

PATENT TO DEL NORTE COUNTY, CALIF., TO WHALER ISLAND FOR PUBLIC WHARF

FEBRUARY 9, 1927.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

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

REPORT

[To accompany H. R. 16555]

The Committee on the Public Lands, to whom was referred the bill H. R. 16555, having considered the same, report thereon with a recommendation that it do pass.

This bill authorizes the issuance of a patent to Del Norte County for Whaler Island, located in Crescent City Bay on the Pacific Ocean, Calif., for purposes of a public wharf.

The river and harbor appropriation bill, which recently passed Congress, provided for the extension of a breakwater to protect the harbor in this bay.

Whaler Island is composed entirely of rock, and has an area of about 3 acres. It serves in part as a breakwater to protect the harbor, and its rock is suitable for use in jetty construction. It is located between the end of the jetty and the shore. The intervening waters between the island and the shore are of a shallow depth that permit the construction of a causeway from the island to the shore. Stone from the top of the island would be suitable for this purpose. This causeway would also serve as a sand barrier and a breakwater for the harbor.

The island extends to deep water on two sides. Local interests desire the island for the purposes of a public wharf. The bill authorizes the transfer for this limited purpose. The bill does not authorize the transfer of an unrestricted title, but is subject to the limitation for public-wharf purposes. Under the laws of California a public wharf is subject to use by all commerce, and rates thereon are subject to regulation by a utility commission.

On the 11th day of January, 1927, Eric Lyders, an attorney at San Francisco, filed in a California land office an application for

the selection of said island as an assignee of the assigns of Thomas B. Valentine scrip. Subsequently this bill was filed, and thereafter the President made an order withdrawing this island from entry pending legislation by Congress as provided by law. Mr. Lyders claims that the filing of his application created in him a vested right to the island of which he can not be deprived by action of Congress.

This island, located in the harbor, should not be in private hands where it could be so managed as to interfere with the proper protection and development of the harbor, and with the best administration of the harbor facilities for the benefit of public commerce. Crescent City is a harbor through which it is anticipated very large quantities of Government-owned timber from the forest reservations will eventually be shipped to market. Proper wharf facilities would serve this purpose. Its use as a protection to the harbor and for public purposes can be preserved by the conveyance authorized by this bill.

Del Norte County has paid \$245,000 toward development of this harbor. Its moral claims to the island, to be used for the benefit of the public, are superior to those of an applicant, whose manifest purpose is speculative.

This island is unsurveyed public land, and manifestly the Government, notwithstanding the application, should retain the power to apply it to public purposes, such as a public wharf.

The equities are in favor of the public interest. The private claimant should not succeed in his application unless lawful reasons require it. The courts are open to protect the lawful right, if any, of the applicant, notwithstanding this action of Congress.

The report of the Secretary of War is as follows:

FEBRUARY 3, 1927.

Hon. N. J. SINNOTT,

*Chairman Committee on the Public Lands,
House of Representatives, Washington, D. C.*

DEAR MR. SINNOTT: I have the honor to reply to your letter of the 27th ultimo requesting report on House bill No. 16555, "Authorizing the Secretary of the Interior to issue patent to the county of Del Norte, State of California, to Whaler Island, in Crescent City Bay, Del Norte County, Calif., for purposes of a public wharf."

Whaler Island is located in Crescent City Harbor about 2,300 feet from the mainland, and has a rocky area of approximately five acres. It is understood to be unsurveyed public land under the control of the Department of the Interior. The island is considered by local interests an appropriate site for municipally-owned wharves and terminals, and the bill authorizes its transfer to the county of Del Norte for public wharf purposes. Such transfer is not objectionable from the standpoint of the work of harbor improvement in charge of this department, and I am aware of no reason why the bill should not receive favorable consideration.

Representative Lea's letter to your committee is herewith returned.

Sincerely yours,

DWIGHT F. DAVIS,
Secretary of War.

The report of the Secretary of the Interior is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, February 4, 1927.

Hon. N. J. SINNOTT,

*Chairman Committee on the Public Lands,
House of Representatives.*

MY DEAR MR. SINNOTT: I am in receipt of your request dated January 25, 1927, for a report on H. R. 16555, entitled "An act authorizing the Secretary of the Interior to issue patent to the County of Del Norte, State of California,

to Whaler Island, in Crescent City Bay, Del Norte County, Calif., for purposes of a public wharf."

On January 6, 1927, Eric Lyders, post-office address 200 Bush Street, San Francisco, Calif., filed application for Whaler Island, in the Pacific Ocean, situated about 1 mile southeast of the Crescent City Lighthouse; also described by metes and bounds and as containing 2.7 acres, approximately, in sec. 33, T. 16 N., R. 1 W., Humboldt meridian, California.

The applicant surrendered an unused portion of special certificate E-86 issued to Thomas S. Valentine under the act of April 5, 1872 (17 Stat. 649). Notice for publication has been issued by the district land office. No patent can issue until a plat of survey has been filed and no application for the survey of the land has been received in the General Land Office.

I am in receipt of a request dated January 27, 1927, from the Secretary of War to withhold approval of the scrip application until opportunity has been afforded the War Department to determine whether the island will be useful in connection with the improvement of Crescent City Harbor.

The request was accompanied by a map of Crescent City Harbor, Calif., published in connection with House Document 595, Sixty-ninth Congress, second session, showing the completed and projected harbor improvements under construction by the Corps of Engineers, United States Army.

By Executive order of January 28, 1927, the lands were withdrawn from disposal subject to prior valid existing rights, if any, under the provisions of the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497).

In view of the possible need of this island for use in connection with the improvement of the harbor, I suggest a reference of the bill to the Secretary of War.

Very truly yours,

HUBERT WORK.


