SPECIAL MESSAGE

OF

GOV. LEONARD J. FARWELL,

ON THE

FOX & WISCONSIN RIVER IMPROVEMENT.

DELIVERED TO THE

TWO HOUSES OF THE WISCONSIN LEGISLATURE,
FEBRUARY 9, 1853.

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MESSAGE.

EXECUTIVE DEPARTMENT,

MADISON, FEBRUARY 9, 1853.

To the Senate and Assembly:

The Report of the Board of Public Works has been printed, and is now before you for consideration and reference.

Inasmuch as the Governor of this State, is invested by law, with the general control and supervision of the whole Fox and Wisconsin River Improvement, and more or less responsible for its management, I have considered it proper, to report the general condition of the work and the fund, and present my views upon the subject.

The Report of the first Board in 1848, estimates the quantity of land, likely to be sold, embraced in the Government Grant, at 280,000 acres. Various estimates of the quantity, have been made by the different Boards; but this amount would seem to be as nearly correct as any, and it is supposed, that of this amount, quite a quantity will be unsaleable, for a considerable length of time.

The first estimate of the entire cost of the Improvement, made by a Committee of the Assembly, June 26, 1848, based upon the Report of Capt. Cram, was $313,929 13.
It will be seen that according to these estimates, the fund would have been fully sufficient to complete the entire work, and show an overplus.

The whole quantity of land sold, up to Jan. 1, 1853, is 119,727.29 acres, and the sum realized, is $149,658 99.

The estimated value of the unsold lands belonging to the Grant, made by the present Board, is $232,890 99.

There has been already expended upon the Improvement, as follows:

1. The proceeds of lands already sold, $149,658 99, less the sum of $7,459 03, in the Treasury.
2. The present indebtedness to contractors, $158,259 30.
   The whole amount expended, so far, $300,459 26.

The present indebtedness, the amount yet required to complete the Improvement, and the interest that will accumulate in the mean time, are estimated by the present Board, at $502,573 85.

This amount, added to the proceeds of the lands, already expended in money, will make the entire cost of the Improvement, as now shown, $644,773 81, more than double the sum of the cost, as estimated by the Board in 1848.

If all the lands in the Grant, can, within the next year, be sold at $1.25 per acre, they will only pay the present indebtedness, and the accruing interest up to January 1, 1854, and leave the small balance, of perhaps $25,000 00, to be yet expended upon the work.

But when it is considered, that a large portion of these lands, will probably not sell for a long time, on account of their quality and location, it may well be doubted, if the entire balance of the Grant, can, by the most judicious management, be made to pay the indebtedness and the accruing interest upon it at the rate of 12 per cent.

The cost of yet completing the Improvement, is estimated by the Report, at $310,564 55.
The cost of the work yet to be done, under contracts made with the State, prior to the contract with Morgan L. Martin, and the contingent expenses, are estimated by the Chief Engineer, at $162,429.04.

By reference to the Reports of the Board of Public Works, the above statement showing the present condition of the work and the fund, will prove to be correct.

At the time the Grant was made by Congress for this Improvement, it was represented and believed, by the friends of the Work, in this State and in Congress, upon estimates and surveys which had already been made, that the Grant would prove to be, more than sufficient to complete the entire improvement.

It was so reported by a Committee of the Legislature at the time, the Grant was formally accepted by this State, the first law passed by the Legislature, upon this subject, was based upon this assumption, and the Reports of the first Board of Public Works, after full and critical estimates, confirmed this opinion.

There was, therefore, great propriety in Congress requiring this State, to complete the improvement, within twenty years, or suffer a forfeiture of the Grant, that was then deemed sufficient by all parties, for that purpose.

It is now clearly demonstrated, that the grant will prove quite insufficient to complete the improvement, or make this water communication of much use, other than the creation of strictly local benefits.

It is now reduced to a positive certainty, that if the work is ever completed, it must be by another grant from Congress, or by appropriation of the general fund, from the State Treasury.

My views upon the construction of the act of Congress of August 8, 1846, making the grant, were made known to the last Legislature, in a message returning the bill, that afterwards, on the 14th day of April, 1852, became a law, by a vote of two-thirds majority.
I still insist, that a proper construction of that act, contemplates, that the work shall be done upon cash terms, that the lands shall not be sold in advance of the necessity for the use of the proceeds, and that the work shall not progress in advance of the fund, in such way, as to encumber or pledge the proceeds of the sales, to pay an accumulating indebtedness.

If this construction had been strictly adhered to, up to the present time, in the management of the work, there would now be no debt, either against the fund, or against the State; and I cannot but think, that the work would have been fully as much advanced for the benefit of the State. The first general law passed upon this subject, August 8, 1848, throughout its various provisions, recognizes and confirms this construction of the grant. It provides that work shall be paid for in gold and silver, to be drawn from the Treasury upon the warrants of the Board; and no where contemplates the issuing of warrants, or any other evidence of debt, unless there is at the time, money in the treasury, from the sales of land, sufficient to meet them.

In process of time, it was found that there was no money in the Treasury; the contractors still continued their several works, obtained from the Chief Engineer their estimates, and applied to the Board for warrants upon the Treasury; the warrants were issued, and here was the inception of the debt that has now grown to such an alarming magnitude, and threatens to still increase, under the present policy, to an indefinite amount.

The contracts, although requiring ready payment in gold and silver, were entirely loose and indefinite, as to the amount of work that could be done under them, and yet fixing a period when they should be completed. They were made, subject to alterations of plans and estimates, by the Chief Engineer; and these alterations and changes in the works, have been made without a reference to the amount of money on hand in the Treasury, and without a reference to the ultimate sufficiency of the fund; and hence, the cost
of the improvement is now shown to be more than double the first estimates.

These evils, the contractors of course are not responsible for.—They entered into their contracts with the State, in good faith, with the reasonable expectation that their works would be paid for in cash, and as fast as their estimates were presented; but owing in my opinion, to a misconception of the Grant, and a wrong policy, they have been compelled in a great measure, to do their work upon credit, at a great loss and inconvenience to themselves, and as I think, it will prove, a great loss to the fund, and perhaps to the State.

The law passed April 14, 1852, has in my opinion, only aggravated the evils, already existing, instead of applying a remedy.—It in effect, legalized the management of the work upon credit, without respect to the amount or sufficiency of the fund, and not only sanctioned the issuing of warrants and scrip by the Board of Public Works, but required the certificates of State Officers, with the Seal of the State, and the interposition and agency of the Executive, in framing, issuing and paying out evidences of debt, with every form and appearance of State Stocks, if indeed wanting in substance.

My objections to that law, will be found in the message returning said bill without my approval, and above referred to, to which I invite your attention.

After the passage of said law, I addressed the following letter to the Secretary of State.

"Executive Office, Madison, April 22, 1852."

"Hon. Charles D. Robinson,
Secretary of State.

Sir:—Since you left Madison, I have carefully deliberated upon my duty, and upon the proper course to be pursued by me as the Executive, in carrying out the present laws, in relation to the Fox and Wisconsin River Improvement."
My opinion, as to the Constitutionality of the law passed by a two-thirds vote over my objections, was made known in my veto message. Subsequent reflection has not, in any respect changed my views as there expressed.

I have also carefully examined and compared the law above mentioned, with the act passed just at the close of the session, and approved April 19th, setting apart one sixth of the entire fund for the improvement of the Wisconsin River.

Section 2 of this last act, repeals all acts and parts of acts contravening the provisions of this act.

In my opinion, this repealing clause, virtually repeals sections 4, 5, 6, 7, and 8 of the first mentioned law.

Holding these views, I cannot direct, or advise, the getting up or preparation of the "Stock Certificates," mentioned and described in section 5. Nor can I "sell, or deliver to contractors, said "Stock Certificates," when prepared as provided in section 6. You will understand then, that I shall not direct, advise, or do any thing in my official capacity in relation to said "Stock Certificates."

Most Respectfully, Your Obt. Servt."

LEONARD J. FARWELL.

Soon after entering upon the discharge of my duties as Executive in January, 1852, the Hon. Morgan L. Martin, made application to me, to sign an authentication of certain scrip of the Board of Public Works, issued to him under his contract with the State, made under the law of March 11, 1851. This I refused to do, for the reasons: 1. That no law required such authentication. 2. That said scrip, was of such form, as to be liable to the objection of its importing a State debt, in violation of the Constitution. 3. That it pledged the Improvement fund, the whole Improvement, from Green Bay to the mouth of the Wisconsin River, and the revenues thereof, for its redemption, without reference to the amount of the fund, or the rights of prior contractors.
Before the last June term of the Supreme Court, rules were entered by His Honor Judge Howe, of Green Bay, and served upon me, to show cause before the Supreme Court, at the June term thereof, why writs of Mandamus should not be issued by said Court, to compel me to authenticate said Scrip of Morgan L. Martin, and to direct the preparation and payment out, of the stock certificates, as required by the law of April 14, 1852.

I appeared by Counsel, and by answer to said rules, protested against the jurisdiction of the Court in the said causes; but expressed myself willing and desirous, of being advised by said Court, in relation to the subject matter thereof.

The Supreme Court decided that they had no jurisdiction in the causes, and dismissed the application. But intimated and advised, that, "the Governor was not required to authenticate the Scrip issued to Morgan L. Martin, under the Act of 1851;" but that, "they could see no valid legal objection to the issuing of the certificates, as provided for by the law of April 14 1852, and paying the same to contractors."

Inasmuch as I had voluntarily solicited the advice of the Court, upon this subject, I felt myself under obligation, both in honor, and out of respect for the unanimous opinion of the highest Court in the State, to waive my own opinion, and defer my own judgment to that of the Court.

I therefore addressed to the Secretary of State, the following letter upon the subject of the Stock Certificates:

EXECUTIVE DEPARTMENT,

MADISON, July 18, 1852.

To the Hon. CHARLES D. ROBINSON,

Secretary of State.

SIR:—The Supreme Court of the State, having at its last term, expressed the opinion, "that the Governor is not required to authenticate the Scrip issued to the Relator, (Morgan L. Martin), under the Act of 1851;" but see no valid legal objection to the is-
suing of the certificates, as provided for in the fifth section of the Act, entitled "an Act to provide for the completion of the improvement of the Fox and Wisconsin River, passed on the 14th day of April, 1852, nor to the delivery of them in payment to contractors, as provided for in the sixth section of said Act." Now, therefore, if you deem it your duty, "to cause stock certificates to be prepared," as required by section five of said Act, in that case, I "deem it expedient," that said stock certificates, be made of the denomination of one thousand dollars each, payable at the office of the Board of Public Works, in the village of Oshkosh, State of Wisconsin, five years from the date thereof.

I deem it proper, however, in justice to myself, to say that my opinions in relation to this law, remain the same as heretofore expressed.

Most Respectfully,

Your ob't servant,

LEONARD J. FARWELL.

Since that time, there have been issued and paid out, stock certificates, as stated in the Report of the Secretary of State, to the amount of $38,000 up to January 1, 1853.

Mr. Martin, sometime since, by his agent, made application for stock certificates, to apply upon his contract, and I declined paying them upon said contract, for the reasons:

1. "That said Martin, by the terms of his contract, was entitled to receive only certain Scrip therein described."

2. That his contract is made payable after, and subject to, all other existing contracts upon the improvement; and all other existing contracts have preference of the Martin contract, and must first be paid; and said contracts had not yet been paid.

3. Mr. Martin's contract was not yet due by its terms, and the law does not provide that it shall or may be, now paid; either in improvement fund, certificates or money.
A. The Supreme Court of the State had decided, that the *scrip*
described in said contract, and agreed therein to be issued to
Morgan L. Martin, ought not to be issued.

The difficulty in carrying out the law of April 14, 1852, (that I
foresaw, before its final passage, and mentioned in my Message
returning the bill,) so as to secure to the improvement of the Wis-
consin River, the one-sixth of the entire fund, according to the 12th
section of said law, and according to a law passed afterwards at
the last session of the Legislature, has been made apparent in the
management of the fund the past season. The same law that sets
apart one-sixth of the proceeds of the sales of land, for the Wiscon-
sin River, devotes and pledges, all of the proceeds of the sales, ex-
cept one-tenth and another immaterial reservation, for the redeem-
tion of the stock certificates; so that, if the one-sixth is taken for
the Wisconsin River, it so far takes from and diminishes the fund
set apart and pledged for the payment of interest upon, and re-
demption of the stock certificates. Upon this subject I directed
the Register and Receiver of the State land office, by letter, as
follows:

"EXECUTIVE OFFICE,
Madison, May 3rd, 1852.

To the Register and Receiver of State Land Office, Oshkosh:

You will please not make any sales of the lands granted to aid
in the improvement of the Fox and Wisconsin Rivers, except for
cash; and when monies are received for lands, you will hold them
exclusively subject to the order of the Board of Public Works, to
be applied in the improvement of the navigation of the Wisconsin
River, under the act approved April 19, 1852, until one-sixth of
the proceeds of the sales of the granted lands, are thus received.

Respectfully, Your Ob’t Serv’t,
LEONARD J. FARWELL."

This is briefly, the history of my connection with the improve-
ment during the past year.
If my action, and the policy that I have indicated on this subject, have been wrong, it has resulted not from any hostility or opposition to the interests of the improvement or the Contractors, but from an earnest endeavor to keep the work and the disposition of the fund, within the terms of the grant; and to protect the State from general liability in violation of the Constitution by reason of overdrawing upon the trust fund.

But, whatever has been done so far, whether right or wrong, in the management of the fund or improvement, cannot now be changed or remedied.

What has been done wrongly, has, in part, been caused by not adhering strictly to existing laws upon the subject; but more, in my opinion, by injudicious and illy advised legislation, based upon a perversion of the act making the grant, and of the finance article of the Constitution: legislation following the hypothesis, that the Constitution allowed the creation of a general State debt to complete this improvement.

And therefore, it has been regarded an immaterial question, as to whether the grant was sufficient or not, or what was its probable amount, in letting the contracts, and adopting plans for the improvement?

Although we cannot go back now and change what has already been done, yet, situated as the State now is with respect to this improvement, it is a serious and important question, what shall be done in future?

The facts meet us boldly at the present session of the Legislature, and demand immediate attention; That there is now a large debt, due and owing, to Contractors and others, on account of the improvement; that a considerable amount of interest is due upon it, and that that interest is accumulating at the rate of twelve per cent. per annum; that the entire balance of the trust fund will perhaps be no more than sufficient to pay off this debt and interest;
and that if the work is continued until all the contracts are completed, a large debt will be created without any other means of payment than from the State Treasury.

I do not think that I under-estimate the fund in making this statement, for it will be a long time before all the lands will be sold. The interest is accumulating in the mean time, and before the full debt will be paid by this means, it will have increased, by interest alone, to a much larger amount. The truth is, that the availability of the fund has always, hitherto, been over-estimated; and each successive Board have been disappointed in the amount of sales, and the advancement of the work; while now, we find ourselves with the fund exhausted or pledged to the payment of an equivalent indebtedness, in about the middle of the estimated works. The present Board think that in twenty years the revenues of the improvement will be sufficient to extinguish the debt, while paying the annual interest, which they estimate at $36,000 per year, and the cost of repairs. From what has already been shown, as the revenues of the work, so far, and from any reasonable estimate of what it will be when the present contracts are completed, if they more than pay the cost of repairs, I shall be greatly disappointed; and I cannot but think that if the State relies upon this source to pay off the ultimate indebtedness, in the course of time, it will be demonstrated, that the amount is greatly increased instead of diminished. By the law of April 14, 1852, the interest upon the stock certificates is payable at the State Treasury, on the 1st day of January in each year, upon the warrant of the Governor.

Warrants have been drawn by me for said interest, upon the Treasury, and have been protested for non-payment, because there was no money in the Treasury belonging to this fund.

Many of these stock certificates are held by persons out of this State, who have received them in good faith, and with the understanding (whether rightly or wrongly, is immaterial) that the faith of the State of Wisconsin was pledged for the payment of this interest, and for the ultimate payment of the principal; and thus
our State credit has been made to suffer in the stock markets abroad.

In disposing of the question, what shall be done? Certain considerations relating to the rights of the first cash contractors, should not be overlooked by the Legislature.

At the time these contracts were made with the State, the fund was supposed to be amply sufficient to meet them; and perhaps by its judicious management, it will appear that it was sufficient.

At all events, have not these contractors a right to insist, that when they have performed their contract in every respect, the State shall pay them, as she has contracted to do, and that too in gold and silver without delay? Has not the State, in effect, warranted the sufficiency of the fund, out of which these contractors are to be paid, by entering into these contracts?

Or is it to be argued that the state is excused from the full performance of these contracts on her part, because the fund she has set apart and devoted to their payment has failed, and failed too, through the mismanagement of the officers of the State? Again, will the State be excused from performing her written contracts to pay for work and labor, actually performed, by the plea that to pay them from the general fund of the State would be un-constitutional?

If the Constitution is violated at all in this matter, it was violated by the State herself in entering into these contracts, and passing laws authorizing them. And it would appear to be a very insufficient and pitiful excuse, for a sovereign State, to refuse to perform her written contracts with individuals, because forsooth, in making such contracts, she violated her own Constitution. I mean this to have application to those contracts, which were made without any condition or proviso, in relation to the sufficiency of the fund; where the contractors have not agreed to look to the trust fund alone for payment, but have contracted generally, to do certain work upon the Improvement at a certain price, to be paid for in gold and silver.
There is a broad distinction between these contracts and those made subsequently, that provide that the contractor shall look to the trust fund alone for payment, and that too, subject to all pre-existing contracts, and claims upon the fund.

I cannot view the matter in any other light, than that the State is bound and pledged, as effectually as she can, bind and pledge herself, to perform inviolably, these first contracts, whether the Improvement fund shall finally prove sufficient or not. But as I before intimated, I think it will appear that at the time these contracts were made, the fund was sufficient, and if it is now not sufficient, it has been owing entirely to a diversion or mismanagement of the fund by the State.

The stock certificates so far, have been delivered only, to those first contractors, which they have received as so much payment upon their contracts, instead of money, the only payment contracted for; and there is, therefore, good reason why the State should make these stock certificates as near an equivalent for money as possible; and there is no other way, in which the State can maintain good faith, with this class of contractors.

I would recommend therefore that means be adopted, to fully indemnify this class of contractors. If they are to continue to do work upon the Improvement, until their contracts are fully completed, some means should be at once provided for their payment in the future. Or perhaps the better course would be, since it is ascertained that the Improvement fund will be wholly insufficient, to meet their estimates in the future, to provide for making immediate settlement with them, and for the surrendering of their contracts to be cancelled.

It is certainly to be much regretted, that the means are likely to be inadequate, to the full completion of this important improvement; and that it seems almost necessary, to arrest the works, to protect the State from a public debt. But while the Constitution remains as it does, I see no other way, for the completion of the im-
improvement, except to obtain another grant from Congress, or submit the works to private enterprise.

Whatever question there may be about this, or that, class of indebtedness on account of this work, being State indebtedness, one question, at least, would now seem to be of great importance, and that is,—

Whether, inasmuch as it is now ascertained, that the trust fund for that purpose, will not be sufficient, if the State continues the prosecution of the work, under the direction and supervision of her officers and agents, she does not, thereby become directly liable, for the payment for such works.

The importance of the subject, and the complicated questions arising out of its consideration, must be my apology for the length of this communication.

With the fullest confidence, that your wisdom will devise the proper legislative measures upon this subject, I submit it to your discretion.

LEONARD J. FARWELL.