

# CREEK EQUALIZATION FUND

## MEMORANDUM

IN SUPPORT OF AN AMENDMENT INTENDED  
TO BE PROPOSED BY HON. ROBERT L. OWEN,  
OF OKLAHOMA, TO THE INDIAN APPROPRIATION  
BILL (H. R. 12878)

BY

**R. C. ALLEN**

NATIONAL ATTORNEY FOR THE  
CREEK NATION



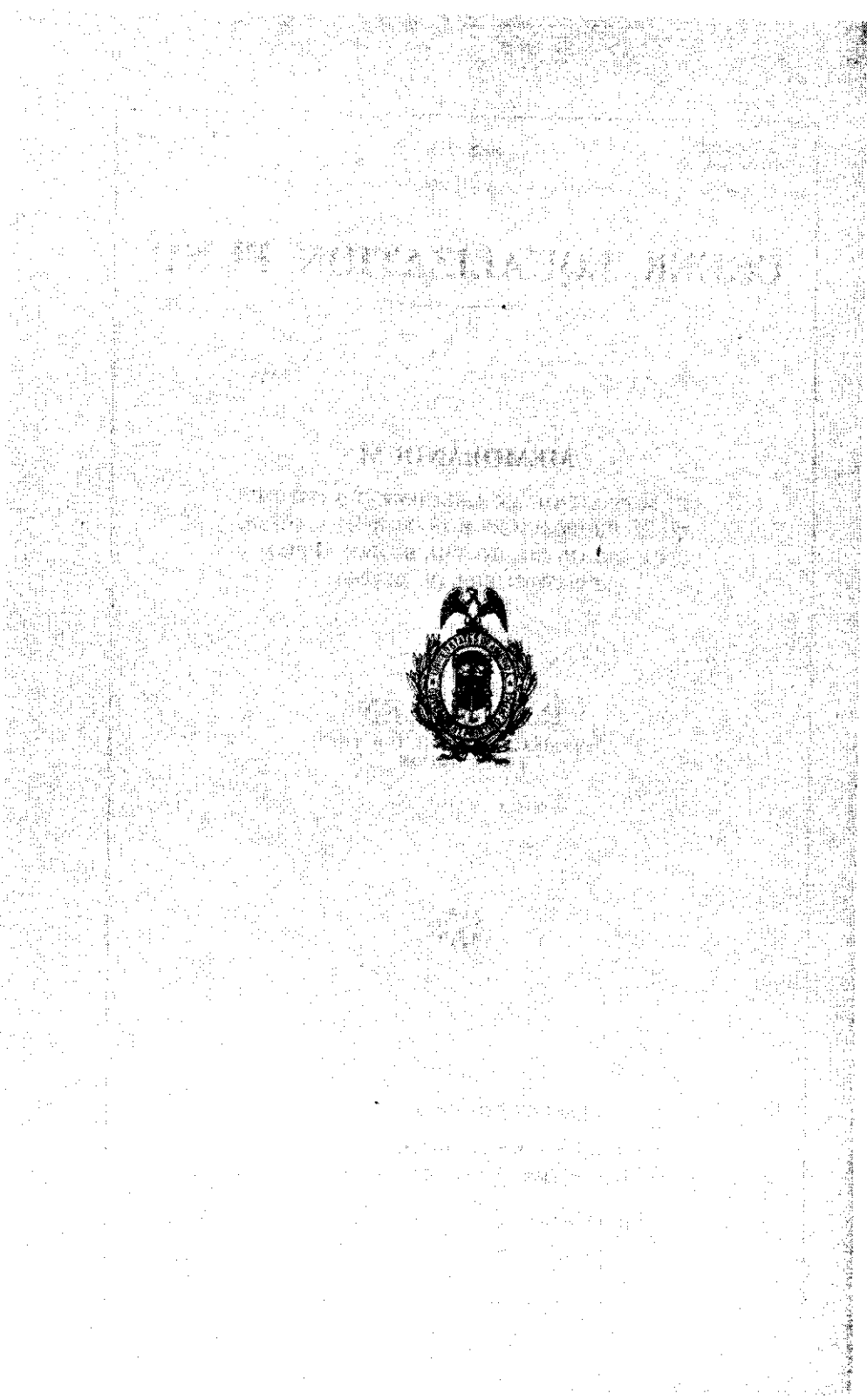
PRESENTED BY MR. OWEN

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1914



THE NATIONAL BUREAU OF INVESTIGATION

MEMORANDUM



## CREEK EQUALIZATION FUND.

Hon. ROBERT L. OWEN,  
*United States Senate.*

DEAR SIR: I inclose, for your information, a memorandum relating to the tribal funds of the Creek Nation and the right of Creek citizens holding certificates from the Government, pledging to them a certain balance of money necessary to equalize their allotments, on the basis of the Creek treaty, of \$1,040—the standard value of an allotment (sec. 2, Creek agreement, proclaimed June 25, 1901). This memorandum was prepared in the office of Hon. Cato Sells, Commissioner of Indian Affairs.

I submit, also, a memorandum showing the balance of tribal funds in the United States Treasury on February 23, 1914, \$2,784,797.93, and the amount deposited in bonded Oklahoma banks, under the provisions of the act of Congress of March 3, 1911, of the same date, amounting to \$1,100,256.85, making a total of \$3,885,054.78.

I inclose also a suggested draft of an amendment to the Indian appropriation bill, which would provide a payment up to \$900 upon these certificates, which would require an amount equal to \$3,059,939. This latter calculation was made in the office of Hon. J. George Wright, Commissioner to the Five Civilized Tribes, and verified by the Commissioner of Indian Affairs.

It will be observed that this will leave over \$800,000 in current funds, and there yet remain other properties belonging to the Creeks, which may, perhaps, reach the sum of a half million dollars.

The persons holding these certificates have felt very much aggrieved at not being paid the full amount of \$1,040, in accordance with the terms of the agreement. The reason this has not been done is because in allotting the newborn children a large part of the unallotted lands were required, and in this way the lands from which the Government had expected to be able to make an equalization on the basis of \$1,040 became impossible, and they refused to accept the act of Congress proposing a payment to them on the certificates making an equalization to the certificate holders up to \$800, accompanied with a proviso that the holders of these certificates should accept these payments in full settlement of the certificates of \$1,040.

We believe that the Government should permit the difference between Congress and the United States under the terms of the treaty to be adjusted by a suit to be brought in the Court of Claims, upon which we strongly insist.

From any point of view, however, there can be no just reason urged now why the holders of certificates of allotment should not receive an amount necessary to enable them to be paid up to \$900, which would, as above stated, require \$3,059,939.

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I should be obliged if you would bring this to the attention of the Senate, and ask a report from the Commissioner of Indian Affairs upon this statement at the earliest practicable moment, in order that justice, so long delayed, may be done, so far as practicable at this time, without further delay.

Yours, very respectfully,

R. C. ALLEN,  
National Attorney for Creek Nation.

## MEMORANDUM OF AUTHORITIES.

[In support of the amendments intended to be proposed by Mr. Owen, of Oklahoma, to the Indian appropriation bill H. R. 12579, which passed the House of Representatives on Feb. 20, 1914, and is now pending in the Senate.]

It is contended by the Creek Tribe of Indians that Congress should appropriate such sum of money as will be necessary to equalize all allotments in the Creek Nation upon a basis of \$1,040, being the standard value of allotments in the Creek Nation as fixed by agreement. In presenting this contention of the citizens of the Creek Nation I shall present the matter with as much brevity as the subject will admit. In order to thoroughly understand the contention made, as above stated, it is necessary to call attention to the early treaties entered into by the Government of the United States with the several tribes of Indians constituting the Five Civilized Tribes of Oklahoma. Reviewing the early treaties between the United States and the several tribes mentioned it will be observed that a valuable consideration passed to the United States for every foot of land granted to either of the tribes, which consideration consisted of large holdings of land in the various States where the several tribes were domiciled.

It appears that on the 24th day of April, 1802, the United States entered into a compact with the State of Georgia by which it was agreed that the Creek Indians who were then domiciled in the State of Georgia were to be removed from said State. In order that this compact might be complied with, the United States on the 12th day of February, 1825 (7 Stat., 237), entered into a treaty with the Creek Nation of Indians by the terms of which the Creek Tribe of Indians ceded to the United States all lands owned and occupied by them in the State of Georgia for lands west of the Mississippi, to be selected by a committee for that purpose. This committee was appointed and selected the territory now embraced in the Creek Nation in the State of Oklahoma. Various other treaties were entered into at different times carrying into effect the treaty referred to, and finally, on the 14th day of February, 1833, at Fort Gibson (7 Stat., 417), articles of agreement were concluded between commissioners on the part of the United States and the Creek Nation of Indians by the terms of which, in consideration of the grants and cessions of land by the Creeks in the State of Georgia, the United States agreed to convey in fee simple the land selected by them in what was then the Indian Territory. Following the language of the various treaties with the several tribes of Indians composing the Five Civilized Tribes, one is impressed with the idea that it was the cherished hope of the Indians

that they would not be molested or disturbed in their quiet enjoyment of the land selected by them, and that they might be permitted to hold same in common.

Prior to August 7, 1856, the boundaries were unsettled between the Creek and Seminole Indians, and on the day last mentioned a treaty was entered into between the United States and the Creek Tribe of Indians (11 Stat., 699) in which the Creeks ceded to the Seminoles certain bounded territory, in consideration of which the United States agreed as follows:

The United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek or Seminole Tribes of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within or annexed to any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same.

Having thus settled all of the differences between the Creek Tribe of Indians and the United States, and having been guaranteed the quiet and peaceful enjoyment of all the lands embraced in the territory conveyed to them by the United States, no further treaties were made until after the Civil War.

**RIGHT GRANTED FREEDMEN TO SHARE IN THE LANDS AND TRIBAL FUNDS OF THE FIVE CIVILIZED TRIBES.**

**SEMINOLES.**

Article 3 of the Seminole treaty of March 21, 1866 (14 Stat. L., 755), Volume II, Kappler Treaties, page 911, provides that "In compliance with the desire of the United States to locate other Indians and freedmen thereon the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation" under the treaty of August 7, 1856.

As to why the United States wished to locate freedmen thereon, you will find reasons therefor assigned by Judge Parker in his decision of the United States *v.* Payne (2 McCrary U. S. Circ. Rep., 8th Circ., 299).

Article 2 of the same treaty provides that—

Inasmuch as there are among the Seminoles many persons of African descent and blood, who have no interest or property in the soil, and no recognized civil right, \* \* \* these persons and their descendants \* \* \* shall have and enjoy all the rights of native citizens.

**CHOCTAWS AND CHICKASAWS.**

Article 3 of the Choctaw and Chickasaw treaty of April 28, 1866 (14 Stat., 769) Volume II, Kappler Treaties, page 919, after providing for the cession of the leased district to the United States in consideration of \$300,000, to be invested and held by the United States in trust—

until the legislatures of the Choctaw and Chickasaw Nations, respectively, shall have made such laws, rules and regulations as may be necessary to give all persons of African descent, resident in the said nation at the date of the treaty of Fort Smith (September 10, 1865) and their descendants, heretofore held in slavery among said nations all the rights, privileges, and immunities, including the right of suffrage, of citi-

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*zens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations, respectively, and also to give to such persons who were residents as aforesaid and their descendants, 40 acres each of the land of said nations on the same terms as the Choctaws and Chickasaws.*

## CHEROKEES.

Article 9 of the Cherokee treaty of July 19, 1866 (14 Stat., 799), Volume II, Kappler Treaties, 944, provides—

*that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all colored persons who were in the country at the commencement of the rebellion and are now residents therein, or who may return within six months (prior to Feb. 11, 1867), and their descendants shall have all the rights of native Cherokees.*

## CREEKS.

It will be remembered that at the outbreak of the Civil War Gen. Albert Pike went over into the Indian Territory and induced a large majority of the Creek Indians to join the Southern Confederacy. After the close of the Civil War, without any consideration passing to the Creek Indians and as a penalty for their having joined the Southern Confederacy—as declared in the preamble—certain agents of the Government caused the Creek Indians to enter into the Creek treaty of June 14, 1866 (14 Stat., 785), volume 2, Kappler Treaties, page 931.

The Creek treaty of June 14, 1866 (14 Stat., 785), Volume II, Kappler Treaties, page 931, recites in the preamble that—

*the Creeks made a treaty with the so-called Confederate States on the tenth of July, one thousand eight hundred and sixty-one, whereby they ignored their allegiance to the United States and unsettled the treaty relations existing between the Creeks and the United States, and did so render themselves liable to forfeit to the United States all benefits and advantages enjoyed by them in lands, annuities, protection, and immunities, including their lands and other property held by grant or gift from the United States, and whereas, in view of said liabilities, the United States required of the Creeks a portion of their land wherein to settle other Indians.*

It is noted that in this preamble of the Creek treaty there is omitted therefrom the phraseology used in article 3 of the Seminole treaty of March 21, 1866—

*to locate other Indians and freedmen thereon.*

But in article 2 of the Creek treaty of June 14, 1866, it is provided that—

*Inasmuch as there are among the Creeks many persons of African descent who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country and may return in one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens thereof, shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds.*

thus putting freedmen on a parity with blood citizens, having an equal interest in both the land and tribal funds, using stronger language in recognition of freedmen's equal participation with blood citizens in property rights of the nation than any other of the Five Civilized Tribes. An attempt was made in the Cherokee Nation to exclude freedmen from equal participation with blood citizens in the

distribution of tribal funds, and both the Court of Claims and the Supreme Court of the United States sustained the contention of the freedmen that they were to be treated on an absolute equality with blood citizens. See case of *Whitmire Trustee v. Cherokee Nation* (30 C. Cls., 138, 152, 180), also decision of the Court of Claims of February 3, 1896, not reported, and the decision of the Supreme Court of the United States in the same case, dated January 29, 1912 (223 U. S., 108).

Section 21 of the act of June 28, 1898 (30 Stat. L., 495), commonly called the Curtis Act, found on page 20 of Laws, etc., of the Five Civilized Tribes, provides:

The roll of Creek freedmen made by J. W. Dunn, under authority of the United States, prior to March 14, 1867, is hereby confirmed, and said commission is directed to enroll all persons now living whose names are found on said rolls and all descendants born since the date of said roll to persons whose names are found thereon, with such other persons of African descent as may have been rightfully admitted by the lawful authorities of the Creek Nation.

#### EQUALIZATION OF ALLOTMENTS.

The original Creek agreement with the United States, negotiated March 8, 1900, approved March 1, 1901, ratified by the Creek council May 25, 1901, and proclaimed by the President June 25, 1901, in section 2 thereof, after providing for the appraisal of all lands belonging to the Creek Tribe of Indians in the Indian Territory at their true value, excluding only lawful improvements on lands in actual cultivation, provided further in section 3 thereof for an allotment of all tribal lands among the citizens of the tribe so as to give each one an equal share of the whole, in value as nearly as may be, in manner as follows:

One hundred and sixty acres of land, valued at \$6.50 per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of values.

This original Creek agreement remained in force about one year, when it was superseded by the supplemental Creek agreement approved June 30, 1902 (32 Stat. L., 500), which was ratified by the Creek national council on July 26, 1902, and proclaimed by the President on August 8, 1902, whereof section 2 changed the method of appraisal of the lands at their true value, as provided in section 2 of the original agreement, which was amended to read that all lands "shall be appraised at not to exceed \$6.50 per acre, excluding only lawful improvements on lands in actual cultivation."

Section 3 of the supplemental agreement amended paragraph 2 of section 3 of the original agreement to read:

If any citizen select lands, the appraised value of which is \$6.50 per acre, he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment.

Under the provision that precluded the appraisal of lands at "not to exceed \$6.50 per acre," 158 wiser ones of the Creek citizens procured allotments of 160 acres of land in excess of the value of \$1,040, such excess being \$1,600.69. Eight hundred and fifty received completed allotments of 160 acres of the value of \$1,040.

Had there been an equalization of Creek allotments at the close of the enrollment of citizens, both blood and freedmen, and including children born prior to May 25, 1901, living on the latter date, under the original Creek agreement approved March 1, 1901, and the sup-

plemental agreement approved June 30, 1902, there would have been sufficient Creek tribal funds to equalize all allotments on the basis of \$1,040. But before the work was completed, believing, as did many Creek tribal officials and citizens that there was a surplus of unallotted Creek tribal lands, they petitioned Congress to add children born since May 25, 1901, which was the limit fixed under the original and supplemental Creek agreements for the enrollment of children, and Congress, answering their importunities, passed the act of Congress of March 3, 1905, which provided for the enrollment of children born subsequent to May 25, 1901, and prior to March 4, 1905, and living on said latter date (p. 87, Laws, etc.), and the later act of Congress approved April 26, 1906 (34 Stat., 137), section 2 whereof provided for the enrollment of additional children who were minors living March 4, 1906, whose parents had been enrolled as members of the Creek Tribe.

Under the original and supplemental Creek agreements of March 1, 1901, and June 30, 1902, there were enrolled, including citizens by blood, freedmen, and children living May 25, 1901, a total number of 15,790 persons, who, for the purpose of this bill, may be termed "agreement Indians," and who are entitled, if any, to a standard allotment of the value of \$1,040. To equalize these allotments up to \$900 will require \$3,059,939.

Under the later act of March 3, 1905 (33 Stat., 1048), page 87 of Laws, Decisions, Etc., 2,099 minor children, both blood and freedmen, were enrolled, and under the still later act of April 26, 1906 (34 Stat. L., 137), 821 minor children, both blood and freedmen, were enrolled, making a total enrollment of newborn children enrolled under the two above acts of 2,920 minor children or "newborns," of whom 1,135 were newborn freedmen children. All have been allotted 160 acres of land irrespective of value.

The 15,790 persons enrolled under the original and supplemental agreements have also been allotted 160 acres of land irrespective of value. There being insufficient Creek tribal funds on deposit in the United States Treasury, including moneys now on deposit in State and national banks of Oklahoma, pursuant to act of March 3, 1911 (36 Stat., 1058-70), the question arises: Who shall wait, the original Creek agreement citizens or the newborn children enrolled under the later acts of Congress, which were never approved by the Creek Tribe, although tribal officers sought their enactment by Congress? It has been estimated that to equalize all Creek allotments, including the newborn children, it will take \$6,913,932.95, and as there is now on deposit in the United States Treasury \$2,784,797.03, and in the State and national banks of Oklahoma there is on deposit \$1,035,350, making a total of Creek tribal funds of \$3,885,054.78, which would create a deficiency of \$3,028,878.17, for which deficiency the Creek Nation claims the United States is liable to make good, because the Creek citizens were not apprised of the exact number of enrolled citizens and the amount of tribal funds on deposit and the amount of unallotted tribal lands at the time they urged the enrollment of the newborn children. It is admitted that if the Creek officials had known the exact status of Creek tribal affairs they would not have asked for the enrollment of the newborn children, and there would have been sufficient funds on hand to equalize allotments of all persons enrolled under the original and supplemental agreements.

Inasmuch as it will require a judicial determination as to whether the United States is liable for this deficiency, and guaranteed to each and every enrolled citizen an allotment of the standard value of \$1,040, it is meet and proper that the newborn children should be omitted from present participation in the equalization of Creek allotments until the question of the liability of the United States to make good the deficiency is determined by a court of final resort.

By review of these figures you can readily see how manifestly unfair it would be to the citizens of the Creek Nation to refuse to redeem the promise the Government made to the individual members of the Creek Tribe of Indians. It would simply mean that the more intelligent members of the Creek Indians who are not greatly in need of the protection of the Government, and who, on account of their intelligence and business acumen, have selected allotments of the standard value of \$1,040, would be permitted to retain all of such allotments, and that the weak and dependent members of the tribe, who, on account of their lack of business experience and good judgment, really need the protection of the Government, who have received allotments at less than the standard value of \$1,040 (and many of such class of Indians have received allotments of little or no value) would not be afforded the protection they deserve, and which has been solemnly promised to them.

In conclusion, I desire to call attention to the fact that Congress, in the Indian appropriation act of March 3, 1909 (35 Stat. L., 781, 805), proposed to reduce the standard value of the Creek allotment from \$1,040, as fixed in the agreement, to \$800, and settle with the Creek Indians upon the latter basis, which settlement it was proposed they should accept, in lieu of all claims against the Government. This proposition was submitted to the Creek council for their action and on the 22d day of April, 1909, the said council almost unanimously rejected the proposal.

Respectfully submitted.

R. C. ALLEN,  
*National Attorney for the Creek Nation.*

## CREEK EQUALIZATION FUND.

## CREEK NATION.

Balance of tribal funds in United States Treasury Feb. 23, 1914.

Creek general fund.....	\$2,472,946.15
Interest on Creek general fund.....	179,454.35
Indian moneys, proceeds of labor:	
Creek cattle tax.....	1,791.60
Creek right of way.....	28,989.24
Creek royalties, grazing, etc.....	10,077.63
Creek stone and timber.....	690.39
Creek town lots.....	20,030.00
Creek unallotted lands, etc.....	73,818.57
<b>Total in United States Treasury.....</b>	<b>2,784,797.93</b>
Amount deposited in bonded Oklahoma banks under the provisions of the act of Congress of Mar. 3, 1911 (36 Stats. L., 1068-1070), Feb. 23, 1914:	
Unallotted land sales.....	\$332,900.00
Town-lot sales.....	702,450.00
<b>Total deposited.....</b>	<b>1,035,350.00</b>
Accrued interest Dec. 31, 1913.....	64,906.85
<b>Total.....</b>	<b>1,100,256.85</b>
<b>Total Creek funds.....</b>	<b>3,885,054.78</b>
Original Creeks by blood.....	10,120
Freedmen.....	5,670
<b>Total.....</b>	<b>15,790</b>
Enrolled under June 28, 1898; March 1, 1901; and June 30, 1902. All allotted 160 acres.	
Newborns:	
Mar. 3, 1906—	
Blood.....	1,299
Freedmen.....	809
<b>Total.....</b>	<b>2,099</b>
Apr. 26, 1906—	
Blood.....	495
Freedmen.....	328
<b>Total.....</b>	<b>821</b>
<b>Total newborns.....</b>	<b>2,920</b>
All allotted 160 acres.	