10-21-2016

Exhibit F Part 2 from N. Semanko

Norman M. Semanko
Attorney, Moffatt, Thomas, Barrett, Rock & Fields, Chartered

I presented this my case once more: A patent in fee forced against my deceased wife, Eugenia Weywick Wildshoe, without her knowledge or consent. Said patent in fee canceled under decision by the Solicitor General in Washington, D.C., August 18, 1932. Decision say if any assessed taxes on land is paid said taxes must be redeemed. No taxes paid on said estate—clear, never mortgaged, no wheat allotment, contract not be signed on said estate. In the year of 1931 the north and south highway of the State of Idaho happen to cross my deceased wife's estate. Seven hundred dollars is paid for boundary of said highway, which is taken by Benewah County, Idaho, for taxes.

Supt. A. G. Wilson did not inform the Benewah County, Idaho, officials in regards of the Solicitor General's decision. We heirs are not paid yet.

Yours respectfully,

PHILIP WILDSHOE (WEYWICK).

The CHAIRMAN. Any other Indian that wants to be heard?

STATEMENT OF MAURICE ANTELOPE

The CHAIRMAN. What is your name?

Mr. ANTELOPE. Maurice Antelope.

The CHAIRMAN. You have a statement to make?

Mr. ANTELOPE. Yes.

The CHAIRMAN. Go ahead and make it.

Mr. ANTELOPE. I am very glad to see you folks. We are wishing all the time to see you people. Then we have been writing most of the time, explaining and telling to the Commissioner what we want and the Commissioner knows what we write because we send them many times a petition. One time we make a complaint about our superintendent, Mr. Sharp. We put up all our complaints, how he treat us Indians.

The CHAIRMAN. You have a new superintendent now, do you not?

Mr. ANTELOPE. Yes.

The CHAIRMAN. How is he?

Mr. ANTELOPE. Oh, wait. I am just beginning. We sent the complaint to the Commissioner of Indian Affairs about Mr. Sharp and Mr. Drum, to put them out, both of them, and that is what we are troubled with. That is our trouble. It is still there now. Our trouble is the same thing.

The CHAIRMAN. What is your trouble?

Mr. ANTELOPE. About renting land. Superintendent always rents our Indian land; some of them are forced and the Indians don't like that man and the superintendent——

The CHAIRMAN. You mean the white man?

Mr. ANTELOPE. Yes; the white man, the renter.

The CHAIRMAN. Sometimes you do not like the renter?

Mr. ANTELOPE. Yes, sir.

The CHAIRMAN. And the superintendent put him there anyway?

Mr. ANTELOPE. Yes, sir; and the Indians do not like him and the superintendent put him there anyway. We do not like him at all, because one superintendent do that, then our crop runs short every year. We do not know where the other is going, because, you know, we used to handle our own affairs; we used to handle our land and crop business and at that time we were well off. Since the superintendent take it away from us and give it to the white people, then we are always short every year.

The CHAIRMAN. Do you think the Indians here are competent to pick out their own man that they want to lease land to?

Mr. ANTELOPE. Yes. That is what the Indians want. He wants to pick out his own man, pick up a good farmer.

The CHAIRMAN. And put the bad farmer off?

Mr. ANTELOPE. Yes; if we don't like him and he don't raise no crop at all and make no money for us.

And another thing, just a few days ago, or just a few days ago—last week, I think—we held a meeting on October 14, about our agent going to move to Moscow and our Indian, we don't like him at all to move, because we got a building for our superintendent, a good building, and everything—wood, light, and good roads and buildings—that cost us $62,000. That is why we don't like him to move.

Senator FRAZIER. You do not like to see the superintendent move over to Moscow?

Mr. ANTELOPE. No, sir. We got a good place for our superintendent already and we do not like for him to move.

The CHAIRMAN. I thought you did not like your superintendent?

Mr. ANTELOPE. We like the superintendent to help us, not be against us.

The CHAIRMAN. Does not this superintendent help you?

Mr. ANTELOPE. No.

The CHAIRMAN. Does he not help you?

Mr. ANTELOPE. Oh, this superintendent, it is all right, but some other Indians——

The CHAIRMAN. Some of the others do not like him?

Mr. ANTELOPE. Yes, sir.

The CHAIRMAN. Then they would want to see him move, would they not?

Mr. ANTELOPE. I do not understand you.

The CHAIRMAN. If they do not like him they would like to see him move, would they not?

Mr. ANTELOPE. No. I say we don't like him to move to Moscow. He is right here. Indians go after him for business and when he is in the office, that superintendent is right there and sometimes he says, "Nothing doing. You got to wait", and then you got to come back and then go back and forth. If it is moved to Moscow, that is too far, too much trouble, and too much lost time.

The CHAIRMAN. You will have somebody here. Even if your superintendent moves, they will leave someone here at this agency.

Mr. ANTELOPE. No. We do not like that. We want him to stay here. We have been altogether, the Indian and you people before have the agent right there and we do not have to change it; no, sir.

The CHAIRMAN. Have you a farm?

Mr. ANTELOPE. Yes, sir; a good ranch.

The CHAIRMAN. Do you farm it?

Mr. ANTELOPE. No.

The CHAIRMAN. Why not? Do you lease it?

Mr. ANTELOPE. I have been farming before. Of course, I am a good farmer.

The CHAIRMAN. You are a good farmer?

Mr. ANTELOPE. One time. I raise lots of grain and then white people raise everything and charged me more, for sacks, and so forth. When I go buy a sack, they raise up the price, and twine

United States Senate

COMMITTEE ON MANUFACTURES

February 15th, 1908.

Hon. James R. Garfield,

Secretary of the Interior.

Dear Sir:-

I hand you herewith a letter from a very good citizen of Idaho, which explains itself. It calls for certain information and expresses a desire as to the method of opening the Reservation which are not within my knowledge. I would be pleased to be advised so as to enable me to answer.

Mr. Sommers.

Very truly yours,

EGT/H.

Extract from Indian Appropriation Act of June 2.

[34 Stat., 335.]

COEUR D'ALENES. (Treaty.)

For last of fifteen installments of eight thousand dollars each, to be expended under the direction of the Secretary of the Interior, under the sixth article of agreement of March twenty-sixth, eighteen hundred and eighty-seven, ratified by Act of March third, eighteen hundred and ninety-one, eight thousand dollars.

For pay of blacksmith, carpenter, and physician, and purchase of medicines, as per the eleventh article of said agreement, three thousand five hundred dollars.

In all, eleven thousand five hundred dollars.

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands in the Coeur d'Alene Indian Reservation, in the State of Idaho.

That as soon as the lands embraced within the Coeur d'Alene Indian Reservation shall have been surveyed, the Secretary of the Interior shall cause allotments of the same to be made to all persons belonging to or having tribal relations on said Coeur d'Alene Indian Reservation, to each man, woman, and child one hundred and sixty acres, and upon the approval of such allotments by the Secretary of the Interior, he shall cause patents to issue therefor under the provisions of the general allotment law of the United States.

That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said Coeur d'Alene Indian Reservation shall be classified under the direction of the Secretary of the Interior as agricultural lands, grazing lands, or timber lands, and shall be appraised under their appropriate classes by legal subdivisions, and upon completion of the classification and appraisement such surplus lands shall be opened to settlement and entry under the provisions of the homestead laws, at not less than their appraised value, in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of one dollar and twenty-five cents per acre, by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof: *Provided*, That the price of said lands when entered shall be fixed by the appraisement, as herein provided for, which shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry, and in case any entryman fails to make the annual payments, or any of them, promptly when due all rights in and to the land covered by his or her entry shall cease, and any payment theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry: *Provided*, That the right to commute by said entryman shall be allowed as to any lands classified as agricultural and grazing lands, but the entryman, upon commutation, shall not be required to pay in the aggregate

any amount in excess of the appraised value of such lands; and nothing in this Act shall be held to repeal or extend the provisions of the homestead laws permitting the entryman to cut and remove, or cause to be cut and removed, so much timber as is actually necessary for buildings, fences and other improvements on his land entered: *Provided further*, That the general mining laws of the United States shall extend after the approval of this Act to any of said lands and mineral entry may be made on any of said lands but no such mineral selection shall be permitted upon any lands allotted in severalty to the Indians: *Provided further*, That all the coal or oil deposits in or under the lands on the said reservation shall be and remain the property of the United States, and no patent that may be issued under the provisions of this or any other Act of Congress shall convey any title thereto: *Provided further*, That the lands remaining undisposed of at the expiration of five years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than one dollar per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold ten years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price: *And provided further*, That sections sixteen and thirty six of said lands be, and they are hereby, excepted from the foregoing provisions and are hereby granted to the State of Idaho for school purposes, and the United States shall pay to said Indians therefor the sum of one dollar and twenty five cents per acre: *And provided also*, That if the State of Idaho has made any selections under existing law in lieu of sections sixteen and thirty-six of the lands affected by this Act the acreage of such selections shall be deducted from the acreage to be paid for under the preceding proviso.

That the said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter any of said lands except as prescribed in such proclamation.

That the Secretary of the Interior shall reserve from said lands, whether surveyed or unsurveyed, such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause any such reservations, or parts thereof, to be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe and the net proceeds derived from the sale of such lands shall be paid to said Indians as provided in section seven of this Act.

That the net proceeds arising from the sale and disposition of the said lands, excepting mineral and town-site lands, as aforesaid and including the sums paid for mineral and town-site lands, shall be after deducting the expenses incurred from time to time in connection with the allotment, appraisement, and sales and surveys herein provided, deposited in the Treasury of the United States to the credit of the Coeur d'Alene and confederated tribes of Indians belonging and having tribal rights on the Coeur d'Alene Indian Reservation, in the State of Idaho, and shall be expended for their benefit, under the direction of the Secretary of the Interior, in the education and improvement of said Indians and in the purchase of stock cattle, horse teams, harness, wagons, mowing machines, horse rakes, thrashing machines,

and other agricultural implements for issue to said Indians, and also for the purchase of material for the construction of houses or other necessary buildings, and a reasonable sum may also be expended by the Secretary, in his discretion, for the comfort, benefit, and improvement of said Indians: *Provided*, That a portion of the proceeds may be paid to the Indians in cash per capita, share and share alike, if in the opinion of the Secretary of the Interior such payments will further tend to improve the condition and advance the progress of said Indians, but not otherwise: *Provided*, That any sums placed in the Treasury of the United States to the credit of said Indians shall bear interest at the rate of three per centum per annum, which interest shall be expended in the same manner as the principal.

That any of said land necessary for agency, school, and religious purposes, including any lands now occupied by the agency buildings, and the site of any sawmill, gristmill, or other mill property on said lands are hereby reserved for such uses so long as said land shall be occupied for the purposes above designated: *Provided*, That all such reserved lands shall not exceed in the aggregate three sections and must be selected in legal subdivisions conformable to the public surveys, such selection to be under the direction of the Secretary of the Interior and subject to his approval.

That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations as to the manner of sale, notice of same, and other matters incident to the carrying out of the provisions of this Act, and with authority to reappraise and reclassify said lands if deemed necessary from time to time, and to continue making sales of the same, in accordance with the provisions of this Act, until all of the lands shall have been disposed of.

That nothing in this Act contained shall be construed to bind the United States to find purchasers for any of said lands, it being the purpose of this Act merely to have the United States to act as trustee for said Indians in the disposition and sales of said lands and to expend or pay over to them the net proceeds derived from the sales as herein provided.

That to enable the Secretary of the Interior to allot, classify, appraise, and conduct the sale and entry of said lands as in this Act provided the sum of fifteen thousand dollars, or so much thereof as may be necessary, is hereby appropriated from any money in the Treasury not otherwise appropriated, the same to be reimbursed from the proceeds of the sales of the aforesaid lands: *Provided*, That when funds shall have been procured from the first sales of the land the Secretary of the Interior may use such portion thereof as may be actually necessary in conducting future sales and otherwise carrying out the provisions of this Act.

L.
11420-1908
308.1

February 19 1908.

Subject:
Relative to opening the
Coeur d'Alene Reservation.

Honorable W. B. Heyburn,
United States Senate.

Sir:

I am in receipt of your letter of February 15, 1908, inclosing one from W. L. Sommers of Harrison, Idaho requesting certain information relative to opening the Coeur d'Alene Indian Reservation and expressing his views in regard to the method which should be followed in the opening.

The Coeur d'Alene Reservation will be opened to settlement and entry in accordance with the provisions of the act of June 21, 1906 (34 Stat. L., 335) after allotments shall have been made to each Indian belonging on that reservation who is entitled to receive an allotment and the surplus lands shall have been classified as agricultural, grazing or timber lands and appraised by the Secretary of the Interior.

Mr. Sommers objects to that part of the act which provides for the classification of the timber lands, and says that all the surplus lands of the reservation which are not mineral in character should be opened under the homestead

laws for the reason that if the timber lands are appraised as such they will pass into the hands of lumber companies for less than their actual value and result in the profits which would be derived therefrom going to some of the larger business centers instead of being expended in the development of the country.

He objects also to granting rights of way across the reservation to railroad companies without proper compensation being made therefor, and says further that the proceeds derived from such grants should go to the public school fund of the State or county wherein the lands lie.

There is probably some merit in the suggestions of Mr. Sommers relative to the opening of all the lands of the reservation under the homestead laws from the settlers viewpoint, yet it is believed that this method would not be the most equitable one to the Indians. It is well known that lands which are valuable for the timber growing thereon command a premium over the value which they would have if classified as agricultural or grazing lands, and when it is remembered that those timber lands are to be appraised by 40-acre legal subdivisions it becomes apparent that if they were disposed of at public auction or by sealed bids they would undoubtedly bring a much greater sum than if disposed of as agricultural lands.

While the said act of June 21, 1906 provides for the classification of the surplus lands into agricultural, grazing and timber lands, no provision is made therein for the disposal of

such lands other than under the provisions of the homestead laws. This appears to be in accord with Mr. Sommers' suggestions and will prevent the lands passing into the hands of lumber companies, for, in order to secure title to the timber lands it will be necessary for the purchasers to comply with the homestead laws in regard to settlement and residence for the period required by those laws and will confine the acreage which may be appropriated by any one person to not more than 160 acres.

With reference to the granting of rights of way across the reservation to railroad companies you are informed that the land which was appropriated by them for such rights of way was paid for at the rate of from $5.00 to $10.00 per acre, or at an average of $8.50 per acre, which was the amount of damages assessed by the superintendent of the reservation, and in the opinion of the Department, based on reports of the superintendent, is the reasonable value of the lands.

I cannot readily see just how the State or county would have any claim to the proceeds derived from the granting of rights of way across Indian lands, and it seems to me that the law which directs that moneys derived in this manner should be placed to the credit of the Indians across whose lands the rights of way extend, is just and equitable in its provisions.

Mr. Sommers' letter is returned herewith.

Very respectfully,

Secretary.

ACE:LM

Land.
9667-1909.
J T R

Opening of Coeur
d'Alene Reservation.

A. M. Bowen, Esq.,

Attorney at Law,

220 Wall Street,

Spokane, Washington.

Sir:

I have your letter of January 30, 1909, inviting attention to the agreement made with the Coeur d'Alene Indians in 1889, as ratified by the Act of March 3, 1891 (26 Stat.L., 1026, 1029). You say that by the terms of this agreement the present Coeur d'Alene Reservation was to remain Indian land forever, and that no part of the reservation was to be sold, occupied or settled by white persons, without the consent of the Indians residing on the reservation.

The Supreme Court of the United States having decided in Lone Wolf vs. Hitchcock, 187 U. S. 553, that Congress has absolute power to dispose of the Indians' land without their consent, and such legislation having been enacted, it remains, of course, for this Department to carry out the laws as passed by the Congress and construed by the Supreme Court.

Regarding your inquiry in connection with your appointment as Attorney for the Coeur d'Alene Indians, permit me to invite your attention to the Revised Statutes of the United States, Sections 2103 et seq.

Very respectfully,

MM-6

Secretary.

1-4831

Land.
9567-1909.
J T H

Feb'y 15 1909.

Opening of Coeur d'Alene Reservation.

OFFICE OF INDIAN AFFAIRS RECEIVED FEB 15 1909 File.

A. Z. Bowen, Esq.,

Attorney at Law,

220 Wall Street,

Spokane, Washington.

Sir:

I have your letter of January 30, 1909, inviting attention to the agreement made with the Coeur d'Alene Indians in 1889, as ratified by the Act of March 3, 1891 (26 Stat.L., 1026, 1029). You say that by the terms of this agreement the present Coeur d'Alene Reservation was to remain Indian land forever, and that no part of the reservation was to be sold, occupied or settled by white persons, without the consent of the Indians residing on the reservation.

The Supreme Court of the United States having decided in Lone Wolf vs. Hitchcock, 187 U. S. 553, that Congress has absolute power to dispose of the Indians' land without their consent, and such legislation having been enacted, it remains, of course, for this Department to carry out the laws as passed by the Congress and construed by the Supreme Court.

FEB 5 1909

TO INDIAN OFFICE

SIGNATURE

Spokane, Jan. 29th., 1909.

Hon. James Rudolph,
Secretary of Interior, Washington, D.C.

Dear Sir.

Regarding your inquiry in connection with your appointment as attorney for the Coeur d'Alene Indians, permit me to invite your attention to the Revised Statutes of the United States, Section 2106 et seq.

Yes, many of your inquiry in connection with your appointment as attorney for the Coeur d'Alene Indians, permit me to invite your attention to the Revised Statutes of the United States, Section 2106 et seq.

Assistant Secretary.

OBJ 2237

Read

SPECIAL

220 WALL STREET

SPOKANE Jan. 30th., 1909.

Hon~~orable~~, James R. Garfield,
Secretary of Interior, Washington, D.C.

Dear Sir.

You may not remember that you and I sat side by side in the Columbia Law School, under the gentle Professor Dwight. But such is the case.

You may infer from my letter head, that I am not actively engaged in the practise of law, and while it was my intention to to leave that field to more brilliant men, and to apply myself to the more congenial task of developing this great State, there has been pressed upon me one case, of such great importance, and of such deep pathos, that I find it impossible to refuse to accept. I have been appealed to for some months, by some members of the Tribe of the Coeur d'Alene Indians to accept a retainer from them, and to defend their rights.

And while it seems to me that it will result to me in no financial profit, and will be only a great deal of work, trouble, and probably the cause of unfriendly relations between myself and large interests among the citizens here, I can not under my duty as a sworn Attorney permit these considerations to influence my decision.

From what study of the case I have so far made, it seems to me perfectly clear that the present plan of the Government to throw the Coeur d'Alene Reservation open to white settlement is a direct breach on the part of the United States of the agreement of 1889, made in good faith by and between our Government and those Indians.

That agreement reads as follows: "-- the Coeur d'Alene shall be held forever as Indian land and as the homes of the Coeur d'Alene Indians, and their posterity,- -- and no part of said reservation shall ever be sold, occupied, opened to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation."

If I am rightly informed by the Indians, they have never given their consent to that opening, and never will. That there may be one or two members of the Tribe, worthless young fellows, who would sell anything for a little money, who would consent to the plan of opening the reserve. But these are the very ones who should be protected against themselves.

Moreover my information leads me to believe that a certain group of United States Senators and an Attorney have boasted that they are the authors of the plan to take the land out of the hands of the Indians "without the consent of the Indians", and that these men in high places are actually quarrelling among themselves for the honor(?) of thus inducing the United States to violate its most sacred obligations.

You will probably observe, if you take the time to look carefully at the agreement of 1889, that if the United States shall proceed to that point in the present plans of opening the Reserve to white settlement, where the said aggeement is finally broken, then that act on the part of the Government will bring back into the hands of the Indians their original claim to all that vast body of land that was comprised in that agreement. This act on the part of the Government will put a cloud upon the title to the entire territory now occupied by the City of Spokane, the City of Coeur d'Alene, and all the four millions of acres ceded by the Indians by that agreement. This would amount to a National calamity.

But it would put the Indians in a rightcous claim for damages against this Government amounting to many millions of dollars. It would not only do that, but it would place a deep black splotch of disgrace upon the fair escutcheon of the United States, which all time would not efface. While therefore in accepting the case as from the Indians against the United States, I am at the same time fighting for the fair name of my own Government.

From all the information I have been so far able to gather, I am led to believe that there is a conspiracy on foot consisting of an alliance between certain very powerful financial interests out here, and certain corrupt Government officials, to mislead the Government into the prosecution of a line of conduct that will be an eternal disgrace to that Government, and will result in filching away the lands of the Indians and the turning of those lands over to the conspirators, or their friends.

From the information so far placed before me, it seems to me that one of the wisest steps you could possibly take in closing your term of honorable service as Secretary of the Interior, would be to put a stop at once to the entire plan of opening the Reserve, if a Proclimation is prepared for the President to sign have that signature withheld, and order a thorough investigation of this whole matter by a Federal Grand Jury, or take steps to have such investigation made by the Senate, in order that the Indians may be treated justly, the agreement made with them in 1889 kept sacred, and the everlasting disgrace of the Government of the United States prevented.

Kindly send me by return mail the proper forms to be signed and filed with your Department, substituting and appointing me as the Attorney for these Indians.

Meanwhile, With Great Respect, I remain

Yours Very Truly,

A. J. Bowen

All Rev. Stat. U.S. Sec. 2079

All 187 U.S. 553

1 - 23771

Land-
Allotments
41438-1909
F H L

Opening of Coeur d'Alene reservation.

JUN -4 1909

FOR FILE

Hon. Thomas R. Hamer,

House of Representatives.

Sir:

Your letter of May 28, 1909, regarding the opening of Coeur d'Alene reservation, has been received.

The place of registration for the Coeur d'Alene opening will be at Coeur d'Alene City, Idaho, as set forth in the inclosed circular of the General Land Office governing the opening of the Coeur d'Alene, Flathead and Spokane reservations.

Very respectfully,

(Signed) R. G. Valentine,

Acting Commissioner.

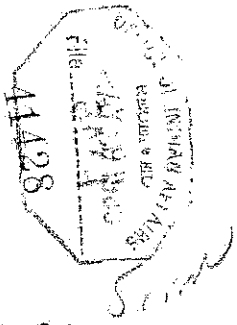
FS-3
1789

HOUSE OF REPRESENTATIVES

WASHINGTON

Read by R. G. V.

May 28, 1909.



Hon. Robert G. Valentine,

Acting Commissioner of Indian Affairs,

Washington, D.C.

My dear Mr. Valentine:

I am this day in receipt of a communication from a number of the business men of Coeur d'Alene City, Idaho, advising me that it is quite generally reported in Idaho that the registrations for the applications for land on the Coeur d'Alene Indian Reservation, soon to be opened, are to be filed in Spokane.

I can hardly bring myself to believe that such an arrangement as this has been authorized by your Department. Coeur d'Alene is a very progressive city of some twelve thousand inhabitants in the northern part of my state, and adjacent to the Coeur d'Alene Reservation. It has ample hotel facilities to care for the people that may present themselves for registration, and inasmuch as the Coeur d'Alene Reservation is in the State of Idaho, it would seem that the registration office should be opened in our state.

Will you kindly advise me of the present status of this matter at your earliest convenience.

Very truly yours,

Thos. R. Stanley

b/g

File

Land.

JTR

Subject.
Opening Kosna.in
Idaho and rules
governing same.

May 6, 1906.

Alfred Krepanis, Esq.,
Spring Brook,
Ashburn County,
Wisconsin.

Sir:

This office is in receipt of your letter of April 30, 1906, asking if ~~the~~ Indian reservations in the State of Idaho will be opened for settlement in the near future, and, if so, what rules will govern the opening, entry, or occupation of ~~such~~ reservation.

In response you are informed that in a circular issued by the Commissioner of the General Land Office under date of January 21, 1906, appears the following paragraph:

> Coeur d'Alene, Idaho: Embraces 310,000 acres, to be opened to settlement and entry under the homestead and mineral laws under the act of June 21, 1906 (34 Stat., 325); the surveys will be accepted the coming Spring; the allotments of lands to the Indians are about to begin, after which the remaining lands are to be classified and appraised. It is doubtful if the reservation will be opened this year.

The act mentioned in the foregoing contains the following:

> That the said lands shall be opened to settlement and entry by proclamation of the resident,

OBJ 2242

which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter any of said lands except as prescribed in such proclamation.

The proclamation referred to in the foregoing has not been made public, and, until this is done, it is impossible to say what rules will govern the entry or settlement on this reservation. When prepared, the proclamation will be made known to the public generally through the medium of the press, at which time you will have an opportunity of obtaining the information you want.

Very respectfully,

Chief ~~Clerk~~ Commissioner.

REFER IN REPLY TO THE FOLLOWING:

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

WASHINGTON. May 4,1908.

Land.

JTR

Subject:
Opening of Coeur d'Alene
Indian Reservation.

J.W. Allen,Esq.,

769 2d Street South,

Portland,Oregon.

Sir:

The Office is in receipt of your letter of April 20, 1908, requesting to be informed when the Coeur d'Alene Reservation, Idaho, will be opened for settlement, and if to be classified, will the timber lands on this reservation be subject to entry under the homestead law.

In response you are advised that the Coeur d'Alene Reservation will be opened under the provisions of the Act of June 21,1906, (34 Stat.L., 325, et seq.), which contains the following provisions:

> That upon the completion of said allotments to said Indians, the residue or surplus lands -- that is,lands not allotted or reserved for Indian school, agency or other purposes -- of the said Coeur d'Alene Reservation shall be classified under the direction of the Secretary of the Interior as agricultural lands, grazing lands or timber lands, and shall be appraised under their appropriate classes in legal subdivisions, and upon completion of the classification and appraisement, such surplus lands shall be opened to settlement and entry, under the provisions of the homestead laws, at not less than their appraised value, in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of $1.25 per acre by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof.

The proclamation referred to in the foregoing has been made public, and until this is done, it is impossible to say what rules will be promulgated for the opening of this reservation to homestead settlers.

A copy of the circular issued by the Commissioner of the General Land Office and dated January 21,1908,showing the Indian reservations it is proposed to open in the near future, is inclosed for your information.

Very respectfully,

Chief Clerk.

(P)

(Land 1051-3)

574/1908-L.13

Dollar Oregon 4/20th/08.

Hon commissioner Ind affairs
Washington D C

Dear Sir

Will you kindly inform me when the condalmd indian Reservation located in Idaho is going to be thrown open for settlement and if the lands are going to be classified and if so entitled to a homestead be allowed to file on timbered land

Thanking you in advance for the information

I remain Respectfully Yours
J K Allen
769-2nd Ave-South
Dollar Oregon.

2-64908

Land-Allotments
48367-1913
K F B

Authority for opening
Coeur d'Alene Res'n.

APR 24 1913

FOR FILE

FILED BY C. P. F.

48367/1913 COEUR D'ALENE 2 Coe 1

Mr. Bennett Williams,

Coeur d'Alene, Idaho. Box 315.

Sir:

Referring to your request of April 18, 1913, received by reference from the Librarian of Congress, you are advised that no agreement was entered into with the Coeur d'Alene Indians in regard to opening the surplus lands of their diminished reservation to public settlement and entry.

Under decision rendered in the case of Lone Wolf versus Hitchcock (187 U.S. 553), absolute authority vested in Congress to enact legislation providing for the opening of tribal lands without the consent of the Indians.

In this connection it may be said that under date of April 11, 1906, in reporting upon H. R. 17884, providing for the opening of the Coeur d'Alene surplus unallotted lands to public settlement, it was stated that the Superintendent had been instructed to bring pending legislation to the attention of the Indians and to tell them that Congress had power to open the reservation if it saw fit to do so but that the Office would be pleased to have enacted into law any proper provision which they desired.

The Superintendent reported that the Indians were greatly opposed to the proposed measure and refused to consider it with a view to suggesting any amendments or changes.

It was stated further in said report, that,-

> It is believed that all Indian reservations must sooner or later, be abolished, and that as fast as the Indians residing thereon are in position to appreciate the change which the allotment of lands in severalty means to them, appropriate legislation should be enacted authorizing the steps necessary to allot lands in severalty and to restore the remainder to the public domain. The Coeur d'Alene Indians are perhaps in as good condition to receive their lands in severalty as they will be for years to come. The provisions of the bill under consideration are liberal and the interests of the Indians are safeguarded; . . .

For your further information there is enclosed an extract from the Indian appropriation act of June 21, 1906 (34 Stat.L.; 335) relating to the opening of the Coeur d'Alene reservation;, also, copy of Indian appropriation act of March 3, 1891 (26 Stat.L.,989-1026), containing the agreement referred to in the enclosed excerpt copy.

Respectfully,

(Signed) C. F. Hauke.

Second Assistant Commissioner.

4-KFB-21

Librarian of Congress,

Washington, D. C.

Dear Sir:

Can you inform me where I can find a copy of the treaty between the United States and Coeur d'Alene Indians under the authority of which Congress passed the act opening the Coeur d'Alene Indian reservation to homestead entry after providing allotments of land for the Indians?

Very truly yours,

Bennett McClaren

April 14 1913

REFER IN REPLY TO THE FOLLOWING:

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

WASHINGTON. May 4,1908.

Land.

JTR

Subject:
Opening of Coeur d'Alene
Indian Reservation.

J.W. Allen,Esq.,

769 2d Street South,

Portland,Oregon.

Sir:

The Office is in receipt of your letter of April 20, 1908, requesting to be informed when the Coeur d'Alene Reservation, Idaho, will be opened for settlement, and if to be classified, will the timber lands on this reservation be subject to entry under the homestead law.

In response you are advised that the Coeur d'Alene Reservation will be opened under the provisions of the Act of June 21,1906, (34 Stat.L., 325, et seq.), which contains the following provisions:

> That upon the completion of said allotments to said Indians, the residue or surplus lands -- that is,lands not allotted or reserved for Indian school, agency or other purposes -- of the said Coeur d'Alene Reservation shall be classified under the direction of the Secretary of the Interior as agricultural lands, grazing lands or timber lands, and shall be appraised under their appropriate classes in legal subdivisions, and upon completion of the classification and appraisement, such surplus lands shall be opened to settlement and entry, under the provisions of the homestead laws, at not less than their appraised value, in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of $1.25 per acre by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof.

The proclamation referred to in the foregoing has been made public, and until this is done, it is impossible to say what rules will be promulgated for the opening of this reservation to homestead settlers.

A copy of the circular issued by the Commissioner of the General Land Office and dated January 21,1908, showing the Indian reservations it is proposed to open in the near future, is inclosed for your information.

Very respectfully,

Chief Clerk.

(F)

(Land 374/1908-L.B.
Land 1051-3)

Dollar Oregon 4/20th/08.

Hon commissioner Ind affairs
Washington DC

Office of Indian Affairs
Received
APR 27 1908
File

Dear Sir

Will you kindly inform me when the condalmd Indian Reservation located in Idaho is going to be thrown open for settlement and if the lands are going to be classified and if so how are entitled to a homestead be allowed to file on timbered land

Thanking you in advance for the information

I remain Respectfully yours

J M Allen

769-3rd St South
Dollar Oregon.

File

Land.

JTR

Subject.
Opening Kosna.in
Idaho and rules
governing same.

May 6, 1908.

Alfred Krepanis, Esq.,

Spring Brook,

Ashburn County,

Wisconsin.

Sir:

Your letter of April 30, 1908, asking if ~~any~~ Indian reservations in the State of Idaho will be opened for settlement in the near future, and, if so, what steps will be necessary to obtain a dairy, or occupation of ~~such~~ reservation.

In response you are informed that in a circular issued by the Commissioner of the General Land Office under date of January 21, 1908, appears the following paragraph:

> Coeur d'Alene, Idaho: Embraces 310,000 acres, to be opened to settlement and entry under the homestead and mineral laws under the act of June 21, 1906 (34 Stat., 325); the surveys will be accepted the coming spring; the allotments of lands to the Indians are about to begin, after which the remaining lands are to be classified and appraised. It is doubtful if the reservation will be opened this year.

The act mentioned in the foregoing contains the following:

> That the said lands shall be opened to settlement and entry by proclamation of the President,

OBJ 2253

which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter any of said lands except as prescribed in such proclamation.

The proclamation referred to in the foregoing has not been made public, and, until this is done, it is impossible to say what rules will govern the entry or settlement on this reservation. When prepared, the proclamation will be made known to the public generally through the medium of the press, at which time you will have an opportunity of obtaining the information you want.

Very respectfully,

Chief ~~of Field~~ Commissioner.

1 - 23771

Land-
Allotments
41436-1909
F H E

Opening of Coeur d'Alene reservation.

JUN -4 1909

FOR FILE

Hon. Thomas R. Hamer,

House of Representatives.

Sir:

Your letter of May 28, 1909, regarding the opening of Coeur d'Alene reservation, has been received.

The place of registration for the Coeur d'Alene opening will be at Coeur d'Alene City, Idaho, as set forth in the inclosed circular of the General Land Office governing the opening of the Coeur d'Alene, Flathead and Spokane reservations.

Very respectfully,

(Signed) R. G. Valentine,

Acting Commissioner.

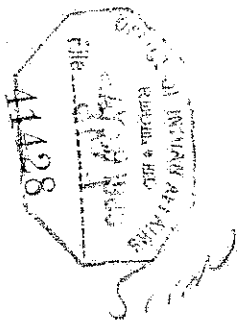
PS-3
1789

HOUSE OF REPRESENTATIVES

WASHINGTON

Read by R. G. V.

May 28, 1909.



Hon. Robert G. Valentine,

Acting Commissioner of Indian Affairs,

Washington, D.C.

My dear Mr. Valentine:

I am this day in receipt of a communication from a number of the business men of Coeur d'Alene City, Idaho, advising me that it is quite generally reported in Idaho that the registrations for the applications for land on the Coeur d'Alene Indian Reservation, soon to be opened, are to be filed in Spokane.

I can hardly bring myself to believe that such an arrangement as this has been authorized by your Department. Coeur d'Alene is a very progressive city of some twelve thousand inhabitants in the northern part of my state, and adjacent to the Coeur d'Alene Reservation. It has ample hotel facilities to care for the people that may present themselves for registration, and inasmuch as the Coeur d'Alene Reservation is in the State of Idaho, it would seem that the registration office should be opened in our state.

Will you kindly advise me of the present status of this matter at your earliest convenience.

Very truly yours,

Thos. R. Stanley

h/g

2-64908

Land-Allotments
48367-1913
K F B

Authority for opening
Coeur d'Alene Res'n.

APR 24 1913

FOR FILE

FILED BY C. P. F.

48367/1913

COEUR D'ALENE 6 Cor 1

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In this connection it may be said that under date of April 11, 1906, in reporting upon H. R. 17884, providing for the opening of the Coeur d'Alene surplus unallotted lands to public settlement, it was stated that the Superintendent had been instructed to bring pending legislation to the attention of the Indians and to tell them that Congress had power to open the reservation if it saw fit to do so but that the Office would be pleased to have enacted into law any proper provision which they desired.

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> It is believed that all Indian reservations must sooner or later, be abolished, and that as fast as the Indians residing thereon are in position to appreciate the change which the allotment of lands in severalty means to them, appropriate legislation should be enacted authorizing the steps necessary to allot lands in severalty and to restore the remainder to the public domain. The Coeur d'Alene Indians are perhaps in as good condition to receive their lands in severalty as they will be for years to come. The provisions of the bill under consideration are liberal and the interests of the Indians are safeguarded; . . .

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Respectfully,

(Signed) C. F. Hauke.

4-KFB-21

Second Assistant Commissioner.

Librarian of Congress,

Washington, D. C.

Dear Sir:

Can you inform me where I can find a copy of the treaty between the United States and Chief Wallace Indians under the authority of which Congress passed the act opening the Colville Indian reservation to homestead entry after providing allotments of land for the Indians?

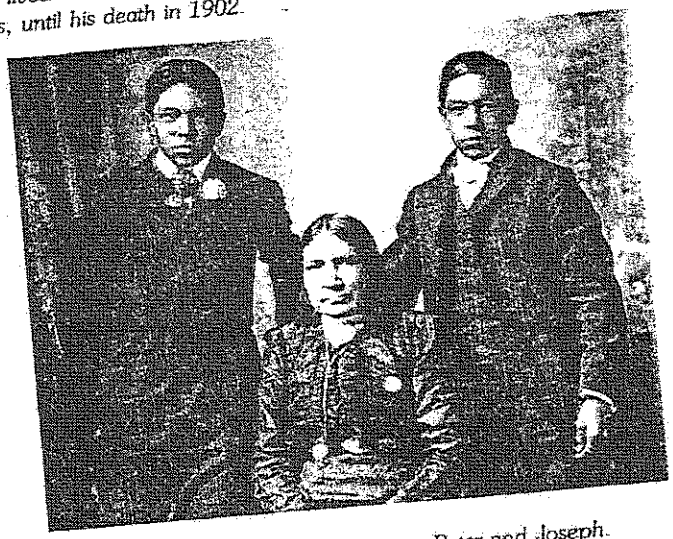
Very truly yours,

Bennett McWilliams

April 14 1913

CHIEF JOSEPH SELTICE

Andrew Seltice lived out his old age as a wealthy farmer and highly respected Head Chief of the Coeur d'Alenes, until his death in 1902.



Mrs. Julia Seltice with sons Peter and Joseph.

6-21-02 History of Cda Claims Case

GENERAL COUNCIL MEETING OF THE COEUR D'ALENE TRIBE
HELD IN THE GYMNASIUM OF THE SACRED HEART MISSION
DeSmet, Idaho - June 27, 1959

The meeting was called to order by Chairman Joseph R. Garry, and the invocation was given by Father Harrington, S.J., substituting for Father Ferretti, S.J., who is our regular parish priest.

Sergeants-at-arms appointed were:

Dan Cherrapkin
Gus Michell
Joe Falcon

MEMBERS OF THE TRIBAL COUNCIL PRESENT:

Joseph R. Garry, Chairman
Oswald George, Vice-chairman
Lena M. Louie, Secretary
Lawrence Nicodemus, Councilman
David Garrick, Councilman
Mitch Michael, Councilman
Henry Aripa, Councilman

(All Councilmen present)

The following were introduced:

Ignace Garry, Chief of the Coeur d'Alene Tribe
William E. Ensor, Jr., Supt., Northern Idaho Agency
Harold Hayne, Administrative Officer, Northern Idaho Agency
Al Rogers, Credit Officer, Northern Idaho Agency

The Chairman then gave a resume of the history of the Coeur d'Alene Tribal Council and the important roll it has played in the recent successes of the Coeur d'Alene Tribe. While the Coeur d'Alene Tribe, like many other Northwest Tribes, voted to exclude itself from the Indian Reorganization Act, it nevertheless is organized and operates under a constitution approved September 2, 1947 by the Secretary of the Interior. Among the number of accomplishments by the tribe through its tribal council, the greatest and the one for which the tribe is meeting today to learn about in some detail is the winning of the Coeur d'Alene Claims case. He further stated that the Indian Claims Commission's creation by Congress, which began its operations in 1947, made it possible for a great number of tribes, including the Coeur d'Alene, to litigate land claims against the Federal Government based on unconscionable consideration. In fact, had the Indian Claims Commission not been created, for which most of the ground work for setting up the Commission had been done by the National Congress of American Indians, the Coeur d'Alene Tribe would not have had any claims to litigate at all. He went on to explain the differences in the various Indian Claims cases, citing as first example the instances where the tribes that had a specific provision in their treaties for settlement for designated lands ceded to the Federal Government as being referred to as "Treaty Claims".

Claims of this type are generally easier to settle. The other claims are for "unconscionable consideration", along with which "aboriginal title" would have to be proven by the tribe. These are the types of claims in which consideration or a price has already been given by the government and which the tribes have accepted, and the claim would only be for the difference between the value accepted and the actual value of the land at the time of taking. The Coeur d'Alene Claim, being in the category of the latter one explained, namely "unconscionable consideration", it was a more difficult one to litigate and the Coeur d'Alene Tribe has been unusually fortunate in getting its claims settled in the relatively short time of some nine years.

The Chairman then explained the chain of important events that led to the final adjudication of the Coeur d'Alene Claim up to the present time. First, on December 6, 1957, after a series of hearings before the Indian Claims Commission, the commission entered its opinion as to the value of the claim which was the gross total of $4,659,663.00, less the original consideration already collected by the Coeur d'Alene Tribe in years past which amounted to $231,884.97, leaving the net claims total of $4,427,778.03. Then from this amount was yet to be subtracted gratuities for various services rendered the Coeur d'Alene Tribe by the Federal Government. On December 21, 1957, the Coeur d'Alene Tribe agreed to accept this net award provided the deductions for gratuities and services did not reduce the amount of the award by more than $200,000.00, or in no case for less than $4,200,000.00. The Commission's findings as just off sets was recommended to be no more than $85,000.00. On May 6, 1958 the Department of Justice rendered its final decision on the case in the value of $4,342,778.03, which was the final balance after the $85,000.00 was approved and deducted for off sets by the Department of Justice for government services.

On July 8, 1958, in concurrence with the U. S. Treasury's request, the President of the United States recommended a supplemental budget for the approval of Congress in the total amount of $8,525,088.00 in which was included the $4,342,778.03 which represented the net amount of the Coeur d'Alene Judgment Award. This Supplemental Appropriation was enacted by Congress and signed by the President of the United States under date of August 27, 1958, and became Public Law 86-766, and the Coeur d'Alene Tribe's share of this Act ($4,342,778.03) was deposited in the United States Treasury to the credit of the Coeur d'Alene Tribe and started to draw 4% interest.

In compliance with the rules and regulations of the Indian Claims Commission, a hearing was scheduled on October 10, 1958 to determine the amounts due the attorneys on contingent basis in accordance with contractual agreements between them and the tribe, as well as to pay some of the attorneys' expenses as agreed to by the tribe, together with expenses of witnesses and appraisers.

On November 3, 1958, the Indian Claims Commission ruled and ordered the above expenses for attorneys' contingent fees, reimbursable expenses and costs be paid by the U. S. Treasury direct from the Judgment award now on deposit to the credit of the Coeur d'Alene Tribe in the amount of $455,271.00. This amount deducted from the net amount of the Judgment Award leaves a remaining balance in the U. S. Treasury to the credit of the Coeur d'Alene Tribe, the total unobligated balance of $3,887,507.03.

The Chairman commented here that in accordance with his calculations that by August 27, 1959, at which time the Judgment Award will have been deposited in the U. S. Treasury for one year, the accrued interest on these funds alone will amount to more than $155,000.00.

The Chairman then commented on the false rumors of the availability of these Judgment Funds to the Tribe. He said that at no time, and even to the present day, were any of these funds ever available to the Tribe for any purpose whatsoever except for the expenses of the Claims litigation authorized by the Indian Claims Commission under date of November 3, 1958. He reiterated his statements he generally made in tribal meetings for the past two years that the Bureau of Indian Affairs had not been in agreement with the Coeur d'Alene Tribal Council in its thinking that they, as the governing body of the tribe, should make the proposals for programming the judgment award which includes the proposition that the beneficiaries of the judgment award should include only those who are enrolled members of the tribe in accordance with the Coeur d'Alene Tribe's constitution. The Bureau's idea as opposed to this plan was that only the heirs of the original Coeur d'Alene Tribe upon whom the damage was inflicted should benefit by the Claims Judgment award and not the Coeur d'Alene tribe as presently constituted.

After a number of appeals by the Coeur d'Alene Tribal Council by letters and resolutions to the Bureau of Indian Affairs, the last being a personal visit to the Office of the Secretary of the Interior by the Coeur d'Alene Tribal Delegation on March 20, 1959, the Assistant Secretary of the Interior advised by telegram that the only way to possibly consummate the Tribe's plan was to introduce legislation in Congress which would specifically point out this intent. The bill was subsequently prepared by the Interior Department and introduced in the House on May 21, 1959 by Gracie Pfost of Idaho and in the Senate on May 22, 1959 by James E. Murray of Montana with the assistance of Frank Church of Idaho. The report by the Secretary of the Interior to the respective committees of Congress on this bill carried a recommendation for "do pass". This bill, if passed, would permit the Coeur d'Alene Tribal Council to program the Judgment Award in benefits to the enrolled members of the tribe as presently constituted, subject to the approval of the Secretary of the Interior, and that where per capita payments were made to such members of the tribe, such funds would be exempt from both State and Federal income taxes.

Chairman Joseph R. Garry then read some of the Tribal Council's tentative recommendations for a possible Tribal program, with the specific explanation that they were only suggestions and in no way conclusive or final, and that after all they were also subject to the approval of the Secretary of the Interior. At a later date, after the bill becomes law, if it should pass, another tribal meeting would be called to present the program in its final form.

The Chairman then announced that there would be a question session after lunch.

RECESS: for lunch and Father Harrington lead us in reciting the Grace.

BEFORE THE INDIAN CLAIMS COMMISSION

THE COEUR D'ALENE TRIBE OF INDIANS,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 81

Decided: DEC 1957

Appearances:

Ralph G. Wiggenhorn, with whom were J. M. Schiltz, Glen A. Wilkinson and Donald C. Gormley, Attorneys for Petitioner.

John D. Sullivan, with whom was Mr. Assistant Attorney General Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

D'Marr, Commissioner, delivered the opinion of the Commission.

This case is now before the Commission for the determination of the consideration the defendant paid the petitioner for its lands under the Agreement of March 26, 1887, 26 Stat. 989, 1027, the effective date of such agreement, and the value of the lands ceded.

A hearing has heretofore been held upon the issue of petitioner's right to the lands claimed to have been used and occupied by the

[redacted] Coeur d'Alene Indian Tribe from time immemorial and which were ceded to the United States by the Agreement of March 26, 1887, ratified by the Act of March 3, 1891, 26 Stat. 989, 1027. The Commission made findings of fact upon said issue and rendered a decision thereon (4 Ind. Cl. Comm. 1) and concluded that the petitioner had proved that it held aboriginal Indian title to the lands described in Finding 11 therein at the time of said 1887 Agreement and that the defendant had recognized said Indian title in petitioner. On the same day, August 26, 1955, the Commission entered an interlocutory order containing said conclusions of law and ordered left for final determination all other issues including the consideration paid for said cession and the value of the lands ceded at the time of said cession. These and related issues are now before the Commission for its determination. The questions to be determined are (1) the value of the lands at the date of acquisition, (2) the date of evaluation, (3) whether the compensation paid under the Agreement of March 26, 1887, was unconscionable and, (4) whether or not Indian title includes the beneficial ownership of timber and subsurface rights.

The Coeur d'Alene Tract consisting of 2,389,92[illegible] acres is located in the present states of Idaho and Washington, with 334,328 acres of said total acreage being in the State of Washington. The Tract occupies the central portion of the Panhandle Section of the State of Idaho and extends into Washington from ten to twelve miles. The northernmost part of the ceded lands reaches the southern tip of Lake Pend Oreille and the eastern boundary is the summit of the Bitterroot Mountain range. The Tract

[redacted]

extends southward to the spur ranges and hills dividing the drainage basin of Coeur d'Alene Lake from the drainage of the Snake River. The area is rugged and mountainous for the most part but is well watered by streams such as the Coeur d'Alene and St. Joe rivers which flow into Coeur d'Alene Lake and the St. Maries River. The Tract contains a small amount of agricultural lands such as Rathdrum Prairie in the northwestern part of the ceded area and part of these farm lands are located along the western portion in the famous Palous wheat belt.

Except for a stampede of mining men into the area in 1865 in what apparently was an unsuccessful venture there was little early settlement within the ceded area. The advent of the Northern Pacific Railroad in the early 1880's which passed through the northwestern corner of the Coeur d'Alene Tract resulted in the development of the agricultural lands of the area and by 1887 a fairly active market existed for these agricultural lands. By 1887 there were telephone lines connecting the principal towns in the area and these were flourishing towns, most of them mining settlements but others in the farming districts. There were post offices, flour mills, banks, sawmills and numerous schools. Patents had been issued in a few instances to settlers in the area. Transportation into the ceded area was accomplished by 1887 as a result of a branch railroad line from Hauser Junction on the Northern Pacific extending southward to the northern end of Lake Coeur d'Alene. At least three steamers were operating on the lake and on the Coeur d'Alene, St. Joe and St. Maries rivers. These steamboats navigated the Coeur d'Alene River to the old Mission (Cataldo) from

[redacted]

which a point a narrow gauge railroad was built up the Coeur d'Alene River to the mining towns.

In the early 1880's a mining prospector, Prichard, discovered the placer gold fields on what is now Prichard Creek, a tributary of the North Fork of the Coeur d'Alene River within the Tract. The exact year of his discovery is in dispute, but by 1884 the news of the discovery became known to the general public and in that year thousands of miners entered the area and thus began the mineral development of the Coeur d'Alene mining region. In 1884, the first lead-silver mines were discovered, such as the Tiger and Poorman mines, and in 1885 the famous Bunker Hill and Sullivan mines were located and staked. By 1887 a large number of lode claims in the silver-lead district had been filed.

The findings of fact herein made deal extensively with the topography of the area and its development, history, transportation facilities, and other factors pertinent to evaluation. It is not deemed necessary to reiterate all of these facts in a discussion of the issues now to be considered.

Date of Evaluation

Defendant contends that the date of evaluation in this case should be November 8, 1873, that is, the date the Coeur d'Alene reservation was established by Executive order. Defendant's counsel argues that from and after that date the Coeur d'Alene Indians accepted the reservation which was set aside for them and abandoned the right of occupancy and use of all other portions of the Coeur d'Alene Tract and that from and after that

da e the lands of the Coeur d'Alene Tract were administered as a part of the Public Domain. The evidence shows that most of the Coeur d'Alene In ians were on the reservation by 1877 and that the lands of the Tract we e administered as a part of the Public Domain prior to 1887. The ev dence, however, also discloses the fact that the Indians continually so ght a council with representatives of the United States to discuss th ir claim to compensation for their lands outside of the reservation an l that the officials of the United States realized that the Indian ti le to said lands had never been extinguished. A study of the documents le ding up to the negotiation and execution of the Agreement of March 26, 1887, shows that it was the intent of the United States to obtain a cession of the lands and thereby extinguish the Indian title in the Coeur d'Alene Tribe to said lands. (See Pet. Exhibits 20, 22, 82, 84, 101, 103, 104, 106, 107, 111, 112, 113, 115 and Def. Exhibits 2, 7). If the United States had considered the removal of the Coeur d'Alene to the Executive order reservation as a relinquishment of any tribal claim to lands outside of the reservation, there certainly would have been no need of the Agreement of March 26, 1887, by which a cession was obtained of said lands. For these reasons the present case is distinguished from United States v. Santa Fe Pacific Railroad Company, 314 U. S. 339, cited by defendant.

Furthermore, the dominion the defendant exercised over the Indians' lands prior to 1887 did not constitute an extinguishment of Indian title. A similar situation was considered by the Court of Claims in Beam v. United States and Sioux Indians, 43 C. Cls. 61. There, an agreement was consummated with the Sioux on September 26, 1876, and ratified February 28,

1887, containing a clause making it binding only on ratification. Prior to the agreement and its ratification, thousands of settlers had entered the ceded territory and remained there under the protection of military forces and it was maintained by the depredation claimant that the defendant acquired title to the Sioux lands contemporaneously with the occupation by the military forces and therefore the agreement should be considered as effective from its date rather than its ratification. In overruling this contention and holding that the agreement was not binding until ratified the court said:

> * * Possession of the country by the military forces pending the treaty no more transferred title to the land than it did to divest the right of exclusive occupation by the Sioux.

So it would appear that until the Indian title passed under the 1887 agreement the prior exertion of Government control of the lands does not affect the Indians' right to additional compensation therefor as of the date the Indian title was legally extinguished.

Petitioner's counsel, on the other hand, urges that the date of evaluation should be March 3, 1891, the date of ratification, rather than the date of the Agreement of March 26, 1887. During oral argument, counsel for petitioners stated that petitioner would accept whatever evaluation date, that is 1887 or 1891, was finally fixed by the Commission.

The Commission has consistently held that in treaties containing clauses postponing the obligations of a treaty until ratified they do not become binding until ratified, relying upon Bush v. United States, 29 C. Cls. 144. See Nez Perce v. United States, 3 Ind. Cl. Comm. 571, 583;

Muckleshoot v. United States, 3 Ind. Cl. Comm. 658; Nooksack v. United States, 3 Ind. Cl. Comm. 479, 504. But the Government now contends that the Bush case, supra, does not support our holdings that such treaties or agreements do not become effective until ratified because in the present case (1) the claim is based upon unconscionable consideration and (2) in the Bush case individual, as distinguished from national, rights were involved.

Why the gross inadequancy of the consideration should change the time for determining such inadequacy from that fixed by the agreement to a prior time is not apparent. We have always held that it is the value of the ceded lands at the time Indian title passed that must be compared with the consideration paid for the lands ceded in order to determine whether the consideration was unconscionable. Under the act (clause 3 of section 2) there must be a treaty or agreement which passes title and fixes the consideration, so we must be governed by the provisions of the treaty or agreement as to the time title passed. We, therefore, see no reason in this case for departing from the rule we have followed in determining such questions.

As to the other contention of defendant, both the Court of Claims and the Supreme Court recognize the rule that as between the parties to a treaty their respective rights attach as of the date of signing and not as of the date of ratification. (This principle, as will be seen later, applies only when the treaty is silent as to the effective date). Also, when a treaty operates on individual rights the principle of relation

does not apply and the treaty operates from the time of ratification. Bush v. United States, 29 C. Cls. 144; Beam v. United States, 43 C. Cls. 61, 66; United States, 9 How. 148; Haver v. United States, 9 Wall. 34.

It is true, as the defendant states, that in the Bush case, supra, only individual rights were affected by the treaty there involved, and to the extent that only individual rights were actually determined the decision is perhaps inappositehere. However, the Court of Claims in that case also discussed the question of the time treaties become operative as between the parties thereto, which is the precise question now before us, and plainly recognized the principle that as between the parties to a compact it becomes operative when ratified if the agreement so provides, as was the case of the 1887 agreement. This recognition is shown by the following statement contained in the opinion at page 147:

> The Indians and the United States, like all other independent contractors, may agree by the terms of their contract when it shall take effect, and courts will enforce that provision in dealing with the rights and obligations of the parties.
>
> As between nations, treaties operating upon purely national rights operate from the date of signing, in the absence of a provision to the contrary. (Underscoring ours)

And at page 146 in referring to a Supreme Court case, the court said:

> * * *In the case of the United States v. Reynes, in 9 Howard, the Supreme Court clearly indicate that, if there had been a provision in the treaty under consideration that it was to be suspended until its ratification, the law would have been different in that case.

And in the case of Beam v. United States et al., 43 C. Cls. 61, 66, the Court of Claims again indicated that the parties to a treaty might

agree to postpone its operation until it is ratified when it said at page 6:

> "It is undoubtedly true, as a principle of international law," said Wheaton and the Supreme Court, "that, as respects the rights of either government under it, a treaty is considered as conclusive and binding from the date of its signature. In this regard the exchange of ratifications has a retroactive effect, confirming the treaty from its date." (Haver v. Yaker, 9 Wall., 34.) But a different rule prevails where the treaty operates on individual rights. The principle of relation does not apply to rights of this character until there is an exchange of ratifications. (Arrendondo's case, 6 Pet., 749.) If it were intended to give retrospective operation to this agreement it must not be supposed that words would have been used that expressed the contrary intention.

In United States v. Reynes, 9 How. 127, 13 L. Ed. 74, 82, the Supreme Court said:

> In the construction of treaties, the same rules which govern other compacts properly apply. They must be considered as binding from the period of their execution; their operation must be understood to take effect from that period, unless it shall, by some condition or stipulation in the compact itself, be postponed.

This rule was followed by the Supreme Court in Davis v. Concordia, 9 How. 280, 287, 13 L. Ed. 138, 142, and United States v. D'Auterive, 9 How. 607, 613, 13 L. Ed. 560, 566.

The principle stated in these cases is that when a treaty or agreement between Indians and the United States is silent as to the time it shall become operative the rights of the parties relate back to the date of signing and not to the date of ratification. But when an agreement provides that it shall not be binding on either party until ratified by Congress, as was the case of the 1887 agreement, it becomes operative on the rights of the parties only from the date of its ratification. Hence,

in the instant case the Indian title to the lands here involved did not pass until March 3, 1891, and the value of the ceded lands must be determined as of that date.

Timber and Mineral Rights

It is defendant's contention that in cases involving Indian title, as distinguished from recognized title, any evaluation of the lands found to have been so used and occupied by the Indians should not include the value of timber and minerals. Defendant's counsel urges that this case is one of first impression with respect to this issue as the decisions holding possessory rights of Indians compensable concerned reservation lands.

It is argued by defendant's counsel that there is a distinction, as far as including timber and minerals are concerned, in evaluation of lands acquired by the United States which were held by an Indian tribe as a permanent reservation, in which counsel concedes the tribe has the full beneficial property interest (Shoshone Tribe v. United States, 85 C. Cls. 361, 364-365; 304 U. S. 111, 118; 82 L. ed. 1213 and Klamath and Modoc Tribes v. United States, 304, U. S. 119, 82 L. ed. 1219), and in those where aboriginal title is concerned and the Indians allegedly have no property interest. In support of this contention defendant cites the holding in United States v. Cook, 19 Wall. 591, 22 L. ed. 210. In that case the United States in 1831 had purchased certain lands from the Menominee Indians for a home for emigrant New York Indians who were to hold said lands under such tenure as the Menominee Indians held their lands. Later, certain of the New York Indians who had been apportioned some of these lands ceded a

part of them to the United States reserving a tract to be held as other Indian lands were held. A small number of the tribe cut timber from a part of the reservation not occupied in severalty which was sold to the defendant in that case. The United States sued to recover possession of the logs from a purchaser from the Indians. The question certified to the United States Supreme Court was whether the action of replevin could be brought and maintained.

The Supreme Court said:

> The right of the Indians in the land from which the logs were taken was that of occupancy alone. They had no power of alienation except to the United States. The fee was in the United States, subject only to this right of occupancy. This is the title by which other Indians hold their lands. It was so decided by this court as early as 1823, in Johnson v. McIntosh, 8 Wheat. 574. The authority of that case has never been doubted. 1 Kent. 257; Worcester v. Ga., 6 Pet. 580. The right of the Indians to their occupancy is essacred as that of the United States to the fee, but it is only a right of occupancy. Cherokee Nation v. Ga., 5 Pet., 48. The possession, when abandoned by the Indians, attaches itself to the fee without further grant. Cherokee Nation v. Ga., 5 Pet., 17.
>
> The timber, while standing, is a part of the realty, and it can only be sold as the land could be. The land cannot be sold by the Indians, and consequently the timber, until rightfully severed, cannot be. It can be rightfully severed for the purpose of improving the land, or the better adapting it to convenient occupation, but for no other purpose. * * *
>
> * * *
>
> The Indians having only a right of occupancy in the lands, the presumption is against their authority to cut and sell the timber. * * *

This case, as will be seen later, had but limited application and affords no help to defendant's theory in this controversy.

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NARA-DC
RG 279
Records of the Bureau of Land Management
Entry 1100
Land Decided Misc. Files, 1947-82
30X 980 (Dec of 81)
F/2

This right of occupancy, defendant's counsel contends, is but a usufructory right and since the fee title to lands occupied by Indians is in the United States the value of this usufructory right must be less than the fee simple value or the value of the full equitable title as in reservation cases such as the Klamath or Shoshone cases, supra.

In support of the contention that the right of occupancy alone does not carry with it the beneficial incidents including the value of timber and minerals, defendant cites United States v. Paine Lumber Co., 206 U. S. 467, 51 L. ed. 1139. The Paine case, defendant's counsel states, brings out the distinction between the rights of Indians who have the full equitable title and those who do not. In that case the Stockbridge and Munsee Indians by the treaty of 1856 ceded certain lands in Wisconsin to the United States reserving a tract which the treaty provided would be allotted to members of the tribe. The treaty further provided the allottees could take possession and that the United States would hold the lands in trust for the allottees until patents were issued to them and that non-assignable certificates were to be issued to the Indians "securing to the holders their possession and an ultimate title to the land." Two members of the tribes sold timber from their allotments, not for the purpose of clearing the land for cultivation, but for the purpose of providing means for the support of their families.

The Supreme Court affirmed the lower court's holding that the Indian allottees had the right to cut and sell the timber for the purpose for which the same was cut and sold. In affirming, the Supreme Court distinguished the Cook case, supra, saying that in that case "The

ultimate conclusion of the court was determined by the limited right which the Indians had in the lands from which the timber there in controversy was cut." The court further said:

> * * * If such were the title in the case at bar, such would be the conclusions. But such is not the title. We need not, however, exactly define it. It is certainly more than a right of mere occupation. The restraint upon alienation must not be exaggerated. It does not of itself debase the right below a fee simple. Libby v. Clark, 118 U. S. 250, 30 L. ed. 133, 6 Sup. Ct. Rep. 1045. The title is held by the United States, it is true, but it is held "in trust for individuals and their heirs to whom the same were allotted." The considerations, therefore, which determined the decision in United States v. Cook, do not exist. The land is not the land of the United States, and the timber when cut did not become of the property of the United States. * * * (Underscoring supplied).

Defendant's argument to make the distinction between the Cook case and the Paine support its contention that aboriginal possession does not include the beneficial incidents must fail for several reasons. In the first place, the Supreme Court in the Cook case, supra, said that "But a tenant for life has all the rights of occupancy in the lands of a remainderman. The Indians have the same rights in the lands of their reservations." (Underscoring supplied). It is only a right of occupancy that the Indians have even in a reservation unless perhaps unrestricted patents have been or are to be issued. The phrase "right of occupancy" is used to distinguish the title by which Indians hold their lands as against the United States. In Worcester v. State of Georgia, 6 Pet. 515, 8 L. ed. 483, the Supreme Court said, "* * * Their right of occupancy has never been questioned, but the fee in the soil has been considered in the government. This may be called the right to the ultimate domain but the Indians have a present right of possession." Secondly, the distinction

in the Cook and Paine cases is not that in the latter the tribes had what might be termed reservation title while in the former the tribe did not have such title. The distinction is that in the Cook case the tribes had a right of occupancy with the "right of ultimate domain" in the United States, while in the Paine case the United States did not own the land but rather held the land in trust for the allottees. In the Cook case it was not necessary for the Supreme Court to determine whether the tribes held possession by Indian title or reservation title nor was it necessary to determine whether the United States was entitled to the ownership of the timber as against the tribe. In the Shoshone case, supra, the Supreme Court said:

> United States v. Cook, 19 Wall. 591, 22 L. ed. 210, supra, gives no support to the contention that in ascertaining just compensation for the Indian right taken, the value of mineral and timber resources in the reservation should be excluded. That case did not involve adjudication of the scope of Indian title to land, minerals or standing timber, but only the right of the United States to replevin logs cut and sold by a few unauthorized members of the tribe. We held that, as against the purchaser from the wrongdoers, the United States was entitled to possession. It was not there decided that the tribe's right of occupation in perpetuity did not include ownership of the land or mineral deposits or standing timber upon the reservation, or that the tribe's right was the mere equivalent of, or like, the title of a life tenant. (Underscoring supplied).

For all the above reasons it is believed that the Cook case, supra, is not controlling with respect to the question of whether the value of minerals and timber should be included in an evaluation of lands which had been held by aboriginal Indian title.

It has been held by the Supreme Court of the United States that the right of occupancy of Indian title lands is not a property right and that

this right of occupancy may be terminated and such lands fully disposed of by the United States without any legally enforceable obligation to compensate the Indians. Tee-hit-ton Indians v. United States, 348 U. S. 272. Where, however, Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently, compensation must be paid for subsequent taking. Tee-hit-ton case, supra. Recovery has been permitted for Indian title lands based upon a statutory direction to pay for the aboriginal title in the special jurisdictional act allowing the Indians to sue the United States, but it was held that there had been no compensable taking under the Fifth Amendment. United States v. Tillamooks, 329 U. S. 40, and United States v. Tillamooks, 341 U. S. 48. The question as to the right of the Indians to recover for original Indian title under the Indian Claims Commission Act, 60 Stat. 1049, has been determined in favor of the Indians, Otoe and Missouria Tribe v. United States, 2 Ind. Cl. Comm. 335, 131 C. Cls. 633, cert. denied 350 U. S. 848. In affirming the holding of this Commission the Court of Claims said:

> * * * Both from the language of clause (4) and its legislative history which we shall discuss later, we are of the opinion that Congress intended that Indian claimants should have a cause of action and should be entitled to recover the value of the Indian title lands which had been taken by the Government without the payment of compensation therefor, whether the Government acquired that land by ratified treaty of cession, or whether the land was taken without the formality of a treaty, even an unratified one.
>
> If clause (4) permits Indian claimants to recover for the uncompensated taking (deprivation) by treaty or otherwise of a property right which in itself created no legal right in the owner against the Government, it would seem reasonable to conclude that Congress also intended that the same property right ceded under a ratified treaty of cession for a grossly

inadequate consideration, would give rise to a cause of action under clause (3); and also, that where the Government's dealings with Indians concerning that same property right were less than fair and honorable, the Indians should have a claim under clause (5). A study of the legislative history of the Act as a whole and of those three clauses in particular, persuades us that Congress did so intend.

It is the extent of the aboriginal Indian interest in land held by Indian title that is now questioned by defendant. In a technical legal sense it is not a property right but a right of occupancy. Tee-hit-ton case, supra. The courts and this Commission having determined that the Indians may recover under the Act for the deprivation of Indian title, it is necessary to ascertain whether such title includes the beneficial ownership of timber and minerals as it does under reservation title. Granting the right to recover for Indian title which has been termed a "right of occupancy" — the same term which is applied to the manner in which Indian tribes hold reservation title and where they have been found entitled to recover for timber and minerals, should their interest in Indian title lands be considered less substantial? In the Shoshone case, 304 U. S. 111, 117, 82 L. ed. 1218, 1219, the Supreme Court said:

> Although the United States retained the fee, and the tribe's right of occupancy was incapable of alienation or of being held otherwise than in common, that right is as sacred and as securely safeguarded as is fee simple title. Cherokee Nation v. Georgia, 5 Pet. 1, 48, 8 L. ed. 25, 42; Worcester v. Georgia, supra (6 Pet. 580, 8 L. ed. 508). Subject to conditions imposed by the treaty, the Shoshone Tribe had the right that has always been understood to belong to Indians, undisturbed possessions of the soil from time immemorial. (Underscoring supplied).

The granting of reservations to Indian tribes gave them only the right of occupancy, something that they always possessed in their lands, but the establishment of such reservation title did secure to the tribes the

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or exercise of the constitutional requirements of the Fifth Amendment. The right of occupancy remained the interest the tribes continued to possess and this included substantial ownership as previously existed in the tribes. As the Supreme Court said in United States v. Algoma Lumber Co., 305 U. S. 415, 83 L. ed. 260:

> The Klamath Reservation was set apart as tribal lands under the Treaty with the Klamath Tribe of February 17, 1870, 16 Stat. 707, from lands immemorially possessed by them. See United States v. Klamath Indians, 304 U.S. 119, 121. Under the provisions of the treaty and established principles applicable to land reservations created for the benefit of the Indian tribes, the Indians are beneficial owners of the land and the timber standing upon it and of the proceeds of their sale, subject to the plenary power of control by the United States, to be exercised for the benefit and protection of the Indians. (Citing cases). The United States acquired no beneficial ownership in the tribal lands or their proceeds, and however we may define the nature of the legal interest acquired by the government as the implement of its control, substantial ownership remained with the tribe as it existed before the treaty. United States v. Shoshone Tribe, supra, 116. (Underscoring supplied).

The Court of Claims has considered the value of timber and minerals in awarding judgment for an Indian tribe in a case involving Indian title. See Alcea Band of Tillamooks v. United States, 115 C. Cls. 463. Defendant's counsel argue, however, that the presently urged contention that Indian title does not include the beneficial incidents as found in the value of timber and minerals was not urged in that case. The argument was in effect made by defendant, however, in support of its petition for writ of certiorari (which was denied) to the United States Supreme Court in a case involving Indian title -- Otoe and Missouria Tribe of Indians v. The United States, 2 Ind. Cl. Comm. 335, 131 C. Cls. 633, but certiorari was denied. 350 U. S. 848.

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NARA-DC
RG 279
Records of the Indian Claims Commission
Entry 110D
Docket Litigation Files, 1947-82
Box 950 (Docket 81)
File

In the treaty, as counsel for the Government argues, that in those cases where the Court of Claims and the Supreme Court have allowed compensation for the taking of Indian lands they were set apart for the permanent occupancy of the Indians. The legal title did not pass but there was permanence to their possession and use. It was this permanency that apparently gave the Indians a compensable interest, although their rights in the land remained merely possessory, and included ownership of the timber and minerals of the lands. Shoshone v. United States, supra.

Of course, lands held by "Indian title" were likewise possessory rights but of uncertain tenure; they were rights the Government would protect but could be taken by it without compensating the Indians therefor (unless directed by statute). However, the passage of the Indian Claims Commission Act changed this and created compensable interest in such lands, as we decided in Otoe-Missouria case and as the Court of Claims decided in affirming that decision. There is nothing in the Indian Claims Commission Act, which made Indian title compensable, indicating that the Indian rights to the lands did not, for valuation purposes, include the timber standing thereon or the mineral deposits. Minerals and timber are constituent elements of the soil; that is common knowledge. So it can be presumed, we believe, that in the absence of an expression of some kind in the act to do so, the value of the lands includes the value of the minerals in and the standing timber thereon.

Consideration

Article 6 of the 1867 agreement required the defendant to pay the petitioner $150,000. The G. A. O. report, page 12 (Claimant's Ex. No. 16) shows disbursements aggregating this sum; however, certain items of the amount appear not to be authorized under said Article 6; they are:

Maintaining law and order	$ 22.73
Miscellaneous agency expense	560.00
Clerk	2,751.12
	3,333.85

Then, the following items are charged against the $150,000 which are plainly expenditures authorized by Article 11 of the agreement and should be so charged:

Medical supplies	$ 1,814.24
Pay and expenses of blacksmiths	641.88
Pay of carpenter	52.50
Pay of physician	550.00
	$ 3,058.62

Because of the above, the Article 6 disbursements should be reduced to the sum of $143,607.53. (Finding 41).

Article 11 of the agreement required defendant to provide for the Indians at "its own expense * * * a competent physician, medicines, a blacksmith and carpenter." The G.A.O. report, (p. 12) shows disbursements for these categories as follows:

Medical supplies	$ 2,742.86
Pay of blacksmith	34,611.63
Pay of carpenters	9,324.59
Pay of physician	38,509.14
	$85,218.82

NARA-DC
96 279
Records of the Indian
Claims Commission
Entry 1100
Docketed Misc.
Files, 1947-12
Box 980 (Docket 81)
F/2

Add for total of similar items erroneously included in Article 6 expenditures	$ 3,058.62
Total Article 11 charges	$88,277.44

x With the above adjustments we conclude that the defendant is entitled to a credit on the claim of $143,607.53 for Article 6 expenditures and $8 ,277.44 for Article 11 expenditures, a total of $231,884.97.

The petitioner contends that the defendant should not be allowed cr dit for the Article 11 expenditures because it is expressly provided in that Article that such expenditures were to be made by defendant "at it own expense." We believe such disbursements were as much a part of th consideration as was the $150,000 provided for in Article 6. Article 11 provided that the cost of providing medicines, a physician, carpenter an blacksmith should be "in addition to the amount heretofore provided * *," obviously referring to the $150,000. Hence, it seems plain that the Article 11 expenditures were to be separate from and in addition to the $15),000 provided for in Article 6 and were to be made indefinitely at the exp ense of the Government.

Evaluation

The appraisers for the parties in this litigation agree that the highest and best use of the lands of the Tract fits into three classifications: (1) agricultural lands, (2) timber lands and (3) mineral lands. They disagree, however, on the amount of land included in each classification and the value thereof. The appraisers agree that the comparable sales, or market data, approach is the proper method of evaluating the agricultural and timber lands. They disagree on the method of evaluating the mineral lands. From a study of the evidence and testimony of record the Commission has found that 148,060 acres of the Coeur d'Alene tract should be classified as mineral lands, 393,238 acres as agricultural lands, and the remainder, 1,848,606 acres, as timber lands. In support of their conclusions as to value, the appraiser for petitioner, Mr. Henry T. Murray, an expert witnesses for petitioner, Mr. Fred O. Jones, a consulting geologist, and Father William N. Bischoff, Historian, and C. Marc Miller, appraiser for defendant, submitted written reports containing a wealth of valuable information pertaining to the factors which affected the value of the tract and form the basis for many of the findings of fact herein made in this case. In addition to the testimony and reports of the above named experts this Commission also had the benefit of the testimony of Mr. Frank Lilly, a research statistician, specializing in mining, who appeared before the Commission for petitioner, and Professor W. Staley, professor of mining at the University of Idaho, College of Mines, who testified as an expert for defendant.

The differences in opinion of the experts, as to the value of the Coeur d'Alene Tract, readily points up the difficult task confronting this Commission which is called upon to evaluate petitioner's lands at a remote time. Mr. Murray, petitioner's appraiser, based upon his study of the value of the timber and agricultural lands and upon Mr. Jones' appraisal of the minerals, was of the opinion that the value of the lands as of March 3, 1891, was $35,225,000.00 (Tr. 1307). Mr. Frank Lilly, testifying for petitioner, stated that in his opinion the mining district in 1884-1885 would have been worth a minimum of $10,000,000and that after the discovery of the Bunker Hill and Sullivan mines the district in 1887 would have had a minimum value of $15,000,000.00. Mr. Jones, petitioner's mining expert, was of the opinion that the mineral resources had a minimum value as of March 3, 1891, of $30,000,000.00 (Tr. 1165, 1168). Defendant's appraiser, Mr. Miller, was of the opinion that the Coeur d'Alene Tract as of March 3, 1891, had a fair market value of $3,350,000.00. This appraiser concluded that as of March 26, 1887 the known mineral deposits would have added perhaps as much as $1,500,000 to the value of the Tract and such minerals would have enhanced the value in 1891 to the extent of $2,000,000.00. Professor Staley in testifying for defendant was of the opinion that the mining district was worth $2,800,000.00 in 1891.

Agricultural Lands

The agricultural lands are located for the most part in the western portion of the tract, part of them being in the famous Palouse wheat belt and others are found in the Rathdrum Prairie area. Some of the lands

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[redacted] classified as agricultural for the purposes of evaluation were [redacted] and would have required clearing. The acreage classified as agricultural lands total 393,238 acres. By 1887 a fairly active market existed for these lands. Sales of these agricultural lands within the Tract by the Northern Pacific Railway Company were to 1887 at $2.60 per acre, and from 1887 to 1891 this railroad sold unimproved lands in Whitman and Spokane counties, Washington, and Kootanai County, Idaho, for stated considerations ranging from $2.50 an acre to $10.00 an acre for sales usually consisting of 160 acres or less (Finding 25), at an average price of $4.12 per acre. Taking into consideration the comparable sales, the demand for agricultural lands, the need for time to dispose of such a tract of land and expenses incident thereto, and the necessity of clearing some of the lands of timber, the Commission has found that the agricultural lands were, as of March 3, 1891, of value in the amount of $589,857.00, or at the rate of $1.50 per acre for 393,238 acres.

Timber Lands

The appraisers for both parties agreed that much of the Tract was timber lands. Part of the Tract in the southern portion is in what is now known as the best white pine area in the world. With the exception of the jack pine area in the north of the Tract and the alpine growth in the higher mountain regions, all of this timber was of good commercial quality. During the period 1887-1891, there were no sales of timber lands within the Tract. Freight rates were still prohibitive for shipment to the eastern markets. During the period, the timber resources of the area served to supply the local markets, as fuel for steamboats and mining operations,

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for timbering in the mines, railroad ties and for building materials. Defendant's appraiser, Mr. Miller, was of the opinion that only that timber which was accessible at the time would be of value, which he estimated to be 500,000 acres, worth no more than $1.00 an acre. This witness was of the opinion that any price placed on the inaccessible timber lands would have been entirely speculative. Petitioner's appraiser, Mr. Murray, reported 24 sales covering 3,719.43 acres of timber lands on the eastern side of the Bitterroot range not far from the Tract at an average of $4.58 per acre in 1887-1888. These sales were admittedly more accessible than many parts of the Coeur d'Alene Tract and were selective. Mr. Murray considered that Congress by the Timber and Stone Act acknowledged that timber lands were worth at least the sum of $2.50 per acre (cf. Warm Springs Tribe v. United States, 103 C. Cls. 741) but that the price of $2.5[illegible] should be weighted somewhat to reflect a willingness of buyers to pay more than said minimum. Murray was of the opinion that a fair market price for the timber was $3.00 per acre, which he adjusted because of the necessity of taking into account the size of the area classified as timber, the time necessary to exploit or dispose of it, administrative charges and a return on the investment. Mr. Murray was of the opinion that the value of the timber lands as of March 26, 1887, was $1.28 per acre.

The evidence of record as set out in detail in the findings of fact shows that although 1,848,606 acres of the Tract was timber land there was little demand for it in the crucial period. Parts of the area due to the rivers and Lake Coeur d'Alene, were readily accessible for timber operation, while other were largely inaccessible. Timber sales near the Tract

were of but small, selective and easily accessible timber stands. A prospective purchaser would have known these facts and although realizing the potential of the timber lands he would have also been aware of the prohibitive freight rates then in existence. Such a prospective purchaser would also have considered the importance of the timber lands as a protection of the watershed so necessary to the mining and timber operations. Taking into consideration the great amount of timber lands and all of the other factors previously mentioned and more completely set out in the findings of fact, the 1,946,666 acres of timber lands have been found to have the value as of March 3, 1891, in the amount of $1,946,666.00, or at the rate of $1.00 per acre.

Minerals

The Coeur d'Alene mining district, today one of the largest producing mining districts in the world, has produced over one and a half billion dollars worth of minerals to date and from the period 1886 to 1955 the mining companies of the district have paid a total of $253,000,000 in dividends. Both parties agree, however, that the value by which the minerals would have enhanced the market price of the Coeur d'Alene Tract is that which is to be ascertained from facts which a prudent well informed buyer and seller would have known at the date of taking, that is, on March 3, 1891. As previously pointed out the experts for the parties disagree as to the [illegible] value of the mining district. As of 1891, Mr. Jones, petitioner's [illegible] was of the opinion that the minimum value of the mineral resources [illegible]. Mr. Lilly estimated a minimum value about 1887 for [illegible] of $15,000,000.00. Mr. C. Marc Miller,

defendant's appraiser, would have valued the mineral resources at about $2,000,000.00 in 1891, while Professor Staley set a value of $2,600,000 for the same year. The methods of approach used by the experts to the problem of placing a value on the mineral resources vary as greatly as do their ultimate conclusions as to value.

The material and statistics gathered by the experts have been of assistance in arriving at a value for the mineral resources of the Tract.

Mr. Jones, petitioner's expert on minerals, determined the number of claims filed within the mining district, both lode and placer, prior to March 3, 1891. He also ascertained from county records the sale of mining claims between the period March 23, 1887 to March 3, 1891, where the consideration shown on the deed was $10.00 or more. The consideration shown on many of these deeds was for fractional parts, that is, a fourth, a half or a sixteenth interest in the claim sold and Mr. Jones extended these to show a full claim price. Then an average sales price per claim was computed. The expert then assumed that 90% of the total claims filed were valid (workable) in one study and in another that 75% of the claims were valid in order to arrive at a value by multiplying the number of claims by the average sales price.

Counsel for defendant correctly points out the manifest errors in such an approach. In the first place, some of the claims filed were [illegible] cases, i.e., the locator would file his location notice on the same claim year after year. (Tr. 1033). Next, as urged by defendant's counsel, Mr. Jones heavily weighted his values by the extension of sales of fractional parts of mining claims to show a full claim price. Defendant's counsel

calls attention to Jones' report (Pet. Ex. 139, p. 172) for an example of this erroneous method. This report shows a sale of an undivided three-fourths interest in the Gold Hunter Mine on November 10, 1886, for $24,500 which Mr. Jones extended to show a full claim sales price of $32,666.66. On March 29, 1887, he shows a sale of an undivided one-fourth interest for $4,000.00 which he extended to a full claim sales price of $16,000.00. On June 9, 1887, a sale of the claim is shown for a consideration of $17,500. Finally, on June 10, 1887, a sale of the claim is shown for a consideration of $70,000.00. On the same page of the report Mr. Jones shows a sale of an undivided one-sixteenth interest in the Bunker Hill claim on April 25, 1887, for $62,500.00, which he extends to a full claim sales price of $500,000.00, and on the same date a sale of an undivided one-sixteenth interest in the Sullivan claim which he also extended to a full claim sales price of $500,000.00. It is a matter of general agreement among the authorities that the Bunker Hill and Sullivan mines were sold at the same time for a cash consideration of $525,000.00 or $650,000.00.

The sale of the Bunker Hill and Sullivan to Simeon G. Reed in April 1887 is stressed by defendant's counsel as an example of transactions showing greater consideration named in deeds of sale of claims than actually changed hands in the sales. There appears to be general agreement that the sale was for a cash consideration of some $625,000.00 or $650,000.00. Father Bischoff, petitioner's historian, reported that Mr. Reed paid $731,616.02 for the Bunker Hill and Sullivan mines, the concentrator, adjacent fractions, contracts in force, and unexpired

insurance (Pet. Ex. 138, p. 33). The deeds of sale involving the transfer of ownership to Reed, however, which are in evidence, recite considerations totaling $1,453,496.00 (Pet. Exhibits 46, 50, 61, 65-67). Attention was also called to the sale of the Mammoth Lode Claim which was outside the Coeur d'Alene Mining District but within the Tract. There were two deeds for the sale of that property showing a consideration of $5,000,000.00 each while an investigation of said claim showed the only development work ever done on the property was the driving of four short tunnels into the hillside.

It is for these reasons that the value of the mineral resources of the Coeur d'Alene Tract may not be bottomed on Mr. Jones' approach. The great number of locations and the many transfers of interest in the mining claims, however, do demonstrate interest in the area and regard for its potentialities.

The value of the mineral resources as found in the opinions expressed by defendant's expert witnesses, Mr. Miller and Professor Staley, and by petitioner's expert Mr. Lilly, are at best well informed guesses but rather arbitrarily arrived at. Mr. Miller, however, did acknowledge that "Unquestionably, as of March 26, 1887, the mineral deposits of the Coeur d'Alene Tract would have added very appreciably to the value of the Tract in the opinion of a well informed buyer or seller," and that "Nevertheless the possibility and perhaps the probability existed that paying properties would be developed in the area, and that the Bunker Hill and Sullivan property would prove to be a profitable mining operation."

It is, of course, at this late date impossible to know the extent of development of all the claims. It is evident from the record that exploration and development work was being carried on at a number of the claims. The extent of existing ore in those mines that were then opened is not known or the probable ore in sight. In "The Bunker Hill Enterprise," by Thomas A. Rickard, the author quoted a Mr. Lee who was foreman of the mine, as writing (Def. Ex. 38, pp. 116 and 117):

> 'Prof. Clayton and I talked freely about the property and he agreed with me that there was not one hundred and fifty thousand dollars in sight at that time in the property that Mr. Reed had paid $650,000 cash for, and I firmly believe that the 21 ft. of lead ore sold the Sullivan and Bunker Hill property.'

An well informed hypothetical purchaser as of March 3, 1891, while he might have shared the optimism regarding the potentialities of the mining district would also have been aware, as was Mr. Lee, of the uncertainties surrounding a new and but slightly developed mining region. Such a purchaser would also have been aware of the necessity of expending large sums of money for exploration and development of the mining claims and for concentrators and tramways. As Rickard observed "It takes money to make mines, especially large mines needing mills and smelters" (Pet. Ex. 139, page 57). Production figures and operating costs for all of the opened mines as of March 3, 1891, are not available to aid in a determination of value for the mining district. The cost of production necessarily plays an important part in determining value. As the Court of Claims said in The Sioux Tribe of Indians v. The United States, 136 C. Cls. ____:

" * * * Not to be forgotten in establishing this valuation are the facilities

available for extracting the minerals and the means of transportation available after they have been extracted. Therefore, mere knowledge that gold is in paying quantities lay beneath the ground in a given tract of land does not make it valuable if it can be mined only at an exhorbitant expense. Thus, the projected value of a piece of gold-bearing land in 1877 would not be as great as it is in this present day of rapid transportation and modern mining methods." While some transportation was at hand for the Coeur d'Alene Tract in 1891 and added to the value of the region, the mine operators were dependent upon improved transportation facilities and fair rates of transportation and reduction to fulfill the promise of the mining district.

A review of the record justifies concluding that the potential of the mineral resources of the Coeur d'Alene Tract as of March 3, 1891, was sufficiently known to have added to the market value of the Tract. The sum of $2,221,200.00 appears to be a reasonable figure to apply as an enhancement of value due to the presence of minerals including gold in the placer fields and quartz as well as lead and silver ore. With respect to gold mining there appears to have been a decline prior to 1887 but gold was recovered for a number of years thereafter in reduced quantities and at reduced cost.

The Commission concludes that the fair market value of the Coeur d'Alene Tract as of March 3, 1891, was $4,659,663.00. The United States is entitled to credit against this sum the amount of $143,607.53 expended under Article 6 of the Agreement of March 26, 1887, and the sum of $88,277.44 expended under

Article II of said Agreement, or a total sum of $231,604.97, leaving a balance due to petitioner tribe of $4,427,778.03, from which will be deducted the offsets, if any, hereafter to be determined in accordance with the rules of the Commission.

Accordingly, an order will be entered for the sum of $4,427,778.03 from which allowable offsets will be deducted.

Associate Commissioner

We concur:

Chief Commissioner

Associate Commissioner

such

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AUG 26 1955

Clerk
INDIAN CLAIMS COMMISSION

BEFORE THE INDIAN CLAIMS COMMISSION

THE COEUR D'ALENE TRIBE OF INDIANS,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 81

Decided: [illegible]

Appearances:

Ralph O. Wiggenhorn, with whom were Leonard B. Strahan and Bruce L. Beatty, Attorneys for Petitioner.

John D. Sullivan, with whom was Mr. Assistant Attorney General Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

On motion of the defendant, the Commission limited the hearing in this case to the question of petitioner's right to the land claimed to have been used and occupied by the Coeur d'Alene Tribe, and the area thereof.

Petitioner contends that from time immemorial until relinquished by cession in the Agreement of March 26, 1887, 26 Stat. 989, I Kapp. 419.

the Coeur d'Alene Tribe has claimed, possessed, used and occupied exclusively the territory as described in Finding 11. The area claimed would amount to approximately four million acres less some 600,000 acres set aside as a reservation for the tribe by executive order in 1873.(Pet. Ex. 95).

Since the first white contact in 1806, when Lewis and Clark were making their western exploration, the Coeur d'Alene have always been located by fur traders, explorers, missionaries and government agents in the vicinity of Coeur d'Alene Lake and its tributaries. In 1842, Father de Smet ordered a mission established among the Coeur d'Alene and Father Point, the first missionary to reside with them, found them occupying twenty-seven different localities within the area of the lands now claimed by the tribe. Father de Smet in 1858 described the territory of the tribe from north to south and east to west as embracing 100 miles in each direction. In 1859, the same missionary said that taking Coeur d'Alene Lake as a central point their country extended fifty miles to every point on the compass. (Finding 4).

Governor Isaac Stevens, in 1854, while on his expedition to locate a railroad from the Mississippi to the west coast, reported the tribe as living "on the upper part of the Coeur d'Alene River, above the Spokanes, and around the lake of the same name." Governor Stevens on this journey made many treaties with the neighboring tribes but due to an Indian outbreak failed to negotiate a contemplated treaty with the Coeur d'Alene. As the years passed, whites began to settle in Coeur d'Alene country. In 1867, an executive order reservation was set aside for the Coeur d'Alene

but the Indians did not learn about this for several years. In 1873, an agreement was entered into with the tribe (Finding 6) under which the tribe agreed to relinquish all right and title to the lands claimed by the tribe outside of the reservation agreed to be established by said agreement. This agreement was never ratified but the reservation was set aside by executive order of November 8, 1873 (Def. Ex. No. 3). Nothing further was done to secure a cession of the lands claimed by this tribe, which in 1885 petitioned the Government to send a commission to treat with them for their lands outside the 1873 executive order reservation (Finding 7), until an agreement was concluded with the tribe by the Northwest Indian Commission on March 26, 1887. (Finding 8). By this agreement, the tribe, under Article 2, ceded, granted, relinquished and quitclaimed all right, title and claim to all lands outside the reservation. Unlike the unratified agreement of 1873, the 1887 agreement did not describe the lands ceded but the Commission referred to the 1873 agreement and the tribe's petition of 1885 for the description of the lands in reporting the 1887 agreement. (Finding 8).

In the early part of the twentieth century, James A. Teit made a study of the Coeur d'Alene. Although Teit was not an ethnologist by education, his work was edited by Franz Boas who became known as "the father of American Anthology." Teit wrote that the country occupied by the tribe was almost entirely in what is now the State of Idaho, with a small part extending into Washington. He said "they held all the waters of Spokane River from a little above Spokane Falls to the sources, including Coeur d'Alene Lake and all its tributaries. To the southeast

their territory extended across the head of the Clearwater, a tributary of the Snake River. Their eastern boundaries were the Coeur d'Alene and Bitter Root Mountains." (Finding 5).

Petitioner contends it has proven Indian title in two ways to the lands claimed by the tribe and described in the tribe's petition of 1885 (Finding 7). First, petitioner urges that it has shown that it has proven title by a factual showing that the tribe used or occupied a definable area, and secondly, by showing a recognition or acknowledgment of aboriginal title by the United States that the tribe had such title. Defendant, on the other hand, urges that the proof does not sustain Indian title to all the lands claimed by the tribe and that there was no recognition of Indian title in the tribe by the United States to the area claimed.

<u>Use and Occupancy</u>

In support of the claim that the Coeur d'Alene Tribe had exclusively used and occupied the area described in Finding 7, petitioner introduced into evidence historical documents, such as the writings of the missionaries, fur traders, explorers and government agents. Many of these documents and maps are cited in the findings. All of these prove beyond doubt that the Coeur d'Alene were a semi-sedentary people with a tribal organization and that the tribe from time immemorial held, used and occupied a given area of land within what are now the States of Idaho and Washington. Nor does the defendant deny that the Coeur d'Alene were using and occupying lands in the vicinity of Coeur d'Alene Lake at the first white contact and ever since — but would limit the tribe to the area within the 1873 reservation.

In addition to historical documents and maps which were introduced through the testimony of Father William N. Bischoff (Tr. 12-149, 292-332), Historian, the petitioner called upon Dr. Verne F. Ray, a recognized authority on the plateau tribes, and Dr. Alfred William Bowers, anthropologist.

Dr. Ray, an authority on the tribes in the plateau area, has had published several ethnological works on the area including "Tribal Distribution in Eastern Oregon and Adjacent Regions," (1936), (Pet. Ex. 120-extracts); "Cultural Relations in the Plateau of Northwestern America" (1939), (Pet. Ex. 121 - extracts). In petitioner's Exhibit 119, at page 103, Dr. Ray has a map showing the native territorial distribution in the northern plateau about 1650. On this map the Coeur D'Alene territorial boundaries are shown and they appear to conform generally with the boundaries on petitioner's Exhibit 122, a map showing Ray's boundaries in red and Bowers' boundaries in green. Dr. Ray testified that the only change he made on petitioner's Exhibit 122 as compared to his early map appearing in petitioner's Exhibit 119, was with respect to the southwestern boundary. Dr. Ray testified that the area enclosed on petitioner's Exhibit 122 has a natural boundary only on the eastern side where the Bitterroot Mountains are found. The witness stated his conclusions were based primarily on ethnological research concerned among informants of the Coeur d'Alene and neighboring tribes. (Tr. 524-525).

Dr. Bowers, an anthropologist, also testified for the petitioner. On petitioner's map, Exhibit 122, Bowers' boundary lines appear in green and conform to Ray's line, generally, with one major exception — the

southern boundary line. In response to a question by petitioner's counsel regarding this difference,(Bowers' line is considerably north of Ray's line) Dr. Bowers testified (Tr. 560-561) that in studying the Nez Perce Tribe he found that those Indians recognized the difference between the drainage from the St. Joe River and the drainages to the Clearwater.

With respect to this southern boundary line, Spinder (Def. Ex. 13, p. 33) in his writing "The Nez Perce Indians" gave the northern boundary of the Nez Perce as following "the divide at the heads of the short streams flowing into Snake and Clearwater rivers till it reached the Bitterroot mountains." Although Ray's map in petitioner's Exhibit 119 at page 103 shows the southern boundary to cut across far down the North Fork of the Clearwater River, his maps in his later publications, petitioner's Exhibits 120 and 121, appear to show the Coeur d'Alene southern boundary north of the Clearwater watershed. The Commission has before it a claim of the Nez Perce Tribe for its aboriginal lands, Dockets Nos. 175 and 180, and a claim by the Kalispel, Docket No. 94, which include areas conflicting with those of the Coeur d'Alene, however, as stated in Finding 9, the Coeur d'Alene have removed the conflicts by correcting the boundaries of the area claimed by them.

Although the Indians in the unratified agreement of 1873 indicated Steptoe Butte as the landmark for their southwestern boundary. Dr. Ray, on his map, (Pet. Ex. 122) bends the line further to the west to Colfax, Washington. The tribe in its petition in 1885 (Finding 7) claimed west of Steptoe Butte. There is evidence, however, to indicate that the area around Colfax was not exclusively used and occupied by the Coeur d'Alene,

[redacted]

Spier, in his "Tribal Distribution in Washington" (1936), quoted Teit: "Colfax was considered to be in Palouse country, at least, in later days, but was to some extent within both Coeur d'Alene and Nez Perce spheres of influence." (Def. Ex. 13, p. 39). Petitioner's witness, Dr. Bowers, also placed the southwestern boundary to the east of Colfax. (Pet. Ex. 122 - green line).

Dr. Ray and Dr. Bowers in drawing the northern boundary line on the map, (Pet. Ex. 122) includes a portion of the lower tip of the foot of Pend Oreille Lake. Petitioner's witness Ray (Tr. 450) testified that it would be ridiculous to say that the Coeur d'Alene came to the tip of the lake and made no use of it and that the Kalispel Indians recognized the utilization of the lower tip of the lake by the Coeur d'Alene. In Docket 94 before this Commission, however, the Kalispel Tribe has presented evidence in support of their claim of aboriginal possession which includes to the foot of Pend Oreille Lake. (See Pet. Ex. 63 in that case — a map outlining the alleged boundaries of the Kalispel). In the Kalispel hearing, Dr. Allan H. Smith, ethnologist, testified (Tr. 113 of that case) that the Kalispel's had an important winter village at the southern tip of the lake and that the Coeur d'Alene "used to hunt up to the lake but they never wintered there and had moved southward back into their own territory, more deeply into their own territory. The overlap map indicates that the Kalispel claimed territory to the south of the southern tip of the lake. The Coeur d'Alene hunted up to that point in the winter and turned and went back. However, the Upper Kalispel did have a winter village at that point as indicated on the overlap map, Exhibit 64." Dr. Ray also

testified in the Kalispel case that "the degree to which that exhibit [showing the boundaries of the Kalispel] differs from my earlier mapping, I would accept, and it is my opinion that this is accurate, the more accurate of the two." Mooney's map (Def. Ex. 13, following p. 41), would indicate that the Kalispel territory extended south of the foot of Pend Oreille Lake. As stated above, these conflicts have been removed by the Coeur d'Alene.

In the northwestern corner of the Coeur d'Alene territory the limit of the tribe's use and occupation may be set with reasonable accuracy. The petitioner claims westward to the point on the north bank of the Spokane River where Antoine Plant formerly resided and operated a ferry. The most westerly permanent camp of the tribe on the river was near Spokane bridge about twenty miles from Spokane City, and Teit placed the boundary between the Spokane and Coeur d'Alene a few miles below the most western camp which would be in the vicinity of Plant's ferry. (Def. Ex. 13, p. 125). Defendant's ethnologist, Chalfant, locates Plant's place as being five miles east of the town line of the city of Spokane near Millwood, Washington. (Def. Ex. 13, p. 103).

The eastern boundary, according to Ray, is the only natural boundary involved in this case. Teit (Finding 5) said "their [Coeur d'Alene] eastern boundaries were the Coeur d'Alene and Bitter Root Mountains."

Defendant would limit the concept of "use and occupancy" to "the area to which they went consistently and which they exploited nearest to their permanent villages." (Def. Br., p. 43). In support of its position defendant introduced the written report of Stuart A. Chalfant, ethnologist. (Def. Ex. 13) and Mr. Chalfant testified as an expert

in support of his conclusions. Briefly, Mr. Chalfant prepared a map, Def. Ex. 13-A, on which he located the villages of the Coeur d'Alene tribe. On this map he designated with red cross-hatching what he called "nuclear areas" which were the more accessible areas adjacent to the permanent villages. There are three such "nuclear areas," so-called, shown on Chalfant's map. Counsel for defendant states (Def. Br., pp. 44, 45) that these areas contain "258,000 acres or about 500 acres to each Indian, even women and children." Defendant's counsel urges: "Most of their food, the fish and the small game were found near the villages, in the lakes, rivers and valleys. Under these circumstances, it would seem preposterous that this small group of people could use and occupy (using any reasonable interpretation of those terms) any greater area than that outlined by the solid red lines on defendant's Exhibit 13-A. Since this area is much less extensive than the area which was assigned to them as a reservation by the March 26, 1887 agreement there is no basis for the claim asserted herein."

Defendant's ethnologist, however, testified (Tr. 654) that the villages within the nuclear areas were not the only villages of the tribe. Chalfant said they did have summer camps such as at Desmet and Tekoa, Washington, outside the nuclear areas. Chalfant also indicates in his map (Def. Ex. 13-A) by a broken red line the subsistence area of the Coeur d'Alene which encompasses much more territory than the nuclear area. It is these "primary subsistence areas," according to the witness, "which determine the lands held in common by all the Coeur d'Alene and define the extent of their aboriginal territory. By that I mean it defines the extent of

the territory they used in their yearly rounds, and it is the same territory lying not only within their nuclear areas of habitation, but the areas lying between these areas of habitation that were used in common by the bands of all these various groups." Chalfant further testified "this is not to be construed as implying that they never ranged beyond these basic subsistence areas, but it is ethnologically sound to limit their territory to those regions which have been, in the course of their known history, essential to their existence as a unified ethnic group." So, we see that witness Chalfant recognized that the Coeur d'Alene's aboriginal territory included more than just the nuclear areas and on cross-examination (Tr. 786) he testified: "I am not stating that the dotted red line that I made is indicative of the extreme range of the Coeur d'Alene. I am pointing out that it was the interrelation of many factors and since they trapped and fished up to head navigation and around the rapids [of St. Joe River], that that is a very feasible point we could see in relation to the terrain and topography of the mountains surrounding the St. Joe River, from there, or to assume that is about the extent of their continual use and occupation. This does not mean they never used areas beyond that." (Underscoring supplied).

To limit the Coeur d'Alene Indian title to the so-called nuclear areas, as contended for by defendant, based upon the testimony of defendant's witness, would, without even considering petitioner's exhibits and documentary material, result in adopting a theory of use and occupancy which is unrealistic and contrary to the weight of the evidence.

Based upon the documentary material, the writings of the ethnologists and others of record, and the testimony of the witnesses, it is reasonable to say that the Coeur d'Alene Tribe has proven that it has from time immemorial exclusively used and occupied the area of land set forth within the boundaries fixed in Finding 11.

Defendant further contends that the petitioner does not constitute an aboriginal entity insofar as the use and occupation of land is concerned. Defendant's position is that the Coeur d'Alene Indians as an ethnic group was made up of separate autonomous villages or bands which in themselves held tenure, if it existed, and that the present Coeur d'Alene Tribe was not a legal or political entity and therefore it was incapable of holding an interest in property.

This theory is based upon the testimony of witness Chalfant (Tr. 661-672), wherein he interprets the works of Teit and Ray to conclude that the villages were politically autonomous except in times of crisis when they would band together to form a larger division. Cohesion, he felt, among the Coeur d'Alene was more social or ethnic than political.

There is no merit to this theory advanced by the defendant and its witness. Teit, with whom Chalfant disagrees, found a tribal organization existed (Tr. 669) and Dr. Ray in his "Cultural Relations in the Plateau of Northwestern America" (1939), (Pet. Ex. 121, p. 11) ascribed to the Coeur d'Alene a tribal organization. It is noted also that all the documentary evidence of the record bearing upon the subject indicates that the Coeur d'Alene was a tribal entity capable of holding Indian title by use and occupancy and that it was such entity that the agents and commissioners of the United States dealt with over a long period of time.

Recognition or Acknowledgment of Aboriginal Title

Petitioner further urges that it has proven Indian title to the lands contended for by showing a recognition or acknowledgment of such title by the United States in the tribes. Counsel for petitioner states that governmental "recognition" of Indian title may be established by a common-sense consideration of all transactions between the parties and that it is not necessary "that the government wave a formalized sovereign wand as a basis for recognition," citing Crow Indians v. United States, 5 Ind. Cls. Comm. 147, and Miami Tribe v. United States, 2 Ind. Cls. Comm. 617.

Defendant in its brief objects to the petitioner's requested finding that there was a recognition of aboriginal title in the tribe. Defendant points out that the agreement of March 26, 1867, upon which the claim is based, contains no description of a ceded area. Article 2 of said agreement provided that the tribe "hereby cede, grant, relinquish, and quitclaim to the United States all right, title, and claim which they now have, or ever had, to all lands in said territories and elsewhere, except * * * their present reservation * * *." (Finding 8). This article, defendant urges, indicates a quitclaim and is in no way a recognition or acknowledgment of interest in any specific area of land. Defendant's counsel seeks to distinguish the Crow case, supra, since in that treaty the territory involved had been described in the Fort Laramie Treaty and therein designated as the land of the Crows. As to the Miami case, supra, defendant points out that the treaty contained a provision whereby the United States engaged to consider the Indians as joint owners of all the country on the Wabash and its waters.

As previously noted, no effective agreement was made with the Coeur d'Alene Tribe until the Agreement of March 26, 1887 (26 Stat. 989). Earlier, an agreement had been made, but never ratified, with the Indians on July 28, 1873, whereby the tribe therein agreed to relinquish all their right and title to all lands claimed by the tribe outside the reservation within boundaries described therein.(Finding 6). In 1885, the tribe petitioned the Government to send a commission to treat with them for their lands outside of the 1873 reservation established by executive order and in the petition set forth the boundaries of the lands they claimed to own. (Finding 7).

In March 1886, the United States Senate passed a resolution (Pet. Ex. 101, p. 2) directing the Secretary of the Interior to furnish the Senate with all correspondence dealing with the Coeur d'Alene, and other Indians, in regard to the cession or quitclaim by any of said Indians to the United States of any lands "alleged to be heretofore owned or claimed or occupied by them * * *." The Commissioner of Indian Affairs inferred that only recent correspondence bearing upon the Indians' claim for indemnification for lands formerly held and occupied by them which the Indians claimed they had never relinquished, was desired by the Senate. The Secretary of the Interior forwarded papers dating from 1883 in which various persons urged a settlement of the land claims of the Indians, including the petition of the Coeur d'Alene of 1885. (Pet. Ex. 101).

The result of the action of the Senate was the inclusion of an item in the Act of June 30, 1887, (24 Stat. 44) authorizing a treaty to be made with the Coeur d'Alene Indians and others as cited in the act.

Under the provisions of this act, commissioners were appointed who negotiated the Agreement of 1887 with the Coeur d'Alene. The commission was known as the Northwest Indian Commission.

On March 23, 1887 (Pet. Ex. 106, p. 60), the council with the Coeur d'Alene opened. In addressing the tribe, Judge Wright, one of the commissioners, said: "It is also known that you claim to have possessed a large body of land, that much of it has been settled by white people, that you had never ceded it away, and that you have received nothing for it." A little later, Judge Wright had this to say:

> The paper which I hold in my hand [Senate Document] sets out fully your claim; in that petition you say your boundary was as follows: Commencing at Steptoe Butte, runs northwest to Antoine Plamb on the Spokane River, thence to the Pend d'Oreille Lake, thence to the summit of the Coeur d'Alene Mountain, thence south to the most southern thereof whence flows the waters of the Palouse River, thence west along the southern rim of the water-shed of the Palouse River to the beginning.
>
> We wish to do right about the claim; that was one purpose for which we were sent to you. * * * (Pet. Ex. 106, p. 62).

In reporting the agreement, the Commission, however, said that "the lands which they [the Coeur d'Alene] claimed, and held by occupancy, contained about 4,000,000 acres. They had the same title to it which other Indians had, that is, the fee in the United States, and the occupancy, with all its incidental rights, in the Indians. The right of the Indians to their occupancy is as sacred as that of the United States to the fee." (Finding 8). The Commission also reported that it had before it during the negotiations the 1883 petition and the unratified agreement of 1873, in which the description of the boundaries substantially agreed.

In transmitting this Report to the President, the Secretary of the Interior said: "The Coeur d'Alene Indians, in the agreement made with them, relinquish to the United States, for the consideration of $150,000, to be expended for their benefit, etc., all right, title, and interest they now have or ever possessed to and in any lands outside the limits of their present reservation in the Territory of Idaho; * * *." The Commissioner of Indian Affairs report on the agreements made by the Northwest Indian Commission accompanied the letter of the Secretary, and said in part:

> These Indians [Coeur d'Alene] also lay claim to a large tract of country in Washington, Idaho, and Montana Territories, by right of original occupancy, and, as we have seen, the act authorized negotiations with them "for the cession of their lands outside the limits of the present Coeur d'Alene Reservation to the United States."
>
> By the terms of the agreement made with them, the Indians cede and relinquish to the United States all right, title, and interest they now have or ever possessed in any lands outside the limits of their present reservation.

Prior to ratification of the 1887 agreement, Congress authorized (25 Stat. 1002) another negotiation to be made with the tribe for the purpose of purchasing some 184,960 acres on the northern part of the reservation. The Senate had previously directed the Secretary of the Interior to ascertain the feasibility of throwing open any portion of the reserve to occupation and settlement under the mineral laws of the United States. The Secretary referred the matter to the Commissioner of Indian Affairs who advised that the reservation might be materially diminished but only with the full and free consent of the Indians and the payment of proper compensation to them. In so advising the Secretary, the Commissioner

said: (Pet. Ex. 109, p. 24).

> In conclusion I will state that in my opinion these Indians have all the original Indian rights in the soil they occupy. They claimed the country long before the lines of the reservation were defined by the executive order of 1873, and the present reservation embraces only a portion of the lands to which they laid claim. This claim has been recognized in various ways and at sundry times, and the last Congress authorized the Secretary of the Interior to negotiate with them 'for the cession of their lands outside the limits of the present Coeur d'Alene Reservation to the United States.' Pursuant to that authority negotiations were conducted with them in March last and an agreement concluded, which is now before Congress for ratification. The agreement is published in House Ex. Doc. No. 63, Fiftieth Congress, first session, pp. 53-56.

Defendant contends that the above-quoted remark refers only to the land they occupied -- that is, the reservation as established by executive order in 1873. It refers also to the entire area claimed by these Indians outside the 1873 reserve.

A Commission appointed to secure the cession of the northern part of the reservation concluded an agreement with the tribe on September 9, 1889. In reporting this cession to the Secretary, the Commissioner of Indian Affairs said, with respect to the 1887 agreement: "The Coeur d'Alene Indians laid claim to a vast area outside of their present reservation, including the site of the present flourishing city of Spokane Falls and other populous communities. Their claim was based upon original possession and occupancy."

In 1890, the House Committee on Indian Affairs, in reporting favorably on a bill to ratify and confirm the 1887 and 1889 agreements with the Coeur d'Alene Tribe, stated in the report:

> On August 14, 1848, and for generations long prior thereto, the tribe of Coeur d'Alene Indians were in possession of and claimed to own the lands described in this bill and in said two treaties, * * * (Def. Ex. 7, p. 1)

The Agreement of March 26, 1887, as ratified by the Act of March 3, 1891, 26 Stat. 989, Section 19, itself recognizes the Indian title to a large area of land, that is, the land ceded by that agreement outside the Coeur d'Alene reservation, for in the preamble of that agreement it is recited:

> Article 1. Whereas said Coeur d'Alene Indians were formerly possessed of a large and valuable tract of land lying in the Territories of Washington, Idaho, and Montana, and whereas said Indians have never ceded the same to the United States, but the same, with the exception of the present Coeur d'Alene Reservation, is held by the United States and settlers and owners deriving title from the United States, and whereas said Indians have received no compensation for said land from the United States: Therefore,

True, the specific boundaries of the area so acknowledged to have been possessed are not stated in that agreement, yet it cannot be denied that all persons, officials of the Government and civilians alike, were agreed that the Coeur d'Alene occupied a large territory outside their reservation, an area specifically described by boundary lines in the documents hereafter referred to.

Prior to the 1887 agreement, a commission was directed by the Interior Department to obtain the extinguishment of the tribal title to all lands claimed by them and for the purpose of establishing a reservation for them. An agreement was concluded on July 28, 1873 (Pet. Ex. 94). This agreement, although submitted, was not ratified but it contained a description of the boundaries of the lands claimed by the Indians. Again, and in 1885, (Pet. Ex. 109, p. 40), these Indians petitioned the President to have a Commission to treat with them for their lands outside their reservation and in the petition described the lands they claimed to "own." This and

the 1873 agreement were before Congress as the exhibits show. In fact, these, with a mass of other documents, were submitted to the Congress pursuant to an act of Congress (May 15, 1886, 24 Stat. 44) and were before that body at the time of the ratification of the Agreement of March 26, 1887, by the Act of March 3, 1891. (Pet. Ex. 106, pp. 36-37 and Pet. Ex. 109, pp. 40-41). It is reasonable, therefore, to presume that the "large and valuable tract of land" possessed by the Coeur d'Alene Indians referred to in the preamble of the 1887 agreement, were the lands within the boundaries described in the unratified agreement of 1873 and the petition of 1885. In truth, the only evidence of the boundaries claimed by these Indians was that supplied by Government agents who were familiar with the area claimed, and were apparently agreed as to the boundaries thereof.

We consider the fact that specific boundaries were not set forth in the treaty, of no importance here, because such a description was unnecessary to convey title.

We, accordingly, conclude that the Coeur d'Alene have proved aboriginal Indian title to the lands described in Finding 11, and also, that defendant had by the Agreement of March 26, 1887, recognized such title in said Indians.

Associate Commissioner

We concur:

Chief Commissioner

Associate Commissioner

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BEFORE THE INDIAN CLAIMS COMMISSION

THE COEUR D'ALENE TRIBE OF INDIANS,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 81

Decided: [illegible]

FINDINGS OF FACT

Preliminary Statement

On December 4, 1951, the Commission entered its order directing that in the above cause there first be heard and determined the question as to petitioners' rights to the land claimed in their petition (the defendant having by its answer admitted the authority of the petitioner to assert the claim presented), and the area thereof, at the time of the cession by the Agreement of March 26, 1887, which was ratified on March 3, 1891, 26 Stat. 989. So, the findings hereinafter set forth are confined to the issues limited by said order, leaving for later determination the other issues, including that of the consideration paid for the cession and the value of the lands ceded.

1. Petitioner is an Indian tribe residing within the territorial limits of the United States with a tribal organization recognized by the

Secretary of the Interior as having authority to represent such tribe. Petitioner is therefore authorized to maintain this action under Section 2 of the Indian Claims Commission Act (60 Stat. 1049).

2. The first known white contact with the Coeur d'Alene Tribe was the Lewis and Clark Expedition of 1804-06. 1/ Later, in 1824-25, fur traders reported this tribe as living in the vicinity of Coeur d'Alene Lake, 2/ the same location given for them by Lewis and Clark. 3/ The tribe was located in the same general area when the missionaries established a mission among the Coeur d'Alene in 1842 on the banks of the St. Joe River at the point where it flows into the southern end of the Coeur d'Alene Lake, near St. Maries, Idaho. Father Point, first missionary to reside with the tribe, found them occupying 27 different localities.

3. The name Coeur d'Alene is the name popularly given to the Salish Tribe originally and most commonly known as Skitswish, although often referred to by other names such as "Skeetsomish" and "Skeetshus" and in the anglicized translations as the "pointed hearts," "needle hearts," and similar names. 4/ The Coeur d'Alene were clearly distinguishable from neighboring tribes on the basis of language, religion, physical appearance, and geographical location. 5/

1/ Tr. 41-42

2/ Pet. Ex. 12, p. 247; Pet. Ex. 13, p. 150

3/ Pet. Ex. 8, pp. 385, 396

4/ Pet. Exs. 1, 4, 7 (p. 992); 9 (p. 711)

5/ Pet. Exs. 13, p. 151; Pet. Ex. 29, pp. 508-509; Pet. Ex. 17; Pet. Ex. 5, p. 40; Pet. Ex. 33, p. 414

4. In 1854, Governor Isaac Stevens, while on his expedition to locate a railroad from the Mississippi to the west coast reported the Coeur d'Alene as living "on the upper part of the Coeur d'Alene River, above the Spokanes, and around the lake of the same name. They are estimated by Dr. Dart as only two hundred in number, which is believed, however, to be too low an estimate. Father Mengarini * * * gives as his opinion that they reach four hundred and fifty." 6/ Father de Smet who spent much time with the Flatbow Tribes in 1858 described "the country which is occupied by this tribal group [Coeur d'Alene] which our fathers are taking care of. * * * From north to south and east to west, the territory where the Coeur d'Alene Indians occupy is about 100 miles. The country is very mountainous." 7/ In a letter written in May, 1859, Father de Smet said: "Taking Coeur-d'Alene Lake as a central point, their country may extend fifty miles to every point of the compass." 8/ In writing of his experiences with the tribe, Father Diomedi, to whom fell the task in 1876 of getting the whole tribe to settle at the new mission at Nilgoalko, related: "The Indians of this tribe were now located in camps scattered over a radius of fifty miles. * * * " 9/

6/ Pet. Ex. 33, p. 257

7/ Pet. Ex. 27, p. 394

8/ Pet. Ex. 19, p. 142

9/ Pet. Ex. 22, p. 56

5. In aboriginal times the Coeur d'Alene territory was surrounded by other tribes; the Spokane on the west, the Kalispel on the north, the Flatheads on the east and the Nez Perce on the south and southeast, with the Palouse on the southwest at least in later periods.. Each of these tribes recognized in general the territorial boundaries of the Coeur d'Alene.

James A. Teit, one of the early recognized authorities on the Plateau Tribes, in his work on said tribes in 1904, wrote of the Coeur d'Alene as follows:

> The country occupied by the Coeur d'Alene was almost entirely within what is now the State of Idaho. A small part extended into Washington. They held all the waters of Spokane River from a little above Spokane Falls to the sources, including Coeur d'Alene Lake and all its tributaries. To the southeast their territory extended across the head of the Clearwater, a tributary of the Snake River. Their eastern boundaries were the Coeur d'Alene and Bitter Root Mountains. Generally speaking, their country is mountainous and more or less heavily forested, with more rain and snowfall than the territories of the surrounding tribes. The western part, around De Smet, Hangman's Creek, Tekoa, Farmington, and toward Spokane Falls, is drier and comparatively flat, open, and well grassed. In the central part are many navigable waterways.
>
> On three sides tribes of the flathead group were neighbors of the Coeur d'Alene - the Spokane to the west, the Kalispel to the north, and the Pend d'Oreilles to the east. On the south their neighbors were the Nez Perce and Palouse; but, as the latter are considered comparatively new arrivals, in olden times probably they bordered only on the Nez Perce. It seems likely that there was a narrow strip of neutral country between the two tribes, used to some extent by both in times of peace. * * *

Although Teit was not a trained ethnologist, his work was edited by Franz Boas, who became known as "The father of American Anthropology." 10/

Leslie Spier in his "Tribal Distribution in Washington" (1935), wrote:

> Their (Coeur d'Alene) territory was almost wholly in Idaho, only a small part extending into Washington. We are concerned here only in the definition of the latter segment. * * *

10/ Tr. 467

The bands were grouped into three, possibly four, units corresponding to divisions of the tribe. Of these only the Coeur d'Alene Lake - Spokane River division seems to have held territory in Washington. Permanent winter villages are noted on the Spokane River from the Idaho line to a point about twenty miles above Spokane City. "A few miles below /this last point/ was the boundary between the Coeur d'Alene and the Spokane. The latter, however, did not reach much above Spokane Falls (or City)."11/

It seems possible that at one time the narrow strip of Palous country above the mouth of the Palouse was neutral ground, the contiguous tribes of Columbia, Spokane, Coeur d'Alene, and Nez Perce each making use to some extent of the part lying nearest them. This neutral strip, and previous decimation of the Columbia population by disease, would make the expansion of the Yakima or Palous in this direction very easy.

Colfax was considered to be in Palous country, at least, in later days, but was to some extent within both Coeur d'Alene and Nez Perce spheres of influence."12/

Dr. Verne Ray, petitioner's ethnologist, in his "Native Villages and Groupings of the Columbia Basin" (1936), extracts of which appear in petitioner's Exhibit 119/ shows the territory of the Coeur d'Alene with the western and northern boundaries as then determined by Dr. Ray and on page 103 his boundaries for the Coeur d'Alene and other tribes in the Northern Plateau. (Compare with his map on page 386, Pet. Ex. 120). on page 116.

6. In 1873, at the direction of the Department of the Interior, three commissioners negotiated an agreement with the Coeur d'Alene Tribe for the purpose of extinguishing the title of said Indians to all lands claimed by the tribe and for the purpose of establishing a reservation. By this agreement made on July 28, 1873, which was never ratified by Congress,

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11/ See Def. Ex. 13, p. 36; Def. Ex. 6

12/ See Def. Ex. 13, p. 39

the tribe agreed to relinquish to the Government all right and title in and to all lands theretofore claimed by said tribe, lying outside of the proposed reservation, and bounded as follows:

> Beginning at the head of the upper Palouse or Mohnaaha river in the Territory of Idaho; thence westerly across the ridge to Steptoes Butte; thence northerly to Antoine Plants, on the Spokane river; thence across ridge to the foot of Pen de 'Oreille Lake, thence up said lake to the summit of the Bitter Root Mountains; thence along the summit of the Bitter Root Mountains to the place of beginning. 13/

In reporting the proceedings culminating in this agreement, Agent Monteith, one of the signers of the agreement, wrote that the Coeur d'Alene said that the country so bounded "was their country although I found that a portion of it to be in dispute between them and a half breed Spokan Chief." 14/

7. In 1885, the Coeur d'Alene Tribe, in petitioning the Government to send a commission to treat with them respecting their lands outside of the reservation established for them by executive order in 1873, and on other matters, claimed their boundaries to be as follows:

> The boundaries of the country owned by your petitioners, and by their forefathers from time immemorial are as follows, to wit; Beginning at a point on the Palouse River west of a high butte now known and called Steptoe Butte; thence extending northwestwardly to the Spokane River at a point on its north bank formerly resided at by Antoine Plant, a half breed Indian; thence extending to the lower end of the Pend d'Oreille Lake; thence eastwardly to the summit of the Coeur d'Alene Mountains, separating the waters of the Flathead or Missoula River from those of the Coeur d'Alene and Saint Joseph's River; thence southerly along the summit of said mountains to the most southern thereof, whence flows the Palouse River; thence westwardly along the southern rim of the water-shed of the waters of the Palouse River to the point of beginning. 15/

13/ Pet. Ex. 94

14/ Pet. Ex. 93

15/ Pet Ex. 109, p. 40

8. The Northwest Indian Commission, on March 26, 1887, concluded an agreement with the Coeur d'Alene Tribe at De Smet Mission on the Coeur d'Alene reservation, Territory of Idaho. The pertinent articles are as follows:

> Article 1. Whereas said Coeur d'Alene Indians were formerly possessed of a large and valuable tract of land lying in the Territories of Washington, Idaho, and Montana, and whereas said Indians have never ceded the same to the United States, but the same, with the exception of the present Coeur d'Alene Reservation, is held by the United States and settlers and owners deriving title from the United States, and whereas said Indians have received no compensation for said land from the United States; Therefore,
>
> Article 2. For the consideration hereinafter stated the said Coeur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States all right, title, and claim which they now have, or ever had, to all lands in said territories and elsewhere, except the portion of land within the boundaries of their present reservation in the territory of Idaho known as the Coeur d'Alene Reservation.
>
> Article 14. This agreement shall not be binding on either party until ratified by Congress.

The consideration agreed to be paid by the United States under the terms of the agreement was $150,000 (Article 6). The agreement was not ratified by Congress until the Act of March 3, 1891 (26 Stat. 989, 1 Kapp. 429). In this act the agreement was referred to as dated March 26, 1889. This was without doubt a typographical error, for the text of the March 26, 1887 agreement (Ex. 105; see also Ex. 106, p. 56) is identical to that set out in the act except as to the year. Moreover, the later agreement of September 9, 1889, which was also ratified by the same act, in article 4 expressly refers to the former agreement by its correct date, March 26, 1887. The reservation as established in 1873

contained 598,500 acres of land.

Although the above agreement does not state the boundaries of the lands ceded by the tribe, the Northwest Indian Commission was cognizant of the lands claimed by the tribe. In reporting its negotiations with the tribe, the Commission had this to say:

> The lands which they claimed, and held by occupancy, contained about 4,000,000 of acres. They had the same title to it which other Indians had, that is, the fee in the United States, and the occupancy, with all its incidental rights, in the Indians. The right of the Indians to their occupancy is as sacred as that of the United States to the fee.
>
> On page 9 of this document [Sen. Ex. Doc. No. 122, 49th Cong., 1st Sess.] will be found the petition [Pg. 7] of the Coeur d'Alene Indians, addressed to the President of the United States, setting forth their claim and the boundaries of the land in question. This country, as the petition alleges, "is one of the most valuable in Washington Territory, dotted by numerous and valuable wheat farms, valuable forests of timber, saw-mills, gold, silver, and lead mines, the military post of Coeur d'Alene, and numerous thriving towns and villages. The Northern Pacific Railroad runs directly through it, and much of the land owned by that corporation was the land of these Indians.
>
> * * *
>
> At De Smit Mission we were furnished with the original agreement [unratified] made and concluded on the 28th day of July, 1873, * * *.
>
> * * * By reference to the copy of the agreement, it will be observed provision was made for a reservation for the Coeur d'Alenes out of a portion of these lands, and the tribe relinquished to the Government all lands heretofore claimed by them lying and being outside of said described reservation. The boundaries are then given in detail, and it will be found that they substantially agree with the boundaries given in the petition of the Indians. 16/

16/ Pet. Ex. 106, pp. 38 and 39

9. Following the execution of the agreement of 1887, and prior to its ratification, the Secretary of the Interior was directed by a Senate Resolution in 1888 to report whether it was advisable to throw open any portion of the Coeur d'Alene Reservation to occupation and settlement under the mineral laws of the United States. The Commissioner of Indian Affairs, in advising the Secretary of the Interior that he believed a cession of part of the reservation for such a purpose could be obtained once the 1887 agreement was ratified, said:

> In conclusion I will state that in my opinion these Indians have all the original Indian rights in the soil they occupy. They claimed the country long before the lines of the reservation were defined by executive order of 1873, and the present reservation embraces only a portion of the lands to which they laid claim. This claim has been recognized in various ways and at sundry times, and the last Congress authorized the Secretary of the Interior to negotiate with them "for the cession of their lands outside the limits of the present Coeur d'Alene Reservation to the United States" * * *17/

Thus, it appears that the Congress of the United States and the officials of the Department of the Interior recognized that the Coeur d'Alene Tribe had Indian title to lands outside of the boundaries of the reservation established by the Executive Order of 1873 (1 Kapp. 837). While the boundaries of the lands claimed by petitioner were not expressly recognized, it is plain that the Congress and officials of the Interior Department dealing with Indian affairs in considering the Coeur d'Alene land claims outside their reservation recognized the boundaries described in the 1873 unratified agreement (Ex. 94) and the 1885 petition of the Indians (Ex. 109, p. 40) which were boundaries consistently claimed by

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17/ Pet. Ex. 109, p. 24

the Coeur d'Alene and which are substantially the same as those described in Finding 11 hereof, although we found an overlapping of areas claimed in cases pending before us by the Nez Perce on the south and the Kalispel on the north, which have been adjusted by the Coeur d'Alene in changing the boundaries claimed by them. (See amendment to their proposed findings filed herein on August 11, 1955).

10. The Coeur d'Alene Indians at all times pertinent to the period involved had a tribal organization capable of using and occupying an area of land. 18/ The tribe consisted of three divisions or bands, i.e., (1) Coeur d'Alene Lake, (2) Coeur d'Alene River, and (3) the St. Joseph River bands or divisions. 19/ The tribe was semi-sedentary, always returning to permanent villages which remained fairly static and have been located generally in the same places by those who have studied the tribe, i. e., Teit, 20/, Ray, 21/, and Chalfant, 22/ along the Coeur d'Alene, Spokane and St. Joe Rivers, and on the borders of Coeur d'Alene and Hayden Lakes. There were also camps to which the Indians went in season for berry picking, camas root digging, fishing and hunting. In all, some 34 permanent or temporary camp sites have been located by the ethnologists. There is

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18/ See Ray, Pet, Ex. 121, and extracts from Ray in Def. Ex. 13, pp. 135, 136

19/ Teit, Pet, Ex. 5

20/ Ibid

21/ Pet. Ex. 119, pp. 116, 130-133

22/ Def. Ex. 13-A

no record of any migrations of this tribe and according to tradition the tribe has always been in the area where they were first contacted by the whites. 23/ It is the same region from which the Coeur d'Alene reportedly excluded the Hudson Bay Company when the latter attempted to enter their territory. 24/

11. The Commission finds from the evidence that at and long prior to the agreement of March 26, 1887, ratified by the Act of March 3, 1891, 26 Stat. 989, the petitioner had aboriginal Indian title, and that such title was recognized by defendant, to the lands situate in Idaho and Washington within the following boundaries:

> Beginning at Steptoe Butte, thence northerly to the Spokane River at a point on its north bank where Antoine Plant formerly resided and operated a ferry; thence northeasterly, including Rathdrum Prairie, to the most southerly tip of Pend d'Oreille Lake; thence eastwardly to the summit of the Coeur d'Alene or Bitterroot Mountains; thence southerly along the summit of said mountains to the divide separating the watersheds of the North Fork of the Clearwater River and the St. Joe River; thence westerly along said divide to a point separating the headwaters of the St. Maries River from the headwaters of Potlatch River; thence in a direct westerly line to the place of beginning.

Edgar E. Witt
Chief Commissioner

Associate Commissioner

Wm M Holt
Associate Commissioner

23/ Tait, Pet. Ex. 5, p. 40

24/ Pet. Ex. 31, p. 37; Pet. Ex. 22, p. 53; Pet. Ex. 13

BEFORE THE INDIAN CLAIMS COMMISSION

THE COEUR D'ALENE TRIBE OF INDIANS, Petitioner,	)	Docket No. 81
v.	)	
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: DEC [illegible] 1957

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact:

12. By the Agreement of March 26, 1887, 26 Stat. 989, 1027, petitioner agreed to "cede, grant, relinquish and quit claim to the United States" all its lands except the portion thereof within the boundaries of the reservation set apart as such by Executive Order of November 8, 1873.

13. The lands thus ceded, relinquished and quit claimed by petitioner comprise 2,389,924 acres in the present States of Idaho and Washington, 2,055,596 acres of which are in the State of Idaho, and 334,328 acres in the State of Washington. The reservation referred to in Finding 1 contained 598,500 acres, all within the State of Idaho.

14. Description of the Coeur d'Alene Tract: The Coeur d'Alene Tract occupies the central portion of the Panhandle section of the State of Idaho and extends westward into the State of Washington from ten to twelve miles. The northernmost extension of the north boundary of the Tract reaches the southern tip of Lake Pend Oreille and extends from that point due eastward to the Bitterroot Mountains. The eastern

THE INDIAN CLAIMS COMMISSION

(OF INDIANS.)

boundary of the Tract is the summit of the Bitterroot Mountain range, which also serves as the boundary line between the States of Idaho and Montana. The Tract extends southward to the spur ranges and hills dividing the drainage basin of Coeur d'Alene Lake from the drainage basin of the Snake River.

The Coeur d'Alene Indian Reservation containing 598,500 acres is located in the west central portion of the Coeur d'Alene Tract. In the main the Tract may be said to consist of the drainage basin of Coeur d' Alene Lake less the Coeur d'Alene Reservation. The area is drained by the Coeur d'Alene River flowing from the summit of the Bitterroot Mountain range westward to empty into the lake; the St. Joe River flowing from the Bitterroot Mountains in a northwesterly direction and emptying into the southern end of Coeur d'Alene Lake; and the St. Maries River heading in the spur ranges and hills dividing the Coeur d'Alene and Snake drainage systems and flowing northward to a junction with the St. Joe River a few miles east of the lake. Lake Coeur d'Alene empties into the Columbia through the Spokane River, which flows directly westward from Lake Coeur d'Alene. In the main the Coeur d'Alene Tract is a mountainous and rugged area. All of the area from Lake Coeur d'Alene to its eastern border is occupied by the westerly slope of the Bitterroot Mountains and by various short spur ranges. In the northern portion of the Tract the mountain area extends to and beyond Pend Oreille Lake, and in the southern portion of the tract the St. Joe Mountains extend nearly to the Idaho-Washington border.

15. While the country had been visited and traversed by white men much earlier, the first permanent settlement among the Coeur d'Alenes

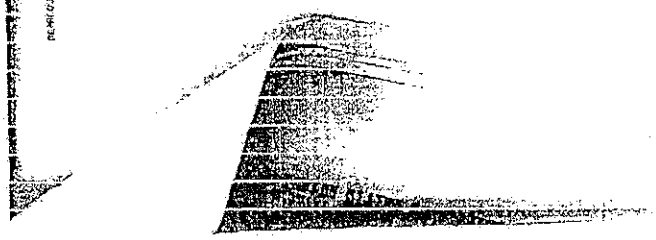
was in 1842, when the Jesuit priests established a mission there. During the ensuing years, the members of the tribe became thoroughly Christianized. The Jesuits taught them how to farm and cultivate the soil. Long before 1887 they had many acres under cultivation. By 1887, they were generally recognized as one of the most advanced and civilized of Indian tribes.

16. The white man's interest in petitioner's territory may be said to have commenced, in respects material to this case, with the surveying and construction of the Mullan Road about 1855, a military road surveyed and cut through the forests from the east by Captain Mullan under government authorization. The discovery of gold on Oro Fino Creek in Nez Perce territory bordering on the south of the lands involved heightened the interest of the white men in the Coeur d'Alene country. This was in the early 1860's. Idaho Territory was established in 1863. Prospecting on the north fork of the Coeur d'Alene River commenced as early as 1865, when there was a stampede of 600 men into the territory. Three years later 700 prospectors were reported in the Coeur d'Alene country. In 1879 a fort was established at what is now the city of Coeur d'Alene. Small settlements grew up, a sawmill was opened, a post office established, and by 1880 Shoshone County had an officially credited white population of 467 and Kootenai County 518. Thus early, and before the Coeur d' Alenes had ceded their territory, it was invaded by whites. From thence forward, the pressure of white settlement increased. Gold was discovered on the north fork of the Coeur d'Alene River in 1883 and the following spring ushered in a vast horde of gold seekers. In the ensuing three years the population increased by leaps and bounds. Towns mushroomed overnight.

As early as 1884, Eagle City was a town of 2000. The following year, Murray had 1000 people, both towns being on the north fork of the Coeur d'Alene River where placer gold was being mined. The settlement of the south fork of that river followed shortly, with the towns of Mullan, Burke, Gem, Mace, Wardner, Milo, Wallace and Kellogg, all on the south fork where the lode discoveries were being prospected and exploited. Other towns sprang up in the territory outside of the mining district. In 1887, the white population in the petitioner's territory was estimated to be about 11,000.

17. Along the narrow river valleys of the tract are found recent alluvial deposits that on the lower reaches of the streams are subject to seasonal flooding. Otherwise the soils of this area are of residual formation, that is, they have developed in place from the underlying rock formations. This mountainous area extends across the southerly part of Benewah County and into Spokane County. These soils have developed under forest conditions and vary from gravelly, stony loams over the higher and steeper areas to silt loams on the lower elevations. Due to the original heavy forest cover these soils are deficient in organic matter, which is reflected in their light color. The lower lying silty soil types have a rather shallow surface soil overlying a subsoil generally similar but more compact. The underlying bedrock is usually found at less than three feet. Topography is generally fairly steep so that these soils are subject to erosion on being cleared of their forest cover.

Extending along the northerly side of the subject lands from near the south end of Lake Pend Oreille to the vicinity of Spokane there is a



rather broad, flat area known as Rathdrum Prairie. This consists of a dark colored gravelly, sandy loam. It is relatively high in organic content due to having been developed under prairie grass conditions. This soil was developed from glacial outwash material and contains large amounts of water-washed, rounded stones. The surface soils which are of only moderate depth merge gradually into the underlying subsoil of similar, but less developed, coarser material. Because of the gravel content of these soils their drainage is excessive.

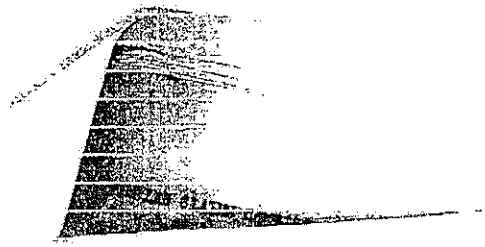
The subject lands lying in the southeasterly part of Spokane County and the northeasterly portion of Whitman County consist substantially of silt loam. This is an aeolian or wind-deposited soil of great depth, in places known to be as much as 100 feet. It was developed under a natural cover of bunch grasses and small brush, which has resulted in a very high content of organic material in the soil, and which is responsible for the characteristic dark brown to black color. These soils consist of a deep, silty loam surface soil that overlies a subsoil of similar but lighter color. The topography of this area is characterized by smooth, low, rounded hills. Permeability is excellent and this land is not as subject to erosion as some of the heavier residual types of soils found in the more mountainous sections. The Palouse soils are among the most productive found in the Northwest.

18. The interest of the whites in the Coeur d'Alene country was not confined to mining. By 1887 many settlers had commenced farming, and in the ensuing four years, increasing numbers of settlers came into the Coeur d'Alene territory to follow agricultural pursuits.

19. In early years, the Coeur d'Alene lands were in Washington Territory, and in 1859, the Washington Territorial Legislature established Shoshone County, which included all of the northern half of the present State of Idaho. In 1861, a county government was set up for Shoshone County. In 1863, the territory of Idaho was established and thereby, also, the portion of Shoshone County which had been in the present State of Washington was cut off and added to Idaho Territory. In 1864, Kootenai County was carved out of the northern portion of Shoshone County. It included the northeastern portion of the Coeur d'Alene lands in the State of Idaho.

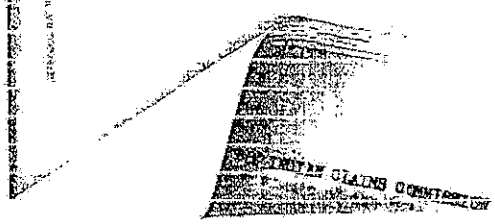
20. In the period from 1887 to 1891, inclusive, the Coeur d'Alene Tract, including the 1873 reservation, comprised large portions of Shoshone County and Kootenai County in Idaho (the northern portion of Kootenai County, now making up the Idaho Counties of Bonner and Boundary, and the southern portion of Kootenai County within the present county of Latah and part of the present county of Benewah were outside the Tract; and the southern portion of Shoshone County, now constituting the major portion of the Idaho County of Clearwater, was also outside the boundaries of the Tract). A strip of land about 10 miles wide East and West and 48 miles long North and South along the eastern boundary of the State of Washington is included in the Tract.

21. Until the early 1880's the Coeur d'Alene Tract, as well as the whole of the interior northwest region, was without railroad transportation. The Coeur d'Alene Tract's only means of communication with the rest of the Northwest and with the outside world, aside from Indian trails, was the Mullan Road, constructed from Fort Benton, Montana to Fort Walla Walla



in the Walla Walla Valley of the Territory of Washington. This road was constructed between 1858 and 1861 and passed directly through the Coeur d'Alene Tract. Like most military roads of this period, the Mullan Road was little more than a trail hacked through the timber and over the mountains, over which vehicular traffic could be moved only during the summer months. By 1887, however, the transportation and communication facilities available into and through the Coeur d'Alene Tract were substantial. A transcontinental railway line, the Northern Pacific, was completed and extended from St. Paul to the Pacific Coast. This line passed through the extreme northwestern corner of the Coeur d'Alene Tract and extended along its eastern border. A branch railroad line from Hauser Junction on the Northern Pacific extended southward to the northern end of Lake Coeur d'Alene. At least three steamers were operating on Lake Coeur d'Alene and on the Coeur d'Alene, St. Joe and St. Maries Rivers. Steamboats could and did navigate the Coeur d'Alene River to the old Mission (Cataldo), some 25 miles eastward and upstream from Lake Coeur d'Alene. From the mission a narrow gauge railroad was built up the Coeur d'Alene River to the mining towns of Kingston, Wardner, Osborne, Wallace, Mullan and Burke.

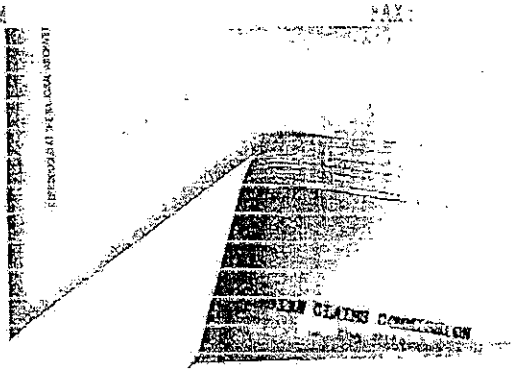
Between March 26, 1887 and March 3, 1891 the transportation facilities of the Coeur d'Alene Tract were very materially increased and bettered. The Washington and Idaho Railway Company's line, a standard gauge branch line of the O. W. R. & N. Company, built from Farmington, Washington east through the Coeur d'Alene Indian Reservation and up the valley of the South Fork of the Coeur d'Alene River, reaching Wallace in the mining



region on December 9, 1889, and the Northern Pacific Railway Company extended a standard gauge branch line from DeSmet, Montana westward across the Bitterroot Mountains by the Mullan Pass, reaching Wallace, Idaho in August of 1890. Thus by March 3, 1891 the Coeur d'Alene Tract was served by the transcontinental line of the Northern Pacific which passed through the extreme northeastern corner of the Tract and continued southward just west of the western border of the Tract; by the Corbin narrow gauge from Hauser Junction to Coeur d'Alene Landing; and by the Corbin narrow gauge from Cataldo into the mining region, the two stretches of narrow gauge tract being connected by steamboat service from Coeur d'Alene Landing to Cataldo; by the standard gauge branch line of the C. M.P.&N. system from Farmington to Wallace; and by the standard gauge branch line of the Northern Pacific from DeSmet, Montana to Wallace, Idaho.

22. By 1886 there were telephone lines connecting the principal towns in the territory with the outside world and affording communication within the territory, and by 1888 telegraph lines were in operation linking the entire Coeur d'Alene area with the Western Union Telegraph Company's lines.

23. By 1887 there were flourishing towns in the territory, most of them mining settlements but others in the farming districts and still others necessitated by transportation, communication and trade. The rapid growth of the city of Spokane in this period was due in large part to the mining activity in the Coeur d'Alene area. By 1887 there were in the territory post offices, flour mills, banks, sawmills and numerous schools. The assessed valuation of property in Kootenai and Shoshone Counties amounted to nearly $2,000,000.00.

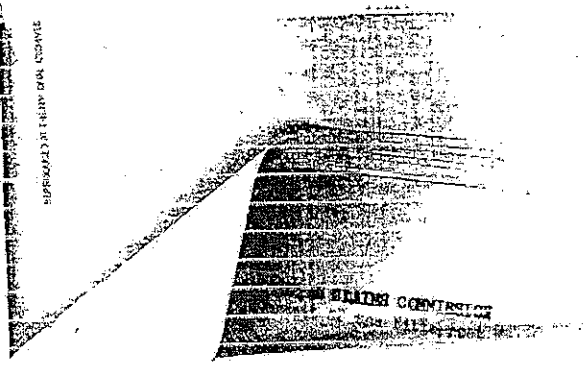


24. Of the total lands ceded by petitioner 148,080 acres thereof should be classified as mineral lands, 393,238 acres as agricultural lands, and the remainder, 1,848,606 acres, as timber lands.

Agricultural Lands

25. (a) The lands classified as agricultural lie in part in that portion of the tract which is west of the Coeur d'Alene reservation in the State of Washington and in part in the State of Idaho, generally north of Hayden Lake and the Spokane River. Part of the agricultural lands are in the Palouse wheat belt and other of those lands are found in the Rathdrum Prairie area. The Palouse area is considered one of the select farming regions of the world. Some of the lands within the Tract classified as agricultural for the purposes of evaluation were timbered in the 1887-1891 period and would have required clearing.

(b) By 1891 a fairly active market existed for the agricultural lands of the Coeur d'Alene Tract. A number of sales of farm land within the area had been made by the Northern Pacific Railway Company and by the Oregon Improvement Company. To 1887 the Northern Pacific Railway Company sales of its agricultural lands within the area were all at $2.60 per acre, the Oregon Improvement Company's at a slightly higher price. During this same period a few homesteads had also been patented in the agricultural portion of the Tract. That the demand for agricultural land was not confined to the Coeur d'Alene tract, but extended east and south of the area, is demonstrated by the sales data appended to his report by the petitioner's appraiser, Murray. As shown by this report, between 1887 and 1892, Murray found 186 sales from the Northern



Pacific Railway Company in Spokane County, Washington, and during the same period 25 sales by the Northern Pacific Railway Company in Whitman County, Washington, and 38 sales during the same period from individual grantors and from the Northern Pacific Railway Company in Kootenai County, Idaho.

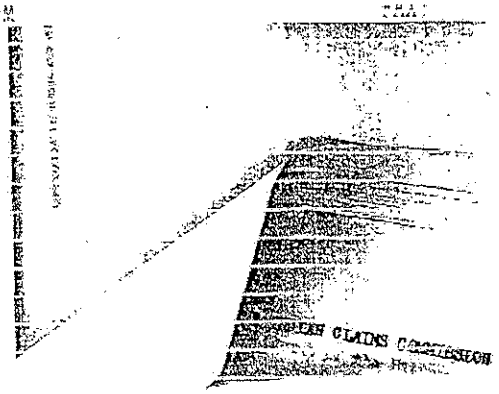
(c) During the period 1887 to 1891 the Northern Pacific Railroad made at least 251 sales, according to county records, of its unimproved lands in Whitman and Spokane Counties, Washington and Kootenai County, Idaho, for stated considerations ranging from $2.50 an acre to $10.00 an acre for sales usually consisting of 160 acres or less. The average consideration shown by the record of these sales is $4.12 per acre.

(d) Mr. Henry T. Murray, a qualified appraiser, of Missoula, Montana, testified as an expert witness for petitioner. After assembling the above sales made by the Northern Pacific Railroad, Mr. Murray made certain adjustments to arrive at his conclusion of the value to be placed on the agricultural lands. The witness assumed that an average of five years would be required to put all the agricultural land on the market and to recover the purchaser's investment. He stated taxes were found to average .035 cents per acre and assumed an investor would be satisfied with a return of six percent on his investment. Discounting the average selling price of $4.12 to determine its worth five years hence Mr. Murray concluded the wholesale price of the 393,237.75 acres of agricultural land to be $1,140,389 or $2.90 per acre. Mr. Murray testified that his opinion of value for the agricultural lands would be the same for either 1887 or 1891 (Tr. 1286).

(e) Mr. C. Marc Miller, a qualified appraiser, testified as an

expert witness for defendant. This witness also used the comparable sales or market data approach to arrive at his opinion as to the value of the agricultural lands within the Tract. Mr. Miller stated (Def. Ex. 38, p. 149) that a study of the sales in the area showed the Northern Pacific Railroad between 1881 and 1887 was selling its lands in small tracts for $2.60 per acre, and after 1887 at from $2.60 to $4.00 per acre. The witness limited the agricultural lands of the tract to 260,000 acres which were those agricultural lands that did not need to be cleared of timber. It was Mr. Miller's opinion that a well informed hypothetical purchaser of the Tract as of March 26, 1887, would have believed that he would be able to dispose of approximately 260,000 acres as agricultural lands at an average retail price of $3.00 per acre but that such a purchaser would have recognized that there would be considerable expense involved in the resale of the lands (Def. Ex. 38, pp. 163-164). Defendant's appraiser was of the opinion that as of March 3, 1891, a hypothetical purchaser would have considered that he could have paid for the agricultural lands of the Tract the sum of $2.50 per acre (Def. Ex. 38, p. 168; Tr. 1164-1165) and that as of 1887 they were worth $2.00 per acre (Tr. 1163 and 1514).

(f) Based upon the entire record, including comparable sales, the demand for land, and the presence of timber on some of the lands classified as agricultural, the Commission finds that the agricultural lands of the Tract as of 1891 had a value of $589,857.00, or at the rate of $1.50 per acre for 393,238 acres.

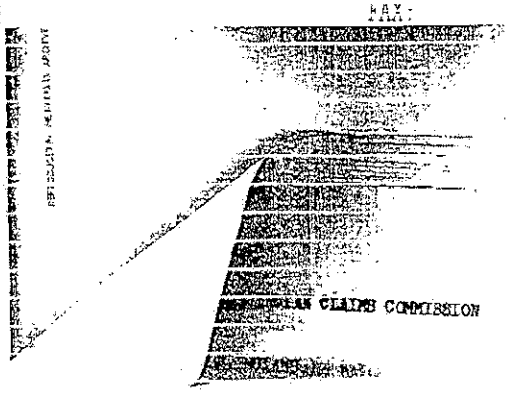


Timber Lands

26. (a) The Coeur d'Alene Tract consisted of 2,389,924 acres of land. Of this acreage the Commission has found that 1,818,606 acres should be classified as timber lands. Part of the tract in the southern portion is in what is now known as the best white pine area in the world (Tr. 1151). With the exception of the jack pine area in the north of the Tract and the alpine growth in the higher mountain regions, all of this timber was of good commercial quality. Due to the topography of the area, however, a large part of this timber stand would not have been considered accessible in the period 1887-1891, and for many years thereafter. During the same period, 1887-1891, the timber resources of the area served to supply the local markets, as fuel for developing steam power in the mining operations and steamboats, for timbering in the mines, railroad ties and for building materials.

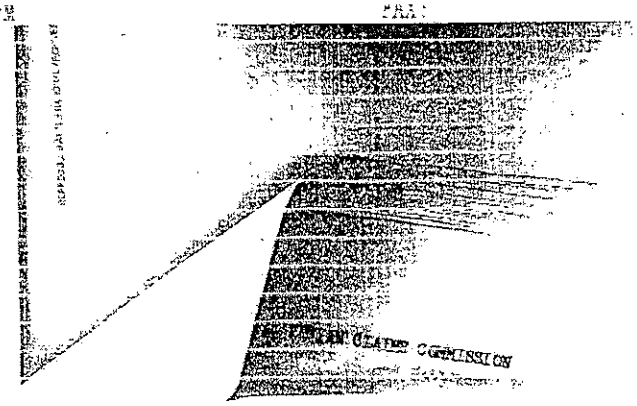
(b) During the period 1887-1891 there were no sales of timber lands within the Tract. Freight rates were still prohibitive for shipment to eastern markets. The Middle West was the main source of timber at that time and it was not until about 1900 that it was eliminated as a controlling factor in natural lumber production. A well-informed purchaser, however, would have been aware of the potential value of the timber in the Coeur d'Alene Tract and would have also been aware that in the distant but reasonably foreseeable future the timber lands of the Tract would be in demand.

(c) Any well informed hypothetical purchaser as of 1887-1891 in considering the timber lands as previously found would consider a large amount of the acreage not accessible for timber operations. The same



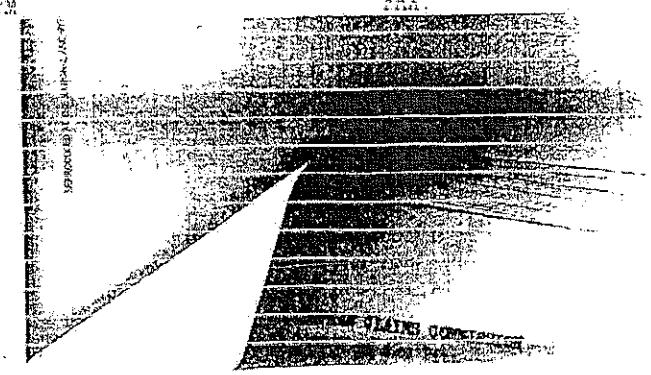
well informed person, however, would realize the importance of this timbered area to the future logging and mining economy of the Coeur d'Alene Tract. The movement of the logs down the rivers of the tract to the mill sites required a stable and dependable flow of water in these streams. The operation of the mines in the mineral area of the Tract also required a continuous, stable and dependable flow of water. Under natural conditions--that is, with the drainage area of the rivers covered with a dense stand of timber, such a continuous and dependable flow of water down the streams of the area was insured. The removal of the timber from this drainage basin, on the other hand, would have insured a succession of freshets, floods and water depletion in the streams. The protection of the watershed insured a slow and gradual run off of summer rains, and a slow and gradual melting of winter snows, thus maintaining throughout the year the flow of the streams of the area. But the rivers of the Coeur d'Alene Tract are short mountain streams, descending rapidly from the Bitterroot Mountains to Coeur d'Alene Lake, and the removal of the timber from the steep mountain and hillsides, which make up this area, would permit the rains to immediately run off and would permit the melting of the winter snows to accelerate tremendously, thus producing seasons of freshets and floods followed by periods when the streams of the region would become dry water courses.

27. (a) There being no sales of timber lands on the Coeur d'Alene Tract during the period 1887-1891, the appraisers for the parties attempted to establish the value of the timber lands through sales of such lands elsewhere. Mr. Murray, petitioner's appraiser, located a sale in 1888 made by the Northern Pacific Railroad Company of 52,291.16 acres lying



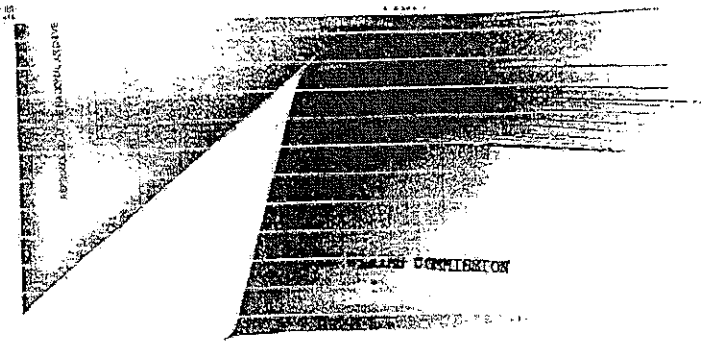
north of the Nisqually River in the State of Washington which took all odd numbered sections in 15 townships. According to this appraiser the terms of sale called for 50 cents per thousand board measure and $1.25 per acre for the land, and that the $1.25 for the land and $1.75 per acre ($3.00 total) be paid according to certain terms. The remainder would in effect revert to the buyer upon the fulfillment of certain performance such as the building of a railroad line, building and equipping a saw mill and producing a stated amount of lumber for shipment each year. Mr. Murray testified that the timber on this land was generally better than on the Tract. Petitioner's appraiser also took into consideration 24 sales of timber lands in 1887 and 1888 covering 3,719.43 acres of land in Montana on the eastern side of the Bitterroot range not far from the Tract. The sales of these timber lands averaged $4.58 per acre. The witness also noted 5 sales that were made on a stumpage basis in that region which showed a return of $1.00 per thousand board feet. These sales, Murray found, were largely in the valley and somewhat easier to log than many parts of the Coeur d'Alene Tract. The witness testified that these sales were probably selective.

(b) In arriving at his conclusion as to the value of the timber lands on the Tract, Mr. Murray considered that Congress by the Timber and Stone Act acknowledged that timber lands were worth at least the sum of $2.50 per acre. It was his considered opinion, however, that in view of the higher prices received in the sale of timber lands that the minimum price of $2.50 per acre should be weighted somewhat to reflect a willingness of buyers to pay more than said minimum. Murray therefore was of the opinion that a fair market price of that part of the Tract valuable for timber was $3.00 per acre. Since the sales he found were of small



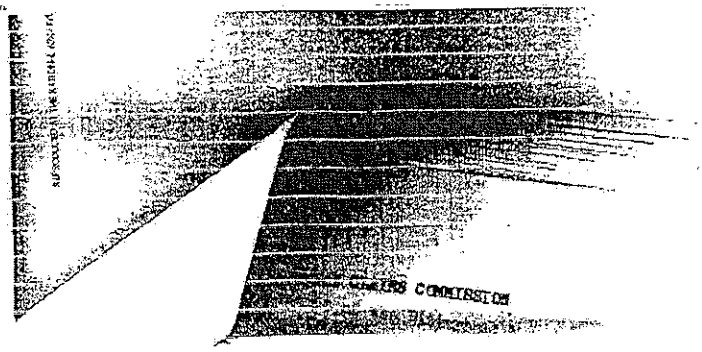
tracts on a retail basis the witness adjusted the market price of $3.00 per acre based on certain assumptions. Petitioner's appraiser assumed that a hypothetical purchaser investing in the Tract would not pay the $3.00 market price since he would require time to either exploit the area or dispose of it. The witness assumed it would require five years as an average time to dispose of the timber holdings. Because of this the appraiser made certain adjustments for charges for taxes, fire protection and administration during such a period and assumed that the purchaser would want a 6% return on the investment for the same period to arrive at the Present Worth (or discounted value) of the fair market value of $3.00 per acre. Mr. Murray was of the opinion that the value of the timber lands as of March 26, 1887, was $1.28 per acre and that as of the date March 3, 1891, their value was at the rate of $2.21 per acre. (Tr. 1235-1265; Pet. Ex. 1hh, pp. 12-2h).

28. (a) Defendant's appraiser, Mr. C. Marc Miller, concluded in his study of the timber lands of the Coeur d'Alene Tract, that during the period 1887-1891 the only demand for the lumber of the area was a local demand; that the needs of the Mississippi Valley region were then being met by the lumbermen of the Great Lakes region and the needs of the West Coast by the lumbermen of the Pacific Coast region; that the lumbermen were not interested in acquiring timber lands in the Coeur d'Alene Tract or in any other part of the "Inland Empire" until after the turn of the 20th century. This witness was of the opinion that any value placed upon the timber lands of the Coeur d'Alene Tract as of this period 1887-1891 was a speculative value. During the same period Mr. Miller concluded



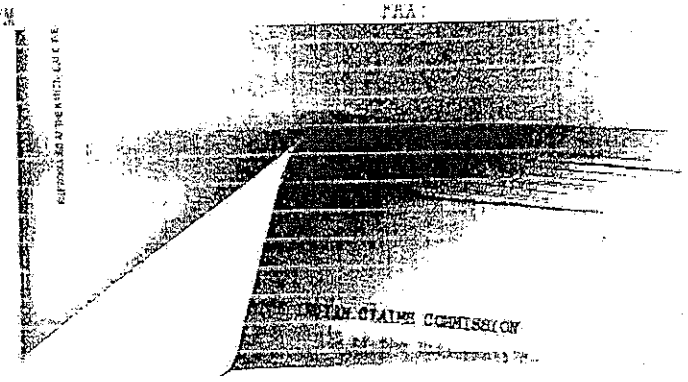
that only 500,000 acres of the Tract would be considered accessible timber lands and that any price fixed on these timber lands would have been entirely speculative. Mr. Miller concluded that no reasonably prudent and well informed purchaser would have considered paying more than $1.00 per acre for the accessible lands of the Tract and would have placed nothing more than a nominal value on the remaining timber lands on the Tract in either 1887 or 1891 (Def. Ex. 38, pp. 94-99 and 164-168).

(b) Defendant's appraiser found that during the years 1887-1891 there were no buyers for timber within the Tract or within the eastern part of the State of Washington, except for a few areas located around sites of population, principally along the Columbia River and that the eastern buyers had not moved into the area although there were people who did prospect the region. Mr. Miller found that the buyers for the timber companies started buying in the area principally in 1902 although there had been a few sales prior thereto and that when the timber within the area became marketable it did sell and there was quite an active market. The witness lists some 58 sales within or near the Tract mostly in 1902 and 1903 at prices ranging from about $3.50 to $30.00 per acre and testified that the only sales of timber within the Tract were of the more accessible timber lands. Mr. Miller testified that he searched the county records to find the largest sale of timberland close to the Tract which would be comparable. The sale he reported was the first sale in or around the area and was made by the Northern Pacific Railroad Company of 52,321.57 acres of timber lands located directly north of the Tract in Kootenai County for the sum of $184,324.50, or about $3.50 per acre in the year 1902. Mr. Miller also reported the sale by the State of



Idaho in 1903 of 8,190 acres of stumpage only in Kootenai County for the sum of $67,567.50. Mr. Miller testified he did not consider sales of timber lands in western Washington for the reason he did not believe them comparable with the timber lands in the Inland Empire because of the difference in transportation and the greater stand per acre in the lands west of the Cascades. Defendant's appraiser testified that the $1.00 per acre value that he placed on the 500,000 acres of what he considered to be accessible timber lands was based on many sales in eastern Washington at about the valuation date of more accessible lands at a dollar an acre to three dollars an acre. These sales are not otherwise referred to or listed as comparable sales. Mr. Miller testified he used the sales of timber lands in and near the Tract in the years 1901, 1902 and 1903 only as a check on the value of $1.00 an acre he placed on the timber lands.

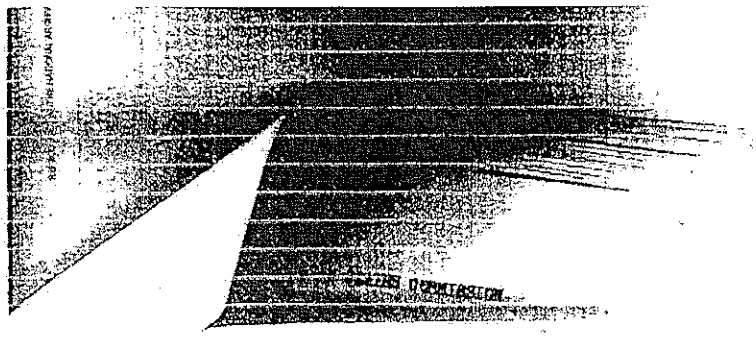
29. In the period 1887-1891 there had been no sales within the Tract of timber lands and only a local market; freight rates were prohibitive during the period with only hope of relief; some of the timber lands would have been considered inaccessible and a prospective purchaser would have been aware of the necessity of watershed protection both to the needs of the lumbering industry and to the mining region. A well-informed hypothetical buyer would also have been aware that the timber lands were of good commercial quality, that with the rivers and the lake on the Tract there was accessible timber in large quantities, and that the timber lands of the area would be in demand by the lumbering industry in the foreseeable future. The hypothetical purchaser would also take into consideration the size of the area of the Tract classified as timber lands; the necessity of paying taxes and fire insurance on the timber



lands; the administrative costs in holding and disposing of the lands; the necessity of probably a number of years to exploit or dispose of his holdings when the timber became marketable; and finally the need of providing for risk and the return of his investment with a profit. In considering all the facts of record the Commission finds that the timber lands within the Tract as of March 3, 1891, had a value in the sum of $1,548,606.00, or at the rate of $1.00 per acre for 1,548,606 acres.

Value of Water Rights

30. The streams and waters of the Coeur d'Alene Tract are not and cannot be separately evaluated. The value placed upon the agricultural and timber lands and upon the mineral lands of the area comprehend the availability of water and the continuance of an adequate water supply to meet the needs of the farms, mines and forests of the area. Water and its use and need is necessarily included in the valuation of the lands of the Tract.



Mineral Lands

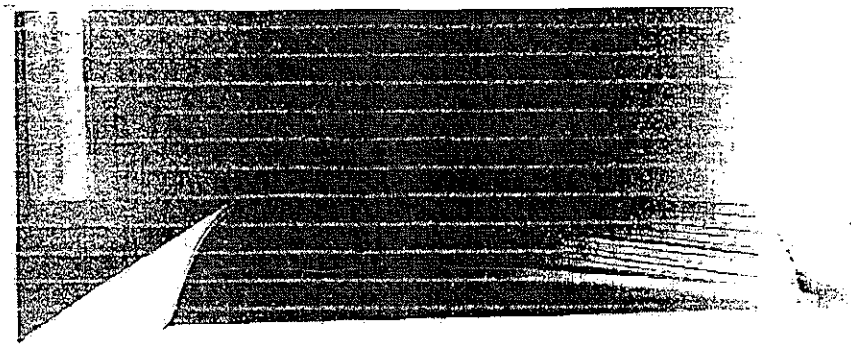
31. The discovery by Prichard of the placers of Prichard Creek ushered in the mineral development of the Coeur d'Alene mining area. The date of Prichard's discovery of placer gold in the creek bed of Prichard Creek is somewhat uncertain, and has been variously fixed by the historical writers at 1880, 1881 and 1882. In any event Prichard kept the news of his discovery strictly to himself for a period, and not until the spring of 1884 did the news of the strike reach the general public. In the spring of that year thousands of miners were on Prichard and Eagle Creek in the Coeur d'Alene area. Petitioner's witness Jones states that his investigation established that a total of 2156 placer claims were filed in the area. In addition to the placer claims located on the tributaries of the North Fork of the Coeur d'Alene River, some gold-bearing lodes were discovered in the same area. Ten claims, later consolidated as the Mother Lode group, six claims, later included in the Daddy group, four claims, later included in the Gold Chest group, and two claims making up the Yosemite group, were staked and developed.

In 1884 and shortly after the placer region of the Coeur d'Alene Tract was brought into production, the first of the lead silver mines of the region were discovered. The Tiger, the Poorman, and several other silver lead prospects were located and staked in this year. In the following year the Bunker Hill and Sullivan mines were located and staked. In fact during this year of 1885 and the following years of 1886 and 1887, a vast number of lode claims in the silver lead district of the Tract were located and staked. Petitioner's witness Jones

testified that his investigation disclosed that a total of 5222 lode claims were eventually located and staked in the silver lead area of the Coeur d'Alene mineral district. That a vast number of claims, both in the placer region of the Tract and in the lead silver region of the Tract, were located and staked in this very short period of time, is not at all surprising. Such is the history of every reported mineral discovery. Actually these locations are extended over all ground which might conceivably at some future time be found to contain mineral values. Much ground is staked which is utterly worthless, and in enumerating the locations filed at a much later date, it is certain that many of the filings are repeated filings upon the same land, and that a number of claims are frequently filed, in part or wholly, covering the same ground. The petitioner's witness Jones stated that much of the placer ground that was staked was valueless for mining purposes. Jones also states that of the lode claims staked, 4262 never were patented, and of the 2158 placer claims staked, 2034 never were patented.

32. The Coeur d'Alene Mining District is located on the western slope of the Coeur d'Alene Mountains in Shoshone County, Idaho. The mineralized zone is approximately 30 miles long by 15 miles wide or about 450 square miles (Tr. 1029). Frederick L. Ransome and F. C. Calkins, of the United States Geological Survey, in their "History of Mining Development" (1908) in writing of the Coeur d'Alene mining area wrote in part as follows (Pet. Ex. 139, pp. 45-51):

> Although the chief excitement at this time [1884-85] centered in the rich gold placers near Murray, the lead-silver veins of the South Fork [of the Coeur d'Alene River]



were beginning to attract attention. * * * In 1885 the Tiger mine, in spite of its comparatively inaccessible position, had been opened by three tunnels and had about 3,000 tons of lead-silver ore on the dump. It was bought in this year by S. S. Glidden for $35,000, Burke and Carton retaining contingent interests. * * *

* * *

The discovery of the Bunker Hill mine by 'Phil' O'Rourke and S. S. Kellogg in 1885, and of the Sullivan mine by 'Con' Sullivan and Jacob Goetz and the evident existence of large bodies of rich ore in the Tiger, Poorman, Granite, San Francisco, Morning and other mines removed all doubts of the future importance of the South Fork mines. The opening of the year 1886 saw a decided rush from the outside and from the waning placers of Murray into this new field. * * *.

* * *

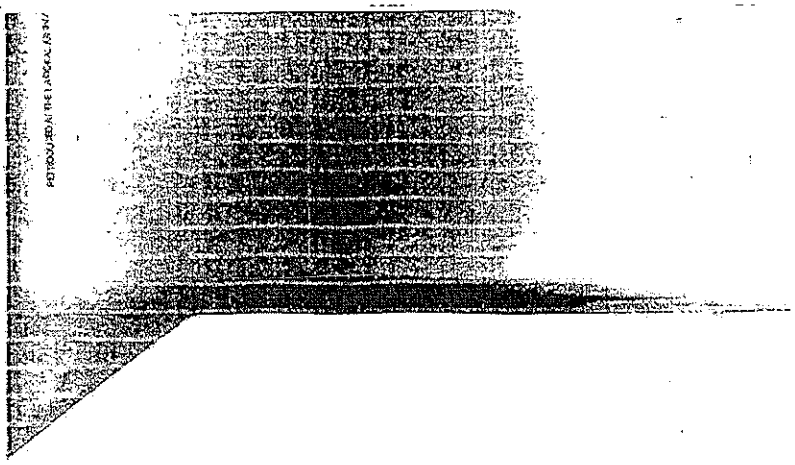
In April, 1887, the Bunker Hill and Sullivan mines were sold to S. G. Reed and in August the Bunker Hill and Sullivan Mining and Concentrating Company was organized with a capital of $3,000,000. The Poorman, Granite, and Morning mines were also sold at about this time. The completion of the narrow-gauge railway to Burke in this year enabled the Canyon Creek mines to ship their ore. Probably over 50,000 tons of lead-silver ore was mined in 1887, the principal producers being the Tiger, Bunker Hill and Sullivan, Tyler and Stemwinder, Last Chance, Sierra Nevada, Poorman and Granite. The Mammoth and Standard veins were as yet merely good prospects. The ore of the Sierra Nevada was chiefly carbonate, carrying 47 per cent lead and 60 to 90 ounces of silver to the ton. Freight to Portland was $16 a ton, and the cost of mining and treating ore of an average value of $96 was $48.85 a ton.

In 1888 placer mining near Murray and Delta had greatly declined. A pipe line was constructed in 1890 to hydraulic the bench gravels of the so-called Old Wash near Murray, and some hydraulic mining is still occassionally carried on in Dream Gulch. * * *

* * *

In 1891 the Morning mine was sold for $400,000. About $200,000 in gold was produced this year, chiefly from the Golden Chest, Golden King, Mother Lode, Occident, Treasure Box, and Buckeye Bay quartz mines, near Murray.

33. The greater part of the ore mined in the district had to be concentrated prior to shipment. The number of tons of ore reduced to one ton of concentrate varied. When treated in the mills which were required to be built at the mines the production of one ton of concentrates contained from 50 to 60 percent lead and varying ounces of silver. Although in 1887 there was much development and exploration work being done at mines there were only two or three concentrators and apparently only a few of the mines were shipping their concentrates. According to the United States Geological Survey Report for the calendar year 1887 (Pet. Ex. 139, p. 113) the chief producers in the Coeur d'Alene region were the Bunker Hill and Sullivan, the Sierra Nevada and the Snowshoe mines. This report states, "The Bunker Hill and Sullivan shipped about 10,000 tons of argentiferous lead concentrates in 1887, the latter two mines about 500 tons each. These mines are all at Wardner, Shoshone county. The total lead output probably amounted to nearly 7,000 short tons from the Coeur d'Alene region. No new district in the United States promises to play so important a part in the lead markets of the Country as the Coeur d'Alene." The reports of the Director of the Mint show the region produced 5,980 tons of lead in 1887 (Pet. Ex. 139, p. 112). The Geological Survey report in speaking of the aspects of better rail transportation in the mining region stated: "These roads, besides aiding development by lowering freights, would come through districts containing promising mines, like those at Mullan and the Sunset group, which are now too far from the railroad to be worked profitably." While practically all of the ore shipped

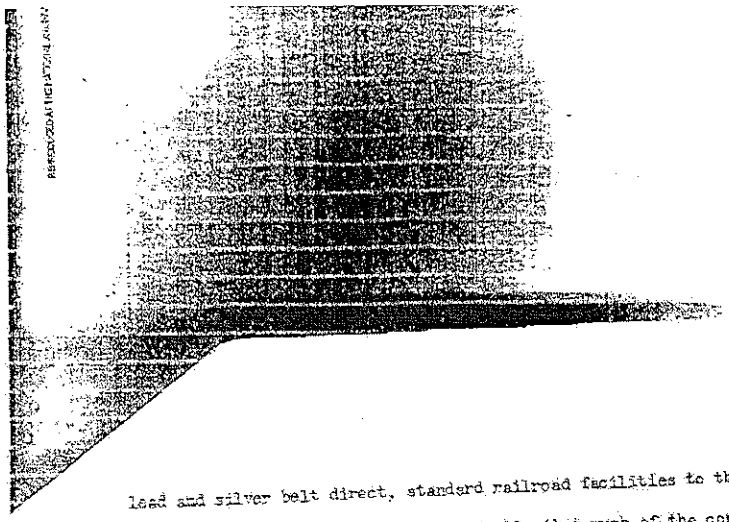


from the region in 1887 appears to have been the product of the Bunker Hill and Sullivan mine, development work was being carried on at other mines within the area.

34. (a) Between March 26, 1887 and March 3, 1891, the lead silver belt of the Coeur d'Alene mining region continued its steady development. In 1889 there were seven concentrators in the region. Production figures for lead and silver recovered from tons of concentrates shipped from the area are as follows for the period 1887-1890, inclusive:

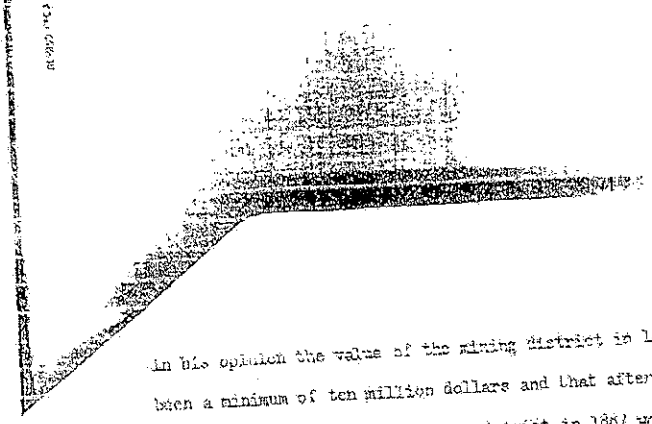
	Lead		Silver		Gold
Year	Tons of 2000 pounds	Value	Fine Ounces	Value	Value
1886	1,500	138,300	116,246	115,664	182,371
1887	5,980	538,200	340,000	332,520	152,276
1888	8,000	705,600	534,000	520,760	211,867
1889	17,500	1,333,500	1,095,265	1,025,168	174,310
1890	27,500	2,392,500	1,499,663	1,574,646	165,360

(b) In the main the upswing in the shipment of concentrates from the area during the latter part of this 1887-1891 period may be ascribed to improved transportation facilities. The Washington and Idaho Railway Company's line, financed by the C.W.R. & N. Company, built from Farmington, Washington, east through the Coeur d'Alene Indian Reservation, up the valley of the South Fork of the Coeur d'Alene River, reaching Wallace on December 9, 1889. The Northern Pacific branch line from De Smet, Montana was constructed westward across the Bitterroot Mountains by the Mullan Pass, and reached Wallace in August of 1890. These two roads were standard guage and offered to the miners of the Coeur d'Alene



lead and silver belt direct, standard railroad facilities to the smelters of the northwest. It is probable that much of the concentrates shipped in 1889 and 1890 was produced from ore which had already been mined and piled on the dumps of the various properties. The period from March 26, 1887 to March 3, 1891, brought about an improvement and enlargement of the transportation facilities of the area and a reduction in shipping costs. These factors in turn produced a material increase in the shipment of concentrates from the region. It is probable that during this period public knowledge of and interest in the district was increased, and that the improvement of transportation facilities, the increase in the production and shipping of concentrates, and the wider knowledge and increased interest of the public in the area, enhanced the value of the mining district.

35. Mr. Frank Lilly, a research statistician, specializing in mining, was one of the expert witnesses appearing for petitioner. Mr. Lilly in his work since 1920 has visited and inspected many mines in the United States and Canada in order to obtain statistics for his service booklets pertaining to the economic outlook of different ores and the markets on metals and the leading stocks. In addition he made analytical reports on mines on which he was consulted. This witness for many years has been familiar with the Coeur d'Alene mining district having a financial interest in mining property in the area and has visited the region frequently. Mr. Lilly, based on his research into the history of production and development of the mining district and the amount of ore which he said was then known to exist, stated that



in his opinion the value of the mining district in 1884-1885 would have been a minimum of ten million dollars and that after the discovery of the Bunker Hill and Sullivan the district in 1887 would have had a minimum value of fifteen million dollars (Tr. 227-228). Mr. Lilly testified that placer mining had never been an important thing in the district and that he would not include it in considering the value of the district (Tr. 199-200, 233).

36. (a) Mr. Fred O. Jones, a consulting geologist, testified as an expert witness for petitioner as to the value of the Coeur d'Alene mining district. Mr. Jones is a graduate of Colorado College where he obtained an A. B. degree in geology. His experience includes a year on mines in the Leadville district of Colorado where he worked in concentrating plants and in general mine mapping; a number of years in the oil fields of Wyoming as an engineer and later was a project geologist for the United States Bureau of Reclamation at Grand Coulee Dam for a term of years analyzing the foundation conditions for engineering structures such as power houses, pumping plants and dams. This witness testified that he was not a land appraiser, that he had never made an appraisal of mining properties for court purposes or for purposes of investment and that he had never acted as a broker for the sale or purchase of mining property (Tr. 1004-1005).

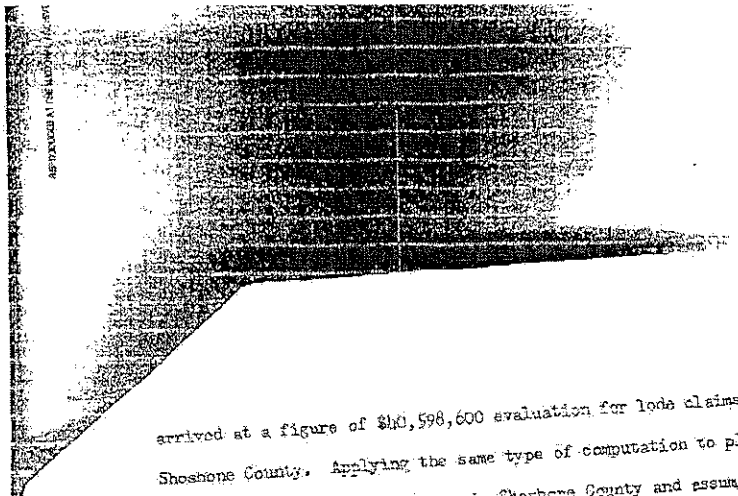
(b) Mr. Jones, based upon extensive research, prepared "A Valuation Study of the Mineral Resources of the Lands Ceded by the Coeur d'Alene Tribe of Indians on March 3, 1891." This study is in a written report bearing petitioner's exhibit number 230 and contains much valuable

information pertaining to the geology and mining history of the Tract, transportation, production, contemporaneous newspaper items concerning the mining district, and early reports by well-informed or expert mining men regarding the mining area. Mr. Jones' research included a determination of the number of lode and placer claims filed in the mining district prior to March 3, 1891. A search of the records of Shoshone County, the witness testified, showed 5,222 lode claims and 2,156 placer claims had been recorded by that date. Of the lode claims so located and filed upon, patents had been applied for on 52 lode claims prior to March 3, 1891, and patents were later issued on them. Including these a total of 960 lode claims have become patented. Of the placer location notices filed, a total of 19 had gone to patent prior to March 3, 1891, and including these a total of 122 have become patented (Tr. 10Uh-10h7). Mr. Jones testified that some of these claims were duplicates, i.e., particularly with the unpatented claims the locator would file his location notice on the same claim year after year (Tr. 1033). The witness testified that prior to March 26, 1887, there had been 2,388 lode claims and 1,66h placer claims filed in the county records.

(c) Mr. Jones testified that a search of the records showed a total of 2h30 sales of lode claims and hh0 placer claims within the mining district for the four-year period from March 26, 1887 to March 3, 1891 (Tr. 1128) where the consideration was $10.00 or more. He testified all recorded deeds where the consideration shown on the instrument was ten dollars or less were ignored in his evaluation studies. Many, if

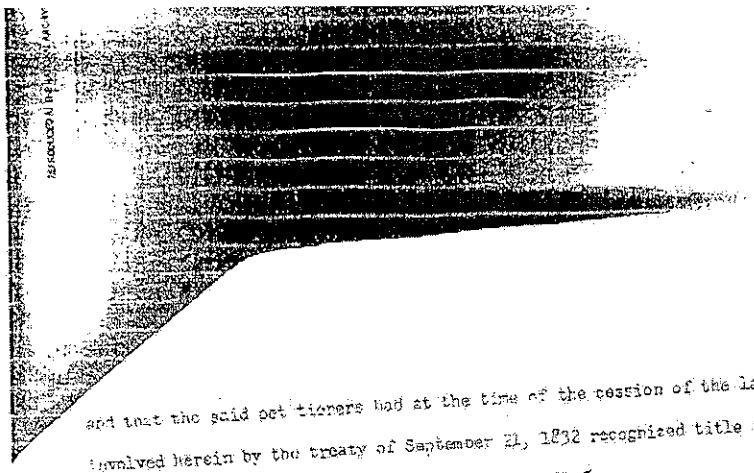
not most, of the sales were of fractional parts, that is a fourth, a half, or a sixteenth, which in computing to arrive at an average sales price were extended to show a full claim price (Tr. 1129). Mr. Jones testified that it was his opinion that these transactions were "the only tangible yardstick as to what mining people were paying for mining properties." Petitioner's appraiser also took into consideration the value of water rights. His research showed a total of 694,786 miner's inches of water rights had been appropriated by filing on the streams and that although there had been about 21 sales of these rights, some fractional, he had used but six sales to obtain an average price for the sales of such rights (Tr. 1153). Mr. Jones admitted that the filings were no doubt for more water than the miners could use and in many cases were for more water than was in the streams (Tr. 1174).

(d) Petitioner's appraiser Jones, based on the recorded deeds of sales, made three evaluation studies. First he assumed that 90% of the total lode locations were "valid" (that is valuable) and he included in this first "Evaluation Study" the $3,000,000 "sale" of the Bunker Hill and Sullivan Mine in the sales sample. This "sale" of the Bunker Hill and Sullivan Mine was actually a transfer for stock by Simeon G. Reed (who had purchased the property in April 1887 for a reported $650,000.00) and his wife to the Bunker Hill and Sullivan Concentrating Corporation which was incorporated on July 29, 1887. Mr. Reed's personal papers show no money changed hands in this transaction (Pet. Ex. 139, p. 175). Mr. Jones took 90% of the lode claims or 4700 and computing at the sum of $8638, the average sale price per claim he



arrived at a figure of $40,598,600 evaluation for lode claims alone in Shoshone County. Applying the same type of computation to placer locations and water right filings in Shoshone County and assuming them to be 50% valid he arrived at an evaluation of $3,185,480 for placer locations and $1,775,872 for water rights, or a total Shoshone County evaluation of $45,559,952. In addition the witness followed the same method to evaluate the Pend Oreille Mining District in Bonner County, Idaho and the Wolf Lodge and Mission Mining Districts in Kootenai County, Idaho and mining in Spokane County, Washington, all within the Coeur d'Alene Tract. Mr. Jones' total evaluation in study #1 was $45,776,222 (Pet. Ex. 139, p. 179). In Studies No. 2 and 3 Mr. Jones eliminated the Bunker Hill and Sullivan stock sale. In Study No. 2, the witness reached an evaluation of $39,890,702. In Study No. 3 he assumed only 75% of the total lode claims were valid and but 50% of the placer locations and water rights filings were valid and reached a total evaluation of $31,876,945. Mr. Jones testified that in his opinion the mineral resources of the Tract had a minimum value of $30,000,000 on March 3, 1891, and a minimum value of $25,000,000 on March 26, 1887 (Tr. 1166, 1168).

37. (a) Defendant's appraiser, C. Marc Miller, devotes a portion of his written report ("Appraisal of Coeur d'Alene Tract in Idaho and Washington, 1873-1887-1891," Def. Ex. 38, pp. 100-134) to the appraisal of the minerals of the Tract. The report contains much valuable information with respect to the history of mining in the area, development of the mines and transportation, and the early financial difficulties of some of the now successful mining properties. Mr. Miller reports that he found the records of sales of mining properties at or about the dates of his valuations were of little assistance in determining the value of the mineral lands since it was impossible at this late date to determine the degree of development and the monies expended in the development of the mining properties prior to the date of sale and because he believed the consideration recited in the deeds of sale very frequently bore little relationship to the actual money paid for the property. Defendant's appraiser stated that although many authorities indicate the actual consideration paid for the purchase of the Bunker Hill and Sullivan mine in 1887 by Simeon Reed was no more than $625,000 or $650,000 the considerations recited in the deeds to Reed total more than $1,500,000. Copies of some, if not all, of the deeds to Reed were introduced in evidence by petitioner (Pet. Exhibits 46, 50, 61, 65, 66 and 67) and the consideration recited in said deeds total $1,453,496. This witness also investigated the reported sale of a mining property known as the Mammoth Lode Claim which was located outside of what is known as the Coeur d'Alene Mining District but in Kootenai County, Idaho, within the Tract. According to his investigation there were two deeds



and that the said petitioners had at the time of the cession of the land involved herein by the treaty of September 21, 1832 recognized title to the land ceded by said treaty and described in Finding 5.

2. That their respective interests in said lands are set forth in Finding 5.

IT IS FURTHER ORDERED:

That the parties hereto be and they are hereby directed to proceed with the production of evidence to show the acreage of the lands hereinabove described, the value of same as of February 8, 1833, and the consideration received therefor by the respective petitioners; and on such other matters as may have bearing upon the question of defendant's liability in the premises.

Dated at Washington, D. C., this 2nd day of August, 1957.

s/ Edgar E. Witt

s/ Louis J. O'Marr

s/ Wm. M. Holt

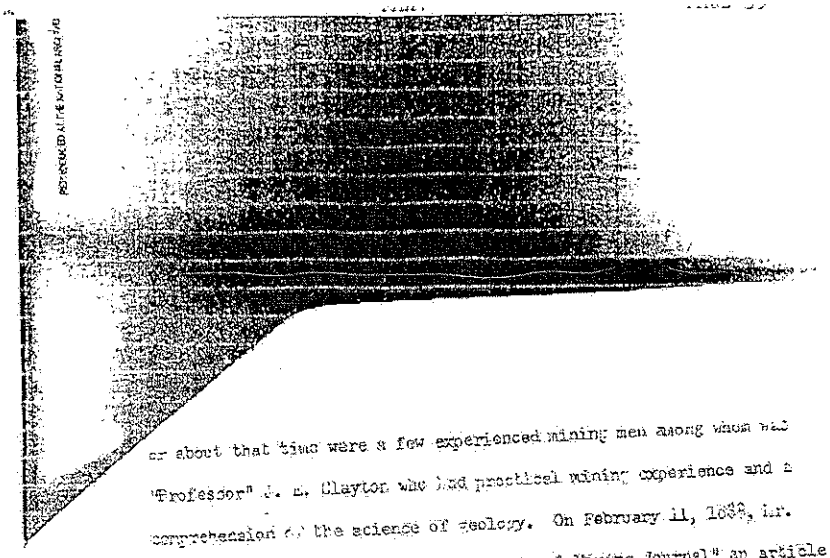
of sales of this property in 1886 at a total recited consideration of ten million dollars. Mr. Miller stated he found the only development work ever done on the property was the driving of four short tunnels into the hillside and that these sales were "another example of the recital of an utterly fictitious consideration in the transfer of mining property."

(5) From his research defendant's appraiser Miller concluded that as of 1887 and 1891 only the Bunker Hill and Sullivan could be considered as a proven mining property and all others could be considered only as prospects or potential mines. This witness was of the opinion that "Unquestionably, as of March 26, 1887, the mineral deposits of the Coeur d'Alene Tract would have added very appreciably to the value of the Tract in the opinion of a well informed buyer or seller." Mr. Miller stated in his report that the hypothetical purchaser and the hypothetical seller would have in mind the potentialities of the mining region, the fact that the Bunker Hill and Sullivan property was a more or less proven mining property, the need of expending large sums in the development of other properties and the risk involved. Mr. Miller was further of the opinion that "Nevertheless the possibility and perhaps the probability existed that paying properties would be developed in the area, and that the Bunker Hill and Sullivan property would prove to be a profitable mining operation." Mr. Miller concluded that as of March 26, 1887, the known mineral deposits in the Coeur d'Alene mining district would have added perhaps as much as $1,500,000 to the value of the Tract and the same would have enhanced the value of the Tract on March 3, 1891, to the extent of $2,000,000.

38. (a) Mr. William M. Staley, Professor of Mining at the University of Idaho, College of Mines, at Moscow, Idaho, testified as an expert witness for Defendant. Professor Staley holds a Bachelor of Science degree in mining engineering, an Engineer of Mining degree and a Master of Science degree. The witness has spent many summers working for the Idaho Bureau of Mines and Geology and has written a number of publications regarding various phases of mining in the State of Idaho. His professorial duties and his work with the Idaho Bureau of Mines and Geology has included frequent trips to the Coeur d'Alene Mining district. Professor Staley, based upon his research into the early history of mining in the area, testified that the development, that is openings of any extent into the ground, of the mines had not progressed sufficiently so that one could base an opinion in 1887 with respect to the possible future of the mines. By 1891, this witness testified, more would have been known of the future possibilities of the mining area because the mine workings had become deeper and more extensive and because more of the mines had become producers. (Tr. 1353-1357). Mr. Staley testified that one standard which is used today as a means of evaluating a mining property includes consideration of such factors as positive ore (ore in sight), probable ore (based on geology, development of the mine and other similar properties), operating costs and determination of the average selling price over the estimated years of life of the property. The witness testified that as of 1887 due to the extent of development it would not have been possible to have applied this method of evaluation (Tr. 1374-1380).

(b) Professor Staley testified that he was of the opinion that the most practical and reasonable way to evaluate the mining district as of 1887 was to base it on the figures available now that might have been available in 1887. This witness testified that during the period 1883-1887 the production figures for the entire district show that the Bunker Hill and Sullivan mine was responsible for 65% of the production in the district. If the Bunker Hill and Sullivan mine was worth the $650,000.00 paid for it in 1887, Professor Staley reasoned, then the entire district was worth one million dollars. This witness further testified that he would arbitrarily add to this sum an additional million dollars based on prospects for the future, thus making the value of the mining district as of 1887 a total sum of $2,000,000.00. Defendant's witness also explained what he called a check on his estimate based on obtaining a weighted average of the reported operating profit of the Bunker Hill and Sullivan mine for 1887 to 1891, which he stated would be $4.86 a ton. The witness then estimated the district produced 210,000 tons a year and multiplying this sum by $4.86 he stated "we come out with $1,025,000 which appears to be somewhat of a check or indication similar to the one based on the selling price of the Bunker Hill Mine." Professor Staley was of the opinion that the district would have been worth $2,800,000 as of 1891 (Tr. 1361-1386).

39. A hypothetical willing buyer and a hypothetical willing seller as of March 3, 1891, would have had available, or it could have been obtained, much information of value pertaining to the mining district as of that date. Along with the prospectors and promoters in the area at



or about that time were a few experienced mining men among whom was "Professor" J. B. Clayton who had practical mining experience and a comprehension of the science of geology. On February 11, 1888, Mr. Clayton had published in the "Engineering & Mining Journal" an article entitled "The Coeur d'Alene Silver Mines" which no doubt was the result of his study of the mining district in 1887. The article shows that the author was well acquainted with the geology of the area and the properties being developed. In writing of the "Possible Output" of the mining district, Mr. Clayton had this to report:

* * *

It is difficult to make any close estimate of the possible daily output of the different mining locations on this great lode /Bunker Hill lode and ore zone/ until more extensive and complete explorations are made.

The Bunker Hill and Sullivan are extracting about 125 tons of crude ore per day, which yields in the concentrating mills about 30 tons of clean shipping ore that assays about 32 ounces per ton in silver and 65 per cent in lead -- say a gross value of silver and lead of $60 per ton. With fair rates of transportation and reduction the net profit on the dressed ore ought to be about $30 per ton -- say $25 per ton net. This output, judging from what I know of the mine, is about one-half of its capacity; at any rate I think its daily capacity could be easily doubled within one year from this date, say 60 tons of clean shipping ore per day.

If the Stemwinder mine continues as large as it now shows in the cross-cut tunnel and in the surface workings it will be able to furnish about 30 tons of clear ore per day. The Last Chance and Jame can probably produce, when opened and equipped, about 20 tons of dressed ore per day, and the Tyler mine may be rated at about the same quantity, making a total output of 130 tons of clean shipping ore per day.

* * *

To those who are familiar with this great lode the above estimates will appear small or extremely conservative. While

I am free to confess that its possibilities are much larger than the estimates, I do not think that the present developments will warrant a larger one. In order to realize the output that I have estimated, the Bunker Hill and Sullivan must double the capacity of their concentration mill; the Stewwinder and Tyler must have its capacity doubled, and the Emma and Last Chance must build a mill of one hundred tons capacity, all of which takes time and a large outlay of money before my estimates can be realized in actual daily output.

After this discussion of the possibilities of the mines in the Wardner group, which Mr. Clayton stated in his personal judgment represented no more than one-fourth of the productive capacity of the district, he reported on the possible output of the mines on Canyon Creek which he estimated could produce 200 tons of shipping ore per day when properly opened and equipped and that the Tiger and Poorman mines in that group could then furnish half that amount. Mr. Clayton reported on the potentials of the mine groups in other parts of the district which gave promise of being large producers and of dozens of promising discoveries, some of which might be worthless, which had not been opened or prospected enough to include in his estimates. Mr. Clayton concluded that for his estimated output of 500 tons per day to be reached it would require two years of active development, the erection of six or eight more good concentrating mills and very largely increased facilities for shipping ore.

40. (a) As of March 3, 1891, the mines of the Coeur d'Alene tract were in the stage of early development and exploration. The potential of the area as a valuable mining region was readily accepted by the informed persons in the area. The production figures for the time indicate that a large part of the lead-silver ore produced in the mining district

[illegible] the eastern

had come from one property — the Bunker Hill and Sullivan mine, by then a more or less proven mining property. Large sums of money were needed and had been expended to build concentrators, tramways, and to otherwise develop the mining properties. Great interest in the area was evidenced by the many transactions involving the sales of mining claims and especially by the large sum of money paid for the Bunker Hill and Sullivan mining property by Simeon Reed in April 1887.

(b) The Commission finds, based on all the evidence of record, that the mineral lands of the Coeur d'Alene Tract, as of March 3, 1891, had a value in the amount of $2,221,200.00 for the 148,080 acres of mineral lands.

14. In addition to those set forth in Finding 8, the Agreement of March 26, 1887, contains the following provisions:

ARTICLE 6.

And it is further agreed that the United States will expend for the benefit of said Coeur d'Alene Indians the sum of one hundred and fifty thousand dollars, to be expended under the direction of the Secretary of the Interior, as follows: For the first year, thirty thousand dollars, and for each succeeding year for fifteen years, eight thousand dollars. As soon as possible after the ratification of this agreement by Congress, there shall be erected on said reservation a saw and grist mill, to be operated by steam, and an engineer and miller employed, the expenses of building said mill and paying the engineer and miller to be paid out of the funds herein provided. The remaining portion of said thirty thousand dollars, if any, and the other annual payments shall be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Coeur d'Alene Indians, parties hereto.

ARTICLE 7.

It is further agreed that if it shall appear to the satisfaction of the Secretary of the Interior that in any year in which payments are to be made as herein provided said Coeur d'Alene Indians are supplied with such useful and necessary articles and do not need the same, and that they will judiciously use the money, then said payment shall be made to them in cash.

[illegible] mountains. The eastern

ARTICLE 11.

It is further agreed that in addition to the amount heretofore provided for the benefit of said Coeur d'Alene Indians the United States, at its own expense, will furnish and employ for the benefit of said Indians on said reservation a competent physician, medicines, a blacksmith, and carpenter.

As shown by the C.A.C. report (claimant's Ex. 168) at page 12, there was charged the sum of $150,000 to cover the expenditures the defendant made under said Article 6. However, of such expenditures the following items were not of the character authorized by said article:

Maintaining law and order	$ 22.73
Miscellaneous agency expenses	560.00
Clerk	2751.12
Total	3333.85

And the following items chargedas Article 6 disbursements should be deducted and charged as Article 11 expenditures:

Medical supplies	$1811.24
Pay and expenses of blacksmith	$ 641.88
Pay of carpenter	52.50
Pay of physician	550.00
Total	3058.62

Therefore, there is deducted from the amount charged as paid on the consideration under Article 6 the total sum of $5,392.47, leaving the sum of $143,607.53 or the amount the defendant is entitled to credit on the award for expenditures under Article 6 of the agreement.

By the statement appearing at page 12 of the C.A.C. report there was properly disbursed by defendant under said Article 11 the following:

Medical supplies	$2,742.86
Pay of blacksmith	34,621.63
Pay of carpenters	9,324.59
Pay of physician	38,509.74
	85,218.82
To which is added the similar items erroneously charged under Article 6, above	3,058.62
Total Article 11 deductions	$88,277.44

...s and extends ...s due eastward to the Bitterroot Mountains. The eastern

By reason of the above adjustments the defendant is given credit on the claim in the sum of $231,884.97.

42. The Coeur d'Alene tract, consisting of 2,389,994 acres, had a fair market value as of March 3, 1891, of $4,659,663.00 and the petitioner is entitled to an award in that amount, less the sum of $231,884.97 paid on the claim by defendant pursuant to the Agreement of March 26, 1883, or the net sum of $4,427,778.03.

That because of the great disparity between the consideration paid petitioner for the cession of its land and the value thereof at the time of the cession, as hereinabove set forth, the Commission finds that the consideration of $231,884.97 was unconscionable.

Edgar E. Witt
Chief Commissioner

Associate Commissioner

John M. Hoff
Associate Commissioner

6-21-02 History of CdA Claims Case

GENERAL COUNCIL MEETING OF THE COEUR D'ALENE TRIBE
HELD IN THE GYMNASIUM OF THE SACRED HEART MISSION
DeSmet, Idaho - June 27, 1959

The meeting was called to order by Chairman Joseph R. Garry, and the invocation was given by Father Harrington, S.J., substituting for Father Ferretti, S.J., who is our regular parish priest.

Sergeants-at-arms appointed were:

Dan Cherrapkin
Gus Michell
Joe Falcon

MEMBERS OF THE TRIBAL COUNCIL PRESENT:

Joseph R. Garry, Chairman
Oswald George, Vice-chairman
Lena M. Louie, Secretary
Lawrence Nicodemus, Councilman
David Garrick, Councilman
Mitch Michael, Councilman
Henry Aripa, Councilman

(All Councilmen present)

The following were introduced:

Ignace Garry, Chief of the Coeur d'Alene Tribe
William E. Ensor, Jr., Supt., Northern Idaho Agency
Harold Hayne, Administrative Officer, Northern Idaho Agency
Al Rogers, Credit Officer, Northern Idaho Agency

The Chairman then gave a resume of the history of the Coeur d'Alene Tribal Council and the important roll it has played in the recent successes of the Coeur d'Alene Tribe. While the Coeur d'Alene Tribe, like many other Northwest Tribes, voted to exclude itself from the Indian Reorganization Act, it nevertheless is organized and operates under a constitution approved September 2, 1947 by the Secretary of the Interior. Among the number of accomplishments by the tribe through its tribal council, the greatest and the one for which the tribe is meeting today to learn about in some detail is the winning of the Coeur d'Alene Claims case. He further stated that the Indian Claims Commission's creation by Congress, which began its operations in 1947, made it possible for a great number of tribes, including the Coeur d'Alene, to litigate land claims against the Federal Government based on unconscionable consideration. In fact, had the Indian Claims Commission not been created, for which most of the ground work for setting up the Commission had been done by the National Congress of American Indians, the Coeur d'Alene Tribe would not have had any claims to litigate at all. He went on to explain the differences in the various Indian Claims cases, citing as first example the instances where the tribes that had a specific provision in their treaties for settlement for designated lands ceded to the Federal Government as being referred to as "Treaty Claims".

Claims of this type are generally easier to settle. The other claims are for "unconscionable consideration", along with which "aboriginal title" would have to be proven by the tribe. These are the types of claims in which consideration or a price has already been given by the government and which the tribes have accepted, and the claim would only be for the difference between the value accepted and the actual value of the land at the time of taking. The Coeur d'Alene Claim, being in the category of the latter one explained, namely "unconscionable consideration", it was a more difficult one to litigate and the Coeur d'Alene Tribe has been unusually fortunate in getting its claims settled in the relatively short time of some nine years.

The Chairman then explained the chain of important events that led to the final adjudication of the Coeur d'Alene Claim up to the present time. First, on December 6, 1957, after a series of hearings before the Indian Claims Commission, the commission entered its opinion as to the value of the claim which was the gross total of $4,659,663.00, less the original consideration already collected by the Coeur d'Alene Tribe in years past which amounted to $231,884.97, leaving the net claims total of $4,427,778.03. Then from this amount was yet to be subtracted gratuities for various services rendered the Coeur d'Alene Tribe by the Federal Government. On December 21, 1957, the Coeur d'Alene Tribe agreed to accept this net award provided the deductions for gratuities and services did not reduce the amount of the award by more than $200,000.00, or in no case for less than $4,200,000.00. The Commission's findings as just off sets was recommended to be no more than $85,000.00. On May 6, 1958 the Department of Justice rendered its final decision on the case in the value of $4,342,778.03, which was the final balance after the $85,000.00 was approved and deducted for off sets by the Department of Justice for government services.

On July 8, 1958, in concurrence with the U. S. Treasury's request, the President of the United States recommended a supplemental budget for the approval of Congress in the total amount of $8,525,088.00 in which was included the $4,342,778.03 which represented the net amount of the Coeur d'Alene Judgment Award. This Supplemental Appropriation was enacted by Congress and signed by the President of the United States under date of August 27, 1958, and became Public Law 86-766, and the Coeur d'Alene Tribe's share of this Act ($4,342,778.03) was deposited in the United States Treasury to the credit of the Coeur d'Alene Tribe and started to draw 4% interest.

In compliance with the rules and regulations of the Indian Claims Commission, a hearing was scheduled on October 10, 1958 to determine the amounts due the attorneys on contingent basis in accordance with contractual agreements between them and the tribe, as well as to pay some of the attorneys' expenses as agreed to by the tribe, together with expenses of witnesses and appraisers.

On November 3, 1958, the Indian Claims Commission ruled and ordered the above expenses for attorneys' contingent fees, reimbursable expenses and costs be paid by the U. S. Treasury direct from the Judgment award now on deposit to the credit of the Coeur d'Alene Tribe in the amount of $455,271.00. This amount deducted from the net amount of the Judgment Award leaves a remaining balance in the U. S. Treasury to the credit of the Coeur d'Alene Tribe, the total unobligated balance of $3,887,507.03.

The Chairman commented here that in accordance with his calculations that by August 27, 1959, at which time the Judgment Award will have been deposited in the U. S. Treasury for one year, the accrued interest on these funds alone will amount to more than $155,000.00.

The Chairman then commented on the false rumors of the availability of these Judgment Funds to the Tribe. He said that at no time, and even to the present day, were any of these funds ever available to the Tribe for any purpose whatsoever except for the expenses of the Claims litigation authorized by the Indian Claims Commission under date of November 3, 1958. He reiterated his statements he generally made in tribal meetings for the past two years that the Bureau of Indian Affairs had not been in agreement with the Coeur d'Alene Tribal Council in its thinking that they, as the governing body of the tribe, should make the proposals for programming the judgment award which includes the proposition that the beneficiaries of the judgment award should include only those who are enrolled members of the tribe in accordance with the Coeur d'Alene Tribe's constitution. The Bureau's idea as opposed to this plan was that only the heirs of the original Coeur d'Alene Tribe upon whom the damage was inflicted should benefit by the Claims Judgment award and not the Coeur d'Alene tribe as presently constituted.

After a number of appeals by the Coeur d'Alene Tribal Council by letters and resolutions to the Bureau of Indian Affairs, the last being a personal visit to the Office of the Secretary of the Interior by the Coeur d'Alene Tribal Delegation on March 20, 1959, the Assistant Secretary of the Interior advised by telegram that the only way to possibly consummate the Tribe's plan was to introduce legislation in Congress which would specifically point out this intent. The bill was subsequently prepared by the Interior Department and introduced in the House on May 21, 1959 by Gracie Pfost of Idaho and in the Senate on May 22, 1959 by James E. Murray of Montana with the assistance of Frank Church of Idaho. The report by the Secretary of the Interior to the respective committees of Congress on this bill carried a recommendation for "do pass". This bill, if passed, would permit the Coeur d'Alene Tribal Council to program the Judgment Award in benefits to the enrolled members of the tribe as presently constituted, subject to the approval of the Secretary of the Interior, and that where per capita payments were made to such members of the tribe, such funds would be exempt from both State and Federal income taxes.

Chairman Joseph R. Garry then read some of the Tribal Council's tentative recommendations for a possible Tribal program, with the specific explanation that they were only suggestions and in no way conclusive or final, and that after all they were also subject to the approval of the Secretary of the Interior. At a later date, after the bill becomes law, if it should pass, another tribal meeting would be called to present the program in its final form.

The Chairman then announced that there would be a question session after lunch.

RECESS: for lunch and Father Harrington lead us in reciting the Grace.

1894: Special U.S. agent buys reservation land for the townsite of Harrison which had been mis-surveyed $15,000 paid to Tribal Account

1908: -Congressional Act allows purchase of 40 acres at St. Maries for Woodlawn Cemetary Assn.; also
-Purchase of 3,000 x 200 ft. tract in Plummer for depot of Milwaukee RR; also
-State of Idaho purchases 8,000 acres for Heyburn State Park; also
-Purchase 2 sections from each township and give to State of Idaho for school support; also (maybe in 1906 Appropriations Ac
-640 acres to the University of Idaho

1909 Allotments of 160 acres each to 638 CdA's totalling 104,076.53 acres
(541 CdA's and 97 Spokanes & Kalispels)

1910 104,416 settlers sign up for a drawing of the unalloted portion of the reservation.
Bert's low #? — 1,350 homesteads drawn and given out, totalling 219,767 acres.

1913: First "fee patents" granted, to allow sale by Indians: 31 fee patents, totalling 5,021.49 acres

1920 Total of 197 fee patents given — 31,080.97 acres

1933: Only 62,400.64 acres left in Indian allotments
40% of allotments lost by time of Indian Reorganization Act

1967 268 allotments (23,976.88 acres) out of trust

1981 69,697.84 acres left in trust