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SENATE

{ REPORT
No. 1051

AUTHORIZING THE SHOSHONE TRIBE OF INDIANS OF THE WIND RIVER RESERVATION IN WYOMING TO SUBMIT CLAIMS TO THE COURT OF CLAIMS

JUNE 9, 1926.—Ordered to be printed

Mr. KENDRICK, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S 2301]

The Committee on Indian Affairs, to whom was referred the bill (S. 2301) authorizing the Shoshone tribe of Indians of the Wind River Reservation in Wyoming to submit claims to the Court of Claims having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

Strike out all of section 1 following the enacting clause and substitute in lieu thereof the following:

That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party, notwithstanding the lapse of time or statutes of limitation, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims which the Shoshone tribe of Indians of the Wind River Reservation in the State of Wyoming may have against the United States arising under or growing out of the treaty of July 3, 1868 (15 Stat. 673), or arising under or growing out of any subsequent treaty or agreement between said Shoshone tribe of Indians and the United States or any subsequent act of Congress affecting said tribe, which claims have not heretofore been determined and adjudicated upon their merits by the Court of Claims or the Supreme Court of the United States.

Page 2, line 23, after the word "payment" insert the words "including gratuities."

Strike out all of section 4 and substitute in lieu thereof the following:

If it be determined by the court that the United States in violation of the terms and provisions of any law, treaty, or agreement, has appropriated or disposed of any lands, money or other property belonging to the Indians, damages therefor shall be confined to the value of the money, lands or other property at the time of such appropriation or disposal, together with interest thereon at 5 per centum per annum from the date thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court

shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Shoshone Indians in and to such money, lands, or other property.

Strike out all of section 5 and substitute in lieu thereof the following:

Upon final determination of such suit or suits the Court of Claims shall have jurisdiction to fix and determine a reasonable fee, not to exceed ten per centum of the recovery, together with all necessary and proper expenses incurred in preparation and prosecution of the suit, to be paid to the attorneys employed by said Shoshone Tribe of Indians, and the same shall be included in the decree and shall be paid out of any sum or sums found to be due said tribe.

The report of the Department of the Interior under date of April 22, 1926, is attached hereto and made a part of this report.

There are also attached hereto letters which appeared in House Report No. 775, Sixty-fourth Congress, as expressing the opinion of the Department of the Interior under date of January 28, 1913, and January 29, 1914.

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THE SECRETARY OF THE INTERIOR,
Washington April 22, 1926.

Hon. J. W. HARRELD,
Chairman Committee on Indian Affairs, United States Senate.

MY DEAR SENATOR HARRELD: Reference is again made to your letter of January 11, 1926, inclosing for a report a copy of S. 2301, a bill authorizing the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming to submit claims to the Court of Claims.

The principal claim of the Shoshone Indians is based upon the treaty concluded at Fort Bridger, Utah Territory, July 3, 1868 (15 Stat. L. 673), and the purpose of the bill is to confer jurisdiction on the Court of Claims to hear and determine the legal and equitable claims against the United States at that the Shoshone Tribe of Indians believe arise from this article.

Under article 2 of this treaty the United States removed the Arapahoe Indians to the reservation set apart for the Shoshone Tribe. Article 11 of the above treaty provided that no treaty of cession of any portion of the reservation should be of any force or validity unless executed and signed by at least a majority of the adult male Indians occupying or interested in the same. The Shoshones claim that they were not willing and have never given their consent to the location of the Arapahoes on their reservation.

The Shoshone Indians complained on various occasions of the Arapahoes being located on their reservation and of their being permitted to share in the distribution of reservation lands and moneys. Since the Arapahoes were placed on this reservation they appear to have been permitted to share equally with the Shoshones in the lands and moneys of the reserve. There is nothing in the records to show the value of the lands involved or the approximate amount that might be recovered. It is believed, however, that the amount would be half the value of the lands of the reservation and half the benefits derived therefrom. In order to arrive at anything definitely approximate in this regard it will require considerable time and an accounting by the General Accounting Office.

It is recommended that S. 2301 not receive your favorable consideration. The Director of the Bureau of the Budget has reported that the proposed legislation is in conflict with the financial program of the President.

Very truly yours,

E. C. FINNEY, *Acting Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, January 28, 1913

Hon. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs, House of Representatives.

SIR: I have the honor to acknowledge receipt of your communication dated January 17, 1913, transmitting for report a copy of H. R. 27001, Sixty-second Congress, third session,

The purpose of the bill is to confer jurisdiction on the Court of Claims to hear and determine all legal and equitable claims of the Shoshone Tribe against the United States and the Arapahoe Tribe of Indians.

The principal claim of the Shoshone Indians is based on the alleged violation by the United States of article 2 of the treaty with the Eastern Band of Shoshone and Bannock Indians concluded at Fort Bridger, Utah Territory, on July 3, 1868, ratified February 26, 1869 (15 Stat. L. 673), and proclaimed February 24, 1869, as follows:

"ART. 2. * * * The United States further agrees that the following district of country, to wit, commencing at the mouth of Owl Creek and running due south to the crest of the divide between the Sweetwater and Papo Agie Rivers; thence along the crest of said divide and the summit of Wind River Mountains to the longitude of North Fork of Wind River; thence due north to mouth of said North Fork and up its channel to a point 20 miles above its mouth; thence in a straight line to headwaters of Owl Creek and along middle of channel of Owl Creek to place of beginning, shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will and do hereby relinquish all title, claims, or rights in and to any portion of the territory of the United States, except such as is embraced within the limits aforesaid."

The Shoshones claim that they have never been willing and have never given their consent to the Arapahoes being located on the reservation set apart for the Shoshones in the treaty cited.

The Commissioner of Indian Affairs, in his annual report for 1877, on page 19, said:

"In accordance with their earnest request made to the President during the recent visit of the delegation to this city, permission was given the Northern Arapahoes to join the Shoshones on the Wind River Reserve in Wyoming. In a formal council held last month by Agent Irwin with the Shoshones their consent to the arrangement desired by the Arapahoes was obtained, and the removal of the latter is now in progress."

The records show that on October 4, 1877, United States Indian Agent James Irwin was directed to proceed to the Shoshone Reservation to consult the Indians there for the purpose of gaining their consent to the removal of the Arapahoes, both tribes to be under the care of one agent. On October 17, 1877, Agent Irwin wired the Indian Office from the Red Cloud Agency that he had returned from the Shoshone Agency, where he "held council and made peace between the Arapahoes and Shoshones. Settlers are well pleased. Will report as early as possible."

I am advised by the Indian Office that a very careful search has been made of its files, but no further report on the subject was received from Agent Irwin, and that in fact nothing has been found which would indicate that the Shoshones at that or any future time gave their consent to the temporary or permanent location of the Arapahoes on the reservation. As a matter of fact, the records indicate that the Shoshones were and have been opposed thereto.

In his report of February 21, 1878, James I. Patten, United States Indian agent, Shoshone and Bannock Agency, Wyo. T., said, in referring to the proposed removal of the Arapahoes to the reservation, that there was a large majority of the tribe, including Washakie, the chief, and nearly all of the leading men, who strongly objected to their coming and to dividing the reservation with any other tribe; that the Shoshones did agree and were at that time willing to make peace with the Arapahoes, but wanted them placed on a reservation apart, giving as their reason that the reservation at that time was none too large for the use of the Shoshones, and, further, that the Shoshones were afraid that the two tribes would not agree well together; that Agent Irwin, in his council held with the Shoshones the preceding fall, told them distinctly that the President had not the remotest thought of placing the Arapahoes on the reservation, but that all that was desired was for the Shoshones to make peace with them, and that the department would set apart a tract of land for the Arapahoes near the mouth of Sweetwater River. Mr. Patten said also that he had been led to make the foregoing

statements by reason of the item contained in the annual report of the Commissioner of Indian Affairs for 1877, *supra*. Agent Patten also, in his report, quoted from a personal letter received by him, under date of December 8, 1877, from former Agent James Irwin, as follows:

"I see that William Welch and others in Philadelphia are getting up a scheme to put the Arapahoes on the Shoshone Agency. Now, this must not be without the Shoshones are agreed, and even then it is not fair. The Shoshone Reservation belongs to them as much as any man's farm belongs to him, and it is just as fair to say to a white man who has a title to his farm that he shall give another man half of it. William Welch is a good man, but he is always getting his foot in it. But I want you to protect the Shoshones from all encroachments in every direction. The Arapahoes should have a reservation, but the Government has no right to filch it off the Shoshones, and I would like you to tell the Shoshones to spurn any such proposition as an outrage upon them and their rights. The President promised the Arapahoes a reservation at the Red Buttes, including the mouth of Sweetwater, and that is what the Arapahoes wanted; and that the agent of the Shoshones should be their agent, and that is all right, and all the President will ask to have done. I take it for granted that you know of William Welch's meeting in Philadelphia proposing to put the Arapahoes on the Shoshone Reservation and open a mission school."

The department has considered that the Arapahoes had equal rights with the Shoshones to the lands on the reservation, assuming that the Shoshones had impliedly consented to the Arapahoes being located on the reservation in accordance with article 2 of the treaty of July 3, 1868, *supra*, by acquiescing in the arrangement.

In a letter of August 13, 1891, addressed to J. D. Woodruff, chairman of the commission appointed to negotiate with the Indians of the Shoshone Reservation for the surrender of a part of the reservation, the Indian Office said:

"Your attention is called to the second article of the treaty with the Shoshones and Bannocks under which the Wind River Reservation was set apart, made July 3, 1868 (15 Stat. 673), which provides that the said reservation should be set apart for the following purpose, to wit: 'The absolute and undisturbed use and occupation of the Shoshone Indians herein named, and for such other friendly or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them.'

"This office holds, as indicated in the inclosed copy of letter to the department, that the Arapahoes have equal rights to the land on the said reservation which does not depend upon the further consent of the Shoshones, and you should conduct your negotiations with them upon that basis and with that understanding."

The letter of August 13, 1891, to Mr. Woodruff, and the Indian Office letter of January 20, 1891, to the department, referred to in the communication addressed to Mr. Woodruff, are printed in House Executive Document No. 70, Fifty-second Congress, first session. It does not appear, however, that the Shoshones have ever expressly agreed that the Arapahoes should be located on the reservation and permitted to share in the lands.

The Shoshone Indians have, on various occasions, complained of the Arapahoes being located on their reservation and of being permitted to share in the distribution of lands and moneys. The department is of the opinion that the Shoshone Tribe of Indians has established a *prima facie* case against the United States and that it should be permitted to have its claim adjudicated by the Court of Claims.

The bill under consideration provides that suit shall be brought against the United States and the Arapahoe Tribe of Indians. The department sees no necessity for making the Arapahoes a party to any suit which may be authorized, as these Indians appear to be in nowise at fault, and the tribe was sent to the Shoshone Reservation by the United States Government. It would be a mistake under these conditions to make the Arapahoes parties defendant to any suit of the Shoshones against the United States, and hence it is recommended that the bill be so amended as to eliminate that feature thereof. To accomplish that the following amendments will be necessary:

1. Strike out, in lines 6 and 7, page 1, the words "and against the Arapahoe Tribes of Indians residing on said reservation."
2. Strike out, in line 9, page 2, the words "or from said Arapahoe Tribe."
3. Strike out, in line 14, page 2, the words "and against said Arapahoe Tribe."
4. Strike out, in line 16, page 2, the words "or said Arapahoe Tribe."
5. Strike out, in line 21, page 2, the words "and of said Arapahoe Tribe."
6. Strike out, in line 25, page 2, the words "and against said Arapahoe Tribe."
7. Strike out, from lines 3 and 4, page 3, the words "and said Arapahoe Tribe."

8. Strike out, in line 4, page 3, the word "parties" and insert in lieu thereof the word "party."

9. Strike out, beginning with the word "and," in line 13, page 3, down to and including the word "tribe," in line 18, page 3.

There should be some provision as to the use to be made of any money that may be recovered in this case, and it is suggested that in order to cover this point there be added to the bill, after the word "causes," in line 4 of page 4, the words: "Provided further, That all sums of money which may be found to be due and recovered for the Shoshone Tribe of Indians under the provisions of this act, less attorney's fees, shall be placed to the credit of said Indians in the Treasury of the United States at 5 per cent interest, and may be paid to the members of the tribe per capita or expended for the benefit of the tribe, in the discretion of the Secretary of the Interior."

Respectfully,

SAMUEL ADAMS, *Acting Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, January 29, 1914.

MY DEAR MR. STEPHENS: I have the honor to acknowledge receipt of your communication dated January 19, 1914, transmitting a copy of H. R. 34 and requesting that the department submit a report thereon for the use and information of your committee.

The purpose of the bill is to authorize the Shoshone Tribe of Indians residing on the Wind River Reservation, Wyo., to submit claims to the Court of Claims for adjudication. A somewhat similar bill, H. R. 27001, was introduced in the Sixty-second Congress, third session, and a report thereon setting out the basis of the claim of this tribe of Indians was made by the department on January 28, 1913. In its report, a copy of which is inclosed, the department expressed the opinion that the Shoshone Tribe had established a prima facie case against the United States, and that it should be permitted to have its claim adjudicated by the Court of Claims. Certain amendments were suggested. Afterwards, on February 12, 1913, another bill, H. R. 28742, was introduced in the Sixty-second Congress, third session, which contained the amendments suggested in departmental report of January 28, 1913.

H. R. 34, Sixty-third Congress, is identical with H. R. 28742 of the Sixty-second Congress. For the reasons given in department letter of January 28, 1913, it is suggested that the bill receive the favorable consideration of your committee.

Very truly yours,

A. A. JONES,
First Assistant Secretary.

HON. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs, House of Representatives.



