64TH CONGRESS, 1st Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 1133.

LANDS WITHIN FORMER FLATHEAD INDIAN RESERVATION, MONT.

AUGUST 18, 1916.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. RAKER, from the Committee on the Public Lands, submitted the following

REPORT.

[To accompany S. 1059.]

The Committee on the Public Lands, to which was referred the bill (S. 1059) to provide for the payment for certain lands within the former Flathead Indian Reservation, in the State of Montana, having had the same under consideration, begs leave to report it back to the House with the following amendments:

Page 1, line 11, after the "comma" and before the word "persons," insert "which appraisement of said commission in 1912 and 1913 is hereby vacated and set aside."

Page 2, strike out all of section 2, lines 10 to 19, both inclusive.

As thus amended the committee unanimously recommend that the bill do pass.

The bill as amended reads as follows:

AN ACT To provide for the payment for certain lands within the former Flathead Indian Reservation in the State of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where lands within the former Flathead Indian Reservation which were classified and appraised during the years nineteen hundred and twelve and nineteen hundred and thirteen by the commission appointed for that purpose under authority of the act of June twenty-fifth, nineteen hundred and ten, have been appraised at an amount in excess of the amount at which similar lands were appraised by the Flathead Commission of nineteen hundred and seven and nineteen hundred and eight, which appraisement of said commission of nineteen hundred and twelve and nineteen hundred and thirteen is hereby vacated and set aside, persons who have between August twenty-sixth, nineteen hundred and ten, and June fourteenth, nineteen hundred and eleven, settled upon, or between said dates filed applications to enter, such lands, and which applications have been or may hereafter be allowed, shall not be required to pay more for the lands so settled upon or entered by them than the highest amount specified by the Flathead Commission of nineteen hundred and seven and nineteen hundred and eight for lands of like character and similar classification.

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Full report on this bill was made by the Committee on Public Lands of the Senate, which fully explains the reason and necessity of this legislation. The committee therefore inserts report No. 279, as made by the Senate committee, which report is as follows:

The bill was referred to the Interior Department, and the Secretary of that department furnished the committee with the following report thereon:

DEPARTMENT OF THE INTERIOR,
Washington, February 1, 1916.

Hon. H. L. MYERS,
Chairman Committee on Public Lands, United States Senate.

MY DEAR SENATOR: I am in receipt of letter dated December 17, 1915, from the clerk of your committee, transmitting for the views of this department a copy of Senate bill No. 1059, Sixty-fourth Congress, first session, which provides that in all cases where lands within the former Flathead Indian Reservation, which were classified and appraised during the years 1912 and 1913 by the commission appointed for that purpose under the act of June 6, 1912 (37 Stat., 125), have been appraised at an amount in excess of the amount at which similar lands were appraised by the Flathead Commission of 1907 and 1908, persons who have heretofore settled upon or entered such lands shall not be required to pay more for the lands so settled upon or entered by them than the highest amount specified by the Flathead Commission of 1907 and 1908, for lands of like character and similar classification; that in all cases where patents shall issue for land so paid for there shall be transferred, from any funds belonging to the United States not otherwise appropriated, to the credit of the Indians, for whose benefit such lands are disposed of, such an amount as shall equal the difference between the amounts so paid and the amount at which the lands so paid for have been appraised or reappraised by the commission of 1912 and 1913.

It appears that the original Flathead Commission, being the commission of 1907 and 1908, referred to in the bill, appraised first-class agricultural lands at $7 per acre, second-class agricultural lands at from $2.50 to $3.50 per acre, and grazing land at from $1.25 to $1.50 per acre.

The Flathead Commission of 1912 and 1913, whose appraisements were approved October 13, 1913, appraised about 2,781.67 acres as first-class agricultural lands, at prices ranging from $10 to $30 per acre, aggregating about $54,250.08; about 4,496.08 acres of second-class agricultural lands, at prices ranging from $4 to $15 per acre, amounting to $40,310.53; and about 4,084.55 acres of grazing lands, at from $2 to $7.50 per acre, amounting to about $11,749.57, aggregating about $106,310.18. If the lands in question had been appraised at $7, $3.50, and $1.50 per acre, respectively, in accordance with the highest scale of prices adopted by the original Flathead Commission, the appraised price would aggregate about $41,334.79, or about $64,975.39 less than the aggregate price for such lands fixed by the second Flathead Commission.

The bill in question would permit homesteaders to take the land at $7 per acre for first-class agricultural land, $3.50 per acre for second-class agricultural land, and $1.50 per acre for grazing land, the difference between such amounts and the appraised price to be paid into the Indian fund by the United States.

The Flathead Indian lands, which had been classified as agricultural lands by the original Flathead Commission, were opened to entry under the act of April 28, 1904 (33 Stat., 302), by proclamation of May 22, 1909, and regulations of May 24, 1909 (37 L. D., 698 and 700). The date of opening was changed by Executive approval of February 26, 1910, on departmental recommendation of February 23, 1910 (40 L. D., 57–58).

The regulations in question provided for a drawing and preference-right entries of the land in question by those successful at the drawing, commencing May 1, 1910, all lands not entered by preference-right applicants to become subject to general settlement and entry on November 1, 1910.

For various reasons numerous tracts had not been classified and appraised by the original Flathead Commission, and hence were not subject to entry at the time of the original opening. On August 26, 1910, the local officers were directed by the General Land Office to receive applications for these lands, with the consent of the applicants, and to suspend same to await classification and appraisement of the land, with the view to giving such applicants a preference right to enter the land after the classification. It appears that numerous applications were so filed and suspended, and that on filing such applications the applicants made settlement on the land. On June 14, 1911, the local officers were directed by the General Land Office to thereafter reject applications for unappraised lands. However, those applications already filed were allowed to remain suspended and on the approval of the classification of

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these lands on October 13, 1913, such applications, where no objection existed, were returned for allowance on proper payment being made.

The persons who filed these applications naturally expected that they would not be required to pay more for their lands than the prices fixed for lands of like character by the original Flathead Commission, and inasmuch as they were permitted to settle upon the land and make improvements with this expectation it is thought that the legislation now proposed should be enacted in so far as it affects persons who made applications or settled upon the land between August 26, 1910, and June 14, 1911.

Naturally, by reason of the settlement and improvement of a part of the land in the Flathead Indian Reservation, the balance of the land was rendered more valuable in 1912 and 1913 than in 1907 and 1908, when the original Flathead Commission made its appraisement, and no good reason is seen for reducing the prices of the lands affected by the new appraisement except to those persons who settled upon or applied to enter the land when it was first opened to settlement and prior to June 14, 1911. Those coming later, after the lands had become more valuable, should naturally expect to, and should be required to, pay the higher appraised prices. It is, therefore, recommended that the bill be amended so as to affect only persons who filed homestead applications or made settlement between August 26, 1910, and June 14, 1911. This amendment could be effected by amending line 12, page 1 of the bill, to read as follows: "have between August twenty-sixth, nineteen hundred and ten, and June fourteenth, nineteen hundred and eleven, settled upon, or between said dates filed applications to enter, such lands, and which applications have been or may hereafter be allowed, shall not."

It is noted that the first section of the bill refers to the second Flathead Commission as acting under authority of the act of June 6, 1912. The act under which said commission was appointed was the act of June 25, 1910 (36 Stat., 855–863), section 29. It is therefore suggested that the bill be further amended by substituting the word "twenty-fifth" for the word "sixth" in line 7, and by substituting the word "ten" for the word "twelve" in line 8 of the bill, both on page 1.

As thus amended, the enactment of the bill is recommended.

Cordially, yours,

FRANKLIN K. LANE, *Secretary.*

This bill is similar to S. 6373 of the Sixty-third Congress, which was favorably reported by this committee and which was referred to the Board of Indian Commissioners for report. In response thereto the board submitted a report to the committee, wherein it advised that it sent the Rev. William H. Ketcham, a member of the board, also the board's secretary, Mr. F. H. Abbott, out to the Flathead Reservation, Mont., for the purpose of thoroughly investigating the subject matter of this legislation. The report of this investigation made to the chairman of the Board of Indian Commissioners, and by him transmitted to this committee, contains the following statement of facts and data, showing the necessity for the passage of this bill:

RELIEF OF HOMESTEAD SETTLERS (S. 6373).

"It is difficult in brief space to set out clearly the situation that has developed in connection with the opening to settlement of the surplus lands of the Flathead Indian Reservation. The confusion and complications could hardly be more and greater than they have been. The files of the Interior Department contain much conflicting correspondence with field representatives of the Indian Bureau and homestead settlers on the surplus lands, numerous requests for reclassification and reappraisal of homestead entries and reports thereon, bills have been introduced to relieve the situation and have met with adverse reports from the Department of the Interior, and a complicated situation has gradually grown more complicated. In an attempt to adjust the difficulties a bill, S. 6373, submitted herewith, was introduced by Senator Myers, of Montana, chairman of the Committee on Public Lands, and was referred to the Board of Indian Commissioners with request 'for such suggestion or other information as they may be able to offer with respect to the same.' The difficulties appear to have arisen chiefly from the following facts:

"First. About 21,000 acres of agricultural lands originally allotted to Indians under the act of April 23, 1904 (33 Stat. L., 302), were subsequently relinquished by them and allotments selected elsewhere. These relinquished allotments, under the terms of the President's proclamation which opened the reservation lands to settlement, became subject to homestead entry on November 2, 1910. These lands being Indian allotments at the time of the appraisal of lands by the first commission of 1908, were not appraised by said commission, but were included in a subsequent appraisement approved October 13, 1913, in accordance with the act of June 25, 1910 (36 Stat. L., 863).

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"Second. Under the act of March 3, 1909 (35 Stat., 795), approximately 50,000 acres were also withdrawn from settlement and reserved for proposed water-power and reservoir sites by letters of the Secretary of the Interior dated April 21, 1909, February 23, 1910, April 28, 1910, December 8, 1913, and December 7, 1914. A considerable portion of these lands so withdrawn were released from reservation by letters of the Secretary of the Interior under date of March 23, 1910, August 15, 1912, September 25, 1911, December 22, 1913, May 12, 1914, June 29, 1914, August 29, 1914, October 21, 1914, and October 26, 1914. Indians had selected allotments approximating 7,000 acres within the area thus reserved for water-power and reservoir sites. To provide for lieu allotments for these Indians other lands were temporarily withdrawn from settlement and reserved.

"Third. The relinquished allotments and some of the lands withdrawn and reserved for lieu allotments and water-power and reservoir sites, above mentioned, were subsequently restored to homestead entry and settlement by the Secretary of the Interior. These restored lands naturally were unclassified and unappraised, and the commission which made the original appraisal in 1908 had deibanded and ceased to have any legal existence.

"Fourth. The President's proclamation opening the surplus lands to settlement, promulgated on May 22, 1909, provided for entry by numbers prior to September 1, 1910, but that 'all of said lands which have not then been entered under this proclamation will become subject to settlement and entry under the general provisions of the homestead laws and the said acts of Congress.' Before the date for the opening under the President's proclamation it was apparent that there would be more numbers presented than there were tracts of appraised and classified lands on the reservation open to settlement and that there would be a demand for the unappraised and unclassified tracts previously withdrawn but subsequently restored. Instead of hastening to a conclusion the classification and appraisal of these lands at the time and prior to entry, which would have avoided the later confusion and misunderstanding, but which it was decided could not be done under the act of 1904, above mentioned, the appraisal commission which had been appointed under that act having made its report and disbanded, the General Land Office, in order to accommodate as many as possible of the applicants for lands, pending the classification and appraisal of said lands under the act of June 25, 1910 (36 Stat. L., 863), issued the following letter, known and designated generally as letter 'K':

UNAPPRAISED LANDS IN FLATHEAD INDIAN RESERVATION.

WASHINGTON, D. C., *August 26, 1910.*

Register and receiver, Kalispell, Mont.

SIRS: It appears that there are a number of unappraised and unclassified tracts in the Flathead Indian Reservation. These tracts can not be entered until the lands have been formally classified and appraised. You will, however, with consent of the applicant, receive applications to enter such tracts and suspend the applications until the lands have been duly classified and appraised.

Very respectfully,

FRED DENNETT, *Commissioner.*

"A similar letter was sent to the Missoula office. Acting under the advice of this letter, about 200 settlers made suspended applications on unclassified and unappraised lands within the Flathead Indian Reservation pending classification and appraisal. Furthermore, a list of the timber schedule was not furnished to the local land officers till December 20, 1910, and consequently was not received in the local land office until about December 23. The unreserved and unentered lands were opened to settlement and entry at the local land office on November 2, 1910, and in consequence of letter 'K' of August 26, 1910, a number of applications were filed and suspended in the local office awaiting appraisement, involving lands actually classified as timberlands.

"Fifth. On June 25, 1910 (36 Stat. L., 863), Congress granted the Secretary of the Interior authority to classify and appraise the previously unclassified and unappraised land on the Flathead Indian Reservation, and the appraising commission appointed by authority of the above act did not complete its report until about September 1, 1913. By the time the commission began its work a general land boom was on and prices had increased to such an extent that this second commission, taking into consideration nearness of land to market and increased values owing to the cultivation and improvements on adjoining land, appraised land from $1 to $30 an acre, whereas similar and often immediately adjacent lands entered and settled at identically the same time had been appraised by the first commission in 1908 at from 10 cents an acre for barren land to $7 an acre for agricultural lands of the first class, and all of the settlers who had made entry under suspended applications in accordance with so-called

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letter 'K' were called upon to pay the prices fixed by the second commission, not withstanding the fact that these applicants were practically all bona fide settlers, whereas many of the 'number' entrymen who made settlement at the same time were probably not bona fide home seekers."

In the course of the board's investigations on the Flathead Reservation several meetings were held with the settlers and numerous affidavits were obtained concerning the settlers' understanding with reference to the appraisement and settlement of these lands. Upon this point the language of the board's report is as follows:

"The evidence submitted at the hearings above mentioned is overwhelming and convincing beyond the shadow of doubt that the settlers on the unclassified and unappraised lands of the Flathead Indian Reservation who made suspended applications under letter 'K' had every reason to believe and every right to expect that classification and appraisal of the lands entered by them would be prompt and that the prices of said appraisal would not exceed prices fixed for similar lands by the first appraisal commission. Letter 'K' itself, from the Commissioner of the General Land Office, when considered in connection with the general practice of the Government in fixing in advance a definite price of lands opened to settlement, was a sufficient inducement to warrant this belief on the part of entrymen."

In summing up the whole matter the further language of the report is as follows:

"Words too strong can not be found to express my conviction that these settlers should be permitted to make proof on their entries on the basis of the top prices fixed on similar lands by the first appraisal commission. For the Government to insist upon more, in the light of all the circumstances and the facts, would, in my judgment, be unfair. A private corporation selling lands and holding out inducements similar to those held out by the Government in the opening of the lands of this reservation to settlement could undoubtedly be compelled in the courts under similar circumstances to do what these settlers are asking the Government to do for them. For the Government to adhere to its present demands upon these settlers would not only be unjust but would undoubtedly force a large number of them to forfeit everything they have invested in improvements, together with their four years of work on their lands. Many of them settled upon so-called farm units and expected that water would be placed on their lands for irrigation purposes. Water has not been made available to them and will not be, perhaps, for years to come. They have had repeated crop failures; many of them have spent all the earnings of previous years, which they brought with them to the country, and have borrowed money to the full limit of their credit with the hope of holding on till they get water or until climatic conditions may change to their benefit; they have used their homestead right and can not go elsewhere on the public domain to exercise it. The question may be raised as to whether the Government should open Indian reservations under the homestead laws. The Flathead experiment shows conclusively that no entries should be permitted on unappraised and unclassified lands and no entries on irrigable lands under so-called 'farm units' prior to the completion of the irrigation projects.

"On the other hand, the Indians are clearly entitled, under the act of 1904 heretofore referred to, to receive the appraised valuation of their lands regardless of the time when that appraisal is made, and it would be unjust and probably illegal to compel the Indians to accept a price lower than the price fixed by the appraisal commission. The delay of the Government in completing classification and appraisal of the lands withdrawn for various purposes, a delay for which Congress is partly responsible, has worked a hardship and loss to the Indians by depriving them of an earlier payment for their lands, a consideration which, though small, is worth noting. Senate bill 5761, introduced on June 5, 1914, which provided for eliminating the appraisal of the second commission and fixing a definite maximum price per acre for the unappraised and unclassified lands entered, left out of consideration the legal rights and equities of the Indians, and the Secretary of the Interior could do nothing else in justice to the Indians than to report adversely on that bill, as he did under date of June 27, 1914.

"Boiling the matter down, the Indians would appear to have a just claim against the Government if the actual appraised price is not paid for these lands, while the settlers referred to would have a similarly just claim if they are compelled to pay more than the prices fixed by the first commission. These conclusions appear to be so clearly established from the record and the amount involved so small, comparatively, that I do not hesitate to recommend, as a just and satisfactory solution, that Congress enact S. 6373, subject to the amendments suggested.

"William H. Ketcham,
"*Member Board of Indian Commissioners.*"

In the light of all the information furnished, the committee is of the opinion that this legislation is proper and that the relief proposed therein for the settlers on the Flathead Reservation, Mont., should be granted.

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