

VETO MESSAGE RELATING TO THE CORBETT TUNNEL
OF THE SHOSHONE IRRIGATION PROJECT.

M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

RETURNING

WITHOUT APPROVAL SENATE BILL 4862, ENTITLED "AN ACT FOR THE RELIEF OF CERTAIN PERSONS HAVING SUPPLIED LABOR AND MATERIALS FOR THE PROSECUTION OF THE WORK OF CONSTRUCTING THE CORBETT TUNNEL OF THE SHOSHONE IRRIGATION PROJECT," TOGETHER WITH THE REPORT OF THE SECRETARY OF THE INTERIOR IN RELATION THERETO.

JULY 18, 1912.—Read; ordered to lie on the table and to be printed.

To the Senate:

For the reasons stated in the letter of July 12 of the Secretary of the Interior, which accompanies this message, I return without approval Senate bill 4862, entitled "An act for the relief of certain persons having supplied labor and materials for the prosecution of the work of constructing the Corbett Tunnel of the Shoshone irrigation project."

I do this because I think this legislation is of retroactive character and imposes on certain of the reclamation settlers an additional burden over and above the contract price of the work done, increasing that price by a double payment of part of what was due under the contract from the reclamation fund to the principal contractors. At the time when the work was begun and continued there was no law which relieved the subcontractor or the material man from the necessity of looking after the collection of what the contractor owed him or which imposed on the Government or the reclamation authorities the duty of seeing to it that the money paid under the principal contract was used by the principal contractor to pay his subcontractors or material men. To require that this additional amount should now be included in the assessment upon the lands is by law to increase a contract burden by a change of the character of the liability after it has been assumed and fixed. This is retroactive and is legislation in its nature unjust to the reclamation settlers.

WM. H. TAFT.

THE WHITE HOUSE, July 18, 1912.

DEPARTMENT OF THE INTERIOR,
Washington, July 12, 1912.

MY DEAR MR. PRESIDENT: In reply to that portion of Mr. Hilles's letter of July 8, requesting information whether there is any objection to your approving S. 4862, "An act for the relief of certain persons having supplied labor and materials for the prosecution of the work of constructing the Corbett Tunnel of the Shoshone irrigation project":

The contractor for the construction of the Corbett Tunnel failed to comply with his contract, whereupon the work was completed by the United States through the Reclamation Service. Suits were begun by the United States on the contract and bond in the district of Montana, and to enforce a lien on the construction equipment in the district of Wyoming. In the latter suit a cross bill was filed by the concern that sold a portion of the equipment to the contractor. A tentative agreement for a settlement has been reached by the representatives of the bondsmen and of this department. The Department of Justice, however, holds that the settlement should be conditional upon the settlement of the Wyoming cross suit at the same time, and my latest advice is that none of the suits have yet been dismissed. The terms of settlement tentatively agreed upon included the payment of \$42,000 by the bondsmen to the Government. This is only a fraction of the Government's claim, but is the most that it seems possible to recover.

The pending bill as originally introduced would have directed the Secretary of the Interior to ascertain and pay the laborers and material men's claims outright. As it now reads it gives the laborers and material men priority in recourse to the bondsmen over the claims of the Government. This reverses the existing rule of priority and returns to that prevailing before the act of February 24, 1905 (ch. 778, 33 Stat., 811).

The proponents of the bill cite the act of March 4, 1911 (36 Stat., 1170), as a precedent. That act reversed priorities on the Belle Fourche as is now proposed for the Shoshone project. On the Belle Fourche project the contract was advertised before the rule of priority was changed by the act of 1905, though actually let thereafter. The pending bill would reverse the rule of priority although the contract was advertised several months after the rule of priority was changed by statute.

If the bill becomes a law, it will bring to naught the work done in instituting the suit and in protracted negotiations for settlement. The precedent will probably be followed in future cases with the result that the Government's security will be of little value in any case. I am of the opinion that reasonable security for the claims of laborers and material men should be given by the Government's withholding payment on the contract during a time fixed for the filing of notice of such claims, payment thereafter to be made to the contractor or claimant as may be ordered by the proper court. This would require general legislation.

The bill properly provides that the United States shall not be involved by it in any expense. The laborers and claimants who seek relief through the pending bill have suffered undoubted hardship. The effect of the proposed statute would be to shift that hardship to

such water users on the Shoshone reclamation project, or the part of it served by the Corbett Tunnel, as hereafter settle upon the public lands or initiate irrigation on the private lands under the project. The Director of the Reclamation Service reports that there are approximately 150,000 acres of irrigable land in the whole project, of which but a small proportion is private or State land; that there are approximately 80,000 irrigable acres which will be served by the Corbett Tunnel, but that the expense of the tunnel has been charged upon the whole project and not merely upon the 80,000 acres; that about 22,000 acres are covered by existing water-right contracts with entrymen and private owners; and that about 12,000 acres are subject to existing public notices fixing the price of water rights to settlers who shall hereafter make entry, or private owners who shall hereafter contract for water from the project.

As to the 22,000 acres: The existing contracts, so long as they are fulfilled by the water users, are binding upon the United States. This fact precludes the shifting of any of the burden from the laborers and material men to water users on said 22,000 acres. As to the 12,000 acres: The department could cancel existing public notices and charge upon this 12,000 acres, together with other lands for which the price of water rights has not yet been fixed by any public notice, the expense of the proposed relief to the laborers and material men. To ascertain the area upon which this burden (\$42,000) could be charged it is therefore necessary to subtract either 22,000 acres or 34,000 acres from the total irrigable acreage (150,000) of the project, or from the irrigable acreage (80,000) which will be served by the tunnel. The result would be a maximum charge of about 91 cents per acre and a minimum charge of about 33 cents. Since the director reports the average holding to be 60 acres, this would be a maximum burden of \$54.60 and a minimum burden of \$19.80 on each farmer (average).

The chief engineer of the Reclamation Service advises me that the water-right charge already imposed and to be imposed upon the lands in the project is, in view of the nature and value of the lands, now at the maximum of safety, and that the addition which the pending bill would render necessary would be a heavy burden upon all future settlers and water-right contractors and would seriously jeopardize the success of the project. Under these circumstances, I am reluctantly compelled to advise that the bill should not receive your approval. If the lands of the project were able to bear the additional charge I would gladly advise otherwise.

Very respectfully,

WALTER L. FISHER,
Secretary.

The PRESIDENT,
The White House.

[S 4862. Sixty-second Congress of the United States of America; at the second session, begun and held at the city of Washington on Monday, the fourth day of December, one thousand nine hundred and eleven.]

An act for the relief of certain persons having supplied labor and materials for the prosecution of the work of constructing the Corbett Tunnel of the Shoshone irrigation project.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons having supplied labor or materials for the prosecution of the work of constructing the Corbett Tunnel as a part of the Shoshone irrigation project in the State of Wyoming, under any contract or contracts let for that purpose by the Government of the United States, and their assigns and legal representatives, are hereby given the full rights and remedies awarded to persons supplying labor and materials in the prosecution of public works, as set forth in the act of August thirteenth, eighteen hundred and ninety-four, entitled "An act for the protection of persons furnishing materials and labor for the construction of public works," to the same force, extent, and effect as if the act had not been amended, modified, or repealed, with full right of action in the name of the United States for his or their use and benefit against any contractor or contractors and their sureties upon any bond or bonds furnished to the United States under any such contract: *Provided*, That no action prosecuted under this act shall involve the United States in any expense.*

CHAMP CLARK,
Speaker of the House of Representatives.

J. H. GALLINGER,
President of the Senate pro tempore.

I certify that this act originated in the Senate.

CHARLES G. BENNETT, *Secretary.*

