1-1-1833

Mexican Road Commissioner's Report on Expected Compensation, January 1, 1833

George Champlin Sibley

Benjamin Reeves

Thomas Mather

The Answer of G. C.Sibley B. H. Reeves and Thomas Mather. (Late Commissioner to mark out a Road to New Mexico) to contain objections, raised by Peter Hagner 3rd Auditor of the Treasury Department, agent the charge made by Said Commissioners for compensation for their time and personal services. Addressed respectfully to such Committee or Committees or other authorities as may have charge of the Subject.
Jan. 1833 then wrote to I. S. Johnston on this business and sent him copy of this paper also wrote to Gen. Ashley and refered him to the papers sent to Mr. Johnston. etc.

An Act to authorise the President of the United States to cause a Road to be marked out from the Western frontier of Missouri to the confines of New Mexico.

Section I.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled that the President of the United States be, and he is hereby is authorised to appoint Commissioners to mark out a road from the Western frontier of the State of Missouri, to the boundary line of the United States in the direction to Santa Fe, of New Mexico--Provided, that the said commissioners shall first obtain the consent of the intervening Tribes of Indians, by treaty, to the marking of the said road and to the unmolested use thereof to the citizens of the United States and of the Mexican Republic--.

Section 2.

And be it further enacted that the President of the United States be and he is hereby authorized to cause the marking of said road to be continued from the boundary line of the United States to the frontier of New Mexico, under such regulations as may be agreed upon for that purpose between the Executive of the United States, and the Mexican Government.--

Section 3.

And be it further enacted, that the sum of Ten Thousand Dollars be, and the sume hereby is appropriated to defray the expenses of marking the said Road and the further sum of Twenty Thousand Dollars, to defray the expenses of treating with the Indians for their consent to the establishment and use thereof; The said sums to be paid out of any money in the Treasury not otherwise appropriated.

(Approved 3rd March 1825)

Extracts from the letters of instruction addressed by the Secretary of War, to the commissioners appointed under the above Act of Congress.

Dates Department of War, 16th March, 1825.

"Two preliminary steps are required to be taken before you can proceed definitively to mark the Road--First the consent of the Indians Tribes is to be procured, and second, an agreement is to be entered into between the limited States and the Mexican Government for continuing the Road etc - - - - - - - -

"Your first step will be to enter into negotiations with the intervening Indian Tribes, for their consent to the establishment and use of the Road--For this object, as you will see by the Act 20,000 are appropriated--The method of assembling the Tribes with a view to get their consent is left to your discreation;as is also the mode of compensation which you may adopt to obtain it. But in no case is the sum appropriated for this object to be exceeded your compensation as Commissioners in this branch of your service will be three Dollars per day for each commissioner whilst actually engaged in holding the Treaties and Five Dollars per day for a Secretary, whom you are authorized to appoint which compensations together with all necessary expenses will constitute an item in the disbursements of the $20,000 and to be deducted from that sum leaving the balance to be disposed of in your discretion to the Tribes with whom you may hold treaties etc - - - - - -"You will be careful in keeping separate the disbursements under the two divisions of the duties which are assigned to you and your returns will be accompanied by your certificate of honor that the sums which you may have disposed of or have been disposed of as stated in your accounts and that the time which you may charge for yourselves and Secretary is that in which you were actually engaged in carrying into effect the objects connected with this branch of your commission" - - - - - - -

"The Sum of $10,000 is appropriated to defray the expenses of surveying and marking out the road, your disbursements under this head of appropriation, will embrace your own pay as Commissioners, which is fixed for this branch of your service at Five Dollars each per day, whilst actually engaged in surveying and marking the road etc.- - - - - -"Your compensation as commissioners will be as you are informed $3 each and $5 per day for your Secretary whilst actually engaged in treating with the Indians, and $5 a day for each commissioner, whilst actually engaged in surveying and marking of the Road--It is in the meaning of these instructions to allow you $8 a day each whilst engaged in the two-fold duties assigned to you and $5 a day for a Secretary whilst engaged in Treating with the Indians--There is no compensation for a Secretary provided for in the estimate upon which the appropriation is made for surveying and marking the road"-

(Signed) James Barbour.

The foregoing extracts contain all the instructions that the Commissioners ever received in relation to their compensation--In making up their accounts, they charge for their own services Eight Dollars each per day for every day that they were actually engaged in the duties assigned them--Mr. Hagner the 3rd Auditor of the Treasury Department to whom the accounts have been presented for settlement questions the propriety of this charge alledging that agreeable to the true construction of the instructions to the Commissioners they were only entitled to $8 a day when engaged treating with Indians and that for the rest of the time charged, they should have charged only $5 a day each--Mr. Hagner's argument on this point is as follows; after citing part of the instructions--"From the tenor of these instructions (The Commissioners having charged their per diem for the whole period, at the rate Eight Dollars the question arose whether for the time they were engaged in treating with the Indians it was not intended that their compensation should be equal to what it has been customary to allow to Commissioners appointed to make Treaties with the savage Tribes, and whether after having accomplished this part of the duty assigned to them it was not the meaning of the instructions that for the time they were exclusively engaged on duty in relation to the Survey and marking the road their compensation was to beat the rate fixed by the Instructions for that service, to wit $5 per day,-- because if the compensation of $8 was intended to be allowed for the whole period of their service, and not to be confined to the time they were actually engaged in the two-fold duties assigned them, it was not preceived why any other rate of allowance should have been named in the instructions. It was not supposed that the commissioners could actually be engaged on both duties at the same time; the treating with the Indians for their consent, being the preliminary step to the commencement of the survey etc., but being appointed to survey and mark out the road at a fixed perdiem of $5 and the duties of treating with the Indians being also confided to them it was presumed whilst acting in the two-fold capacity the higher allowance was intended for that period only in which they might actually be engaged in negotiating with the Indians" Before I proceed to meet this "Question" and reply to the above "remark" of the 3rd Auditor it is proper to State, that the instructions from the Secretary of War to the Commissioners were communicated in two distinct letters, both bearing date the 16th March 1825 and are evidantly intended to convey as distinctly as could be the views of the Department as to the disbursement and Accounts to be kept there of the $30,000 appropriated by the Act of Congress for the object of causing a "Road to be marked out etc." .This appropriation having been made under two distinct heads it became necessary to cause its disbursement under the directions of two distinct Bureaus of the War Department--Hence the two letters of instruction and hence the seeming inconsistency of the various rates of compensation to the Commissioners named in those letters which is entirely removed however upon an attentive examination of the subject and of the instructions as I shall show--The Commissioners after carefully considering the

instructions given them as to what was to be their compensation for their own services and after having consulted others as to the just and proper construction of their instructions on the point and upon being made acquainted with the uniform practice of the Government in such cases; came to the conclusion that their pay was intended to be fixed at Eight Dollars a day each for every day they might be respectively employed in the duties of the Commission and they made no doubt at all but the true object of the Secretary's naming $3 per day and $5 per day as rates of compensation for their services was only intended by way of adjusting the item of the Commissioners pay properly under the two distinct heads of the appropriation--to wit $3 per day or 3/8of that compensation to be charged to the Indian Treaties and 5/8 to the Road which I am warranted in saying is the view entertained on this point by the chiefs of both the Bureaus charged with the execution of the Act of Congress. A reference to the instructions bearing in mind the fact of their being given in two distinct letters as above explained; must convince everyone who will understand the whole matter, that Mr. Hagner is mistaken in his argument--It will be seen that the rate of $3 a day for each commissioner whilst actually engaged in holding the Treaties" is as positively fixed in the instructions as is the rate of $5 a day whilst actually engaged in surveying and marking the Road --Mr. Hagner admits however that $3 a day was not intended to be the pay for negotiating treaties and setting aside the instructions in this particular,he resorts to usage for authority to allow - $8 a day for making the Treaties--The instructions he says allow $8 a day only when the Commissioners are actually engaged in their two fold duties; that is to say when they are making Treaties and marking out the Road at this same time--But he admits that "It was not supposed that the Commissioners could be actually engaged on both duties at the same time," and yet he consents to allow them $8 each per day whilst actually engaged in holding the Treaties," altho the letter of instruction (as herein quoted) days, your compensation as Commissioners in this branch of your service will be $3 per day"--Mr. Hagner expressed a difficulty to comprehend why if the Secretary intended $8 a day to be the actual pay of the commissioners for the whole period of their services any other rate of allowance should be named in the instructions--The Commissioners contend that the last paragraph (but one) of the letter of Instruction No 2, does fix their compensation at $8 each per day for the whole period of their service--That it was evidently inserted with the view of removing the ambiguity and inconsistency apparent in the preceding parts of the two letters where compensation is mentioned and they conceive that the difficulty of Mr. Hagner is entirely removed by what has been already said in relation to the other rates of compensation named in the instructions. I will proceed however to examine the "question" still more minutely and in order to do so properly and to remove every doubt it is necessary not only to refer to the two letters of Instruction but to understand and consider the great responsibility as well as the arduous nature of the duties enjoined by them.--By the letter No 1. The Commissioners are instructed that the first duty enjoined on them is "To enter into negotiations with the intervening "Tribes of Indians for their consent to the establishment and use of the road " and this is also enjoined on them by the Act of Congress--This says the Secretary is the first of "two preliminary steps required to be taken, before the Commissioners can proceed definively to mark the Road--Now is it not evident from the very nature of the case, that the Govt. must have considered it indispensible for the Commissioners in order to discharge their first preliminary duty" to assemble the Tribes with a view to get their consent" and that for this purpose a separate and distinct expedition into the Indian Country would of course be necessary? It could not have been deemed proper by the Government for the Commissioners to enter at all upon the main object of their appointment surveying and marking out the Road before they had taken the first preliminary step pointed out by the instructions.--It was in exact conformity with this

plain view of the subject, that the Commissioners commenced their operations, and they had actually made the necessary preparations in great part for their first preliminary expedition, when by a fortunate accident they were enabled to adopt a different and a much less expensive plan which is fully explained in their general report when the commissioners were about to proceed as at first proposed (to complete all their Indian Treaties as their "first step) it never for a moment entered into their thoughts that for the responsible and arduous duties they were about to perform, their compensation was to be only Three Dollars per day, whilst their Secretary was to receive from them by direction of the Secretary of War, Five Dollars a day--They knew perfectly well, that it was the uniform practice of the government to pay their commissioners for such services, at least Eight Dollars per day and they were also aware of the fact, that at the very time they were about to leave their and families to encounter the privations of the Wilderness in the worst season to negotiate Treaties with several Indian Tribes at different places, General Clark was then actually officiating as a Commissioner at his own residence in St. Louis to treat with part of the Chiefs of the same Tribes; and was receiving Eight Dollars a day for his services in that capacity in addition to his salary as superintendent of Indian Affairs--with the knowledge of these facts, how was it possible for the commissioners to entertain a shadow of doubt that it was in the meaning of Mr.Secretary Barbour's Instructions to allow them at least $8 a day for their services? If they had so doubted nothing is more certain than that they would promptly have declined the service--But it may be asked why discuss this point any further since Mr. Hagner has given it up and has agreed that the Secretary did intend to allow $8 a day to each commissioner whilst engaged in holding Treaties, Mr. Hagner has indeed admitted that for the separate service of negotiating the treaties the Commissioners are entitled to their pay as claimed and this he admits in the face of what had been by him contended to be the true meaning of the Instructions on this point, to wit that for such single service $3 per day was the intended allowance--now I beg leave to ask if the Secretary really intended to allow $8 a day for this single service, why did he expressly say in his letter No 1 that $3 a day was to be the allownace? Why mention that sum at all? The plain answer is as before stated that he desired three eighths of the Commissioners pay to be charged in the Accounts of the disbursements to the Indian Treaty head and the other Five eighths to the head of marking out the Road--For that he should have intended to fix the actual pay of the Commissioners at Three Dollars a day whilst making Treaties is too palpably absurd to be for one moment admitted. But when in his letter No 1 he says "which compensations" (meaning the $3 to the Commissioners, the $5 to their secretary)"together with all necessary expenses will constitute an item in the Disbursements of the Twenty-thousand Dollars (the sum appropriated for Treaties) and to be deducted from that sum is it not perfectly clear what was his meaning and intention?

If therefore as has been shown (and admitted) the commissioners are entitled to claim $8 a day for negotiating the Treaties notwithstanding their allowance for that separate service appears at first view to be fixed at $3 per day; surely it cannot be deemed unreasonable for them to demand at least the same rate of pay for marking out the road altho $5 a day is named in the instruction as the sum apparently fixed for that separate service--If as has been admitted, it would be unjust to disallow their charge as to the time employed negotiating, the treaties it cannot be less so for that which with infinately greater labor, exposure and privation they employed in the other, and principal branch of their Commission--The usage for allowing Eight Dollars a day for services such as those last named is believed to be quite as well established and quite as justly, as that which is admitted to have been applicable to those performed in holding Indian Treaties--With the view of escaping the gross inconsistency and injustice of requiring the services of the Commissioners for Two Dollars a day less than

their Secretary and $5 a day less than the other Commissioners are uniformly allowed and paid for similar (tho far less arduous) services: it has been urged that in the present case the commissioners might be allowed their pay as charged provided they were actually employed at one and the same time in both branches of their two-fold duties--But unfortunately, this was utterly impossible and if it were not impossible was it not inadmissible under the Law and their Instructions? Under no circumstances whatever, could the Commissioners have performed their two-fold duties at one and the same time--When they were actually engaged in holding treaties "how could they at the same time be actually engaged in surveying and marking out the Road? But they might be as in fact they were during the time charged, wholly devoted to either or to both branches of their trust, as circumstances required; and in that manner were they actually engaged in the two-fold duties assigned to them, and in no other in no other way could it have been expected of them or was it possible for them to have been so engaged "in the meaning" of Mr. Secretary Barbour's two letters of Instructions--The Commissioners must therefore insist as before declared, that the concluding paragraph of the Letter of Instruction No 2 were intended expressly to fix the compensation of the Commissioners and that it is there fixed at Eight Dollars each per day whilst engaged in the two-fold duties assigned to them, that is to say for the whole period that they actually employed, respectively in carrying into effect the Act of Congress under which they were appointed--It is contended that no other rate of daily pay named in either of the Two Letters of Instruction could in the nature of the case have any other relation to the actual compensation of the commissioners than to prescribe a rule by which its amount should be divided properly between the two branches of the appropriation which they were directed to disburse separately and distinctly and account for to two appropriate Bureaus of the War Department--If the Commissioner had been aware that it was intended to reduce their customary daily pay at any period of their employment, more especially at the precise period when their duties were to be the most toilsome and hasardous they could not most assuredly have accepted a service to unusually marked and so manifestly unjust not tosay illiberal in its offer of compensation.--In conclusion they solemnly that they entered upon the duties of their appointment under the entire belief and expectation that their time and services were to be remunerated at the rate of pay they have charged and they never for one moment thought otherwise or did they ever imagine that their just and reasonable claim would be refused or questioned, until the question arose in the 3rd auditors office which I have here examined and as I trust fully answered.

G. C. Sibley for self &
B. H. Reeves,
Thomas Mather -Late Commissioners.

Lindenwood near St. Charles Mo.
Jan 1, 1833.