

E.H.M.

DEPARTMENT OF THE INTERIOR,
WASHINGTON.

71010
January 30, 1909.

Honorable Edward L. Hamilton,
Chairman, Committee on Territories,
House of Representatives.

Sir:

Supplemental to my letters of January 27th and 28th concerning an enabling act for the Territories of New Mexico and Arizona, and pursuant to verbal conversation held at your instance with Governor Kibbey, I call attention to the following matters:

Section 6 on page 8 should be amended by substituting for the words in lines 16 and 17 which read: "that Sections 16 and 36 heretofore reserved for the Territory of New Mexico," the following words:

"that in addition to Sections 16 and 36 heretofore granted to the Territory of New Mexico,"

I suggest also that the Sections 13 and 36 throughout Section 6 should be changed to 2 and 32.

The last proviso of Section 6 beginning in line 14, page 9 should be amended as indicated for the similar proviso in Section 24.

I will make my further suggestions for the part of the bill which relates to Arizona with the understanding that they

are equally applicable to the provisions for New Mexico.

The word "purchased" in line 7 page 23 should be "acquired." Lines 11, 12 and 13 of page 23 should be amended by inserting after the word "property" in line 11 the words: "outside of any Indian Reservation"; and by striking out the following: "who has severed his tribal relation and has obtained from the United States and from any person a title thereto by patent or other grant." Otherwise the law would seem to allow a reservation Indian, perhaps as a dummy representative of some white man, to acquire property outside of his reservation, and if he has not severed his tribal relations, hold the property without paying taxes.

The word "temporarily" should be omitted from line 12, page 24 since it might be misleading, the right to change the capital after 1920 having been definitely granted in subsequent lines. Between lines 1 and 2, page 26, there should be inserted the following:

"and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

I draw attention to Section 24 in which there is a grant of sections 13 and 33. The Santa Fe Railroad from Albuquerque in New Mexico westward to the western boundary of Arizona has already a vested right to the odd sections for a distance of twenty miles on each side of its tracks. This of course includes sections 13 and 33. For that reason neither of the States would be entitled to these sections in place within the granted limits of the company, but would be obliged to take indemnity for them elsewhere. The

reason which causes grants of school sections to be made so that they are not contiguous, is to prevent the possibility of disposing of large areas in solid blocks, the object being as far as possible to dispose of the public lands to homemakers in areas only sufficiently large to support a family in reasonable comfort. For that reason Congress has avoided the indemnity selection right as far as possible in earlier grants of school sections to States. Thus Sections 16 and 36 were probably selected as being even sections and for that reason more likely to be taken by the State in place. Utah also received a grant of four school sections because of the low value of its great extent of arid land, in which particular it resembled Arizona and New Mexico. The two sections in addition to 16 and 36 granted to Utah were 2 and 32, the reason evidently being to prevent the possibility of selecting indemnity in large blocks which would have been the necessary result of granting odd sections like 13 and 33. The interest of the government would then seem to be that even sections be substituted for 13 and 33. Arizona and New Mexico would also be in better position by having sections like 2 and 32 instead of these odd sections because they could not probably find better land in its natural condition outside the railroad limits and the proximity of their land to the railroad will be a direct advantage. I suggest therefore that in Sections 6 and 24 the expression 2 and 32 be substituted wherever "Sections 13 and 33" are found.

The last proviso of Section 21 beginning in line 3 of

page 28 has been written in different words from those suggested by me in my letter of January 28th. The form used is much shorter and for that reason would be better if it were not for the following difficulty: the provision as printed provides for a flat rate of fifteen per cent to the State, but nevertheless leaves them their option of making indemnity selections. Thus it would be possible for the State to make indemnity selections for practically all their school sections within National Forests and still continue to receive fifteen per cent of the proceeds. I am still inclined to believe that the proviso as suggested in my letter is sufficiently clear to prevent chance of misunderstanding, and that it might be used in place of the printed proviso to advantage. If this is not done, however, it will be necessary to insert after the word "State" in line 17 of page 28 the following:

"Said fifteen percentum however to be reduced at the end of each fiscal year in proportion to the reduction of the area of said sections originally in national forests, by all indemnity selections which may have been made by the State for said sections in said forests prior to the close of the respective fiscal years, the area of said sections when unsurveyed to be determined by the Secretary of the Interior by protraction or otherwise."

With this change it would meet the situation.

Upon further thought I would suggest that "fifteen percentum" in line 16 be made to read "twenty percentum." This, to be sure, would apparently give the State nearly double its pro rata share of the proceeds. There are several reasons, however, which would reduce this apparently large ratio over the possible return to the State from the same land if it were administering the

land itself:

1. The ratio of the State land to the actual forest land is always greater than one-ninth because all National Forests include within themselves more or less private holdings which are continually increasing, - among other reasons because they are subject to mineral entry.

2. For reasons of equity and policy the charges for grazing and other uses of the forests, except timber cutting, are and will be less than what might be exacted by others than the government. Thus the charges for grazing permits on Indian land contiguous and similar to forest reserve land is three or four times greater. Other States also receive similarly a greater return for their land which they lease.

3. The timber is cut from National Forests with less rapidity than from private or State lands for the reason that the forests are, by specific direction of law, created not only to furnish a timber supply but also to conserve the water flow.

All these and other considerations reduce the income from National Forests below that which even a careful private owner would secure. On the other hand, the arrangement of this proviso is very advantageous to the State because it makes it possible for the State to treat the returns from timber cutting as income instead of principal, and will ensure an almost certain and steadily increasing income.

Another change should be made after the word "sections"

in line 12 of page 28 by inserting the words: "so left in the National Forests."

In line 5 page 32 you have omitted the word "survey" immediately after the word "unreserved." There have been so few surveys in the State that at first glance this omission would seem to be for the best interest of the State. However, there are many difficulties, some of them disadvantageous to the grantee:

1. The grant does not include mineral land. The government depends to a considerable extent on its surveys to determine what land is and is not mineral. Therefore when a State applies for a large tract of unsurveyed land it would be necessary for the Secretary of the Interior to make an exhaustive investigation to make sure that none of the land is mineral. This would cause delay which would be increased by difficulties arising from the discovery of any mineral tracts within the area applied for. A survey would then be necessary in order to identify the mineral areas and exclude them from the patent to the State.

2. It would be necessary to do some surveying in order to identify the exterior limits of the area applied for. This would be another cause of delay and annoyance.

3. It would be impossible under existing law to patent the land to the State with a reservation of mineral land.

4. The various difficulties mentioned above would probably decrease considerably the price obtained by the State.

I feel confident that Congress will appropriate

specifically additional funds for surveying areas desired by the State. At the time of such surveys the question of the mineral character of the land can be determined and the State can make its selections, and obtain its patent with great facility immediately after the surveys are completed. Thus, too, the government surveys will be extended over the large areas involved, which in itself is desirable.

For that reason I urge that the word "survey" be replaced in line 5.

After the words "surveyor-General" in line 8 page 32 there should be inserted the words: "or other officer exercising the functions of a surveyor-general."

Attention has been called to the provision for a minimum price at which land granted for educational purposes can be sold as indicated in line 20 page 31. I am convinced that the provision for a minimum in these cases is wise. The grants of land for educational purposes are made to create endowment funds. For that reason the land does not need to be sold in order that the entire amount obtained can be used at once for buildings etc. It can be leased for a rental which will approximate the income derivable from the probable selling price. Therefore, although much of the land will be worth less than the minimum price fixed, nevertheless, no hardship will be worked upon the State, and if by changed conditions or the discovery of water supply for irriga-

tion or any other reason the land should enhance in value, the various educational funds will profit by the enhancement. The fact that some or much of the land can not be sold at or above the minimum price is no more objectionable in Arizona and New Mexico than any other States where a minimum price was fixed, because in all States some land must be worth less than the minimum. I hope very much that the committee will deem it wise to leave the provision for a minimum in the bill.

Governor Kibbey has called my attention further to the fact that Sections 16 and 36 amounting to twenty thousand or thirty thousand acres are within irrigation projects, and that they are occupied by persons who have placed more or less improvements upon them. He advocates a provision whereby the legislature may dispose of lands of this nature without exposing them to public sale in order that the legislature may deal equitably with those who have any equitable claims in connection with such lands. I can see no objection to this arrangement especially since not more than two per cent of the inhabitants of the State are directly interested in obtaining these lands at less than their value. It would seem that the other ninety-eight per cent would certainly see to it that no advantage be given to purchasers, beyond those strongly demanded by equity. For that reason I join with Governor Kibbey in suggesting the insertion of the following clause at the end of Section 29:

"Excepting all of such lands which are now and were on the first day of January, 1909, within the exterior limits"

of any district or districts of lands within said State designated by the Secretary of the Interior to be lands that may be supplied with irrigation water from any irrigation works, which have been wholly or in part constructed or acquired, or which are under construction or process of acquisition by the United States under the provisions of an Act of Congress entitled, "An Act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and acts amendatory thereof, and all of such lands for which provision had been made by the occupants thereof prior to January 1, 1909, for the use of water for the irrigation thereof from any public or private source, the right to the use of which is being now exercised under bona fide claim of right thereto, all or any part of which lands may be disposed of by said State in such manner and upon such terms as the Legislature of the State may from time to time prescribe, but at not less than \$25.00 per acre."

Very respectfully,

Secretary.