REFER IN REPLY TO THE FOLLOWING:

Land
37569-1908
J T R

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON.

June 15, 1908.

Subject:
Protest against the opening of Fort Peck Reservation.

Partie Creecreeshe,
Charley Mudleman,
Sam Reelection,

Chiefs of Flathead Tribes of Indians,

Through the United States Indian Agent,

Flathead Agency, Jocko, Montana.

My friends:

The Office is in receipt, by reference of the Secretary of the Interior, of your petition of May 31, 1908, addressed to the President, protesting against the opening of the Flathead Reservation for settlement.

You say in your petition that by the terms of the treaty of July 16, 1855, (12 Stat., L. 975), the reservation on which you now reside was to be reserved for the Indians residing thereon, as long as there were any such Indians; that you do not want the reservation opened to settlement, but want the land to remain as a reservation for the use of the Indians in common.

In response you are advised that, in the opinion of the Office, the treaty referred to contains no provision to the effect that the lands on this reservation shall remain as a

reservation for the use of the Flathead Tribe of Indians in common.

In this connection, your attention is invited to a part of an opinion by the Supreme Court of the United States in the case of Lone Wolf vs. Hitchcock, (187 U. S., 553-566), reading as follows:

> The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians. In United States v. Kagama, (1885) 118 U. S. 375, speaking of the Indians, the court said (p. 382):
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> After an experience of a hundred years of the treaty-making system of government, Congress has determined upon a new departure--to govern them by acts of Congress. This is seen in the act of March 3, 1871, embodied in 2079 of the Revised Statutes: "No Indian nation or tribe, within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired."

From the foregoing it appears that even if the treaty of July 16, 1855, should have contained a provision reserving the reservation in common for the use of your tribe of Indians, the power would still remain in Congress, by subsequent legislation, to abrogate a provision of this character.

The Office desires to suggest, however, that the loss, if any, resulting to the Flathead Tribe of Indians, by reason of having their reservation thrown open to settlement, is more than fully compensated by the inestimable benefits derived from the effect of civilization and contact with white settlers, resulting from the opening of this reservation for settlement.

You should look upon this as a distinct gain to the individual members of your tribe, rather than a loss.

Very sincerely,

Acting Commissioner.

JHB