



WATER-RIGHT DOCKET

Olympic National Park

Docket No: 29

MAKAH MEMORIAL PARK AREA-OZETTE RESERVATION

Land History

04-12-1893: statement regarding the sale of the osette reservation

OSETTE RESERVATION.

EXECUTIVE MANSION, April 12, 1893.

It is hereby ordered that the following-described lands, situated and lying in the State of Washington, viz, commencing at Point Apot-Sloes (Indian name), on the ocean beach about one-half a mile north of the Indian village Osette in Clallam County, said State; thence due east 1 mile; thence due south to the point of intersection with the southern boundary line of the said Indian village extended eastward, and the northern boundary line of Charley Weberhard's claim; thence due west to the Pacific Ocean; thence with the Pacific Ocean to the point of beginning, be, and the same are hereby, withdrawn from sale and settlement and set apart as a reservation for the Osette Indians not now residing upon any Indian reservation: Provided, however, That any tract or tracts, if any, the title to which has passed out of the United States, or to which valid legal rights have attached under existing laws of the United States providing for the disposition of the public domain, are hereby excepted and excluded from the reservation hereby created.

GROVER CLEVELAND.

NOTE: Copied from page 200 of EXECUTIVE ORDERS RE INDIAN RESERVATIONS - May 14, 1855, to July 1, 1912. Filed in Room 1163 of Interior Library, bearing identification "K 82 I4."



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

April 24, 1962

Dear Mr. Aspinall:

Your Committee has requested a report on H. R. 2329, a bill "To acquire lands to construct an approach road into the Ozette Lake region in the Olympic National Park in the State of Washington, and for other purposes."

Subject to certain necessary amendments, we would have no objection to enactment of the bill if the Congress determines such action to be an equitable disposition of a claim by the Makah Tribe that the lands in question should be added to its reservation. The nature of this claim and the basis for our recommended amendments are set forth below.

One amendment which we propose relates to section 1 which authorizes the Secretary to construct an approach road into the Ozette Lake region from a point to be selected by him on State Highway 9B or United States Highway 101. We recommend that this section be amended to authorize a study of the road and a report to Congress. We are not prepared to make a recommendation regarding the construction of the road because the necessary studies have not been made. Detailed studies on the ground are especially important in view of the terrain and the desirability of locating the road in a manner that will not destroy scenic and wilderness values. Moreover, we have no way of estimating the cost of construction until the studies have been made.

Section 2 of the bill relates to the Ozette Indian Reservation. The section adds to the Olympic National Park approximately 719 acres of public land near an old fishing village at the mouth of the Ozette River that were withdrawn and reserved by Executive order dated April 12, 1893, for the use of the Ozette Indians who were not then residing on any Indian reservation. The land is no longer occupied by any member of the class of Indians for whom it was reserved. They are all deceased. This addition to the park will be known as the Makah Memorial Park Area, and the Secretary is required to set aside a location for a Makah Indian Fishing Camp.

The 719 acres of land were originally a part of the general area that was occupied by the Makah Indians, and this general area included several fishing sites that had been used from time to time by the various bands of the tribe.

By the Treaty of January 31, 1855 (12 Stat. 939), the Makah Tribe relinquished all of its interest in the lands formerly occupied by it in return for the establishment of the Makah Reservation on a designated tract of land. The Ozette Indians were a part of the Makah Tribe and when they moved to the Makah Reservation in accordance with the 1855 Treaty they relinquished any tribal claims they might have maintained outside the reservation.

The Executive order of April 12, 1893, that made the fishing village in question available to the Ozette Indians did not make the land a part of the Makah Reservation or set it aside for the Makah Tribe. On the contrary, the Executive order expressly said that the lands were "withdrawn from sale and settlement and set apart as a reservation for the Ozette Indians not now residing upon any Indian reservation", which of course excluded the Indians who were living on the Makah Reservation.

At the present time, there are no living representatives of the class of Ozette Indians for whom the reservation was established. All of the Indians enrolled as Ozettes are now deceased. Most of the families who occupied the reservation as a permanent residence left the site about 1903 when, due to a lack of school facilities, the Government insisted that the children go to school in Neah Bay. These children were subsequently enrolled in other tribes on the Makah Reservation and elsewhere.

On April 13, 1935, two Indians who constituted the total population remaining on the Ozette Reservation voted to accept the provisions of the Indian Reorganization Act of June 18, 1934. They are now deceased and there is no recognized Ozette Tribe or Band of Indians.

No Indians presently reside on the reservation, but some members of the Makah Tribe sometimes use the site for hunting, fishing, and camping purposes.

The Makah Tribe asked the Department to transfer the site to the tribe by Executive order. In an Opinion dated November 12, 1957, (M-36456), the Solicitor of this Department expressed the opinion that this could not be done because (1) the Ozette Reservation was set aside for a class of Indians not residing on the Makah or any other reservation, (2) there are no longer any representatives of the class of Indians designated in the Executive order, and (3) the trust

under the Executive order has been fully carried out, the legal and equitable estates have merged in the United States, and the trust is terminated by operation of law. Public lands cannot now be added to an Indian reservation without an Act of Congress.

On the other hand, it is clear that the land would constitute a most desirable addition to Olympic National Park. It adjoins the Olympic National Park Ocean Strip, and is completely surrounded by National Park lands. The area includes Cape Alava, the westernmost point in the conterminous United States. In addition, it possesses some of the best recreational and educational values along the Ocean Strip and will eventually become a point of great interest to the traveling public. The Ozette Fishing Village contains the richest known archeological remains on the Ocean Strip, according to a survey made by the University of Washington. "Canoe stumps" have been found that are the remains of large trees felled by the Indians for making dugout canoes. The reservation also contains the only source of potable water for some distance in either direction along the shore. Ozette Island, which is the largest island along this stretch of coast, lies to the west of the Ozette Indian Village site. Between the shore and this island is the richest habitat of intertidal marine life adjoining the Olympic Ocean Strip. Another smaller island, known as Indian Island or Cannon Ball Island, because of unusual boulder formations found there, lies closer to the shore of the reservation. The Ozette Reservation is the best shoreline vantage point from which an interesting sea lion colony offshore on a rocky islet can be viewed.

Because of the association which the Makah Indians originally had with the general area, it would be appropriate to designate the addition as the Makah Memorial Park Area and provide an appropriate memorial plaque.

If the Congress should determine that the Makah claim does not constitute a bar to inclusion of the land in Olympic National Park, there would still be a need to clarify the provision of the bill relating to Indian fishing rights. The use of a part of the land by the Makah Indians as a fishing camp, under Secretarial regulations, is unobjectionable, but this provision should not be interpreted as a statutory impairment of any Indian fishing rights under the 1855 Makah Treaty (12 Stat. 939), which provides in Article IV that:

"The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands: Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens."

The amendment recommended above with respect to section 1, and the amendment to clarify Indian fishing rights, can be made as follows:

1. On page 1, line 3, delete the word "construct" and insert in lieu thereof "study the desirability and feasibility of constructing".
2. On page 1, line 6, place a period after "Highway 101", delete the rest of the sentence, and insert the following new sentence: "Within one year after the date of enactment of this Act the Secretary of the Interior shall report to the Congress the results of such study, together with the estimated cost of such a road."
3. On page 2, line 14, add the following new sentence: "Nothing in this section shall be regarded as an impairment of any Indian fishing rights that were granted in the 1855 treaty between the Makah Tribe and the United States (12 Stat. 939)."

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

Assistant

John A. Cann
Secretary of the Interior

Hon. Wayne N. Aspinall
Chairman, Committee on
Interior and Insular Affairs
House of Representatives
Washington 25, D. C.

87TH CONGRESS
1ST SESSION

H. R. 2329

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1961

Mr. WESTLAND introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To acquire lands to construct an approach road into the Ozette Lake region in the Olympic National Park in the State of Washington, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That the Secretary of the Interior is authorized to construct
4 at such location as he finds desirable an approach road into
5 the Ozette Lake region from a point to be selected by him
6 on State Highway 9B or United States Highway 101 and
7 for this purpose he may procure the necessary land and in-
8 terests in land by purchase or donation.

9 SEC. 2. The land that, by Executive order dated April
10 12, 1893, was withdrawn from sale and settlement and set

1 apart as a reservation for the Ozette Indians not then residing
2 upon any Indian reservation, consisting of approximately
3 seven hundred nineteen acres of land, which land is no longer
4 occupied by such Ozette Indians, is hereby added to the
5 Olympic National Park that was established by the Act of
6 June 29, 1938 (52 Stat. 1241), and such land shall be
7 subject to all the laws and regulations that are applicable to
8 other land within the park. The land added to the park
9 by this section of this Act shall be known as the Makah
10 Memorial Park Area and the Secretary of the Interior shall
11 set aside a location for the Makah Indians to fish and, as an
12 incident to such fishing, a camp, to be known as the Makah
13 Indian Fishing Camp, under regulations to be prescribed
14 by him.

15 SEC. 3. There are hereby authorized to be appropriated
16 such funds as are required to carry out the purposes of this
17 Act.

Docket Information

Number of Documents in Docket 7

Documents Dated from 4/12/1893 to 4/24/1962

Docket Compiled: 6/3/2011