

GRANTING EASEMENTS ON CERTAIN LANDS IN COEUR D'ALENE INDIAN RESERVATION, IDAHO.

MAY 4, 1908.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PARKER, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H. R. 21010.]

The Committee on Indian Affairs, having had under consideration the bill (H. R. 21010) authorizing the Secretary of the Interior to grant easements on certain lands in the Coeur d'Alene Indian Reservation, in Idaho, report the same back with the recommendation that the bill pass.

The bill provides that due compensation, to be determined by the Secretary of the Interior, shall be paid for the use of the land for the benefit of the Coeur d'Alene Indians.

Under the bill provision for use may be revoked by the Secretary of the Interior or his successors, should the lands cease to be used for the purpose mentioned in the bill, or if Government control of the power site shall be acquired in any manner hereafter.

The bill provides further that expenses incidental to proper survey of the lands so taken shall be paid by the corporation or corporations to whom the reservoir site is granted.

The bill is recommended by the honorable Secretary of the Interior, as appears from the accompanying letter, which is made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, April 27, 1908.

SIR: The receipt is acknowledged of your letter of April 20, 1908, inclosing for report a copy of H. R. 21010, being "A bill authorizing the Secretary of the Interior to grant easements on certain lands in the Coeur d'Alene Indian Reservation, in Idaho."

In response you are informed that the office understands that this proposed legislation is introduced at the suggestion of the Washington Water Power Company,

which owns at the present time a dam located in the Spokane River at Post Falls, Idaho, and used in connection with a power plant devoted exclusively to the generation of electrical energy for transmission to many points in northern Idaho and eastern Washington for power, lighting, and heating purposes. Incidentally it may be mentioned that this company furnishes Spokane, Wash., and Coeur d'Alene City, Idaho, with electricity for light and power purposes and furnishes power for electric cars running from Spokane to Coeur d'Alene City, a distance of 8 miles. The company also furnishes power for an electric railway entirely in the State of Washington extending southward from the city of Spokane, and electricity to the extent of 5,000 horse power is generated for principal mines in Shoshone County, Idaho.

It appears that in the year 1871 Frederick Post with the consent of the Coeur d'Alene Indians used and occupied the falls now known as Post Falls, Idaho. In 1889 the Coeur d'Alene Indians ceded the lands north of the present diminished reservation to the Government and at that time recognized their previous agreement with Mr. Post.

The act of March 3, 1891 (26 Stat. L., 1031), contains the following provision:

"*Provided further*, That the Secretary of the Interior shall cause to be surveyed for and patented to Frederick Post, upon his making final proof of all thereof before the register and receiver of the proper United States land office, and to the satisfaction of the Commissioner of the General Land Office and Secretary of the Interior, and paying therefor two dollars and fifty cents per acre and the cost of making such survey of such portion of said reservation as is recited in the agreement in word and figures as follows, to wit:

"Know all men by these presents that I, Andrew Seltice, chief of the Coeur d'Alene Indians, did on the first day of June, anno Domini, eighteen hundred and seventy-one, with the consent of my people, when the country on both sides of the Spokane River belonged to me and my people, for a valuable consideration sell to Frederick Post the place now known as Post Falls, in Kootenai County, Idaho, to improve and use the same (water power); said sale included all three of the river channels and islands, with enough land on the north and south shores for water power and improvements; and have always protected the said Frederick Post, for eighteen years, in the rights there and then conveyed, and he has always done right with me and my people. We, the chiefs of the Coeur d'Alenes, have signed articles of agreement with the Government to sell the portion of the reservation joining Post Falls, in which we have excepted the above-prescribed rights, before conveyed to Frederick Post, and no Indian and no white man except Frederick Post have any rights on the above-described lands and river channels; the said Frederick Post has fulfilled all of his agreements with me and my people by improving the water power and building mills at great expense, and I hereby authorize him to build a house and take full possession of the above-described lands on the reservation side, so that when the treaty is confirmed he may have full possession and protection of the Government in the same.

"Given under my hand and seal this sixteenth day of September, anno Domini eighteen hundred and eighty-nine.

ANDREW (his x mark) SELTICE."

The records of the General Land Office show that the grant to Frederick Post contained 156,801 acres of land and 141,593 acres of water, making a total of 298,394 acres, for which, in accordance with the above act, a patent was issued on September 5, 1894.

It appears that Mr. Post had improved the power at Post Falls under his agreement with the Indians and that after the issuance of a patent to him he continued in full possession and use of the same until he sold his property to the Washington Water Power Company.

It appears also that the demand for electric power in the vicinity of Post Falls has increased constantly from the date of the construction of the plant, and that the Washington Water Power Company has reconstructed its dams at Post Falls and also installed an improved plant, expending for this purpose, it is alleged, the sum of \$500,000. The new dam is constructed with surplus gates, so as to provide wasteways in periods of high water and is of the same type as the dams theretofore maintained in the river by Frederick Post and his successors; but, anticipating the increasing needs of the country, the dam was provided with a mechanical contrivance known in hydraulic engineering as a "bear trap," whereby the height of the dam can be raised and the power increased.

The original dam of Mr. Post caused the water to overflow upon the lands of the Coeur d'Alene Indian Reservation at least for a part of the year, and as any increase

in the height of the water caused by the raising of the dam will overflow additional lands the company desire to acquire the overflow rights now under consideration on the Indian reservation.

It is alleged that the water in the Coeur d'Alene Lake and the St. Joe River, which flow into the lake, will be raised and held about 6 feet above normal low water, and that this will flood the lowlands on each bank of the St. Joe River in the Coeur d'Alene Indian Reservation to the extent of from 3,000 to 5,000 acres.

In a report, dated April 4, 1908, from Messrs. Charles O. Worley, superintendent in charge of the Coeur d'Alene Indian Reservation, and W. B. Sams, special allotting agent for that reservation, which report was made after a full investigation at the request of this Office, it is said that a peculiar fact with regard to the St. Joe River is that the banks which would be considered the shore line at high water are the highest points of a little narrow valley which gently slopes downward toward the foot of the hills, the river banks presenting the appearance of having been at some remote period banked up to prevent overflow, and while the immediate banks of the river are not often overflowed the lands lying back of the banks and running back to the hills are covered with water during the entire year and present the growth and appearance of a marsh.

In this report attention is invited to the fact that the high-water period is from March to August and is caused by the melting of the snow in the mountains and that the time for planting crops comes during the high-water period and after the water recedes it is too late to do more in the overflowed district than cut such wild grasses as grow on lands subject to overflow and which are of little value and have never been cultivated. It is said also that the lands lying on either side of the river consist of narrow valleys and hills rising abruptly and are not available for any purpose, except a few scattered tracts, the largest one including perhaps 15 acres which might be cultivated.

Messrs. Worley and Sams say further that the dam of the Washington Water Power Company is of a height of 10 feet and that it is constructed so as to obtain a head of water of about 10 feet, and that the officers of the company assured them that they have no intention of raising the present dam. This, however, is not in accordance with a statement filed by the company with this office, from which it appears that it intends to raise the waters of Lake Coeur d'Alene and the St. Joe River about 6 feet above normal low water. Messrs. Sams and Worley consider that the dam is so constructed at the present time that it does not raise the river to any greater height than it would naturally go during high water, as it is provided with large flood gates which are kept open during the high-water period, but the object of it is to retain the water at a given point which is less than high-water mark, in fact, 8 to 10 feet head, high-water mark being from 14 to 16 feet head during the dry spell between receding of the floods of spring and the coming of the rainy season in the fall. It is said also that it can be demonstrated that the dam has not caused the waters of the river to rise to any greater height during the flood time, but simply retains the water at a good head during all times of the year, thus aiding navigation in the river.

In conclusion, Messrs. Worley and Sams say that it is their opinion that the valley of the St. Joe River under consideration was overflowed before the dam was built, and would be overflowed again each season if the dam were removed, the only effect of the dam being to retain a sufficient head of water for power purposes during the time when the water is low; but as the floods invariably last through July, even if the water should immediately recede thereafter, it would be too late to plant crops in the valley, hay being the only thing that could be raised. It is said that the entire acreage of the valley that would be available if it could be drained, which is impracticable, would not exceed from 4,000 to 5,000 acres. They suggest that if the Washington Power Company could be prevailed upon to pay the sum of \$1.25 damage on the land flooded by the dam during the dry season for the benefit of the Indians it would be a greater sum than the Indians could obtain otherwise, as the lands are practically a marsh.

The Indian Office, basing its opinion upon the investigation made by Messrs. Worley and Sams, considers that the lands over which the company seeks to acquire an easement have been overflowed for years, and in the absence of the dam would be overflowed for the greater part of each year, being in fact but little better than marsh lands and unavailable for allotment.

The power company has apparently acquired a legal right to the use of the power of Post Falls, and can undoubtedly increase the height of their dam if they see fit. Unless some legislation is enacted whereby the company can purchase an easement upon the land, the only recourse remaining to the Indians will be a suit for the dam-

ages sustained by their lands overflowed by the waters of the St. Joe River held in check by the dam. In view of the fact that these lands are naturally overflowed for the greater part of each year, damages of this nature might be difficult to ascertain.

The bill under consideration provides for the payment of due compensation, to be determined by the Secretary of the Interior, and for the revocation of the rights granted if the lands are no longer used and occupied as a reservoir site or if the Government should procure control of the power site. The Department considers that the rights of the Indians are fully protected and that the passage of the bill would be advantageous to them. I therefore recommend that the bill receive your favorable consideration.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

HON. JAMES S. SHERMAN,
House of Representatives.

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