

WISCONSIN LAND-CLAIM.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

TO HON. T. C. POUND, HOUSE OF REPRESENTATIVES,

TRANSMITTING

Certain papers relative to the claim of the State of Wisconsin for certain lands included in Indian reservations, and recommending legislation thereon.

JUNE 3, 1878.—Referred to the Committee on the Public Lands and ordered to be printed, to accompany bill H. R. 5101.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., May 31, 1878.

SIR: I am in receipt of your letter of this date, requesting to be informed of the action taken on the list of lands submitted to my predecessor for approval August 29, 1876, and in reply I have the honor to inform you that, under date of August 29, 1876, the Commissioner of the General Land Office submitted for the approval of my predecessor a list of lands containing 19,778.33 acres, inuring to the State of Wisconsin under the swamp-grant of September 28, 1850. These lands are located within the limits of the Lac de Flambeau Indian reservation, made under the provisions of the treaty with the Chippewa Indians of Lake Superior and the Mississippi, dated September 30, 1854.

On April 28, 1875, the Acting Secretary of the Interior decided that the right of the State to the swamp-lands became vested at the date of the grant, September 28, 1850, and that it could not be divested by the subsequent treaty of September 30, 1854 (copy of decision inclosed, marked A). No action upon the list submitted was taken by my predecessor. In view of the fact that some of these lands have been occupied for many years by the Indians, and are valuable to them (as shown by letter of the Acting Commissioner of Indian Affairs, dated October 13, 1875, addressed to my predecessor—copy inclosed, marked B), and in view of the fact that, should the evidence of title be transferred to the State, and the lands be purchased from her, conflicts and trouble would probably arise between said purchasers and the Indians, I have also declined, as yet, to approve said list, although urged to take action in the premises by the governor of the State both by letter and in per-

son. My object in delaying the approval of the list was to allow Congress to take some action by which the interests of the Indians, the United States, and the State of Wisconsin might be protected.

The remarks in relation to lands within the Lac de Flambeau reservation apply with equal force to the lands within the limits of the other reservations, viz, for the Lac Courte Oreille band, La Pointe band, and the Red Cliff band, made under the provisions of the treaty of September 30, 1854. In my opinion, it would be both unwise and unjust to attempt to deprive the Indians of the lands they have occupied for years. It is also desirable that the government have exclusive control of all the lands within the Indian reservations; or, in other words, that the title of no portion of lands within said reservations be in the State of Wisconsin. The reasons why the government should have exclusive control of its reservations are too apparent to require explanation or argument. I inclose a copy of a bill, which, should it become a law, will, in my opinion, protect the rights of the Indians under the treaty, give to the government the control of the reservations, and at the same time give to the State of Wisconsin full indemnity for all the lands relinquished by her. This proposition meets with the approval of the Commissioners of the General Land Office and of Indian Affairs, and I respectfully urge that action be taken by Congress in order that this question may be properly disposed of by this department.

Very respectfully,

C. SCHURZ,
Secretary.

Hon. T. C. POUND,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., May 15, 1878.

SIR: In reply to your letter of the 6th ultimo, calling for a list of the lands allotted in severalty to members of the different tribes occupying reservations in Wisconsin, and any information in my possession relative to the occupancy of land by Indians within the reservations, not allotted in severalty, I have the honor to report that, under treaty of September 30, 1854 (10 Stats., 1109), there have been set apart and withheld from sale for the Chippewas of Lake Superior lands as follows:

	Acres.
For the Lac Courte Orielle band	69, 136
For the Lac de Flambeau band	69, 824
For the La Pointe band.....	124, 333
For the Red Cliff band	13, 993

Making a total area of 277, 286

It was further provided that the President might assign to each head of a family, or single person over 21 years of age, 80 acres of land for his or their separate use, and might, at his discretion, as fast as the occupants became capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he might see fit to impose; that he might make rules and regulations respecting the disposition of the lands in case of the death of the head of a family, or single person, occupying the same, or in case of its abandonment by them, &c.

The stipulations by which the United States agreed to make these reservations were made in consideration of certain cessions of land set forth in article 1 of said treaty.

Wisconsin was admitted into the Union as a State by act approved May 29, 1848 (9 Stats., 178). By act of September 28, 1850 (9 Stats., 519), entitled "An act to enable the State of Arkansas and other States to reclaim the swamp-lands within their limits," Wisconsin was granted all the swamp and overflowed lands therein which remained unsold at date of the act.

The said Indian reservations were made subsequent to the swamp-grant to said State, by virtue of said treaty of 1854, and hence it is apparent that all the swamp-lands within the boundaries of these reservations belong to the State; therefore the State should in some way be reimbursed for the lands so taken, or her swamp-grant made good and available by granting her the right to make lieu selections for such swamp-lands as are officially ascertained to lie within said Indian reservations.

The Bad River Indians (of the La Pointe band) have made selections, and about forty-six patents have been issued to them.

That part of said band of which Buffalo was chief, residing on the Re Cliff reservation, made individual selections, which were approved by the President February 20, 1877, and for which patents will soon issue. Other selections have been made by the same band, which have not been approved.

The Lac Courte Oreilles have also made selections, which as yet have not been approved.

I understand that the swamp-lands in question are very desirable for the Indians; that they are among their best meadow-lands, and are particularly adapted to producing wild rice, which forms a valuable source of food.

I do not deem it expedient to attempt a specific restitution of these swamp-lands, and it is obviously a matter of justice that the State should have the benefit of her grant. I therefore recommend that Congress be asked to provide by law that the State of Wisconsin be granted, through her duly-constituted authorities, the right of selecting indemnity for such swamp-lands as by the official returns of the surveyor general are shown to belong to the State, and that her claim to said swamp-lands in place be thereupon vested in the government, and that such right of selection shall be confined to those public lands to which no prior right, under any law of the United States, shall have attached at the date of such selection.

The State is also entitled to certain school-lands, which in the same manner, have been embraced in said reservations, and concerning them I recommend a like remedy.

I also suggest that in Minnesota and Oregon the situation is the same, so far as said grants are concerned. Certain reservations have been made including swamp and school land, and I recommend legislation of the character suggested above to relieve those States and discharge the obligations of the government.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

WISCONSIN LAND-CLAIM.

A.

DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY,
Washington, D. C., April 28, 1875.

SIR: I have examined the appeal of the State of Wisconsin from your decision, of May 20, 1874, refusing to recognize the claim of the State to the swamp-lands included in the Indian reservations created by the second article of the treaty of September 30, 1854 (10 Stats., 1109).

As I understand your statement, the lands included in said reservations were the property, in fee-simple, of the United States on the 28th day of September, 1850, the date of the swamp-land grant.

Wisconsin had been admitted into the Union as a State on the 29th of May, 1848.

The grant of September 28, 1850, was a present grant, and the State of Wisconsin acquired title to all the swamp-lands in said tracts at that date (Railroad Co. vs. Smith, 9 Wall., 95), and that title could not be, and was not, divested by subsequent treaty of 1854.

I reverse your decision; and herewith return the papers transmitted with your letter of July 8, 1874.

Very respectfully,

W. H. SMITH,
Acting Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

B.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., October 13, 1875.

SIR: This office is in receipt, from the Commissioner of the General Land Office, of a copy of a decision of the honorable Acting Secretary of the Interior, dated April 28, 1875, overruling Land Office decision of May 20, 1874, whereby the latter officer refused to recognize the claim of the State of Wisconsin to the swamp-lands included within the limits of certain Indian reservations established by the second article of the treaty with the Chippewa Indians of Lake Superior, concluded September 30, 1854.

The treaty of 1854, after reserving certain lands for Indian purposes, makes provision for an allotment of the same in severalty to members of the different bands of Indians occupying the same.

An allotment has already been made to members of the La Pointe band, occupying the La Pointe or Bad River reservation.

An examination of these allotments, and a comparison with the books of the General Land Office, exhibit the fact that in some twenty-five cases either a part or the whole of such allotments are composed of the lands designated as swamp-lands, and which come within the scope of department decision above referred to. These lands comprise the very choicest tracts upon the reservation in question. The Indians gather the major part of their wild rice and cranberries from a portion of the same, and have their gardens upon the remainder. They have lived upon and cultivated these tracts, in many cases, for twenty years, and their houses and all their other improvements are located upon them. They have been encouraged to believe that these lands belonged to them, and that, when allotments should be made in severalty, they would receive patents therefor. Should they now be deprived of their lands and improvements, it would be a very great hardship, and one that should be prevented if possible.

I therefore have the honor, respectfully, to recommend that the Commissioner of the General Land Office be directed, until further instructions, not to certify to the State of Wisconsin as swamp-lands any of the tracts comprised within the limits of any of the reservations set apart by the treaty aforesaid, and that legislation be asked of Congress giving to the State of Wisconsin an equal quantity of public lands in lieu thereof, located elsewhere within the limits of said State, or that provision be made for otherwise indemnifying the State.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

The Hon. SECRETARY OF THE INTERIOR.