid by the United States for the lands and improvements so as aforesaid relinquished to the United States by said agreement; and shall within the same time file with the Secretary of the Interior its written acceptance of the conditions of this section: *And provided further*, That the said Northern Pacific Railroad Company, its successors and assigns, do and shall pay any and all damages which the United States or said Indians, individually or in their tribal capacity, or any other Indians lawfully occupying said reservation, may sustain by reason or on account of the act or acts of the said railroad company, its successors or assigns, agents or employes, or on account of fires originating by or in the construction or operation of said railroad, the damages in all cases to be recovered in any court of the Territory of Washington having jurisdiction of the amount claimed, upon suit or action instituted by the proper United States attorney in the name of the United States: *Provided further*, That the said United States attorney may accept such sum of money in satisfaction of any such injury or damages as in his discretion may be just; and, if so accepted before suit or action is commenced, no suit or action shall be instituted; and, if accepted after commencement of suit or action, the same shall be dismissed at the cost of said company, its successors or assigns.

SEC. 4. That all moneys accepted or recovered under the provisions of section three of this act shall be covered into the Treasury of the United States; and, if accepted or recovered on account of damages sustained by said Indians in their tribal capacity, they shall be placed to the credit of said Indians in their tribal names, to be expended by the Secretary of the Interior for the benefit of said Indians in such manner as he may deem for their best interest; and in the case of an individual Indian the amount covered into the Treasury shall be expended for his sole benefit or paid to him in cash, in the discretion of the Secretary of the Interior.

SEC. 5. That said Northern Pacific Railroad Company shall accept this right of way upon the expressed condition, binding upon itself, its successors and assigns, that it will neither aid, advise, nor assist in any effort looking towards the changing or extinguishing the present tenure of the Indians in their lands, and will not attempt to secure any further grant of land or its occupancy than is hereinbefore provided: *Provided*, That any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privileges of said railroad company under this act.

SEC. 6. That nothing contained in this act shall be considered as in any wise affecting the relation between the Government and said Northern Pacific Railroad Company, growing out of the grant of land made to said company, beyond the right of way provided for in said hereinbefore-recited agreement.

SEC. 7. That Congress may at any time amend, add to, alter, or repeal this act.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 6, 1886.

SIR: I have the honor to inclose herewith a copy of a letter from Hon. John Hailey, subcommittee of the House Committee on Indian Affairs, dated the 24th ultimo, in which he takes exception to the form of the agreement incorporated in the draft of a bill prepared in this office "to accept and ratify an agreement made with the confederated tribes and bands of Indians occupying the Yakima Reservation, in the Territory of Washington, for the extinguishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make

the necessary appropriations for carrying out the same," which said proposed legislation formed the subject of Executive message to Congress, December 21, 1885, and is printed, with accompanying papers, in Senate Ex. Doc. No. 21, of the present session.

Mr. Hailey states that he finds incorporated in the bill as prepared a copy of an agreement made with the Yakima Indians, January 13, 1885, and calling especial attention to the recitals contained in the first seven paragraphs, and also to the first line of the eighth paragraph of the agreement; desires to be informed of the object or necessity for their introduction therein, contending that, if the Northern Pacific Railroad Company has any just claims on the United States by which the Government is required to extinguish the Indian title to certain lands on the Yakima reservation, there is no necessity for putting the obligations of the United States to the Northern Pacific Railroad Company into an agreement made between the United States and the Yakima Indians; and, on the other hand, if the Northern Pacific Railroad Company has no just claims upon the United States for the relinquishment of the Indian title to this land, that it is certainly wrong for Congress to pass the bill presented, with the seven paragraphs embodied as a part thereof, as in his (Mr. Hailey's) opinion it would at least be an acknowledgment on the part of Congress that the Northern Pacific Railroad Company still had rights and claims upon the United States by virtue of the old acts of Congress referred to in the agreement.

The recitals in the agreement to which Mr. Hailey excepts read as follows:

"Whereas, by section 1 of an act of Congress approved July 2, 1864, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast, by the northern route' (13 Stat. L., 365), the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget Sound; and

"Whereas, by section 2 of said act, Congress granted to said company the right of way for the construction of said railroad and telegraph line, to the extent of 200 feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations; and

"Whereas, by said section 2, Congress provided that the United States should extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operation of this act and acquired in the donation to the road named in the act; and

"Whereas, by treaty between the United States and certain confederated tribes and bands of Indians therein designated as the Yakima Nation of Indians, concluded at Camp Stevens, Walla Walla Valley, June 9, 1855, duly ratified and proclaimed (12 Stat. L., 951), a tract of land therein described, situate in the Territory of Washington, was reserved from the land thereby ceded, for the use and occupation of said confederated tribes and bands of Indians, as an Indian reservation; and

"Whereas, by article 3 of said treaty, it is provided that, 'if necessary for the public convenience, roads may be run through said reservation, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways;' and

"Whereas the said Northern Pacific Railroad Company did, on or about the 20th day of October, 1884, file in the Department of the Interior a certified map showing the definite location of its line of railroad through the Yakima Indian Reservation, from the presumed southeasterly boundary of said reservation on the bank of the Yakima River, 8 miles below the mouth of Satass River, to its north boundary near the mouth of Atah-num River, all being in Washington Territory, as definitely fixed and determined in compliance with the several acts and resolutions of Congress relating to the Northern Pacific Railroad, and as approved by the board of directors of said company, by resolution passed June 21, 1883; also three several descriptive plats of ground, required by said railroad company for station purposes, designated as 'Satass,' 'Toppenish,' and 'Simcoe,' respectively, and severally containing an area of 20.60 acres, exclusive of the right of way of 125 feet in width on each side of the center line of said railroad; and

"Whereas the said Northern Pacific Railroad Company now desires to construct its line of railroad through the Yakima Reservation, upon the route so designated, and claims the right by virtue of said recited act so to do:

"Now, therefore, in order to fulfill the obligations of the Government in the premises, this agreement, made, etc."

In reply to Mr. Hailey's comments, I have to say that I am informed that the agreement in question was prepared in consonance with a form long previously

theretofore settled and approved of by the Department, and that the language of the recitals therein appear to be identical, *mutatis mutandis*, with that used in two prior agreements made by the United States with the Crow and Flathead Indians of Montana, respectively, for similar purposes; that with the Crows bearing date August 22, 1881, and being ratified and confirmed *in extenso* by act of Congress July 10, 1882 (23 Stat., 157); and that with the Flatheads being dated September 2, 1882, and being ratified in the Indian appropriation act July 4, 1884 (23 Stat., 89), with the following proviso, viz:

"That nothing herein shall be construed as in any wise affecting the relation between the Government and said railroad company growing out of the grant of land made to said company beyond the right of way provided for in said agreement."

(For copy of this agreement see Senate Ex. Doc. No. 15, Forty-eighth Congress, first session.)

I further beg to call Mr. Hailey's attention to the fact that the effect of the language used in the agreement with the Crow Indians (which, as I have already stated is the same as that employed in the Yakama agreement) was fully considered in the report made by the House Committee on Public Lands of the Forty-eighth Congress upon the question of forfeiture of the Northern Pacific Railroad land grants (H. R. Report No. 1256, Forty-eighth Congress, first session), from which I make the following extracts:

* * * * *

"Fourth. It is further contended that the grant is not forfeitable because of the action of Congress in the passage of the act approved July 10, 1882 (alluding to the act ratifying the agreement made with the Crow Indians above mentioned, 22 Stat., 157).

"The granting act contained two donations affecting the public lands: First, a grant of 'a right of way' through public lands (sec. 2); second, the grant of lands contained in section 3. The two grants are entirely separate and distinct, made by two different sections, and of two different estates. The former applied to all lands legally described as 'public,' the latter only to certain odd sections of such lands not within named exceptions. Under the former the company had the right to build its road across any of such public lands, and for that purpose had the use of an easement in 200 feet on each side of its track. Under the latter it took in fee the designated sections. June 25, 1881, the road was located over the Crow Indian Reservation, already shown not to have been included in the granted lands.

"Thereupon, August 22, 1881, a treaty or agreement was entered into between certain special agents designated by the Secretary of the Interior on the one part and the Crow Indians upon the other, which agreement, so far as pertinent to the present inquiry, is as follows:

"(Here the agreement is partially recited.)

"July 10, 1882 (22 Stat., 157), Congress passed an act ratifying and confirming this agreement.

"The act first recited the agreement *in extenso*, and then provided as follows:

"Sec. 3. That the right of way over the land relinquished by said agreement to the United States for the construction of said Northern Pacific Railroad, and the use of the several parcels of land so relinquished intended to be used for depots, stations, sidings, and so forth, for said railroad, are hereby granted to said Northern Pacific Railroad Company, its successors and assigns, for the uses and purposes in said agreement set forth.

"It is claimed that by these proceedings the United States waived the breach of condition.

"As hereinbefore stated, relative to another branch of the case, this argument is plausible but not sound. It ignores entirely the fact to which we have adverted, viz., that the act contained two grants, one in fee of the odd sections, and overlooks the fact that these proceedings related solely to the former.

"The Crow treaty and act ratifying it are specifically limited to and operate only upon the right of way. This is shown beyond all question by a bare inspection of the statute. Neither the agreement nor the act contains a single word or expression that could be tortured into recognition of the continued existence of the land grant or as a waiver of the forfeiture thereof.

"Their only scope and operation is to relinquish the Indian title for the purpose of making the right of way available. In this there is nothing whatever inconsistent with the idea of a forfeiture of the land grant and its declaration at any time by Congress.

"The situation was anomalous. This munificent donation was then subject to forfeiture for breach of the condition. A due regard for the rights of the Government and its announced policy of dedicating the public lands for all time to come to actual settlers under general laws, demanded an enforcement of the forfeiture. But the company, pushing its line toward the Pacific, encountered difficulties at this point in

respect to its right of way, not as to its grant of land; for, as already shown, it had no grant of lands on the reservation. No reasons of public policy demanded a forfeiture of its right of way, granted by the act as a separate and distinct concession; but, on the other hand, the most enlightened policy dictated its recognition. Hence Congress and the executive branch of the Government extinguished the Indian title as to the right of way, carefully limiting all that was done to that one grant. In this, as before stated, there was nothing in the judgment of your committee inconsistent with a clear and well-defined intent to insist upon the breach of condition as to the grant of the odd sections in fee.

"The Indian title was the mere right of occupancy; protected by treaty or reservation it remained the same; in either event the lands were public lands of the United States. The United States did not grant these to the company, but expressly reserved and exempted them from its donation. It could and did, however, give the company a right of way through them. Such right it would always give in a proper case. That the recognition of a former grant of that kind, or even a new grant thereof, can be considered as a waiver of breach of another grant, of a separate and distinct estate, is, in the judgment of your committee, an untenable position. It would violate the obvious intent of Congress, as shown in all its legislation affecting the grant, and leave this immense area of the public domain irrevocably consecrated to this corporation without restriction or control even to accomplish the simplest object of its creation. That Congress, by the act of 1882, intended any such result as that is beyond the credence of your committee. We think it was intended merely to confirm the right of way, and that nothing in the proceedings taken for that purpose legally operated as a waiver of the reserved rights of the United States as to the grant of lands."

* * * * *

House report, from which the foregoing is an extract, was adopted, in its entirety, by the House Committee on Public Lands of the present Congress (see House Report No. 1226, Forty-ninth Congress, first session), and as the arguments and conclusions therein equally apply to the Yakima Reserve, which also was not included in the granted lands (*Idem*, p. 8), it would appear unnecessary for this office to offer any further explanation on the subject.

(2) Mr. Hailey objects that the agreement is signed by 18 Indians only, out of a population of 3,200, "while treaty made with these Indians in 1855 (which they have kept) says that no part of their land shall be taken with (without?) their consent."

In answer to this objection, I have to say that the agreement appears to have been executed in accordance with the instructions contained in Department letter of November 17, 1884, to Inspector Gardner, the officer who conducted the negotiations with the Indians (see copy thereof in Senate Ex. Doc. No. 21, Forty-ninth Congress, first session, pp. 7-9); and that I do not find in the treaty with the Yakimas any such provisions as that mentioned by Mr. Hailey.

A reference to that treaty (12 Stat., 955), by which a large tract of country was ceded to the United States, will show that it was signed by 14 Indians only, belonging to the confederated tribes, and that it was accepted and ratified by the Senate in that shape.

(3) Mr. Hailey further calls attention to the language of the certificate of the interpreter, his signature, and the witness to his signature, James McNaughton, who, as he is credibly informed, was the attorney of the Northern Pacific Railroad Company at that time. Mr. Hailey claims that there was no necessity for him, the attorney, to be there at that time, Inspector Gardner having been furnished with maps showing the amount and description of land for which the United States desired to negotiate.

In answer to these objections I would remark that—

In the testimonium of the agreement the Indians signing are described (following the manner of the treaty) as "head chiefs, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians," and although their representative capacities are not affixed to their names, it is presumed the inspector satisfied himself that they were such.

It is true that the interpreter's certificate does not verify this fact, as perhaps it should properly have done, but it states that he had read and explained the agreement to the Indians signing, that they fully understood it, and that they signed it in his presence, which I respectfully submit is all sufficient for the purpose. The interpreter appears to have been unable to sign his name, and the attestation should strictly have been framed accordingly, but experience has shown that notwithstanding all precautions it is not always possible to procure papers from Indians executed with the precision of ordinary legal documents.

With regard to the presence of Mr. McNaughton, one of the attesting witnesses to the interpreter's certificate, it does not appear that the office had any knowledge, prior to the receipt of Mr. Hailey's letter, that he was in any way connected with

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the railroad company. In the instructions to Inspector Gardner, I find the following clause:

"There is no objection to the agent of the railroad company being present at the council, but he should take no active part in the proceedings beyond affording such explanation as may be necessary for the more intelligent comprehension of the line of route, location of stations, etc., by the Indians."

I am informed that this has invariably been the practice of the Department in kindred cases, and I can not see what objection there can be to it, surrounded as it is by proper restrictions to prevent undue influence being exerted on the Indians.

I am further informed that this office has no knowledge of Mr. Robert W. Mitchell, also referred to by Mr. Hailey as being present at the negotiations, his connection with the railroad company, or the fact that he was so present.

In conclusion I desire to say emphatically that the proceedings throughout appear to have been directed solely to the acquisition of the right of way and necessary grounds for station purposes, and that in framing the bill it was not the intention or desire of this office to attempt to revive, either directly or by implication, any rights which may have been forfeited by the Northern Pacific Railway Company.

As Mr. Hailey's criticisms are upon a measure of legislation which was submitted through the Department, it appears proper that this reply should be made through the same channel.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

[Senate Ex. Doc. No. 21, Forty-ninth Congress, first session.]

Message from the President of the United States, transmitting a communication from the Secretary of the Interior, with draft of a bill to ratify an agreement with the Indians at Yakima Reservation.

DECEMBER 21, 1885.—Read and referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate and House of Representatives:

I transmit herewith a communication of the 15th instant from the Secretary of the Interior, submitting, with accompanying papers, a draft of a bill to accept and ratify an agreement made with the confederated tribes and bands of Indians occupying the Yakima Reservation, in Washington Territory, for the right of way of the Northern Pacific Railroad across said reservation, etc.,

The matter is presented for the consideration and action of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION,
December 21, 1885

DEPARTMENT OF THE INTERIOR,
Washington, December 15, 1885.

SIR: I have the honor to submit herewith a report of 12th instant from the Commissioner of Indian Affairs, with accompanying papers, relative to an agreement concluded with the Indians on the Yakima Reservation, in Washington Territory, extinguishing their title to certain lands upon said reservation required for right of way and station purposes for the Northern Pacific Railroad.

A draft of a bill ratifying said agreement is also submitted, and, in accordance with the recommendation of the Commissioner and the provisions of the laws and treaties bearing upon the case, referred to in the papers, I respectfully ask that the matter may be laid before Congress for the early attention and action of that body.

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

L. Q. C. LAMAR,
Secretary.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December, 12, 1885.

SIR: I inclose herewith, in duplicate, the draft of a bill to accept and ratify an agreement, made January 13, 1885, with the confederated tribes and bands of Indians occupying the Yakima Reservation, in the territory of Washington, for the extinguish-

ment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same, and have the honor to recommend that the same be transmitted to the Congress for its consideration and action.

An abstract of this agreement will be found in office report to the Department of February 14, 1885, printed with accompanying papers, in Senate Ex. Doc. No. 82, Forty-eighth Congress, second session, duplicate copies of which are also herewith inclosed.

Beyond reference to the respective committees on Indian Affairs the subject does not appear to have further engaged the attention of the last Congress.

It is understood that the railroad has already been built through the reservation, and as the Indians are continually inquiring of their agent about the compensation moneys awarded them under the agreement, and it is difficult to make them comprehend the reasons for the delay in payment, early action by Congress upon the legislation submitted would appear desirable.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The HON. SECRETARY OF THE INTERIOR.

A BILL to accept and ratify an agreement made with the confederated tribes and bands of Indians occupying the Yakima Reservation, in the Territory of Washington, for the extinguishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a certain agreement now on file in the office of the Commissioner of Indian Affairs, bearing date the thirteenth day of January, in the year of our Lord, eighteen hundred and eighty-five, made between Robert S. Gardner, United States Indian inspector, on the part of the United States, duly appointed by the Secretary of the Interior, in that behalf, of the one part, and the head chief, chiefs, headmen, and delegates of the Yakima and other confederate tribes and bands of Indians, resident on the Yakima Reservation in Washington Territory, of the other part, be, and the same is hereby, ratified and confirmed; said agreement is in the words and figures following, namely:

"Whereas by section 1 of an act of Congress, approved July second, eighteen hundred and sixty-four, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast, by the northern route' (13 Statutes at Large, page 365), the Northern Pacific Railroad Company, was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget Sound; and

"Whereas, by section 2 of said act, Congress granted to said company the right of way for the construction of said railroad and telegraph line to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations; and

"Whereas, by said section 2, Congress provided that the United States should extinguish as rapidly as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operation of this act and acquired in the donation to the road named in the act; and

"Whereas, by treaty between the United States and certain confederate tribes and bands of Indians therein designated as the Yakima nation of Indians, concluded at Camp Stevens, Walla Walla Valley, June 9, 1855, duly ratified and proclaimed (12 Statutes at Large, page 951), a tract of land therein described situate in the Territory of Washington, was reserved from the land thereby ceded, for the use and occupation of said confederate tribes and bands of Indians, as an Indian reservation; and

"Whereas by article 3 of said treaty it is provided that 'if necessary for the public convenience roads may be run through said reservation, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways;' and

"Whereas the said Northern Pacific Railroad Company did, on or about the 20th day of October, 1884, file in the Department of the Interior a certified map showing the definite location of its line of railroad through the Yakima Indian Reservation

from the presumed southeasterly boundary of said reservation on the right bank of the Yakima River, 8 miles below the mouth of Satass River, to its north boundary near the mouth of the Atah-num River, all being in Washington Territory, as definitely fixed and determined in compliance with the several acts and resolutions of Congress relating to the Northern Pacific Railroad, and as approved by the board of directors of said company by resolution passed June 21, 1883, also three several descriptive plats of grounds required by said railroad company for station purposes, designated as 'Satass,' 'Toppenish,' and 'Simcoe' respectively, and severally containing an area of 20.60 acres, exclusive of a right of way of 125 feet in width on each side of the center line of said railroad; and

"Whereas the said Northern Pacific Railroad Company now desires to construct its line of railroad through the Yakima Reservation, upon the route so designated, and claims the right by virtue of said recited act so to do;

"Now, therefore, in order to fulfill the obligations of the Government in the premises—

"This agreement, made at the Yakima Agency, Washington Territory, this 13th day of January, in the year of our Lord 1885, by and between Robert S. Gardner, United States Indian inspector, on the part of the United States, and the undersigned head chief, chiefs, headmen, and delegates of the Yakima and other confederate tribes and bands of Indians resident on the Yakima Reservation, in Washington Territory, and interested in the lands hereinafter described, witnesseth:

"That for the considerations hereinafter mentioned the said confederate tribes and bands of Indians do hereby surrender and relinquish to the United States all the estate, right, title, and interest which they now have under and by virtue of the aforesaid treaty of June 9, 1855, in and to all that part of the Yakima Reservation situate in the Territory of Washington, described as follows, viz:

"A strip of land not exceeding 250 feet in width; that is to say, 125 feet on each side of the line laid down on the map of definite location of the route of the Northern Pacific Railroad wherever said line runs through said reservation, entering the same at the presumed southeasterly boundary thereof on the right bank of the Yakima River, 8 miles below the mouth of Satass River, thence following through said reservation to the north boundary thereof at or near the mouth of the Atah-num River, said strip of land being intended to be used by the said Northern Pacific Railroad Company, its successors or assigns, as a right of way and roadbed, and containing 1,000 acres or thereabouts. A copy of said map of definite location was on the day of the date hereof produced and shown to said Indians in council assembled, and is hereto annexed, marked with the letter D, and made a part of this agreement.

"Also in and to the three several pieces or parcels of land situate along and adjoining the said strip of land hereinbefore described, as the same are respectively delineated on the three several copies of plats or maps thereof, also now produced and shown to said Indians and hereto attached and made a part of this agreement, marked respectively with the letters A, B, and C, and containing respectively the following areas, that is to say: Tract A ('Satass'), 20.60 acres; tract B ('Toppenish'), 20.60 acres; and tract C ('Simcoe'), 20.60 acres; the same being intended to be used by the said Northern Pacific Railroad Company for the purposes of depots, station houses, sidings, etc.

"In consideration of such surrender and relinquishment of lands as aforesaid, amounting in the aggregate to 1,061.80 acres, the United States agrees to pay to the said confederated tribes and bands of Indians the sum of \$5,309, being at the rate of \$5 per acre, to be deposited in the Treasury of the United States to the credit of the said confederated tribes and bands of Yakima Indians upon ratification of this agreement by Congress and necessary appropriations therefor, the aforesaid sum to be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct.

"And for the considerations aforesaid the United States further agrees, upon ratification of this agreement by Congress and necessary appropriations therefor, to pay to the individual members of said confederate tribes and bands, parties hereto, whose names appear in the schedule hereto annexed, marked with the letter E, the reasonable value of all improvements, whether of buildings, fences crops, cultivated fields, or otherwise, falling within the limits of the lands hereby agreed to be surrendered, as the same shall be appraised and determined by a board of arbitrators to be composed of the said Robert S. Gardner, party hereto on behalf of the United States, the agent for the time being on behalf of said Indians, and such other person as they two shall mutually agree upon, the amount of compensation so determined upon and hereby agreed to be paid to be expended for the benefit of such individual Indians, or paid to them in cash in the proportions to which they may be severally entitled appearing by said schedule, as the Secretary of the Interior may direct.

"All provisions of existing treaties with the said confederated tribes and bands not

affected by this agreement to remain in full force and effect, and this agreement to be subject to ratification by Congress.

"In testimony whereof the said Robert S. Gardner, United States Indian inspector, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians have hereunto set their hands and seals, at the place and on the day and year aforesaid.

"Robert S. Gardner, United States Indian inspector; Joe Stuire, his x mark; Eneas, his x mark; Chet-a-mau-mene, his x mark; Weallept, his x mark; George Locea, his x mark; Joseph Eysnucks, his x mark; Cocea, his x mark; Snetups Colula, his x mark; Wachauca, his x mark; Thomas Pearn; Willi-pi-pi, his x mark; Willie Shuester, his x mark; William Wanto, his x mark; Thomas Simpson, his x mark; Thomas Cree, his x mark; George Waters: Tecumseh Takotowit, his x mark; We-hi-poo, his x mark.

"Signed and sealed in the presence of Virgil G. Bogue, Henry D. Cock, Walter J. Milroy, Charley Olney.

"YAKAMA AGENCY, WASHINGTON TERRITORY.

"January 13, 1885.

"I certify that the foregoing agreement was read and explained by me, and was fully understood by all the above-named Indians of the confederated tribes and bands constituting what are known as the Yakama Indians, before signing, and that the same was signed by said Indians in my presence.

"ANDREW RIDDLE, his x mark,
"Official Interpreter.

"Witnesses:

"JAMES McNAUGHT.

"R. H. MILROY,

"United States Indian Agent."

SEC. 2. That for the purpose of carrying the provisions of this act into effect, the sum of \$8,295.80 is hereby set aside out of any moneys in the United States Treasury not otherwise appropriated, \$5,309 whereof shall be deposited in the United States Treasury to the credit of the confederated tribes and bands of Yakama Indians, and be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct; and the balance, or sum of \$2,986.80, shall be deposited in the United States Treasury to the credit of the individual Indians, members of the said confederated tribes, whose names appear on the Schedule E, referred to in said recited agreement, to be expended for the benefit of such individual Indians, or paid to them in cash, in the proportions to which they may severally be entitled appearing by said schedule, as the Secretary of the Interior may direct.

SEC. 3. That the right of way over the land relinquished by said agreement to the United States for the construction of the said Northern Pacific railroad and the use of the several parcels of land so relinquished intended to be used for depots, stations, sidings, etc., for said railroad, are hereby granted to the said Northern Pacific Railroad Company, its successors and assigns, for the uses and purposes in said agreement set forth: *Provided*, That the said Northern Pacific Railroad Company, its successors or assigns, shall, within sixty days from the taking effect of this act, pay to the Treasurer of the United States said sum of \$8,295.80 hereby appropriated to be paid by the United States for the lands and improvements so as aforesaid relinquished to the United States by said agreement, and shall within the same time file with the Secretary of the Interior its written acceptance of the conditions of this section: *And provided further*, That the said Northern Pacific Railroad Company, its successors and assigns, do and shall pay any and all damages which the United States or said Indians, individually or in their tribal capacity, or any other Indians lawfully occupying said reservation, may sustain by reason or on account of the act or acts of the said railroad company, its successors or assigns, agents or employés, or on account of fires originating by or in the construction or operation of said railroad, the damages in all cases to be recovered in any court of the Territory of Washington having jurisdiction of the amount claimed, upon suit or action instituted by the proper United States Attorney in the name of the United States: *Provided further*, That the said United States Attorney may accept such sum of money in satisfaction of any such injury or damages as in his discretion may be just, and if so accepted before suit or action is commenced, no suit or action shall be instituted, and if accepted after commencement of suit or action, the same shall be dismissed at the cost of said company, its successors or assigns.

SEC. 4. That all moneys accepted or recovered under the provisions of section 3 of this act shall be covered into the Treasury of the United States, and if accepted or recovered on account of damages sustained by said Indians in their tribal capacity

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they shall be placed to the credit of said Indians in their tribal names, to be expended by the Secretary of the Interior for the benefit of said Indians in such manner as he may deem for their best interest, and in the case of an individual Indian the amount covered into the Treasury shall be expended for his sole benefit, or paid to him in cash, in the discretion of the Secretary of the Interior.

E.

Description and valuation of improvements of individual Indians on lands in the Yakama Reserve, Washington Territory, referred to in the agreement entered into between the United States and the confederated tribes and bands constituting the Yakama Indians, this 15th day of January, 1886.

Description.	Nature of improvements, and by whom made.	Town.	Range.	No. of acres.	Value per acre.	Value of improvements.	Total value.
Rich rye-grass arable land, inclosed with substantial fence.	Fenced, tilled, and cultivated, and meadow land; improvement made by Frank Wacise.	9 N.	21 E.	9.30	\$20	\$114.00	\$300.00
Do	Fenced, tilled, and 10 acres wheat-field to be abandoned; improvement made by Mose Strong.	9 N.	21 E.	15.10	20	48.00	350.00
Do	Fenced and tilled, and 20 acres wheat-field to be abandoned; improvement made by Jasen Lee.	9 N.	31 E.	12.10	20	58.00	300.00
Rich rye-grass arable land, inclosed by fence and ditch.	Lands tilled and hay meadow, one oat-field and wheat-field; improvement made by Louis Shuster.	9 N.	21 E.	25.80	20	77.40	593.40
Do	Hay land, tilled, wheat-field, and pasture; improvement made by Satass Shuster.	9 N. 10 N.	21 E. 21 E.	25.80	20	77.40	593.40
Rich rye-grass land, uninclosed.	Meadow land, unfenced; improvement made by William Wanto.	10 N.	21 E.	4.00	20	20.00	100.00
Rye-grass arable land, cultivated, inclosed with wire fence.	Well cultivated and substantially fenced; improvement made by Tecumseh Yakotowit.	10 N.	20 E.	4.20	20	116.00	200.00
Sage-brush land, cleared and cultivated, accessibility to water cut off by railroad.	Fenced, cultivated in wheat, 29 apple trees destroyed; improvement made by Cotiatin, Old John and Billy.	12 N.	19 E.	16.60	20	218.00	550.00
							2,986.80

YAKAMA AGENCY, WASH., January 15, 1886.

We certify on honor that the foregoing schedule, marked with the letter "E," contains a true description of improvements made by individual Indians of the Yakama and other confederated tribes and bands upon lands of the Yakama Reservation, in the Territory of Washington, falling within the limits of lands surrendered by the said confederated tribes and bands to the United States for the purposes of the Northern Pacific Railroad by agreement bearing even date herewith, and that the said improvements have been carefully examined by us, and the valuations thereof are appraised by us at the sums set opposite the respective names of the Indians, owners, or occupants thereof. We further certify that the several amounts so appraised are, in our judgment, a fair and just compensation for the damages sustained in each case.

ROBERT S. GARDNER,
United States Indian Inspector.
R. N. MILROY,
United States Indian Agent.
HENRY D. COCK.

[Senate Executive Document No. 82, Forty-eighth Congress, second session.]

Message from the President of the United States, transmitting a communication of the Secretary of the Interior, with accompanying papers, with reference to legislation to carry out a certain agreement with Indians in Washington Territory.

FEBRUARY 19, 1885.—Read and referred to the Committee on Indian Affairs and ordered to be printed, omitting maps.

To the Senate and House of Representatives:

I transmit herewith a communication of the 16th instant from the Secretary of the Interior, submitting, with accompanying papers, a draft of a bill to "accept and ratify an agreement with the confederated tribes and bands of Indians occupying the Yakama Reservation, in the Territory of Washington, for the extinguishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriation for carrying out the same."

The matter is presented for the consideration and action of the Congress.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, February 19, 1885.

DEPARTMENT OF THE INTERIOR,
Washington, February 16, 1885.

SIR: I have the honor to submit herewith copy of letter of 14th instant from the Commissioner of Indian Affairs, submitting a draft of a bill "to accept and ratify an agreement with the confederated tribes and bands of Indians occupying the Yakama Reservation, in the Territory of Washington, for the extinguishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same," together with the inclosures (maps and other papers) noted therein.

Concurring in the object of the proposed legislation, I respectfully recommend that the matter may be presented to the Congress for the early and favorable consideration and action of that body.

Very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

THE PRESIDENT.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1885.

SIR: I am in receipt, by Department reference, of a letter dated the 17th ultimo, from United States Indian Inspector Gardner, who was specially detailed by you on the 17th November last to negotiate, on behalf of the Government, with the confederated tribes and bands of Yakama Indians, occupying the Yakama Reservation in Washington Territory, for the extinguishment of their title to lands of the reservation required for the purposes of the Northern Pacific Railroad, in accordance with the provisions of section 2 of the act of Congress approved July 2, 1864 (13 Stat., 365), transmitting as the result of his negotiations an agreement (with accompanying papers) entered into by him on behalf of the United States with said confederated tribes and bands, represented by their chiefs, headmen, and delegates, on the 13th of January, 1885.

By the terms of this agreement the confederated tribes and bands of Yakama Indians surrender and relinquish to the United States all the estate, right, title, and interest which they now have under and by virtue of the treaty made with the United States June 9, 1855 (12 Stat. at L., page 951), in and to all that part of the Yakama Reservation situate in the Territory of Washington, described as follows, viz:

A strip of land not exceeding 250 feet in width; that is to say, 125 feet on each side of the line laid down on the map of definite location of the route of the Northern Pacific Railroad, as filed in this Department, wherever said line runs through said reservation, entering the same at the presumed southeasterly boundary thereof, on the right bank of the Yakama River, 8 miles below the mouth of Satass River; thence following through said reservation to the north boundary thereof at or near the mouth of the Atahnum River, said strip of land being intended to be used by the said Northern Pacific Railroad Company, its successors or assigns, as a right of way and roadbed, and containing 1,000 acres, or thereabouts.

Also in and to three several pieces or parcels of land situate along and adjoining the said strip of land hereinbefore described, as the same are respectively delineated on the three several plats or maps thereof filed in this Department, containing, respectively, the following areas, that is to say: Tract A ("Satass"), 20.60 acres; Tract B ("Top penish"), 20.60 acres; and Tract C ("Simcoe"), 20.60 acres; the same being intended to be used by the said Northern Pacific Railroad Company for the purposes of depots, station-houses, sidings, etc.

In consideration of such surrender and relinquishment of lands amounting in the aggregate to 1,061.80 acres, the United States agrees to pay to said confederated tribes and bands of Indians the sum of \$5,309, being at the rate of \$5 per acre, to be deposited in the Treasury of the United States to the credit of the said confederated tribes and bands of Yakama Indians upon ratification of said agreement by Congress and necessary appropriations therefor, said sum to be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct.

The United States further agrees, upon ratification of the said agreement by Congress, and necessary appropriations therefor, to pay to the individual members of said confederated tribes and bands, parties thereto, whose names appear in the schedule thereto annexed, marked E, the reasonable value of all improvements, whether of buildings, fences, crops, cultivated fields, or otherwise, falling within the limits of the lands thereby agreed to be surrendered, as the same shall be appraised and determined by a board of arbitrators, to be composed of Inspector Gardner, on behalf of the Government, the agent for the time being, on behalf of the Indians, and such other persons as they two shall mutually agree upon, the amount of compensation so determined upon, and thereby agreed to be paid, to be expended for the benefit of such individual Indians, or paid to them in cash in the proportions to which they may be severally entitled appearing by said schedule, as the Secretary of the Interior may direct.

It is further provided by said agreement that all provisions of existing treaties with said confederated tribes and bands not affected thereby shall remain in full force and effect, and that said agreement is made subject to ratification by Congress.

Accompanying said agreement is a descriptive schedule and valuation (marked E) of improvements made by individual Indians of said confederated tribes and bands within the limits of the lands so surrendered and relinquished, as made by the appraisers whose certificate is thereto appended, amounting to the sum of \$2,986.80.

I have caused said agreement to be carefully examined, and have the honor to submit herewith, in duplicate, the draft of a bill to accept and ratify the same, and for the granting of a right of way and grounds for station purposes on the Yakama Reservation to the Northern Pacific Railroad Company upon the terms and conditions therein mentioned, which I respectfully recommend be transmitted to Congress for its action.

I also inclose duplicate copies of the agreement, maps, schedule of appraisement, and other papers referred to in this report.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

THE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, November 17, 1884.

SIR: By the first section of the act of July 2, 1864 (13 Stat. 365), incorporating the Northern Pacific Railroad Company and making a grant of lands thereto, Congress authorized and empowered the said company to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as should be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, to some point on Puget Sound.

By the second section of said act Congress granted the said company the right of way through the public domain for the construction of said railroad and telegraph to the extent of 200 feet in width on each side of said railroad, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side-tracks, turntables, and water stations; and also provided that the United States should extinguish, as rapidly as might be consistent with public policy and the welfare of the Indians, the Indian title to all lands falling under the operation of the act and acquired in the donation to the road.

By the second article of the treaty between the United States and certain confederate tribes and bands of Indians therein designated as the Yakama Nation of In-

dians, concluded at Camp Stevens, Walla Walla Valley, June 9, 1855, duly ratified and proclaimed (12 Stat., 950), printed copy herewith inclosed, a tract of land therein described, situate in the Territory of Washington, was reserved from the lands thereby ceded for the use and occupation of said confederate tribes and bands of Indians as an Indian reservation.

The third article of said treaty provides that, "if necessary for the public convenience, roads may be run through the said reservations; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them, as also the right, in common with citizens of the United States, to travel upon all public highways."

The Northern Pacific Railroad Company now desires the extinguishment of the Indian title to so much of the lands of the said reservation upon and along the line of its road as defined, as indicated in the second section of said act before noted, for the purposes of a right of way and roadbed, including all necessary grounds for station buildings, workshops, switches, side-tracks, turntables, and water stations.

By virtue of the provisions of said act, it becomes the duty of the Government to extinguish the Indian title to the lands in said reservation required for the purposes aforesaid, which must be done by agreement duly entered into between the United States and the confederated tribes of Indians occupying or interested in the reservation.

To this end you have been selected on behalf of the Government to confer with the Indians and make all necessary arrangements with them in the premises.

Upon the receipt of this communication, therefore, you will at once proceed to the Yakama Agency, and as soon as conveniently may be after your arrival assemble the Indians in council, taking care to insure as full a representation as is possible of the tribes and bands interested. You will fully explain to the council the nature and object of the agreement which it is proposed to make with the United States, the objective point of the road, and the line of route which it will follow through the reservation, as shown by the copy of the map of definite location filed by the railroad company herewith transmitted, marked D; also the location and extent of the lands required by the company for station buildings, etc., as indicated on the copies of plats also herewith transmitted, marked respectively A, B, and C.

You will advise the Indians to agree upon a fair and reasonable compensation to be paid by the Government for the quantity of land required by the railroad company, impressing upon them the opinion held by the Department that the construction of the road will advance their welfare, be beneficial to the Indian service, and subserve a general public interest in the vicinity through which it will pass.

The whole subject having been fully explained to and understood by the Indians, the amount of compensation to be paid by the United States to the confederated tribes for the lands to be surrendered agreed upon, and also compensation to individual Indians for damages, etc., as hereinafter referred to, and all other necessary preliminaries having been arranged, you will reduce the terms of the agreement to writing substantially in form inclosed herewith.

It is proposed that the amount of money to be paid by the United States for the lands surrendered shall, upon ratification of the agreement by Congress and necessary appropriation therefor, be deposited in the Treasury of the United States to the credit of the confederated tribes, and be expended for their benefit in such manner as the Secretary of the Interior may direct, and that under like conditions the amount of compensation awarded to individual Indians for damages shall be expended for their benefit, or paid to them in cash, in the proportions to which they may be severally entitled thereto, in the discretion of the Secretary. All this you will cause to be fully explained to the Indians, as also the fact that except as to the quantity of lands the title to which may be extinguished by said agreement, all the stipulations of existing treaties, so far as the same are unfulfilled, will remain in force.

It appearing to this Department that the projected road passes through or otherwise damages sundry cultivated fields, inclosures, and other valuable improvements belonging to individual Indians, occupants of the reservation, you will, in company with the Indian agent, and such third person as you shall mutually agree upon, as provided in the agreement, make a thorough examination of all property which may be so affected or damaged, and from the best disinterested evidence you can procure upon the question of value make a careful appraisalment thereof, and of the amount of compensation to be paid by the United States to such individual Indian or Indians therefor.

You will embody such appraisalment in the form of a schedule to be prepared in accordance with Form E, herewith inclosed, which you will jointly certify and annex to the agreement. A duplicate of the schedule should also be prepared and certified in like manner.

Judging from the map of definite location (D), it is estimated that the railroad traverses the reservation a distance of about 32 miles or thereabouts, which, on an average width of 250 feet, would yield for right of way about 969 acres and for station purposes 61 acres, making in the whole about 1,030 acres, to which the Indians

will be required to relinquish their right. As these figures are, however, only approximate, I would suggest, for greater certainty in the agreement, that you get the company's engineer to make a computation and officially certify to the exact quantity of land included in the right of way upon the basis stated. The descriptive plats of station grounds speak for themselves in this respect.

There is no objection to the agent of the railroad company being present at the council, but he should take no active part in the proceedings beyond affording such explanation as may be necessary for the more intelligent comprehension of the line of route, location of stations, etc., by the Indians.

The population of the Yakama Indians is estimated at about 3,200. As it would be a work of great labor to obtain the signatures of a majority of all the male adult members of the tribe, as has been usual in similar cases, and in the absence of any treaty provisions with the Yakama Indians to the contrary, the agreement has been prepared for execution by the head chief, chiefs, headmen, and delegates, whose signatures, it is deemed, will be sufficient. It is, however, desirable that you should obtain as many signatures of the leading men as possible, taking care to ascertain that they reflect the view and wishes of the Indians generally. You will take care to supply all blanks in the agreement before the signatures are affixed; also, that it is properly attested and certified in form shown.

In the execution of this business you are authorized to disregard so much of the foregoing instructions, and also to modify or alter the agreement in such manner as you may deem the best interests of the United States and the Indians may require, bearing in mind, however, that the agreement is between the Government and the Indians, and has simply reference to the extinguishment of the Indian title to the lands in question, and not further or beyond it.

The Commissioner of Indian Affairs has been directed to instruct Agent Milroy, in charge of the Yakama Agency, to have everything in readiness for the assembling of the Indians in council at such time as you may designate by letter to him.

You will acknowledge the receipt of this letter of instructions, and transmit the agreement, when finally completed, with your report and all inclosures sent herewith, to this Department.

Very respectfully,

H. M. TELLER,
Secretary.

ROBERT S. GARDNER,
*United States Indian Inspector,
Western Shoshone Agency, Nevada.*

UNITED STATES INDIAN SERVICE,
Yakima City, January 17, 1885.

SIR: I have the honor to transmit herewith articles of agreement of the Yakama Indians for the surrender of a strip of land to the United States, to be used as a roadbed or right of way to the Northern Pacific Railroad Company; also an appraisalment (in duplicate) of damages sustained by individual Indians by reason of the construction of said railroad.

The original papers are herewith returned.

Very respectfully, etc.,

ROBERT S. GARDNER,
United States Indian Inspector.

THE SECRETARY OF THE INTERIOR.

Whereas by section 1 of an act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route" (13th Statutes at Large, page 365), the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the 45° of latitude to some point on Puget Sound; and

Whereas by section 2 of said act Congress granted to said company the right of way for the construction of said railroad and telegraph line, to the extent of 200 feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations; and

Whereas by said section 2 Congress provided, that the United States should extin-

guish, as rapidly as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operation of this act and acquired in the donation to the road named in the act; and

Whereas by treaty between the United States and certain confederated tribes and bands of Indians therein designated as the Yakama nation of Indians, concluded at Camp Stevens, Walla Walla Valley, June 9, 1856, duly ratified and proclaimed (12th Statutes at Large, page 951), a tract of land therein described, situate in the Territory of Washington, was reserved from the land thereby ceded, for the use and occupation of said confederated tribes and bands of Indians, as an Indian reservation; and

Whereas by article 3 of said treaty it is provided that "if necessary for the public convenience roads may be run through said reservation, and on the other hand the right of way, with free access from the same to the nearest public highway, is secured to them, as also the right in common with citizens of the United States to travel upon all public highways;" and

Whereas the said Northern Pacific Railroad Company did, on or about the 20th day of October, 1884, file in the Department of the Interior a certified map showing the definite location of its line of railroad through the Yakama Indian Reservation, from the presumed southeasterly boundary of said reservation, on the bank of the Yakama River, 8 miles below the mouth of Satass River, to its north boundary near the mouth of Atahnum River, all being in Washington Territory, as definitely fixed and determined in compliance with the several acts and resolutions of Congress relating to the Northern Pacific Railroad, and as approved by the board of directors of said company, by resolution passed June 21, 1883; also three several descriptive plats of ground, required by said railroad company for station purposes, designated as "Satass," "Topenish," and "Simcoe," respectively, and severally containing an area of 20.60 acres, exclusive of the right of way of 125 feet in width on each side of the center line of said railroad; and

Whereas the said Northern Pacific Railroad Company now desires to construct its line of railroad through the Yakama Reservation, upon the route so designated, and claims the right by virtue of said recited act so to do:

Now, therefore, in order to fulfill the obligations of the Government in the premises, this agreement, made at the Yakama Agency, Washington Territory, this 11th day of January, in the year of our Lord 1885, by and between Robert S. Gardner, United States Indian inspector, on the part of the United States, and the undersigned head chief, chiefs, headmen, and delegates of the Yakama and other confederated tribes and bands of Indians resident on the Yakama Reservation, in Washington Territory, and interested in the lands hereinafter described, witnesseth:

That, for the considerations hereinafter mentioned, the said confederate tribes and bands of Indians do hereby surrender and relinquish to the United States all the estate, right, title, and interest which they now have under and by virtue of the aforesaid treaty of June 9, 1856, in and to all that part of the Yakama Reservation situate in the Territory of Washington, described as follows, viz:

A strip of land not exceeding 250 feet in width, that is to say, 125 feet on each side of the line laid down on the map of definite location of the route of the Northern Pacific Railroad wherever said line runs through said reservation, entering the same at the presumed southeasterly boundary thereof, on the right bank of the Yakama River, 8 miles below the mouth of the Satass River, thence following through said reservation to the north boundary thereof at or near the mouth of the Atahnum River, said strip of land being intended to be used by the said Northern Pacific Railroad Company, its successors or assigns, as a right of way and roadbed, and containing 1,000 acres or thereabouts. A copy of said map of definite location was, on the day of the date hereof, produced and shown to said Indians in council assembled, and is hereto annexed, marked with the letter "D," and made a part of this agreement.

Also, in and to the three several pieces or parcels of land situate along and adjoining the said strip of land hereinbefore described, as the same are respectively delineated on the three several copies of plats or maps thereof, also now produced and shown to said Indians and hereto attached and made a part of this agreement, marked respectively with the letters A, B, and C, and containing respectively the following areas; that is to say, tract A (Satass), 20.60 acres; tract B (Topenish), 20.60 acres; and tract C (Simcoe), 20.60 acres; the same being intended to be used by the Northern Pacific Railroad Company for the purposes of depots, station houses, sidings, etc.

In consideration of such surrender and relinquishment of lands as aforesaid, amounting in the aggregate to 1,061.80 acres, the United States agree to pay to the said confederated tribes and bands of Indians the sum of \$5,309, being at the rate of \$5 per acre, to be deposited in the Treasury of the United States to the credit of the said confederate tribes and bands of Yakama Indians upon ratification of this agreement by Congress and necessary appropriations therefor; the aforesaid sum to be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct.

And for the considerations aforesaid the United States further agree, upon ratifica-

tion of this agreement by Congress and necessary appropriations therefor, to pay to the individual members of said confederate tribes and bands, parties hereto, whose names appear in the schedule hereto annexed, marked with the letter E, the reasonable value of all improvements, whether of buildings, fences, crops, cultivated fields, or otherwise, falling within the limits of the lands hereby agreed to be surrendered, as the same shall be appraised and determined by a board of arbitrators, to be composed of the said Robert S. Gardner, party hereto on behalf of the United States, the agent for the time being on behalf of said Indians, and such other person as they two shall mutually agree upon, the amount of compensation so determined upon and hereby agreed to be paid, to be expended for the benefit of such individual Indians, or paid to them in cash in the proportions to which they may be severally entitled appearing by said schedule, as the Secretary of the Interior may direct.

All provisions of existing treaties with the said confederated tribes and bands not affected by this agreement to remain in full force and effect, and this agreement to be subject to ratification by Congress.

In testimony whereof the said Robert S. Gardner, United States Indian inspector, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians have hereunto set their hands and seals, at the place and on the day and year aforesaid.

ROBERT S. GARDNER, *United States Indian Inspector.*

[SEAL.]

Joe Stuire, his x mark; Eneas, his x mark; Chet-a-man-nene, his x mark; Weallept, his x mark; George Locca, his x mark; Joseph Eysnuckea, his x mark; Cocea, his x mark; Sctaps Colula, his x mark; Wachauca, his x mark; Thomas Pearne, his x mark; Willi-pi-pi, his x mark; Willie Shuster, his x mark; William Wanto, his x mark; Thomas Simpson, his x mark; Thomas Cree, his x mark; Geo. Waters, his x mark; Tecumseh Takotowik, his x mark; We-hi-poo, his x mark.

Signed and sealed in presence of Virgil G. Bogue, Henry D. Cock, Walter J. Milroy, Charley Olney.

YAKAMA AGENCY, WASHINGTON TERRITORY,

January 13, 1885.

I certify that the foregoing agreement was read and explained by me, and was fully understood by all the above-named Indians of the confederated tribes and bands constituting what are known as the Yakama Indians, before signing, and that the same was signed by said Indians in my presence.

his
ANDREW + RIDDLE,
mark.
Official Interpreter.

Witnesses:

JAMES McNAUGHT.

R. M. MILROY,

United States Indian Agent.

Description of Plat A of station at Satass, showing the location and extent of depot grounds.

Commencing at a station numbered 3,167 on the center line of the located survey of the Northern Pacific Railroad, in the valley of the Yakima River, about 2 miles southeast of the crossing of Satass Creek by said railroad; thence N. 44° E. at right angles to the center line of said railroad 325 feet to a point; thence N. 46° W. parallel with and 325 feet from the center line of said railroad 2,640 feet to a point 325 feet from and at right angles to the center line of said railroad station 3,193 by 40; thence S. 44° W. at right angles to and crossing said railroad center line at station 3,193 by 40, 590 feet to a point; thence S. 46° E. parallel with and 265 feet from the center line of said railroad 2,640 feet to a point at right angles to and 265 feet from station 3,167; thence N. 44° at right angles to and intersecting said center line of said railroad at station 3,167 265 feet to the place of beginning; containing 20.60 acres, more or less, exclusive of the right of way of 125 feet in width on each side of the center line of said railroad.

Description of Plat B of station at Toppenish, showing the location and extent of depot ground.

Commencing at a station numbered 3,720 on the center line of the located survey of the Northern Pacific Railroad, in the valley of Yakima River, about 1 mile northwest of the crossing of said railroad by the wagon-road from Dalles to Yakima City; thence N. 44° E. at right angles to the center line of said railroad 265 feet to a point; thence N. 46° W. parallel with and 265 feet from the center line of said railroad 2,640 feet

to a point 265 feet from and at right angles to said center line of said railroad at station 3,746 by 40; thence S. 44° W. at right angles to and crossing said railroad center line at station 3,746 by 40, 590 feet to a point; thence S. 46° E. parallel with and 325 feet from the center line of said railroad 2,640 feet to a point at right angles to and 325 feet from station 3,720; thence N. 44° E. at right angles to and intersecting said center line of said railroad at station 3,720, 265 feet to the place of beginning; containing 20.60 acres, more or less, exclusive of the right of way of 125 feet on each side of the center line of said railroad.

Description of Plat C of station at Simcoe, showing the location and extent of depot grounds.

Commencing at a station numbered 4,105 on the center line of the located survey of the Northern Pacific Railroad, in the valley of Yakima River, about 7 miles southeast of the crossing of Atahnum River by said railroad; thence N. 44° E. at right angles to the center line of said railroad 265 feet to a point; thence N. 46° W. parallel with and 265 feet from the center line of said railroad 2,640 feet to a point 265 feet from and at right angles to said center line of said railroad at station 4,131 by 40; thence S. 44° W. at right angles to and crossing said railroad center line at station 4,131 by 40, 590 feet to a point; thence S. 46° E. parallel with and 325 feet from the center line of said railroad 2,640 feet to a point at right angles to and 325 feet from station 4,105; thence N. 44° E. at right angles to and intersecting said center line of said railroad at station 4,105, 325 feet to the place of beginning; containing 20.60 acres more or less, exclusive of the right of way of 125 feet in width on each side of the center line of said railroad.

TERRITORY OF WASHINGTON,
County of Yakima, ss:

I, V. G. Bogue, principal assistant engineer of the Northern Pacific Railroad Company, do hereby certify that the number of acres contained in the 250 feet right of way, and the station grounds at Simcoe, Toppenish, and Satass of the Northern Pacific Railroad Company on the Yakama Indian Reservation, is 1,061.80 acres.

Witness my hand at Yakama Reservation this 13th day of January, 1885.

V. G. BOGUE,
Principal Assistant Engineer.

[House Report No. 4138, Forty-ninth Congress, second session.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1211) to accept and ratify an agreement made with the confederated tribes and bands of Indians occupying the Yakima Reservation, in the Territory of Washington, for the extinguishment of their title of so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same, having had the same under consideration, submit the following report:

In this bill is a copy of the agreement referred to, the first eight paragraphs of which read as follows:

"Said agreement is in the words and figures following, namely:

"Whereas by section 1 of an act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route" (13th Statutes at Large, page 365), the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westwardly by the most eligible railroad route as shall be determined by said company, within the territory of the United States, on a line north of the forty fifth degree of latitude to some point on Puget Sound; and

"Whereas by section 2 of said act Congress granted to said company the right of way for the construction of said railroad and telegraph line to the extent of 200 feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations; and

"Whereas by said section 2 Congress provided that the United States should extinguish as rapidly as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operation of this act and acquired in the donation to the road named in the act; and

"Whereas by treaty between the United States and certain confederated tribes

and bands of Indians therein designated as the Yakima nation of Indians, concluded at Camp Stevens, Walla Walla Valley, June 9, 1885, duly ratified and proclaimed (12th Statutes at Large, page 951), a tract of land therein described, situate in the Territory of Washington, was reserved from the land thereby ceded, for the use and occupation of said confederated tribes and bands of Indians as an Indian reservation; and

"Whereas by article 3 of said treaty it is provided that "if necessary for the public convenience roads may be run through said reservation, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways;" and

"Whereas the said Northern Pacific Railroad Company did on or about the 20th day of October, 1884, file in the Department of the Interior a certified map showing the definite location of its line of railroad through the Yakima Indian Reservation from the presumed southeasterly boundary of said reservation on the right bank of the Yakima River, 8 miles below the mouth of Satass River, to its north boundary near the mouth of Atahnum River, all being in Washington Territory, as definitely fixed and determined in compliance with the several acts and resolutions of Congress relating to the Northern Pacific Railroad, and as approved by the board of directors of said company by resolution passed June 21, 1883; also three several descriptive plats of ground required by said railroad company for station purposes, designated as "Satass," "Toppenish," and "Simcoe," respectively, and severally containing an area of 20.60 acres exclusive of a right of way of 125 feet in width on each side of the center line of said railroad; and

"Whereas the said Northern Pacific Railroad Company now desires to construct its line of railroad through the Yakima Reservation upon the route so designated, and claims the right by virtue of said recited act so to do:

"Now, therefore, in order to fulfill the obligations of the Government in the premises, this agreement made at the Yakima Agency, Washington Territory, this 13th day of January, in the year of our Lord 1885, by and between Robert S. Gardner, United States Indian inspector, on the part of the United States, and the undersigned head chiefs, chiefs, head men, and delegates of the Yakima and other confederate tribes and bands of Indians resident on the Yakima Reservation, in Washington Territory, and interested in lands hereinafter described, witnesseth:"

While the quotations made herein from the old act of Congress are correct in the main so far as the words are concerned, yet I can not see why these extracts should be selected from out of the statutes and incorporated as a part of the agreement with the Indians.

Why Indians should be required to sign an agreement with these extracts which have nothing or should have nothing whatever to do with the agreement between the United States and these Indians. We can not conceive for what purpose they were put in the agreement unless it was for the purpose of having Congress approve them, thereby indirectly extending the time for the construction of the Northern Pacific Railroad under the acts and resolutions referred to. Certainly they are not necessary nor should they have any place in the agreement for the purchase of the right of way to be acquired from those Indians.

The first part of the eighth paragraph of this agreement reads as follows:

"Now, therefore, in order to fulfill the obligations of the Government in the premises, this agreement made at the Yakima Agency, Washington Territory, this 13th day of January, 1885."

This shows I think very clearly that the object in putting the first seven paragraphs and the first part of the eighth one in the agreement with these Indians was to first have the Indians sign the agreement, and then for Congress to approve them under an enacting clause of a bill, thereby reviving and recognizing certain obligations of the Government to the Northern Pacific Railroad Company to be in force at this date, which we are of the opinion expired by limitation on July 4, 1879.

Without going into all of the details of the act of Congress approved July 2, 1864 (13 Statutes, page 355), which contains the grant of right of way through public lands and grant of land, etc., said grants, rights, and privileges are by section 8 of said act limited to July 4, 1876. By a resolution No. 34, approved May 7, 1866:

"The time for commencing and completing the Northern Pacific Railroad and its branches is extended for two years." (14 Statutes, page 355.)

And joint resolution approved July 1, 1868 (15 Statutes, page 255), which amends section 8 of original act and fixes the time for completion at July 4, 1877, instead of 1876.

It may be held, and we understand it is, that the extension of two years' time, granted by the resolution approved May 7, 1866, would carry two years' extension from the time fixed for completion in section 8, as amended July 1, 1868. This is certainly giving a very liberal construction of the act and resolutions in favor of the railroad company. To this we make no objection, and under this construction the

time for the completion of the Northern Pacific Railroad and its branches expired July 4, 1879. While Congress made the Northern Pacific Railroad Company the most liberal offer in the way of lands, right of way, depot grounds, etc., ever offered to any company, the act clearly shows that in order to entitle said company to these lands they must complete the whole line of railroad by July 4, 1879.

As it appears from section 3 of the act making the offer of the lands, etc., the object of the liberal offer was to "secure to the Government safe and speedy transportation of the mails, troops, munitions of war, and public stores at an early day." It appears that the whole line of road contemplated to be built by this company, including the Portland branch, was about 2,270 miles on July 4, 1879. At the expiration of the time allowed for the building under the act and resolutions referred to, they had completed only 531 miles.

It is not claimed that maps of the location of the road through the Yakima Indian Reservation were ever filed in the office of the Secretary of the Interior until about October 20, 1884, more than five years after the expiration of the time allowed said company in which to construct said road. Notwithstanding this, certain provisions of the old act and the resolutions amendatory thereof must be copied into the agreement for the Indians to sign, of which they do not know or understand, nor have the provisions referred to anything to do with the proper negotiations between the United States and the Indians for the right of way across the Yakima Indian Reservation.

The Yakima Indians should not be dragged in and made a party to some old acts of Congress that were enacted years ago in reference to a matter of business between the United States and the Northern Pacific Railroad Company, in which these Indians had no interest, neither did they take any part.

If the Northern Pacific Railroad Company have legal rights under the acts of Congress referred to, why do they not resort to the courts to enforce them, and not try to get them recognized by the poor ignorant Indians by having them first incorporated in an agreement between the United States and the Indians, where they have no right to be placed unless it be for the purpose of having Congress put new life and operative force in them by ratifying the agreement under the enacting title of the bill?

In an agreement between the United States and the Yakima Indians does not seem to me to be the proper place to try the rights of property between the United States and the Northern Pacific Railroad Company, growing out of acts of Congress that the Yakima Indians had nothing whatever to do with, nor is it reasonable to suppose they ever knew but little if anything about it.

In the honorable Secretary's letter of November 17, 1884, to Robert S. Gardner, United States Indian inspector, directing him to proceed to the Yakima Indian Reservation, he says: "The population of the Yakima Indians is estimated at about 3,200." Assuming this estimate to be correct, there should be at least 600 male adult Indians, all of whom are presumed to have equal rights. A majority of that number would be 301. The agreement presented for the acceptance and approval of Congress has what purports to be the names of 18 Indians only, and does not show that these 18 had any rights conferred on them by the balance of the tribe to act for them. Attached to this agreement there is what purports to be the certificate of Andrew Riddle, official interpreter. It is as follows:

"I certify that the following agreement was read and explained by me and was fully understood by all of the above-named Indians of the confederated tribes and bands, constituting what are known as the Yakama Indians, before signing, and that the same was signed by said Indians in my presence.

"ANDREW RIDDLE (his x mark),
"Official Interpreter.

"Witnesses:

"JAMES MCNAUGHT.

"R. M. MILROY, *United States Indian Agent.*"

How this interpreter, who could not sign his own name, could read and explain this agreement (with certain parts of acts of Congress), so that these Indians could all understand it, we must confess is a riddle that we can not solve.

However, when we take into consideration that one of the witnesses to this certificate, James McNaught, was at that time attorney for the Northern Pacific Railroad Company, and that one of their land agents, a Mr. Robert Mitchell, was also present, both of whom had left their usual places of business and traveled several hundred miles to be present when this agreement was made, it is not surprising after all to see certain parts of old acts of Congress put in the agreement and to learn that a man who could not sign his name could read and explain them to the Indians so that they fully understood them.

It also appears that this right of way goes through the farms of several Indians, which have been appraised without the Indians interested being allowed any voice in the selection of the appraisers. It also appears that the appraisers have estimated

for the value of the land taken and the value of the improvements thereon, but nothing for the damage done to the balance of the tract or farm through which the right of way runs. We submit that it is often the case that the damage to the balance of the farm not taken through which a railroad runs is often much greater than the estimated value of the right of way through the farm. It usually involves the necessity of a large additional amount of fencing, and often many other inconveniences and expenses which are perpetual, which shows very plainly to have been the case in most, if not each one, of the tracts of land through which this railroad runs.

In conclusion, we will say:

First. That the embodying of parts of acts of Congress in reference to the Northern Pacific Railroad Company in the agreement is wrong, and in our opinion was put in for the purpose of having Congress approve the agreement with said parts of acts, with the view of reviving and extending the original offer of right of way, subsidy of lands, &c., for the benefit of the Northern Pacific Railroad Company.

Second. Eighteen male adult Indians do not represent 600 male adults and 2,600 others, all of whom have some rights in the premises.

Third. Private property is to be taken from individual Indians without giving them any voice in the matter, and I believe without just compensation.

Fourth. We consider the certificate of the interpreter attached to the agreement a farce and should carry no weight. While the whole thing looks to us like it was not only intended to get the right of way and other property from the Indians without their consent, it certainly has a strong color of an attempt to revive some old acts of Congress for the benefit of the Northern Pacific Railroad Company.

For the reasons herein stated we recommend that the bill to accept and ratify the agreement be rejected.

A BILL to accept and ratify an agreement made with the confederated tribes and bands of Indian^s occupying the Yakima Reservation, in the Territory of Washington, for the extinguishment of their title to so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a certain agreement now on file in the office of the Commissioner of Indian Affairs, bearing date the thirteenth day of January, in the year of our Lord eighteen hundred and eighty-five, made between Robert S. Gardner, United States Indian inspector, on the part of the United States, duly appointed by the Secretary of the Interior, in that behalf, of the one part, and the head chief, chiefs, headmen, and delegates of the Yakima and other confederate tribes and bands of Indians, resident on the Yakima Reservation, in Washington Territory, of the other part, be, and the same is hereby, ratified and confirmed; said agreement is in the words and figures following, namely:

"Whereas by section 1 of an act of Congress, approved July second, eighteen hundred and sixty-four, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast, by the northern route" (13 Statutes at Large, page 365), the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget Sound; and

"Whereas, by section 2 of said act, Congress granted to said company the right of way for the construction of said railroad and telegraph line to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain including all necessary ground for station buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, and water stations; and

"Whereas, by said section 2, Congress provided that the United States should extinguish as rapidly as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operations of this act and acquired in the donation to the road named in the act; and

"Whereas by treaty between the United States and certain confederate tribes and bands of Indians therein designated as the Yakima nation of Indians, concluded at Camp Stevens, Walla Walla Valley, June 9, 1855, duly ratified and proclaimed (12 Statutes at Large, page 951), a tract of land therein described situate in the Territory of Washington, was reserved from the land thereby ceded, for the use and occupation of said confederate tribes and bands of Indians, as an Indian reservation; and

"Whereas by article 3 of said treaty it is provided that 'if necessary for the

public convenience roads may be run through said reservation, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways; and

"Whereas the said Northern Pacific Railroad Company did, on or about the 20th day of October, 1884, file in the Department of the Interior a certified map showing the definite location of its line of railroad through the Yakima Indian Reservation from the presumed southeasterly boundary of said reservation on the right bank of the Yakima River, 8 miles below the mouth of the Satass River, to its north boundary near the mouth of the Atah-num River, all being in Washington Territory, as definitely fixed and determined in compliance with the several acts and resolutions of Congress relating to the Northern Pacific Railroad, and as approved by the board of directors of said company by resolution passed June 21, 1883; also three several descriptive plats of grounds required by said railroad company for station purposes, designated as 'Satass,' 'Toppenish,' and 'Simcoe,' respectively, and severally containing an area of 20.60 acres, exclusive of a right of way of 125 feet in width on each side of the center line of said railroad; and

"Whereas the said Northern Pacific Railroad Company now desires to construct its line of railroad through the Yakima Reservation, upon the route so designated, and claims the right by virtue of said recited act so to do:

"Now, therefore, in order to fulfill the obligations of the Government in the premises—

"This agreement made at the Yakima Agency, Washington Territory, this 13th day of January, in the year of our Lord 1885, by and between Robert S. Gardner, United States Indian inspector, on the part of the United States, and the undersigned head chief, chiefs, headmen, and delegates of the Yakima and other confederate tribes and bands of Indians resident on the Yakima Reservation in Washington Territory, and interested in the lands hereinafter described, witnesseth:

"That for the considerations hereinafter mentioned the said confederate tribes and bands of Indians do hereby surrender and relinquish to the United States all the estate, right, title, and interest which they now have under and by virtue of the aforesaid treaty of June 9, 1855, in and to all that part of the Yakima Reservation situate in the Territory of Washington, described as follows, viz:

"A strip of land not exceeding 250 feet in width; that is to say, 125 feet on each side of the line laid down on the map of definite location of the route of the Northern Pacific Railroad wherever said line runs through said reservation, entering the same at the presumed southeasterly boundary thereof on the right bank of the Yakima River, 8 miles below the mouth of Satass River, thence following through said reservation to the north boundary thereof at or near the mouth of the Atah-num River, said strip of land being intended to be used by the said Northern Pacific Railroad Company, its successors or assigns, as a right of way and road-bed, and containing 1,000 acres or thereabouts. A copy of said map of definite location was on the day of the date hereof produced and shown to said Indians in council assembly, and is hereto annexed, marked with the letter D, and made a part of this agreement.

"Also in and to the several pieces or parcels of land situate along and adjoining the said strip of land hereinbefore described, as the same are respectively delineated on the three several copies of plats or maps thereof, also now produced and shown to said Indians and hereto attached and made a part of this agreement, marked respectively with the letters A, B, and C, and containing respectively the following areas, that is to say: Tract A ('Satass'), 20.60 acres; tract B ('Toppenish'), 20.60 acres; and tract C ('Simcoe'), 20.60 acres; the same being intended to be used by the said Northern Pacific Railroad Company for the purposes of depôts, station-houses, sidings, etc.

"In consideration of such surrender and relinquishment of lands as aforesaid, amounting in the aggregate to 1,061.80 acres, the United States agrees to pay to the said confederated tribes and bands of Indians the sum of \$5,309, being at the rate of \$5 per acre, to be deposited in the Treasury of the United States to the credit of the said confederated tribes and bands of Yakima Indians upon ratification of this agreement by Congress and necessary appropriations therefor, the aforesaid sum to be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct.

"And for the considerations aforesaid the United States further agrees, upon ratification of this agreement by Congress and necessary appropriations therefor, to pay to the individual members of said confederate tribes and bands, parties hereto, whose names appear in the schedule hereto annexed, marked with the letter 'E,' the reasonable value of all improvements, whether of buildings, fences, crops, cultivated fields, or otherwise, falling within the limits of the lands hereby agreed to be surrendered, as the same shall be appraised and determined by a board of arbitrators to be composed of the said Robert S. Gardner, party hereto on behalf of the United

States, the agent for the time being on behalf of said Indians, and such other person as they two shall mutually agree upon, the amount of compensation so determined upon and hereby agreed to be paid to be expended for the benefit of such individual Indians, or paid to them in cash in the proportions to which they may be severally entitled appearing by said schedule, as the Secretary of the Interior may direct.

"All provisions of existing treaties with the said confederated tribes and bands not affected by this agreement to remain in full force and effect, and this agreement to be subject to ratification by Congress.

"In testimony whereof the said Robert S. Gardner, United States Indian inspector, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians have hereunto set their hands and seals, at the place and on the day and year aforesaid.

"Robert S. Gardner, United States Indian inspector; Joe Stuire, his x mark; Eneas, his x mark; Chet-a-mau-mene, his x mark; Weallept, his x mark; George Locea, his x mark; Joseph Eysnucksa, his x mark; Cocea, his x mark; Snetups Colula, his x mark; Wachauca, his x mark; Thomas Pearn; Willipi-pi, his x mark; Willie Shuester, his x mark; William Wanto, his x mark; Thomas Simpson, his x mark; Thomas Cree, his x mark; George Waters; Tecumseh Takotowit, his x mark; We-hi-poo, his x mark.

"Signed and sealed in presence of Virgil G. Bogue, Henry D. Cock, Walter J. Milroy, Charley Olney.

"YAKIMA AGENCY, WASHINGTON TERRITORY,
January 13, 1885.

"I certify that the foregoing agreement was read and explained by me, and was fully understood by all the above-named Indians of the confederated tribes and bands constituting what are known as the Yakima Indians, before signing, and that the same was signed by said Indians in my presence.

"ANDREW RIDDLE, his x mark,
Official Interpreter.

"Witness:

"JAMES McNAUGHT.

"R. H. MILROY,

"United States Indian Agent."

SEC. 2. That for the purpose of carrying the provisions of this act into effect, the sum of eight thousand two hundred and ninety-five dollars and eighty cents is hereby set aside, out of any moneys in the United States Treasury not otherwise appropriated, five thousand three hundred and nine dollars whereof shall be deposited in the United States Treasury to the credit of the confederated tribes and bands of Yakima Indians, and be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct, and the balance, or sum of two thousand nine hundred and eighty-six dollars and eighty cents, shall be deposited in the United States Treasury to the credit of the individual Indians, members of the said confederated tribes, whose names appear on the schedule E referred to in said recited agreement, to be expended for the benefit of such individual Indians, or paid to them in cash, in the proportions to which they may severally be entitled appearing by said schedule, as the Secretary of the Interior may direct.

SEC. 3. That the right of way over the land relinquished by said agreement to the United States for the construction of the said Northern Pacific Railroad, and the use of the several parcels of land so relinquished intended to be used for depots, stations, sidings, and so forth, for said railroad, are hereby granted to the said Northern Pacific Railroad Company, its successors and assigns, for the uses and purposes in said agreement set forth: *Provided*, That the said Northern Pacific Railroad Company, its successors or assigns, shall, within sixty days from the taking effect of this act, pay to the Treasurer of the United States said sum of eight thousand two hundred and ninety-five dollars and eighty cents hereby appropriated to be paid by the United States for the lands and improvements so as aforesaid relinquished to the United States by said agreement, and shall within the same time file with the Secretary of the Interior its written acceptance of the conditions of this section: *And provided further*, That the said Northern Pacific Railroad Company, its successors and assigns, do and shall pay any and all damages which the United States or said Indians, individually or in their tribal capacity, or any other Indians lawfully occupying said reservations, may sustain by reason or on account of the act or acts of the said railroad company, its successors or assigns, agents or employees, or on account of fires originating by or in the construction or operation of said railroad, the damages in all cases to be recovered in any court of the Territory of Washington having jurisdiction of the amount claimed, upon suit or action instituted by the proper United States attorney in the name of the United States: *Provided further*, That the said United States attorney may accept such sum of money in satisfaction of any such injury or damages as in his discretion may be just, and if so accepted before suit or action is commenced, no

suit or action shall be instituted, and if accepted after commencement of suit or action the same shall be dismissed at the cost of said company, its successors or assigns.

SEC. 4. That all moneys accepted or recovered under the provision of section three of this act shall be covered into the Treasury of the United States, and if accepted or recovered on account of damages sustained by said Indians in their tribal capacity, they shall be placed to the credit of said Indians in their tribal names, to be expended by the Secretary of the Interior for the benefit of said Indians in such manner as he may deem for their best interest, and in the case of an individual Indian the amount covered into the Treasury shall be expended for his sole benefit, or paid to him in cash, in the discretion of the Secretary of the Interior.

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