AGREEMENT WITH INDIANS OF KLAMATH RESERVATION, OREG.

MARCH 15, 1902.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Moody, of Oregon, from the Committee on Indian Affairs, submitted the following REPORT.

[To accompany H. R. 8760.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 8760) to ratify an agreement with the Indians of the Klamath Indian Reservation, in the State of Oregon, and making appropriations to carry the same into effect; and also the report of the Secretary of the Interior, with its accompanying papers, recommending ratification of the agreement, having had the same under consideration, report thereon as follows:

By a treaty with the Indians now upon the Klamath Reservation, in the State of Oregon, concluded October 14, 1864, and ratified and proclaimed February 17, 1870 (16 Stat., 707), those Indians ceded to the United States a large tract of country, estimated at 20,000,000 acres, for a money consideration of $115,000 and certain educational and industrial benefits which continued for a few years.

By the same treaty and in the same article making the cession of lands the said Indians reserved as a place for their future homes a tract of country within the boundaries of their former possessions, with stipulations that they would remove to and reside upon the same. They promptly complied with the treaty by taking up their residence upon the reserved tract, or so much thereof as they were permitted to occupy.

In 1871, shortly after the treaty was proclaimed, the outboundaries of the reserved tract were ordered to be surveyed, and a contract for that purpose was made with one George Mercer.

The exterior boundaries of said reserved tract are described in Article I of the treaty by mention of and reference to mountain peaks, mountain ranges, streams, lakes, and other physical and natural features of the country. In making the survey, by which it was intended to run and mark the outboundaries of the reserved tract
as described in the treaty, the surveyor failed to follow the calls of the treaty therefor. His survey was approved, notwithstanding the complaints made by the Indians while it was being executed that a mistake was being made that deprived them of a very large portion of the tract that they had reserved for their residence. The record in the case does not show that the complaints of the Indians were reported to the Interior Department or any bureau thereof before the approval of the survey. When, however, white settlers began to move in and settle upon portions of the disputed land the Indians complained more bitterly, and their complaints were made known to the War Department and to the Interior Department by the officers of each stationed in the locality or on the reservation. A report on the subject, called for by the Secretary of the Interior, was made by the Commissioner of the General Land Office on April 8, 1878, wherein he stated:

From an examination of the field notes of survey in connection with the limits described in the treaty, it appears that the treaty lines on the east and south and a portion of the west side of the reservation, described as mountains or ridge of mountains, were not followed by the surveyor, who, in running said lines, followed certain lines of the public survey.

This admission on the part of the General Land Office, under whose directions the survey was made, that the treaty calls had not been followed, left no doubt as to the justness of the complaints of the Indians.

On October 15, 1886, the Commissioner of Indian Affairs again recommended—

that the boundary lines be run in accordance with the treaty and properly marked every half mile, except where the lakes and streams form a natural boundary.

The Secretary of the Interior directed the Commissioner of the General Land Office to carry out that recommendation. It appears not to have been done, and for reasons stated in a subsequent letter of July 30, 1887, from the Commissioner of Indian Affairs to the Secretary of the Interior, wherein the following appears:

Subsequently the office was informally advised by the General Land Office that the surveyor-general of Oregon was of the opinion that the survey of the eastern boundary would not be satisfactory to the Indians and the settlers until the locus of the boundary should be agreed upon by a commission, as a misunderstanding existed as to which range of mountains constituted the eastern boundary as defined by the treaty.

As there was no authority to appoint a commission to investigate and report upon the matter, the Commissioner of Indian Affairs instructed the United States Indian agent for the Klamath Agency to make the investigation, take testimony, and to report his recommendations. This was done, and said agent recommended certain changes in the boundaries as surveyed by George Mercer, all of which were recommended to the Secretary of the Interior, except as to the eastern boundary, concerning which the Commissioner said:

As the eastern line was established some sixteen years ago, and settlements have been made upon surveyed lands within the limits claimed by the Indians, I am inclined to the opinion that the reestablishment of the eastern boundary as surveyed by Mercer will be the easiest way out of the difficulty, the north and south boundaries to be surveyed as recommended by Agent Emery.

The claim of the Indians to the country to the east of the Mercer survey can be hereafter considered and referred to Congress, if deemed just.

The General Land Office was directed by the Secretary of the Interior to carry out the recommendation of the Commissioner of Indian Affairs, and the survey was accordingly made, and was approved in 1888.
The Indians continued to complain that none of the surveys made conformed to the lines as described in the treaty, and that great injustice was done to them by throwing open to settlement by white settlers so much of the land properly forming a part of the treaty reservation.

The matter was finally brought to the attention of Congress, and the Senate, by resolution of May 31, 1894, called for copies of the correspondence on the subject. The response made to the resolution not being full and complete or satisfactory, a further resolution was adopted by the Senate on December 13, 1894, calling for omitted papers and for a report as to the estimated area of land excluded from the reservation by the alleged erroneous survey of the out boundaries thereof. The answer to the latter resolution furnished the important papers omitted in the answer made to the earlier resolution. The report of the Commissioner of the General Land Office described three several lines as the possible treaty lines. If the first should be ascertained to be the treaty lines of the reservation, the area excluded by the erroneous survey of the out boundaries would be about 909,990 acres; if the second, about 682,240 acres; if the third, about 159,550 acres.

Upon this showing Congress, by a clause in the Indian appropriation act of June 10, 1896 (29 Stat., 331), authorized the President to appoint—

A commission, to be composed of three persons, two of whom shall be practical surveyors, * * * to visit and thoroughly investigate and determine as to the correct location of the boundary lines of the Klamath Indian Reservation, in the State of Oregon, the location of said boundary lines to be according to the terms of the treaties heretofore made with said Indians establishing said reservation; * * * ascertain and determine, as nearly as practicable, the number of acres, if any, of land, the character thereof, in a state of nature, that have been excluded from said reservation by the erroneous survey of its out boundaries.

The Commission appointed by the President in pursuance of that provision of law consisted of W. P. Coleman, of Missouri; R. P. Hammond, of California, and I. D. Applegate, of Oregon. They, with the aid of a civil engineer employed by them, ascertained and determined the boundary lines of the reservation as described in the treaty, and surveyed and marked the same. They reported the area of the land excluded from the reservation by the erroneous survey of its boundaries to be 617,490 acres, concerning which their report concludes as follows:

The area which we ascertain and determine to have been excluded from the treaty reservation by the erroneous survey of its out boundaries is 617,490 acres.

The character of the excluded area varies greatly. There are some limited tracts of good meadow and grazing land, but the major portion of the area is of inferior quality. With the exception of the meadows of the Sycan and Sprague River sections, which are the principal bone of contention, the greater part of the excluded land consists of rocky and sterile mountain ranges, producing very ordinary timber and little grass.

The territory in the vicinage of Mounts Scott and Cowlhorn on the northwest and north is especially of little or no value.

Being of volcanic formation, the land consists of substrata of basalt and pumice stone lightly covered with volcanic ashes and decomposed pumice, offering scanty sustenance to vegetation.

The extensive areas embraced in the eastern slopes and spurs of Yamsay Mountains and the western of Winter Ridge are likewise of little worth owing to their rugged and rocky formation.

Giving these inferior tracts, the good timber land and the meadows of the Sycan and Sprague River valleys their proportionate valuation, we determine the value of the excluded land to be $363,270, or 617,490 acres, at 58.36 cents per acre.
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In our intercourse with the Indians on this reservation we observed that a very commendable spirit of progress has been awakened in them. They impressed us as being of a higher type than the ordinary Indian; ambitious, industrious, and thrifty, they have already made great advancement in civilization.

They have, with rare exceptions, adopted the language, dress, and habits of the whites, and the children are few who are not inmates of the excellent schools provided by the Government. An eager desire for further and continuous progress seems to animate young and old alike. The admirable provisions of the Government to enable them to acquire land in severalty and to build houses and barns are highly beneficial. One step further would assure their self-support and independence of Government aid.

This step is some assistance to enable them to utilize profitably the lands now being allotted them.

Grazing is the best and largely predominant resource of the reservation; therefore a few he of cattle as a start for each family would seem to be a prime necessity.

We accordingly respectfully recommend that one-fourth of the amount determined to be due them be paid to the Indians, per capita, for the purchase of cattle, wagons, and mowing machines, and that the remaining portion be held in trust for them by the United States for such period as Congress may establish prohibitory of the disposal of the land now being allotted these Indians; the interest, which the Congress of the United States may fix on the portion held in trust, to be paid annually to the Indians, per capita, in like manner.

In conclusion, we respectfully submit that during all this long period of thirty-two years these Indians have exhibited a patient and unwavering confidence in the justice of the Government demanding the highest commendation.

Believing themselves to be grievously wronged by the white settlements on land they considered secured to them by the solemn pledge of the Government and from which their subsistence was largely drawn, they yet endured all the aggravating conditions of these years, resisted all the allurements of the adjacent and kindred tribes during the exciting period of the Modoc war, and remained loyal and true.

We beg to attach hereto a copy of the testimony taken, marked Exhibit A, and the map compiled under your instructions, marked Exhibit B, and have the honor to remain,

Very respectfully,

W. P. Coleman,  
R. P. Hammond,  
I. D. Applegate,  
Commissioners.

The report of the Commission was submitted to Congress by Hon. D. R. Francis, Secretary of the Interior, concurring in the report of the Commissioner of Indian Affairs recommending favorable consideration of the claim, and reporting an item for incorporation in the Indian appropriation bill making the necessary appropriation for the adjustment of the claim. (See Senate Doc. No. 93, Fifty-fourth Congress, second session.)

The Committee on Indian Affairs of the Senate considered the claim, and made report thereon, recommending that the item submitted by the Department of the Interior be enacted into law without amendment. (See Senate Report No. 420, Fifty-fifth Congress, second session.)

The further consideration of the claim was had by the Senate Committee on Appropriations, to which it was referred, and by which it was decided that before final action looking to an appropriation of the money to pay the Indians for the excluded lands, as recommended by the Commission, an official survey should be made of the out boundaries as determined and established by the Commission to be the correct boundaries of the reservation as prescribed by the treaty; also, that there should be negotiations with the Indians through one of the United States Indian inspectors for cession of any portion of their treaty reservation. A clause was accordingly incorporated in the Indian appropriation act for these purposes: Ten thousand dollars for the survey and $2,000 for the negotiations. (30 Stat., 571.)
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The proceedings had under these provisions of law are so fully and clearly set forth in the report of the Secretary of the Interior, Hon. E. A. Hitchcock, dated December 8, 1900, to Congress, and the report of the Commissioner of Indian Affairs, herewith submitted, that those reports are herein set out in full, as follows (see H. R. Doc. No. 156, Fifty-sixth Congress, second session):

DEPARTMENT OF THE INTERIOR,

Washington, December 8, 1900.

Sir: I have the honor to transmit herewith copy of a communication of the 24th ultimo from the Commissioner of Indian Affairs, together with copies of agreements made by Indian Inspectors McConnell and McLaughlin with the Klamath Indians for the relinquishment of all their rights and interest in and to any part of their reservation in the State of Oregon, as provided by the Indian appropriation act approved July 1, 1898 (30 Stat. L., 571).

On January 2, 1899, Inspector McConnell submitted an agreement concluded by him December 28, 1898, with said Indians. This agreement, the Commissioner states, was not satisfactory in some respects, being at variance with the findings of the Boundary Commission appointed under the authority of the Indian appropriation act of June 10, 1896, whose report may be found in Senate Executive Document No. 93, Fifty-fourth Congress, second session.

In view of the apparent difference of opinion as to the value of the lands (621,824.28 acres) excluded from the treaty reservation of the Klamath Indians, by erroneous survey, the Department deemed it advisable to instruct Inspector McLaughlin to proceed to the Klamath country for the purpose—

First, of determining, after thorough investigation, whether the price fixed by the Boundary Commission is a fair and reasonable one, in view of all the circumstances, and equitable to the Indians and not unjust to the Government.

Second, to endeavor to negotiate an agreement with the Indians which would contain such provisions as to the amount and terms of payment to be made as he is willing to indorse and recommend, and which can be submitted to Congress with the full indorsement and hearty recommendation of the Indian Office and the Department.

An agreement was concluded with the Klamath Indians by Inspector McLaughlin on the 24th of October, 1900, which is satisfactory to the Department, and I transmit herewith draft of a bill to ratify the same, with request for early and favorable consideration.

Very respectfully,

E. A. HITCHCOCK,

Secretary.

The Speaker of the House of Representatives.

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs,

Washington, November 24, 1900.

Sir: This office is in receipt, by Department reference for early consideration, report, and recommendation, of the report of Inspector James McLaughlin, dated October 29, 1899, transmitting an agreement entered into by him, on the part of the United States, with the Indians of the Klamath Agency, Oreg.

The Indian appropriation act of June 10, 1896 (30 Stat. L., 331), authorized the President to appoint a commission of three persons—

"To visit and thoroughly investigate and determine as to the correct location of the boundary lines of the Klamath Indian Reservation in the State of Oregon, the location of said boundary lines to be according to the terms of the treaties heretofore made with said Indians establishing said reservation; and when the correct location of said treaty boundaries of said reservation shall have been so ascertained and determined said commission shall ascertain and determine, as nearly as practicable, the number of acres, if any, of the land, the character thereof, and also the value thereof in a state of nature, that have been excluded from said treaty reservation by the erroneous survey of its boundaries, as now existing and as shown and reported to have been made in reports of the Commissioner of Indian Affairs and of the Commissioner of the General Land Office, submitted to the Senate by the Secretary of the Interior, and as set out in Senate Executive Documents numbered one hundred and twenty-nine, Fifty-third Congress, second session, and numbered sixty-two, Fifty-third Congress, third session."
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"And said Commission shall make report of the facts ascertained and of their conclusions and recommendations upon the matters hereby committed to them to the Secretary of the Interior, who is hereby directed to report the facts found and reported by said Commission and their conclusions and recommendations in the matter, together with his recommendations thereon, to the next regular session of Congress for its action."

The contention regarding the location of the boundary lines of the Klamath Reservation and the erroneous survey thereof is fully set out in the documents above referred to.

Under the foregoing legislation Messrs. W. P. Coleman, R. P. Hammond, and I. D. Applegate were appointed commissioners.

They found the area of the lands excluded from the reservation by the erroneous survey to be 67,490 acres, value of the same being $533,270.

Their report, dated December 18, 1896, was submitted to the Senate by the Secretary of the Interior, January 26, 1897, accompanied by the draft of an item prepared in this office to be inserted in the Indian appropriation bill appropriating said sum for payment to the Indians of the Klamath Reservation in the manner therein indicated, said payment to be in full of all claims and demands of said Indians growing out of the said erroneous survey.

The Secretary recommended that the matter receive early and favorable recommendation by the Congress.

The report and accompanying papers may be found in Senate Executive Document No. 93, Fifty-fourth Congress, second session.

At the second session of the Fifty-fifth Congress the following appropriation and provisions were inserted in the Indian appropriation act approved July 1, 1898 (30 Stat. L., 571):

"For resurvey of the exterior boundaries of the Klamath Reservation (so called), in the State of Oregon, in accordance with the provisions of the first article of the treaty made and concluded with the said Klamath and other Indians October fourteenth, eighteen hundred and sixty-four, and proclaimed February seventeenth, eighteen hundred and seventy, ten thousand dollars, or so much thereof as may be necessary, such survey to be made under the direction of the Secretary of the Interior and in such way as he may determine."

"To enable the Secretary of the Interior, who is hereby authorized and directed to negotiate through an Indian inspector with said Klamath Indians for the relinquishment of all their right and interest in and to any part of said reservation, and also to negotiate with them as respects any and all matters growing out of their occupation of said reservation under said treaty, and the Secretary of the Interior shall also ascertain what portion of the reservation is occupied by citizens of the United States, and for what purpose and under what title; and to pay the necessary expenses incident to such negotiations and examination, two thousand dollars, or so much thereof as may be necessary, any agreement made hereunder to be submitted to Congress for its approval."

July 15, 1898, this office recommended that the Commissioner of the General Land Office be instructed to cause the boundary lines of the Klamath Reservation to be surveyed in accordance with the provisions of the treaty of October 14, 1864, as ascertained by the Commission appointed under the act of June 10, 1896.

October 8, 1898, instructions for the guidance of Inspector W. J. McConnell, who had been selected by the Secretary to carry out the provisions of the second paragraph of the act of July 1, 1898, above quoted, were prepared and submitted for the approval of the Department.

January 2, 1899, Inspector McConnell submitted his report, accompanied by an agreement concluded by him December 28, 1898, with the Indians of the Klamath Reservation, which report, with the agreement, was transmitted to this office for report and recommendation January 18, 1899.

By article 1 of said agreement said Indians ceded, sold, relinquished, and conveyed to the United States all their claim, right, title, and interest in and to all that part of the Klamath Reservation between the boundaries as described in the treaty of October 14, 1864, and confirmed by the Klamath boundary commissioners in their report of December 18, 1896, and the reservation line as established by the survey made in 1871, under the authority of the General Land Office, it being understood that the portion of the reservation thus ceded approximated 617,490 acres. The number of acres so ceded, however, to be finally determined by the resurvey of the exterior boundaries as provided in the act of July 1, 1898.

By article 2 the United States, in consideration of said cession, agreed to pay said Indians the sum of $533,270, or the sum of 86.36 cents per acre for the quantity of land as finally determined by the survey.
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By the third article it was stipulated that said amount of $533,270, more or less, after the payment of the legal fees of attorneys, and until Congress further provided, be deposited in the Treasury of the United States to the credit of the said Indians and draw interest at the rate of 5 per cent per annum, said interest to be paid to the Indians annually per capita.

It was further agreed that the above sum, or the amount remaining after the payment of attorneys' fees, should remain in the Treasury as before provided until such time as the Klamath Indians should, by petition through the United States Indian agent and the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior, ask to have such sums paid to them per capita from time to time as their needs might require.

By the fourth article it was provided that the lands ceded, retained, and those allotted should be subject to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country, and that the allottees, whether under the care of the Indian agent or not, should be subject to all the laws of the United States prohibiting the sale or other disposition of intoxicants to Indians.

The fifth article provided that so long as the United States maintained an Indian boarding school on the Klamath Reservation, the attendance and control of the pupils should be governed by the regulations of the Indian Office.

The sixth article continued the existing provisions of all treaties not inconsistent with the agreement.

The seventh article provided that it should not take effect until ratified by Congress.

In submitting the agreement, Inspector McConnell stated that only 62,361 acres of the land excluded from the reservation by the erroneous survey had been entered, of which the Oregon Central Military Wagon Road Company had filed upon 31,000 acres, and the State of Oregon upon 24,281 acres, leaving 7,080 acres that had been taken up by settlers, leaving a balance of 555,129 acres of the excluded land then unoccupied. He stated that it was fair to presume that the unoccupied land was of but little value, if not practically worthless, having been allowed to remain unentered for twenty-five years, and that there was no apparent reason why the Indians should not be allowed to retain the unoccupied or unclaimed lands, and payment made to them for the 62,361 acres that had been transferred to settlers and other claimants. He stated that if Congress desired to purchase from the Indians all the lands excluded by the erroneous survey the sum to be paid them should not exceed $250,000, and if they were to receive $533,270, it should be understood by them that the amount in excess of $250,000 was a gift on the part of the Government, to be expended for their benefit under the direction of the Secretary of the Interior.

He related the result of the councils with the Indians and his failure to induce them to consent to any agreement which would permit the Government to buy anything for them, or make any improvements with their money, they being only willing to enter into an agreement under which all money would be deposited to their credit.

Notwithstanding his views he concluded the agreement hereinbefore set forth.

This agreement not being in some respects satisfactory to this office, and Inspector McConnell's report being at variance with the findings of the Boundary Commission, and such action having also been requested by the attorneys for the Indians, this office, under date of May 15, 1899, recommended that Inspector James McLaughlin, who had had a long experience with various Indian tribes, and who had been eminently successful in negotiating with them, be instructed to visit the reservation with the purpose, "first, of determining, after a thorough investigation, whether the price fixed by the Boundary Commission is a fair and reasonable one, in view of all the circumstances, and equitable to the Indians and not unjust to the Government; and, second, to endeavor to negotiate an agreement with the Indians which will contain such provisions as to the amount and terms of the payment to be made as he is willing to indorse and recommend, under the instructions to be given him, and which can be submitted to Congress with the full indorsement and hearty recommendation of this office and the Department."

May 7, 1900, the Commissioner of the General Land Office advised this office that he had accepted the surveys of the boundary lines of the Klamath Reservation, and transmitted 39 township plats, 1 large map with photolithographic copy, and duplicate transcript of field notes. This survey shows that 621,824.28 acres were excluded from the treaty reservation of the Klamath Indians by the erroneous survey.

June 13, 1900, you advised this office that, in view of the apparent difference of opinion as to the value of the lands, you had reached the conclusion that further negotiations with the Indians were advisable, and that you had instructed Inspector McLaughlin to proceed to the Klamath country for that purpose.

The agreement submitted by Inspector McLaughlin was made and entered into on
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the 24th day of October, 1900. By the first article the Indians cede, surrender, and convey to the United States all their claim, right, title, and interest in and to all that part of the Klamath Indian Reservation lying between the boundaries described in the treaty of October 14, 1864, as confirmed by the Klamath Boundary Commission, and the reservation boundary lines, as established by the survey made in 1871, under authority of the General Land Office, said tract so ceded and relinquished comprising 621,824 acres.

By article 2, in consideration of the lands ceded, the United States stipulates and agrees to pay to and expend for said Indians, in the manner thereafter provided, the sum of $537,007.20, being at the rate of 86.36 cents per acre. (The exact amount, according to the survey, is $537,007.35.)

By article 3 it is agreed that of the amount to be paid to the Indians, as stipulated in article 2, the sum of $25,000 shall be paid in cash, pro rata, share and share alike, to each man, woman, and child belonging to the said Klamath and other tribes under the jurisdiction of the Klamath Agency, within one hundred and fifty days from and after the date of the ratification of the agreement, and the sum of $350,000 shall be deposited in the Treasury of the United States to the credit of said Indians, and shall draw interest at the rate of 5 per cent per annum, which interest shall be paid to said Indians annually per capita in cash, and that the remainder of said sum of $537,007.20, after the payment of the legal fees of attorneys having duly approved contracts, shall be expended for the benefit of said Indians under the direction of the Secretary of the Interior, upon requisition of the Indians, through the United States Indian agent, in the drainage and irrigation of their lands and the purchase of stock cattle for issue to said Indians, and for such other purposes as may in his opinion best promote their welfare; provided, that beneficiaries whose allotments will not be benefited by the irrigation systems constructed under this provision shall not bear any of the expense of such irrigation construction, and shall, as nearly as practicable, receive an equivalent in value of the stock cattle and other articles contemplated, that each beneficiary may thus receive his or her proportionate share of the benefits of this provision; and provided further, that in addition to the interest on the fund deposited in the United States Treasury the Secretary of the Interior may, in his discretion, expend for the benefit of said Indians, including reasonable cash payments per capita, not to exceed 10 per cent per annum of the principal fund, upon a majority of the male adult Indians of Klamath Agency petitioning for the same, through the Commissioner of Indian Affairs.

By article 4 it is understood that nothing in the agreement shall be construed to deprive the said Klamath and other Indians of any benefits to which they are entitled under existing treaties not inconsistent with the provisions of this agreement.

Article 5 provides that it shall take effect and be in force when signed by Indian Inspector McLaughlin and by a majority of the male adult Indians parties thereto, and when approved by the Secretary of the Interior and accepted and ratified by Congress.

The agreement is signed by 200 male adult Indians of the Klamath Agency.

Agent Applegate certifies that the total number of male adult Indians over 18 years of age belonging to the Klamath Agency is 296.

Joseph Kirk, Rev. Jesse Kirk, William Crawford, Robert Wilson, who sign their own names, and Harrison Brown, who signs by mark, members of the Klamath and Modoc tribes and Yahooskin band of Snake Indians, and constitute a committee duly appointed by their people to negotiate with Inspector McLaughlin, certify that the agreement dated October 24, 1900, was fully understood by them, and also by the Indians who signed the same, and that the signatures of the Indians to said agreement were of their own free will and without due influence or promise of future reward.

In his report Inspector McLaughlin states that upon his arrival at the Klamath Agency on October 8, 1900, he immediately proceeded to obtain information regarding the character of the country, nature of the soil, and quality of the timber within the tract involved, and that from the 8th to the 20th of that month he was engaged in the work, during which twelve days he traveled, including his trips over the reservation to outlying points of the adjoining lands in question, a distance of about 260 miles; that commencing at a point on the boundary line about a mile north of the bridge across Wood River at Fort Klamath, he proceeded as nearly as practicable along said boundary line to the summit of the ridge which divides the upper and middle Klamath lakes, as referred to in the treaty of 1864, traveling over said ridge a considerable distance, from which elevation he had an extensive view of the adjacent foothills and mountain slopes, all of which he found to be heavily timbered, yellow pine predominating, with considerable sugar pine, red cedar, and some fir interspersed; that yellow pine is the chief timber of the heavy forests throughout that
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section of country, producing an excellent quality of lumber for all ordinary purposes, and the sugar pine, so called, is a species of white pine, possessing a high market value for finishing material, being much preferable to yellow pine for the finer kinds of work, while the red cedar furnishes excellent timber for shingles, fence posts, etc.; that the ridge which forms the western boundary of the treaty reservation is a spur of the eastern range of the Cascade Mountains, and its eastern slope for a distance of about 40 miles is within the excluded area and is well covered with good merchantable timber of the varieties above mentioned, also numerous plateaus through the level and sterile portions of the excluded tract contain groves of good, fine timber; that there is a heavily timbered belt of not less than 6 miles in width and 40 miles in length within the excluded tract, along the eastern slope and foothills of the mountain ridge which forms the western boundary of the treaty reservation, in which belt there are many million feet of excellent pine timber, which will become very valuable as soon as certain projected lines of railroad are constructed by which the timber can be profitably converted into lumber and marketed; that from the foothills of the excluded range, the ridge of which forms the western boundary of the excluded lands, the country for a considerable distance east is of inferior quality, no merchantable timber growing upon it, but that there is a dense growth of small, black pine throughout the greater portion of the tract that range in size from small saplings to trees 14 inches in diameter, which species of scrub pine is of little value other than for fence poles or fuel; that this character of country, which is of little value, embraces a tract of the excluded area approximating 40,000 acres; that the whole of Sugar Pine Mountain is heavily timbered with an excellent quality of sugar pine, yellow pine, and red cedar; there being in the said sterile black pine tracts several small plateaus of good yellow pine, with an occasional patch of grass land, which latter affords limited grazing; that the soil throughout the excluded portion which lies east of Klamath marsh is of a different character to that on the west side of the marsh, there being no punche east of the marsh, and the soil of a much better quality, but there are several tracts of sterile lands along the base of Winter Ridge, the eastern border of Sycamore marsh, and in the southeast portion of the excluded lands, which are very rocky, being thickly covered with lava rock and upon which there is no vegetation except a few juniper trees of stunted growth, which character of land, aggregating approximately 25,000 acres in the excluded portion, is practically worthless; that the Sycamore meadow and Thompson valley, which extends from said marsh together with extensive meadows and arable lands in the upper Spokane River district, aggregating, approximately, 20,000 acres, are especially fertile and very productive, and Yanum Mountain, a large portion of which is situated within the excluded area, is well timbered, as is also the eastern slope of Winter Ridge, which forms the eastern boundary of the excluded lands, and that from Mount Frances, which is the northeastern corner of the treaty reservation, along Winter Ridge to Gerhart Mountain, where the said ridge terminates abruptly, a distance of about 45 miles, there is a pine-timber belt averaging about 7 miles in width which extends along the entire distance.

He estimates the merchantable pine timber in the excluded portion of the Klamath Reservation along the Cascade Range on the west, Sugar Pine Mountain on the north, Yanum Mountain in the northeast, and Winter Ridge on the east, together with the numerous small plateaus of good pine throughout the inferior and black-pine portions, at 350,000 acres.

He quotes from different authorities to show that this timber, while now of little value owing to its inaccessibility, will become valuable in the near future by the construction of railroad, etc.

He regards $2.50 per acre a fair average value for lands in their native state throughout the southeastern portion of the excluded area, exclusive of the lava-rock portions, which latter are worthless. His report shows that he has availed himself of every possible means to arrive at the value of the lands excluded, and states that while it is true that there are a great many acres of valuable lands in the tracts, there are many acres of arable land which already possess a considerable value, and an immense amount of pine timber that must become very valuable in the near future; and taking into consideration the twenty-nine years that the Klamath Indians have been deprived of these lands, together with the value of the valleys, meadows, and heavily timbered portions, he most heartily endorses the prices fixed upon said lands by the boundary commission in 1886, to wit, 86.36 cents per acre.

He then relates his negotiations in council with the Indians, stating that he advised them that the Department was opposed to per capita cash payments, as large cash payments have a demoralizing effect upon the Indians and that it was therefore desired by the Department that the greater portion of the amount the Indians were to receive be placed in the United States Treasury to their credit to draw 5 per cent interest annually, the remainder, after paying legal fees of attorneys having duly
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approved contracts, to be expended under the direction of the Secretary for such purposes as would be of the greatest benefit to them, not for the present time only, but for their future welfare.

The Indians at first demanded and urgently insisted upon a large cash payment, but finally yielded to his arguments and were brought to appreciate the advantages of having the money expended as stipulated in the agreement.

He states that the $25,000 per capita cash payment was conceded by him after careful consideration that the beneficiaries might thus be enabled to liquidate their indebtedness, consisting chiefly of small grocers' bills and a few mowing machines, etc. This cash payment for the 1,138 Indians of the agency being about $22 per capita, he thinks will be of great benefit to the beneficiaries and will be judiciously expended by most of them, and especially appreciated by the very old people who would not be particularly benefited in a tangible way should the money be all expended in irrigation and the purchase of stock cattle. The Indians were very much opposed in the beginning to any provision for irrigation, maintaining that those desiring such should construct their own ditches, but finally consented to its incorporation into the agreement with the proviso that only those who will be benefited by the irrigation shall bear any expense of its construction. The equalization is to be secured by giving those who do not receive any benefit from irrigation a larger share of other benefits.

He states that the Klamath and Modoc Indians all dress as whites, wear their hair short, and are well advanced in civilization, and while they are not what can be termed fully civilized the elements of progress are well grounded and steadily developing among them. They are fairly well educated, the majority of them being quite well advanced, and of the 200 whose signatures are attached to the agreement so signed their own names.

He states that the Klamath Reservation with an altitude approximating 4,500 feet is not adapted to agricultural purposes other than the growing of fodder, which at present is raised in valleys along the streams and other low places where there is sufficient moisture, and with irrigation of the lands as contemplated by the agreement, the amount of timothy, red mounth clover, grain fodder, and wild grass that can be raised on the reservation will only be limited by the acreage cultivated.

He also states that there is no finer section in Oregon for stock growing, and that this industry should be fostered and encouraged, as it is the only remunerative industry in that section of the country.

The agreement concluded by Inspector McLaughlin is satisfactory to this office, and without doubt is far better for the future prosperity of the Indians than the disposition of their funds proposed in the former agreement. The price fixed upon the lands, in view of the report of the boundary commission and Inspector McLaughlin's minute and careful investigation, is regarded as just and fair.

These Indians have patiently waited for more than thirty years for the recognition of their rights to the lands given them by treaty stipulations, and a settlement with them should no longer be deferred. The draft of a bill to ratify the agreement has been prepared and is herewith transmitted with duplicate copies of the papers, including certified list of lands entered by citizens of the United States, by the Oregon Central Military Wagon Road Company, and by the State of Oregon, on the tract excluded from the Klamath Reservation by the erroneous survey made in 1871, with the recommendation that they be transmitted to both branches of Congress, with earnest recommendation for early and favorable consideration. But one copy of the map of the boundary, as surveyed under the act of 1868, is transmitted, as it is not presumed the papers will be printed by both Houses. It is not thought necessary to transmit the township plat and field notes, a true location of the boundary being shown on the large map.

Very respectfully, your obedient servant,

W. A. Jones, Commissioner.

The Secretary of the Interior.

While the matter of the excluded lands was receiving further consideration by the Department of the Interior, it was discovered that an error had been made in describing the boundaries of the reservation, as set out in the agreement negotiated by United States Indian Inspectors.

AGREEMENT WITH

Article I of this agreement, and in full of other Indians arising or growing out of their reservation in eighteen hundred and twenty and agrees to pay to and expend, provided, the sum of five hundred and twenty and ninety-six. Article II. It is agreed that of the other Indians, as stipulated in Article thousand dollars shall be paid in cash to women, and child belonging to said Klamath Indians, to the Secretary of the Interior, upon the date of the ratification of this article, fifty thousand dollars shall be deposited credit of said Indians, and shall draw upon, which interest shall be paid to the remainder of said sum of five thousand dollars and twenty cents, after the payment approved contracts, shall be expended direction of the Secretary of the Interior, credit Indians, in the drainage for stock cattle for issue to said Indians. Article III. It is understood that no possible objection to the interest on the fund deposited herein, interest not to be paid unless the proceeds from stock cattle furnished to the Indians in the drainage for stock cattle for issue to said Indians may, in his discretion, upon reasonable cash payments per capita, not exceeding five dollars and twenty cents, after the payment, the amount of the principal fund, upon a majority of the reservation in irrigating for some through the Commission.

Article IV. It is understood that no Indiai Agent, in the drainage for stock cattle for issue to said Indians. Article V. This agreement shall take effect under the direction of the Secretary of the Interior, and to which they are entitled under existing of this agreement.

Article VI. This agreement shall take effect under the direction of the Secretary of the Interior, and to which they are entitled under existing of this agreement.

In witness whereof, the said James Wood, Indian Inspector James McLaughlin, and the parties thereto, and when approved by the Governor and ratified by the Congress of the United States of America, at Klamath Agency, Oregon, this the first day of June, nineteen hundred and one.

And one hundred and eighty-eight of these, we, the undersigned, do hereby certify that the United States and the Indians of Klamath Agency were thoroughly explained by us to said Indians before signing.

Klamath Agency, Oregon, June 19, 1901.

We, the undersigned, do hereby certify that the United States and the Indians of Klamath Agency were thoroughly explained by us to said Indians before signing.
AGREEMENT WITH KLAMATH INDIANS.

The case referred to, in which the title of the Indians to the lands within reservation reserved for them in the treaty of 1864 was considered, is that of the California and Oregon Land Company v. Rankin et al., wherein the circuit court of the United States presided over by Judge Bellinger held as follows:

"These Indians have patiently waited for more than thirty years for the recognition of their rights to the land given them by treaty stipulation, and a settlement with them should no longer be deferred." This statement I repeat with added emphasis. It is earnestly hoped that this agreement will be ratified at the coming session of Congress, that these Indians may not be compelled to longer await the pleasure of the Government in fulfilling its solemn treaty stipulations.

The treaty by its terms provides for public improvements of a permanent character upon these lands for the erection of sawmills, flouring mills, shops, school and hospital buildings, and for maintaining them in repair for a period of twenty years; and it provides for the assignment or allotment of the lands among the Indians as is now proposed, and for the prevention of which this suit is prosecuted. These provisions strengthen the conclusion that the reservation contained in the treaty was of a substantial and permanent right, coextensive with that theretofore enjoyed by the Indians. The effect of the construction contended for by the complainant would be to deprive the Indians of the valuable right reserved to them in the treaty, which constituted the consideration for the cession of the lands made by them to the Gov-
AGREEMENT WITH KLAMATH INDIANS.

government, and of which the road company is to a large extent the beneficiary. It would enable the road company to enjoy the benefits in a large measure of the concession made by the Indians and at the same time take from them the benefits which constituted its inducement. It would defeat in its main scope the object of the treaty, and would in its results be contrary to justice and right. (Fed. Rep., 533.)

By the agreement the Indians cede to the United States 621,824.28 acres, which, at the valuation fixed therefor by the Commission, and confirmed by the report of Inspector McLaughlin, 86.36 cents per acre, amounts to $537,007.20, which is provided for in the bill as follows: $28,000 to be paid to the Indians in cash pro rata payments, share and share alike; $350,000 to be deposited to the credit of the Indians in the Treasury of the United States, to bear interest at 5 per cent per annum, said interest to be paid to the Indians annually in cash per capita payments, and 10 per cent of said principal fund to be annually, with consent of the Indians, expended for their benefit, including reasonable cash per capita payments; and the remainder of said sum of $537,007.20, after the payment of legal fees of attorneys having duly approved contracts, to be expended for drainage and irrigation of the lands within the diminished reservation of the Indians, the purchase of stock cattle for issue to the Indians, and for such other purposes as, in the opinion of the Secretary of the Interior, may be for their welfare.

The Indians of the Klamath Reservation, Oreg., receive no rations or annuities from the Government of the United States; they have no funds to their credit in the Treasury of the United States; they are self-supporting, earning their living by stock raising, laboring, etc.; they have taken allotments of land in severalty, and the money they will receive in payment for the ceded lands will enable them to improve their allotments and otherwise make themselves more comfortable. Their lands are reported to be more suitable for grazing than for other uses, and it will be helpful for them to increase their supply of stock cattle. It is believed, from the reports of their present self-sustaining condition, that they will make good use of the money that they will receive under the bill.

The subject-matter and the bill (H. R. 6551) have been carefully considered by your committee. The payment of the claim has been recommended and urged by Hon. D. R. Francis, Secretary of the Interior; Hon. E. A. Hitchcock, Secretary of the Interior; Hon. D. M. Browning, Commissioner of Indian Affairs, and Hon. W. A. Jones, Commissioner of Indian Affairs, and your committee, concurring in their recommendation and approving the provisions of the bill, which was drawn by the Indian Office and approved by the Secretary of the Interior, report it back and recommend its passage.

CONGRESSIONAL DOCUMENTS IN THE KLAMATH INDIANS' CLAIM.

Senate Ex. Doc. No. 52, Fifty-third Congress, second session: Contains correspondence, reports, etc., from records of the Department of the Interior and its bureaus on claim.

Senate Ex. Doc. No. 62, Fifty-third Congress, third session: Contains copies of papers from records of the Department of the Interior, omitted from Document 129,
AGREEMENT WITH KLAMATH INDIANS.

with a report by the General Land Office, estimating area of land erroneously excluded from the treaty reservation.

Senate Doc. No. 131, Fifty-fourth Congress, first session: Contains brief of the attorneys for the Indians, setting out the principal documents of the case, and the merits of claim.

Senate Doc. No. 93, Fifty-fourth Congress, second session: Contains report of the Commission appointed by the President under act of June 10, 1896 (29 Stat., 321), to investigate claim.

Senate Report No. 420, Fifty-fifth Congress, second session: Report by Senate Indian Committee recommending an appropriation to pay the claim as reported by the Secretary of Interior.

House Doc. No. 156, Fifty-sixth Congress, second session: Contains agreement negotiated by Inspector McConnell; also the agreement negotiated by Inspector McLaughlin, with reports by Commissioner of Indian Affairs and Secretary of Interior thereon.

House Doc. No. 79, Fifty-seventh Congress, first session: Contains corrected agreement negotiated by Inspector McLaughlin.

[House Document No. 79, Fifty-seventh Congress, first session.]

SIR: I have the honor to transmit herewith a copy of a report of the 2d instant from the Commissioner of Indian Affairs, and accompanying copy of an agreement dated June 17, 1901, entered into by United States Indian Inspector James McLaughlin on the part of the United States with the Indians of the Klamath Agency, Oreg., for the relinquishment of a portion of their reservation under the provisions of the act of July 1, 1898 (30 Stat., 592), which authorized the Secretary of the Interior to negotiate with them for all their rights and interest in and to any part of their reservation, together with a draft of a bill to ratify the same.

This new agreement was made necessary from the fact that article 1 of an agreement made October 29, 1900, presented to the Congress, December 8, 1900 (House Doc. No. 156, Fifty-sixth Congress, second session), was erroneous in that it recited the survey of 1871 instead of the survey approved in 1888, which would reestablish the survey of 1871 and restore to settlement lands within the boundaries of the existing reservation then covered by approved Indian allotments.

By the new agreement the Indians cede and convey to the United States all claim, right, title, and interest in and to all that part of the Klamath Reservation lying between the boundaries described in the treaty of 1864 and the lines as established by the survey approved in 1888 by the General Land Office, the tract so ceded comprising 621,824 acres.

This agreement is presented with the request that it be substituted for the one transmitted December 8, 1900, and I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

The Speaker of the House of Representatives.
SIR: Under date of November 24, 1900, this office made report to the Department upon the report of Inspector James McLaughlin dated October 29, 1900, transmitting an agreement entered into by him, on the part of the United States, with the Indians of the Klamath Agency in Oregon, for the relinquishment of all their rights and interest in and to any part of their reservation, as provided by the Indian appropriation act approved July 1, 1898 (30 Stats., 571).

With said report and agreement there was transmitted the draft of a bill to ratify the said agreement.

December 8, 1900, you transmitted the papers to the Speaker of the House of Representatives with request for early and favorable consideration (House Doc. No. 156, Fifty-sixth Congress, second session).

January 18, 1901, said bill, with a proviso relating to indemnity school land selections, was introduced in the House of Representatives by Hon. Thomas H. Tongue (H. R. 13865, Fifty-sixth Congress, second session).

February 12, 1901, you referred to this office for examination and report a communication from Messrs. McCormack and Belt, attorneys for the Indians, dated February 11, 1901, submitting certain data relative to the said agreement; and on February 13, 1901, a communication from the Commissioner of the General Land Office of that date.

Each of these communications called attention to an error in article 1 of the agreement as incorporated in H. R. 13865.

By that article the Klamath and other Indians ceded to the United States—

All their claim, right, title, and interest in and to all that part of the Klamath Indian Reservation lying between the boundaries described in the treaty with said Indians concluded October fourteenth, eighteen hundred and sixty-four, and proclamed February seventeenth, eighteen hundred and sixty-four, and seventy, as confirmed by the Klamath boundary commission in their report to the Secretary of the Interior dated December eighteen, eighteen hundred and twenty-one, and ninety-six and the reservation boundary lines as established by the general survey made in eighteen hundred and seventy-one and seventy-two under the authority of the General Land Office, the tract hereby ceded and relinquished comprising six hundred and twenty-one thousand eight hundred and twenty-four acres.

The Commissioner of the General Land Office stated that the land referred to by the Klamath Indians in their treaty of cession of October 14, 1864 (16 Stats., 707) was surveyed by George Mercer, which survey was approved November 21, 1871, being the survey mentioned in the above agreement with the Indians; that the Mercer survey, according to the claims made by the Indians, did not conform to the natural boundaries set forth in the treaty, and deprived them of large areas on the south, north, and east, wherefore the Indian Office on August 3, 1887, recommended the resurvey which was executed by William Thiel and accepted February 1, 1888; that the boundaries of the survey of 1888 followed the boundary of the survey of 1871 on the west along the shore of Klamath Lake and Wood River, but north of that ran farther west and extended north 2 miles farther; and that the east boundary lines of both surveys were coincident, but the south line of the survey of 1871 ran west in a straight line between townships 36 and 37 south, whereas the survey of 1888 followed the ridge of mountains and embraced lands in four townships not embraced in the survey of 1871.
The Commissioner of the General Land Office further stated that all the lands within the boundaries of the survey of 1888 had been treated as reserved Indian lands and allotments made to the Indians in accordance therewith, including the lands between the boundaries of the surveys of 1871 and 1888, and that it was evident that these two surveys had unwittingly been confounded in the negotiation of the agreement with the Indians by which they ceded all the lands between the boundaries established by the commission (survey of 1900) and the boundaries fixed by the survey of 1871.

This was manifest, he stated, first, from the fact that the act providing for the appointment of the commission (June 10, 1896, 29 Stats., 342) authorized it to ascertain the number of acres that had been excluded from the treaty reservation by the erroneous survey of its boundaries as then existing, and, second, the area of the land excluded was computed on the basis of the survey of 1888 and not the survey of 1871, as was shown by the plat of survey of 1900.

He remarked that the passage of the bill (H. R. 13665) in its then shape would reestablish the survey of 1871 and restore to settler ly the lands within the boundaries of the existing reservation then covered by approved Indian allotments, and would doubtless be the cause of dissension between the settlers and Indians, for which reason he suggested that the bill be resubmitted to this office for further consideration.

May 10, 1901, this office made report upon the above communication of the Commissioner of the General Land Office, stating that the Commissioner was undoubtedly correct in his supposition that the surveys of 1871 and 1888 had been confounded in the negotiations.

The opinion was expressed that this probably arose from the fact that it was supposed, both in this office and by Inspector McLaughlin, that the Thiel survey did not embrace in the reservation any lands not included in it by the survey of 1871.

The opinion was expressed that a new agreement should be concluded with the Indians and substituted for that which had been pending before Congress. It was suggested that the only change that seemed to be necessary was to strike out in article 1 the words "made in 1871 under the authority of," and insert the words "approved in 1888 by," in lieu thereof.

A copy of the agreement concluded by Inspector McLaughlin October 24, 1900, with the change in article 1, above suggested, was submitted to the Department with recommendation that he be instructed to proceed to the Klamath Agency and lay the same before a full council of the Indians, explaining the necessity for a new agreement, and having the same properly executed by a sufficient number of the male adults of the tribe.

June 19, 1901, Inspector McLaughlin transmitted to the Department a new agreement entered into by him, on the part of the United States, with the Indians of the Klamath Agency, by which the said Indians cede, surrender, grant, and convey to the United States all claim, right, title, and interest in and to all that part of the Klamath Reservation lying between the boundaries described in the treaty of 1864 and the reservation boundary lines as established by the survey approved in 1888 by the General Land Office, the tract of land so ceded comprising 621,824 acres.

July 2, 1901, the Department referred the report of inspector, with the new agreement, to this office "for consideration of the recommendation of the inspector and prompt report of action taken thereon."
The agreement is identical with that heretofore submitted to Congress and included in H. R. bill 16665, with the exception of the date of survey in article 1, in which the words "approved in 1888 by" have been substituted for the words "made in 1871 under the authority of."

I have prepared duplicate copies of the new agreement and the report of Inspector McLaughlin, and also two copies of a bill to ratify the agreement, in which the proviso added by Mr. Tongue has been retained, and have the honor to recommend that they be transmitted to both Houses of Congress, with request for early and favorable consideration.

The contention regarding the boundary lines of the Klamath Reservation is fully set out in H. R. Doc. No. 156, Fifty-sixth Congress, second session, and the documents therein referred to.

There are also transmitted two copies of a brief in support of the contention of the Indians, filed in this office July 17, 1901, by their attorneys, Messrs. McCammon and Belt.

There can be no doubt as to the title of these Indians to their reservation, including the lands excluded by erroneous surveys. If any doubt ever existed on this point it was removed by the decision of the court referred to by Messrs. McCammon and Belt (87 Fed. Rep., 533), in which the status of the reservation is very fully and accurately stated.

In my report of November 24, 1900, I said—

These Indians have patiently waited for more than thirty years for the recognition of their rights to the lands given them by treaty stipulation, and a settlement with them should no longer be deferred.

This statement I repeat with added emphasis. It is earnestly hoped that this agreement will be ratified at the coming session of Congress, that these Indians may not be compelled to longer await the pleasure of the Government in fulfilling its solemn treaty stipulations.

Very respectfully, your obedient servant.

W. A. Jones, Commissioner.

The Secretary of the Interior.


Sir: I have the honor to transmit herewith an agreement, dated the 17th instant, entered into by me on the part of the United States, with the Indians of Klamath Agency, Oreg., by which the said Indians cede, surrender, grant, and convey to the United States all claim, right, title, and interest in and to the land excluded from their reservation by the erroneous survey of 1871, the negotiations being authorized by a provision in the Indian appropriation act approved July 1, 1898, and conducted by me under Department instructions of the 21st ultimo, the same being necessary to correct an error in article 1 of the agreement concluded with said Indians on October 24, 1900.

The error referred to occurred from having confounded the surveys of 1871 and 1888 in describing the boundary lines, which read "as established by the survey made in 1871 under the authority of the General Land Office," instead of "as established by the survey approved in 1888 by the General Land Office," which latter description is correct, and is thus shown in the new agreement transmitted herewith.

The draft of this new agreement, containing the necessary corrections in article 1, was prepared by the Commissioner of Indian Affairs, all except the date of execution, which has been duly executed by more than one of the Indians signing the agreement, and it was for a period of eight years, previously desired to exclude the lands from being reserved, he was told while in Washington by the Commissioner of Indian Affairs for the Klamaths to employ an attorney to be favorably acted upon without the opposition of said Rev. Jesse James, evidently prearranged as one of the two interpreters.

In conclusion I desire to state that I was going to succeed in obtaining a settlement with the Indians of Klamath Agency, Oregon, for the Klamaths to employ an attorney to be favorably acted upon without the opposition of said Rev. Jesse James, evidently prearranged as one of the two interpreters.

I am, sir, very respectfully,

The Secretary of the Interior.
AGREEMENT WITH KLAMATH INDIANS.

The said Klamath and other Indians belonging to the Klamath Agency, Oregon, for the consideration hereinafter named, do hereby cede to the United States all their claim, right, title, and interest in and to all that part of the Klamath Indian Reservation lying between the boundaries described in the treaty with the said Indians concluded October fourteenth, eighteen hundred and sixty-four, and proclaimed February seventeenth, eighteen hundred and seventy, as confirmed by the Klamath Boundary Commission in their report to Congress, herein signed.

This agreement, made and entered into on the seventeenth day of June, nineteen hundred and one, by and between James McLaughlin, U. S. Indian Inspector, on the part of the United States, and the Klamath and Modoc tribes and Yahooskin band of Snake Indians, belonging to the Klamath Indian Agency, in the State of Oregon, witness:

\[Signature\]

JAMES MCLAUGHLIN,
United States Indian Inspector.

The Secretary of the Interior,
Washington, D. C.

H. Rep. 969—2
AGREEMENT WITH KLAMATH INDIANS.

The Commissioner of the General Land Office, having determined that the lands within the boundaries of the Reservation may not be improved by occupancy therewith, including the surveys of 1871 and 1888, and that the Thiel survey had unwittingly been confounded with the Indians by which they were excluded from the treaty negotiations, has determined that the ceded area must be returned to the United States. The Commissioner of the General Land Office has, therefore, determined to proceed to the Klamath Agency, Oregon, and have thereunto act their hands and seals at Klamath Indian Agency, Oregon, this seventeenth day of June, A. D. nineteen hundred and one.

JAMES MCLAUGHLIN,
United States Indian Inspector.

The Commissioner of the General Land Office, having determined that the lands within the boundaries of the Reservation may not be improved by occupancy therewith, including the surveys of 1871 and 1888, and that the Thiel survey had unwittingly been confounded with the Indians by which they were excluded from the treaty negotiations, has determined that the ceded area must be returned to the United States. The Commissioner of the General Land Office has, therefore, determined to proceed to the Klamath Agency, Oregon, and have thereunto act their hands and seals at Klamath Indian Agency, Oregon, this seventeenth day of June, A. D. nineteen hundred and one.

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JAMES MCLAUGHLIN,
United States Indian Inspector.
NT OF THE INTERIOR,
VICE OF INDIAN AFFAIRS.

Washington, December 2, 1901.

1909, this office made report to the Indian Office on Agreement with Klamath Indians.

1. A provision relating to indemnity for damage to property for the creation of a reservation north of that line, and the survey of a tract of land west of the ridge of mountains, was made by George Mercer, which was transmitted to the Secretary of the Interior by George Mercer, which was transmitted to the Secretary of the Interior by the House of Representatives on January 1, 1800.

2. Here was transmitted the draft of the treaty to the Speaker of the House of Representatives, which was approved by the General Land Office.

3. The treaty was ratified by the Senate on January 2, 1801, and the tract hereby ceded and the reservation was confirmed by the General Land Office on August 1, 1801.

4. The boundaries of the survey were described in the treaty, and the tract was surveyed by the General Land Office.

5. The tract was surveyed and the reservation was confirmed by the General Land Office, and the tract was surveyed by the General Land Office.

6. The tract was surveyed and the reservation was confirmed by the General Land Office.

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34. The tract was surveyed and the reservation was confirmed by the General Land Office.

35. The tract was surveyed and the reservation was confirmed by the General Land Office.
AGREEMENT WITH KLAMATH INDIANS.

We, the undersigned, do hereby certify that the foregoing agreement between the United States and the Indians of Klamath Agency, Oreg., dated June 17, 1901, was thoroughly explained by us to said Indians, and that it was fully understood by them before signing.

Ruben H. White, Interpreter.

KLAMATH AGENCY, OREG., JUNE 19, 1901.

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and of the one hundred and ninety-one (191) male adult Indians of Klamath Agency, Oreg., to the foregoing agreement.

Robert C. Spink, School Clerk.
Geo. W. Loosley, Stockman.

KLAMATH AGENCY, OREG., JUNE 19, 1901.

I hereby certify that the total number of male adult Indians over 18 years of age, belonging to the Klamath Agency, Oreg., is 206, of whom 191 have signed the foregoing agreement.

O. C. Applegate,
United States Indian Agent.

KLAMATH AGENCY, OREG., JUNE 19, 1901.

DEPARTMENT OF THE INTERIOR, DECEMBER 7, 1901.

Approved.

E. A. Hitchcock, Secretary.

WASHINGTON, D. C., JULY 17, 1901.

Sir: On January 4, 1901, counsel representing the Indians of the Klamath Agency, Oreg., discussed the claim of these Indians before the Committee on Indian Affairs of the United States Senate. At this meeting a full presentation of the claim was made, as set forth in House Doc. No. 136, Fifty-sixth Congress, second session.

Only two questions appeared to present any difficulty. In order that there should be a record in your department of the position taken by counsel for the Indians with regard to these questions, we beg leave to submit to you the argument used by us before the Senate committee, in the first place stating what the points are:

Some members of the committee appeared to entertain a doubt as to whether the reservation occupied by the Klamath Indians was held by them under a treaty which gave them the right and title thereto, or whether they occupied the land under an Executive order, without title or right, and subject to removal from a part or the whole of it at the will of the Executive or of Congress and without the consent of the Indians. There was raised likewise some question as to whether the diminishing of the area of the reservation through an erroneous survey of it made by the United States in 1871 was an act of the Executive lawfully done under the terms of the treaty.

The title or right of the Indians to this reservation has been under consideration by a circuit court of the United States, and a full and complete answer to the first question will be found in its opinion, rendered by Judge Bellinger in the case of California and Oregon Land Company v. Rankin et al., 57 Federal Reporter, 333.

The land company, claiming lands in the reservation of the Klamath Indians under the grant made by Congress to the State of Oregon in 1864, brought suit against an agent of the United States to enjoin him from making allotments in severalty of certain of these lands to members of the Klamath tribe. The court said:

"Particular attention is called to the language of the proviso in the treaty by which the residence of the Indians therein provided for is to continue until otherwise directed by the President, and the contention is made that this language shows that the rights now held by the Indians are not the same rights originally held by them, but are new rights bottomed on the treaty, and, therefore, subsequent in time to the road grant. The treaty could not confer a new right unless it conferred something in addition to what the Indians already possessed. Whatever is within the rights originally held by the Indians has been continuous with them. Equity is not concerned with the form of the proviso in this case. In its purpose and intent it is a reservation in its terms; the right of occupancy was not granted to these Indians. It was withheld by them. Furthermore, I am of the opinion that the words "until otherwise directed by the President," did not have the effect attributed to them by the complainant. The treaty provides that Congress may hereafter permit the sale of these lands if the prosperity of the Indians will be thereby

[House Document No. 79, Fifty-seventh Congress, 2d session, July 3, 1901.]

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Advance. The relation of the Indians to the United States is shown to be that of dependents. They submit to the control and guardianship of the Government, and this right of sale can only be upon a consideration moving to the Indians. There can be no sale as of a property right in the United States, and the power of sale and the right of the President to direct a removal of the Indians in pursuance of its policy is manifestly the exercise of a trust power by the United States. These powers are not the exercise of proprietary rights by the United States, but the performance of a duty which it has assumed. The President can only direct the removal of these Indians, if they are not provided for otherwise. The right provided for a part to it is not a limitation of the right of occupancy heretofore enjoyed by them, but a provision to make effective the authority to dispose of that right when the United States, acting in their behalf, determines that it is to their advantage that such interest should be sold.

The treaty by its terms provides for public improvements of public interest character upon these lands for the erection of sawmills, flouring mills, shops, school and hospital buildings, and for maintaining them in repair for a period of twenty years; and it provides for the assignment or allotment of the lands among the Indians as is now proposed, and for the prevention of which this suit is prosecuted. These provisions strengthen the conclusion that the reservation contained in the treaty was of a substantial and permanent right, coextensive with that theretofore enjoyed by the Indians. The effect of the construction contended for by the complainant would be to deprive the Indians of the valuable right reserved to them in the treaty, which constituted the consideration for the cession of the lands made by them to the Government, and of which the road company is to a large extent the beneficiary. It would enable the road company to enjoy the benefits in a large measure of the cession made by the Indians and at the same time take from them the benefits which constituted its inducement. It would defeat in its main scope the object of the treaty, and would in its results be contrary to justice and right.

This decision was rendered in May of 1898, and no appeal from it has been taken. It shows conclusively that the Klamath Indians, prior to the treaty and at all times thereafter, have held a vested right or title to all of the land described by metes and bounds as reserved to them for their occupancy and use.

That the Executive entertained the same opinion with regard to the meaning of the treaty and the status of the Indians thereunder as that now fixed by the decision cited is shown by the fact that no Executive order was ever issued by the President creating the reservation, nor has any order of the kind been issued by the Secretary of the Interior or subordinate officers of the Government.

This disposes of the first question.

With regard to the second: It appears that after the treaty was proclaimed on February 17, 1870, a survey of the boundaries of the reservation was ordered by the Secretary of the Interior. In making the survey the engineer who contracted to perform the work failed to follow the metes and bounds expressly set forth in the treaty as those of the reservation. The result of this failure was that the survey showed a much smaller reservation than the Indians had anticipated, and the Interior Department, being misled by the survey, adopted it as correct. The Indians complained of the mistake at the time to the local officials of the United States both civil and military, and both made reports thereon to the proper officials in Washington. The matter was investigated by direction of the Department of the Interior and the reports obtained showed that the complaints of the Indians were well founded.

From that time to this it has been conceded by every Secretary of the Interior and by the Commissioner of the General Land Office and the officers of the Indian Office that the first survey was an erroneous one; that its adoption was a mistake without any design or intention on the part of the executive branch of the Government to deprive the Indians of any part of the territory which the treaty reserved to them. No order has been issued by any President, Secretary of the Interior, or subordinate official of the Government directing that the area of the treaty reservation be diminished. Had such an order been issued without the consent of the Indians or just compensation to them, it would have been a breach of the trust which the United States assumed when it made the treaty and which the court has held it is bound to perform.

By the present claim the Klamath Indians merely ask that the United States perform its trust by giving them reasonable compensation for a part of the land which the United States guaranteed to reserve to their use, but which, through the admitted mistake which it is seeking to correct, it took from them.

The office of the Commissioner of Indian Affairs has uniformly insisted that the unintentional diminution of the area of the treaty reservation caused by the erroneous survey of its boundaries constituted a just cause of grievances on the part of the
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Indians, and has from time to time sought to have it righted. Pursuant to two resolutions which it has passed, the Senate has been informed of the facts in this matter through reports of the Secretary of the Interior. (See Senate Ex. Doc. No. 129, Fifty-third Congress, second session, and Senate Ex. Doc. 62, Fifty-third Congress, third session.) On receipt of these reports, a clause was incorporated in the Indian appropriation act of June 10, 1886, (29 Stat. L. 281), which provided for the appointment of a commission to ascertain and determine the correct boundaries of the reservation and the area of the land of which the Indians were unlawfully deprived by the erroneous survey made in 1871.

This commission made its report, finding that the Indians were deprived of their territory to the extent of 617,100 acres, and recommended that the Indians be compensated for this land at the rate of $1.39 cents per acre. The Secretary of the Interior, Hon. D. R. Francis, approved the report and asked Congress to make the necessary appropriation. (See Senate Ex. Doc. No. 93, Fifty-fourth Congress, second session.)

Congress, by a clause in the Indian appropriation act of July 1, 1888, authorized the survey of the boundaries of the treaty reservation as determined by the commission and directed that negotiations with the Indians be held looking to the cession of their right and title to the lands which they were deprived. The survey has been made and negotiations have been completed. The Secretary of the Interior now, by his report to Congress December 8, 1900, anneul the prior stipulations under his instructions be ratified and an appropriation necessary to compensate the Indians be made. (See House Doc. No. 156, Fifty-sixth Congress, second session.)

In connection with the above argument, I beg to request that you will obtain and refer to a copy of the hearings before the subcommittee of the Committee on Indian Affairs of the United States Senate on the Indian appropriation bill at the last session of Congress. Statements on behalf of the Klamath Indians will be found on page 29 et seq.

We submit that the United States, in fulfillment of its trust obligation, is bound to correct the mistake which its agent made, and that Congress should authorize the payment which the Indians stand ready to accept, which the commission, after due investigation, has recommended, and which the Secretary of the Interior now recommends as just and fair.

Very respectfully,

Joseph K. McCauley, Attorney for the Indians of the Klamath Reservation.

R. V. Bell, Of Counsel.

The Secretary of the Interior.

A Bill to ratify an agreement with the Indians of the Klamath Indian Reservation, in Oregon, and making appropriations to carry the same into effect.

Whereas James McLaughlin, an Indian inspector for and on behalf of the Secretary of the Interior, under and by virtue of an act of Congress approved July first, eighteen hundred and ninety-eight (thirtieth United States Statute Laws, page five hundred and seventy-one), entitled "An act making appropriations for the current and previous years of the Indian Department and for making treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-nine, and for other purposes," did, on the seventeenth day of June, eighteen hundred and one, make and conclude an agreement with the Klamath and Modoc tribes and Yahooskin band of Snake Indians, belonging to the Klamath Indian Reservation, in the State of Oregon, which agreement is as follows:

This agreement, made and entered into on the seventeenth day of June, eighteen hundred and one, by and between James McLaughlin, U. S. Indian inspector, on the part of the United States, and the Klamath and Modoc tribes and Yahooskin band of Snake Indians, belonging to the Klamath Indian Reservation, the State of Oregon, witnesses:

ARTICLE I. The said Klamath and other Indians belonging to the Klamath Agency, Oregon, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Klamath Indian Reservation lying between the boundaries described in the treaty with said Indians concluded October fourteenth, eighteen hundred and sixty-four, and proclaimed February seventeenth, eighteen hundred and seventy, as confirmed by the Klamath Boundary Commission in their report to the Secretary of the Interior, dated December eighteenth, eighteen hundred and ninety-nine, and the reservation boundary lines as established by the survey approved in 1888 by the General Land Office, the tract of land hereby ceded and relinquished comprising six hundred and twenty-one thousand eight hundred and twenty-four acres.

ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by
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Article I of this agreement, and in full of all claims and demands of said Klamath and other Indians arising or growing out of the erroneous survey of the boundaries of their reservation in eighteen hundred and seventy-one, the United States stipulates and agrees to pay and expend for said Indians, in the manner hereinafter provided, the sum of five hundred and thirty-seven thousand and seven dollars and twenty cents ($537,007.20), being at the rate of eighty-six and one hundred and seventy-five (.86/175) cents per acre, the price awarded for said lands by the Klamath boundary commissioners in their report to the Secretary of the Interior, dated December eighteenth, eighteen hundred and ninety-six.

ARTICLE III. It is agreed that of the amount to be paid to the said Klamath and other Indians, as stipulated in Article II of this agreement, the sum of twenty-five thousand dollars shall be paid in cash pro rata, share and share alike, to each man, woman, and child belonging to said Klamath and other tribes and under the jurisdiction of the Klamath Indian Agency, within one hundred and fifty days from and after the date of the ratification of this agreement, and the sum of three hundred and fifty thousand dollars shall be deposited in the Treasury of the United States to the credit of said Indians, and shall draw interest at the rate of five per centum per annum, which interest shall be paid to said Indians annually per capita in cash, and that the remainder of said sum of five hundred and thirty-seven thousand and seven dollars and twenty cents, after the payment of the legal fees of attorneys having duly approved contracts, shall be expended for the benefit of said Indians, under the direction of the Secretary of the Interior, upon requisition of the Indians through the U. S. Indian Agent, in the drainage and irrigation of their lands, and the purchase of stock cattle for issue to said Indians, and for such other purposes as may, in his opinion, best promote their welfare:

Provided, That beneficiaries whose allotments will not be benefited by the irrigation systems constructed under this provision shall not bear any of the expense of such irrigation construction, and shall, as nearly as practicable, receive an equivalent in value of the stock cattle or other articles herein contemplated, that each beneficiary may thus receive his or her proportionate share and same alike, to

And provided further, That in addition to the interest on the fund deposited in the U. S. Treasury, the Secretary of the Interior may, in his discretion, expend for the benefit of said Indians, including reasonable cash payments per capita, not to exceed ten per centum per annum of the principal fund, upon a majority of the male adult Indians of Klamath Agency petitioning for same through the Commissioner of Indian Affairs.

ARTICLE IV. It is understood that nothing in this agreement shall be construed to deprive the said Klamath and other Indians of the Klamath Agency of any benefits to which they are entitled under existing treaties, not inconsistent with the provisions of this agreement.

ARTICLE V. This agreement shall take effect and be in force when signed by U. S. Indian Inspector James McLaughlin, and by a majority of the male adult Indians parties thereto, and when approved by the Secretary of the Interior and accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U. S. Indian Inspector, on the part of the United States, and the male adults of the Klamath and other tribes of Indians belonging to the Klamath Agency, Oregon, have hereunto set their hands and seals at Klamath Indian Agency, Oregon, this seventeenth day of June, A. D. nineteen hundred and one.

James McLaughlin,
U. S. Indian Inspector.

Charley Pitt (his x mark).
John Morgan (his x mark).
Dennis O'Tool (his x mark).

And one hundred and eighty-eight other Indian signatures.

We, the undersigned, do hereby certify that the foregoing agreement between the United States and the Indians of Klamath Agency, Oregon, dated June 17th, 1901, was thoroughly explained by us to said Indians and that it was fully understood by them before signing.

Robert H. White, Interpreter.


We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, U. S. Indian inspector, and of the one hundred and ninety-one (191) male adult Indians of Klamath Agency, Oregon, to the foregoing agreement.

Robert C. Spink, School Clerk.
Geo. W. Lockley, Stockman.

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I hereby certify that the total number of male adult Indians over eighteen (18) years of age belonging to the Klamath Agency, Oregon, is two hundred and ninety-six (296), of whom one hundred and ninety-one (191) have signed the foregoing agreement.

O. C. Applegate,
United States Indian Agent.

KLAMATH AGENCY, OREG., June 19th, 1901.
DEPARTMENT OF THE INTERIOR,
December 7, 1901.

Approved.

E. A. Hitchcock, Secretary.

Therefore,
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said agreement be, and the same hereby is, accepted, ratified, and confirmed.

Sec. 2. That for the purpose of carrying the provisions of said agreement into effect there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five hundred and thirty-seven thousand and seven dollars and twenty cents, of which amount the sum of three hundred and fifty thousand dollars shall be placed to the credit of the Indians of the Klamath Agency, in the State of Oregon, in the Treasury of the United States, and shall bear interest at the rate of five per centum per annum. The remainder of said sum of five hundred and thirty-seven thousand and seven dollars and twenty cents, after the payment of the legal fees of attorneys having duly approved contracts, together with the interest on said sum of three hundred and fifty thousand dollars, shall be paid to said Indians or expended for their benefit as provided in article three of said agreement: Provided, That the Secretary of the Interior may, in his discretion, expend for the benefit of said Indians, including reasonable cash payments per capita, not to exceed ten per centum per annum, a major share of the grand fund, upon a majority of the male adult Indians of said Klamath Agency petitioning for the same through the Commissioner of Indian Affairs: And provided, That nothing herein contained shall be held to in any way militate against indemnity school land selections made by the State of Oregon on the basis of sections sixteen and thirty-six in place within the boundary of the Klamath Indian Reservation, as erroneously fixed in eighteen hundred and seventy-one, and the boundary agreed upon in the treaty with the Indians of eighteen hundred and fifty-four; but all such indemnity selections made by the State in lieu of lands in place within said boundaries shall be passed to the approval in the usual way, provided they are in other respects free from objection.

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