



1904

Law of 1891 (Kappler)

Charles J. Kappler
Senate Committee on Indian Affairs

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58TH CONGRESS, }
2d Session. }

SENATE.

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INDIAN AFFAIRS.

LAWS AND TREATIES.

Vol. I.

(LAWS.)

Compiled to December 1, 1902.

COMPILED AND EDITED

BY

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CLERK TO THE SENATE COMMITTEE ON
INDIAN AFFAIRS.

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SEC. 23. The following agreement, entered into on behalf of the United States, by John V. Wright, Jared W. Daniels, and Charles F. Larrabee, Commissioners, on December fourteenth, eighteen hundred and eighty-six, with the Indians of the Fort Berthold Agency, North Dakota, and now on file in the Interior Department, signed by said Commissioners on the part of the United States and by Pa-des-a-hish and others on the part of the Gros Ventres; and by Wo-ka-se and others for the Mandans and Kun-nukh-to-wite and others on the part of the Arickarees, and is in the following words, to wit:

[26 Stat., 1032.]
Agreement with Indians at Fort Berthold Agency.

Proclamation, post, p. 948.

“This agreement made pursuant to an item in the act of Congress entitled “An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes,” approved May fifteenth, eighteen hundred and eighty-six, by John V. Wright, Jared W. Daniels, and Charles F. Larrabee, duly appointed commissioners on the part of the United States, and the Arickaree, Gros Ventre, and Mandan tribes of Indians, now residing on the Fort Berthold Reservation, in the Territory of Dakota, by the chiefs, headmen, and principal men, embracing a majority of all the adult male members of said tribes, Witnesseth that whereas it is the policy of the Government to reduce to proper size existing reservations when entirely out of proportion to the number of Indians existing thereon, with the consent of the Indians, and upon just and fair terms; and whereas the Indians of the several tribes, parties hereto, have vastly more land in their present reservation than they need or will ever make use of, and are desirous of disposing of a portion thereof in order to obtain the means necessary to enable them to become wholly self-supporting by the cultivation of the soil and other pursuits of husbandry:

Agreement.

Preamble.

Therefore, it is hereby agreed and covenanted by the parties to this instrument, as follows:

ARTICLE I.

ARTICLE I.

The Arickaree, Gros Ventre, and Mandan tribes of Indians, parties hereto, hereby cede, sell, and relinquish to the United States all their right, title, and interest in and to all that portion of the Fort Berthold Reservation, as laid down upon the official map of the Territory of Dakota, published by the General Land Office in the year eighteen hundred and eighty-five, lying north of the forty-eighth parallel of north latitude, and also all that portion lying west of a north and south line six miles west of the most westerly point of the big bend of the Missouri River, south of the forty-eighth parallel of north latitude.

Lands ceded.

Description.

ARTICLE II.

ARTICLE II.

In consideration of the foregoing cession and relinquishment the United States shall advance and expend, under the direction of the Secretary of the Interior, the sum of eighty thousand dollars (\$80,000), annually, for the period of ten (10) years from and after the ratification of this agreement, for such purposes and in such manner as shall best promote the civilization and well-being of said Indians, and as hereinafter provided.

Annual expenditure for Indians.

ARTICLE III.

ARTICLE III.

It is further agreed that the Secretary of the Interior shall cause the lands embraced within the diminished reservation, or such portion thereof as may be necessary, to be surveyed and, either through the agent, or such other person as he may designate, allot the same

Allotment in severalty.

in severalty to the Indians of the several tribes, parties hereto, in quantity as follows:

Quantities.

To each head of a family, one hundred and sixty acres.

To each single person over eighteen years of age, eighty acres.

To each orphan child under eighteen years of age, eighty acres.

To each other person under eighteen years of age, forty acres.

Proviso.

Selection.

Provided, That all allotments made under the provisions of this agreement shall be selected by the Indians, heads of families selecting for their minor children, and the agent shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selections, if they so desire.

ARTICLE IV.

ARTICLE IV.

Trust patents to issue.

That upon the approval of the allotments provided for in the foregoing article by the Secretary of the Interior, he shall cause patents to issue therefor, in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs, according to the laws of the Territory of Dakota, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs as aforesaid in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void.

Conveyance in fee.

Proviso.
Descent, etc.

Provided, That the laws of descent and partition in force in said Territory shall apply thereto after the first patents therefor have been executed and delivered.

ARTICLE V.

ARTICLE V.

Extension of Dakota laws.

That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of said tribes to whom allotments have been made shall have the benefit of and be subject to the laws of the Territory of Dakota in all offenses the penalty of which is death or imprisonment in the penitentiary; and said Territory shall not pass or enforce any law denying any such Indian the equal protection of the law.

ARTICLE VI.

ARTICLE VI.

Remaining lands to be held in trust for tribes.
Modified, post, p. 428.

Conveyance in common.

Proviso.
Conveyance to children.

That the residue of lands within said diminished reservation, after all allotments have been made as provided in Article III of this agreement, shall be held by the United States for the period of twenty-five (25) years, in trust, for the sole use and benefit of said tribes of Indians, and at the expiration of said period the United States will convey the same by patent to said tribes in common, in fee, discharged of said trust and free of all charge or incumbrances whatever: *Provided*, That from the residue of said lands thus held in trust allotments shall be made and patented to each child of said tribes who may be born prior to the expiration of the time during which it is provided that said lands shall be held in trust by the United States, in quantity and upon the same conditions, restrictions, and limitations as provided in Article IV touching patents to allottees therein mentioned; but such conditions, restrictions, and limitations shall not extend beyond the expiration of the period during which the lands owned by the Indians in common are held in trust by the United States.

ARTICLE VII.

ARTICLE VII.

It is further agreed that the sum of twelve thousand dollars (\$12,000), or so much thereof as may be necessary, of the first installment of eighty thousand dollars provided for in Article II of this agreement, shall be expended in the removal of the agency buildings and property to a more suitable locality, in needed repairs, and in the erection of such new buildings as may be required: *Provided*, That in the opinion of the Secretary of the Interior the removal of the agency from its present site is desirable. And the balance of said installment, and each subsequent annual installment, shall be expended, except as hereinafter provided, in the purchase of goods, provisions, agricultural and mechanical implements, in providing employees, in the education of Indian children, procuring medicine and medical attendance, in the care and support of the aged, sick, and infirm, and helpless orphans of said Indians, and in any other respect to promote their civilization, comfort, and improvement; and the wishes of said Indians shall be consulted, and govern, so far as practicable, in the expenditure of said money. And in the employment of farmers, artisans, and laborers preference shall in all cases be given to the Indians residing on the reservation who are properly qualified for such positions.

New buildings, etc.

Provisos.

Purchase of goods etc.

Employment of Indians.

Assistance to Indians for self-support.

In order to assist the Indians in settling upon their individual allotments, and encourage them in their efforts at self-support, it is further agreed that each family and male Indian over eighteen years of age, when he shall in good faith commence the cultivation of his individual allotment with the intention of residing permanently thereon, shall be assisted in the erection of a comfortable house, and be provided with one cook-stove, one yoke of work oxen, one breaking plow, one stirring plow, one cow, one wagon, one axe, one hoe, one spade, one hand-rake, one scythe, and one pitch-fork; or, in lieu of any of said articles, such other useful and proper articles as they may require, in the discretion of the Commissioner of Indian Affairs, the cost thereof to be paid out of the funds advanced as per Article II of this agreement: *Provided further*, That whenever in the opinion of the President the annual installment of eighty thousand dollars provided for in the first article of this agreement shall be found to be in excess of the amount required to be expended in any one year in carrying out the provisions of this agreement so much thereof as may be in excess of such requirement shall be placed to the credit of said Indians in the Treasury of the United States and expended in continuing the benefits herein provided for when said annual installments shall have expired.

Disposal of surplus of installments.

ARTICLE VIII.

ARTICLE VIII.

Hereafter no subsistence shall be furnished any adult male Indian (the aged, sick, and infirm excepted) who does not endeavor by honest labor to support himself, nor to children between the ages of eight and fifteen years (the sick and infirm excepted), unless such children shall regularly attend school.

Subsistence.

ARTICLE IX.

ARTICLE IX.

The outboundaries of the diminished reservation shall be surveyed and marked in a plain and substantial manner, the cost thereof to be paid out of the first annual installment provided for in Article II of this agreement.

Survey of boundaries.

ARTICLE X.

ARTICLE X.

This agreement shall not be binding on either party until ratified by Congress.

Effect.

	Dated and signed in open council at Fort Berthold Agency, in the Territory of Dakota, December fourteenth, eighteen hundred and eighty-six;"
Ratification.	Be, and the same is hereby, accepted, ratified, and confirmed except
Modification of Article VI.	as to article six thereof, which is modified and changed on the part of the United States so as to read as follows: "That the residue of lands within said diminished reservation, after all allotments have been made as provided in article three of this agreement, shall be held by the said tribes of Indians as a reservation;" and as so modified said agreement is accepted and confirmed: <i>Provided</i> , That this act shall take effect only upon the acceptance of the modification and changes made by the United States as to article six of the said agreement by the said tribes of Indians in manner and form as said agreement was assented to, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that the said acceptance and consent have been obtained in such manner and form.
Residue to be held as reservation. Proviso.	
Acceptance of modification.	
First installment.	SEC. 24. That for the purpose of carrying out the terms of said agreement the sum of eighty thousand dollars is hereby appropriated, to be immediately available.
Lands ceded to be open to homestead entry only.	SEC. 25. That whenever any of the lands acquired by this agreement hereby ratified and confirmed shall, by operation of law or proclamation of the President of the United States, be open to settlement, they shall be disposed of to actual settlers only under the provisions of the homestead laws, except section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply: <i>Provided, however</i> , That each settler on said lands shall, before making final proof and receiving a certificate of entry pay to the United States for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry the sum of one dollar and fifty cents for each acre thereof, one-half of which shall be paid within two years; but the rights of honorably discharged Union soldiers and sailors as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged except as to the sum to be paid as aforesaid.
R. S., sec. 2301.	
Proviso.	
Additional payment.	
Soldiers and sailors.	
R. S., secs. 2304, 2305.	
Agreement with Sisseton and Wahpeton Sioux Indians ratified.	SEC. 26. That the following agreement entered into on behalf of the United States by Eliphalet Whittlesey, D. W. Diggs, and Charles A. Maxwell, commissioners on the part of the United States, on the twelfth day of December, eighteen hundred and eighty-nine, with the Sisseton and Wahpeton bands of Dakota or Sioux Indians now on file in the Department of the Interior, signed by said commissioners for the United States, and for said Indians by Simon Ananangmari and others, is hereby accepted, ratified, and confirmed, and is in the following terms, to wit: " <i>a</i>
Preamble.	"Whereas, by section five of the act of Congress entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes,' approved February eighth, eighteen hundred and eighty-seven, it is provided 'That at any time after lands have been allotted to all the
Ante, p. 33.	

^a Previous legislation relative to the Sisseton and Wahpeton bands of Sioux is found in the acts of March 3, 1863 (12 Stat., 803), providing for the sale of their reservation and that the Indians should be subject to the laws of the United States; the act of July 15, 1870 (16 Stat., 361), amendatory of the preceding act; the act of June 2, 1872 (17 Stat., 281), authorizing the Secretary of the Interior to determine their right to the lands occupied by them, and the act of June 22, 1874 (18 Stat., 167), confirming an agreement of 1872 whereby their title was relinquished.

Subsequent acts are June 7, 1897 (post, p. 620), authorizing leases for grazing purposes; July 1, 1898 (post, p. 666), requiring leases to be approved by the Secretary of the Interior and declaring subleases void; March 1, 1899 (post, p. 686), regulating attorneys' contracts, and March 3, 1901 (post, p. 742), referring claims of loyal members of these bands to the Court of Claims.