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## Proposed findings of facts and conclusions of law (pretrial submission of defendants' Waltons)

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FILED IN THE  
U. S. DISTRICT COURT  
Eastern District of Washington

JAN 18 1978

J. R. FALLQUIST, Clerk  
*RF* Deputy

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
\* \* \* \* \*

COLVILLE CONFEDERATED TRIBES, )  
 )  
Plaintiff, )

-vs-

NO. 3421 ✓

BOYD WALTON, JR., and KENNA )  
JEANNE WALTON, his wife; and )  
WILSON WALTON and MARGARET )  
WALTON, his wife; )  
 )  
Defendants. )

STATE OF WASHINGTON, )  
 )  
Defendant Intervenor. )

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )

NO. 3831  
PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS  
OF LAW  
(PRETRIAL SUBMISSION  
OF DEFENDANTS' WALTONS)

-vs-

WILLIAM BOYD WALTON and KENNA )  
jeanne walton, his wife; and )  
STATE OF WASHINGTON, )  
 )  
Defendants. )

FINDINGS OF FACT

1. The dispute over water rights involved in the case at bar arises in connection with the ownership and use of lands in a narrow valley approximately three (3) miles long immediately adjacent and north of Omak Lake. Said lands are located in Okanogan County, Washington approximately 2½ miles southeast of the town of Omak, Washington and are within the original boundaries of the Diminished Colville Indian Reservation.

PROPOSED

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1           2. The United States acquired the land in question  
2 by treaty with Great Britain, June 15, 1846 (9 Stat. 869).

3           3. The lands in question were originally incor-  
4 porated as part of a federal reservation denominated as the  
5 Colville Indian Reservation which was originally created by  
6 an Executive Order of President Ulysses S. Grant on April 9,  
7 1872, thereafter modified on July 2, 1872. The reservation  
8 was subsequently diminished when the North one-half was  
9 returned to the public domain by the Act of July 1, 1892.  
10 (27 Stat. 62).

11           4. The purpose in creating the reservation was to  
12 remove various bands of Indians from roaming large portions  
13 of North Central Washington and Eastern Washington and to  
14 confine them to a limited geographical area so as to (1) pro-  
15 tect them from and prevent violence as a result of the all  
16 embracing occupancy of the land by non-Indians and (2) thereby  
17 make the lands from which the Indians were removed available  
18 for settlement and development by the new Americans.

19           5. By the latter part of the 19th century, with the  
20 advancement and push of non-Indians for more and more land, much  
21 of its reservation land, Congress did not consider reservations  
22 and their administration, or lack thereof by the United States  
23 Government, as adequate to protect the Indians' property rights.

24           6. In response to the pressing need to protect the  
25 Indians, Congress, under the direction and leadership of  
26 Senator Dawes, embarked on a bold new plan to convert the  
27 communal held property rights of the Indians into individual  
28 ownership which could be used by the individual apart from the  
29 Tribes and U.S. government and which property right could be  
30 protected by the individual Indian in a Court of Law if need  
31 be.

1           7. Congress enacted the General Allotment Act  
2 (Dawes Act) in 1887 (24 Stat. 388, 25 U.S.C.A. 348 et. seq.).

3           8. The Dawes Act was enabling legislation which  
4 provided the framework for lands to be allotted in  
5 severalty to individual Indians by means of a trust patent,  
6 initially, with a fee patent to be issued at the end of a  
7 prescribed period of time. The fee patent was to terminate  
8 forever the U.S. Government's control of the land and the Act  
9 specifically provided that the land returned to the public  
10 domain in this manner would be subject to the laws of the  
11 territory or State in which it was located (25 U.S.C.S. 349).

12           9. In order to implement the Dawes Act and speed  
13 the allotment process, James McLaughlin, the U.S. Indian  
14 Inspector, was dispatched to the Colville Reservation and  
15 obtained an agreement from the Colville Confederated Tribes  
16 known as the McLaughlin Agreement, dated December 1, 1905.

17           10. As part of the McLaughlin Agreement the Indians  
18 "belonging and having tribal rights on the Colville Indian  
19 Reservation" did "cede, grant, and relinquish to the United  
20 States, all right, title and interest which they may have to  
21 all the lands embraced within the so-called diminished Colville  
22 Indian Reservation." The McLaughlin Agreement provided that  
23 eighty (80) acre allotments be first awarded to every man,  
24 woman and child belonging to or having tribal rights on the  
25 Colville reservation.

26           11. Thereafter the Act of March 22, 1906 (34 Stat.  
27 80) was passed to further implement the Dawes Act by providing  
28 that the surplus lands, remaining after the allotments were  
29 awarded to each Indian on the reservation, could be opened to  
30 homestead by Presidential Proclamation.

1           12. Thereafter the diminished Colville Reservation  
2 was thrown open to homestead pursuant to the Presidential  
3 Proclamation of President Wilson, dated May 3, 1916.

4           13. President Wilson's Proclamation of May 3, 1916,  
5 provided among other things that the lands, first, should be  
6 surveyed and classified as "irrigable", "grazing" or "arid" lands  
7 and should be disposed of under the Homestead Act.

8           14. Defendants Walton's lands are comprised of three  
9 former Indian's allotments. These lands were originally allotted  
10 to individual Indians pursuant to the Dawes Act and ensuing Acts  
11 of Congress and Presidential Proclamations implementing the  
12 same. A brief history of the transfer of the property out of  
13 trust statute to a freehold state is set forth as follows:

14           (a) Walton's Northern Most 100 Acres (Formerly  
15 Allotment S-525)

16                         This acreage was originally part of an  
17 allotment conveyed by Trust patent dated  
18 April 7, 1917, to Chief Alexander Smitakin  
19 who was a member of the Okanogan band of  
Indians residing on the Colville Reserva-  
tion. The Trust patent to Alexander  
Smitakin provided in part as follows:

20                                 ". . . and at the expiration of  
21 said period the United States will  
22 convey the same by patent to said  
Indian in fee, discharged of said  
23 trust and free from any charge and  
encumbrance whatsoever;" (our emphasis)

24                         Following Chief Smitakin's death his sons,  
25 Paul Smitakin and Louie Smitakin, requested  
26 that the United States Government sell the  
land, as provided by statute for disposition  
27 of deceased owners of allotments, in fee  
simple status, so that they, as the sole  
28 heirs of Chief Smitakin, might obtain  
additional capital for their own business  
ventures. (our emphasis)

1 (see PETITION FOR THE SALE OF INHERITED  
2 INDIAN LAND, Appendix A)

3 Before the land could be sold at public  
4 sale an appraisal within six months of the  
5 proposed sale was required by law. A  
6 letter dated January 7, 1925, from  
7 O. C. Upchurch Superintendent of the  
8 Colville Indian Agency, Nespelem, WA,  
9 directed to Mr. W. A. Talbert, the Indian  
10 Farmer for the Colville Indian Reserva-  
11 tion, specifically directed that the  
12 appraisal was to include water available  
13 for beneficial application on the land  
14 as part of the appraisal price, to-wit:

15 "The regulations require an apprais-  
16 ment within 6 months prior to date of  
17 sale. This seems superfluous in  
18 some of our cases, but it is quite  
19 clear that as a matter of regulation  
20 these appraisements must be insisted  
21 upon, not so much because the land  
22 values fluctuate frequently but  
23 because the Indians are making  
24 little improvements and there are  
25 being made improvements on account  
26 of irrigation etc. which enhance  
27 the value and for which the Indian  
28 should be compensated in their sales."  
29 (our emphasis) (App. B)

30 The property was subsequently appraised  
31 and advertised for sale pursuant to public  
bidding. The posted notice advertising  
the property for sale indicated that water  
accompanied the land as part and parcel of  
the sale price in that it specifically  
referred to irrigable acreage. (App. C).  
In addition the report of the Superinten-  
dent included as part of the PETITION FOR  
SALE OF INHERITED INDIAN LAND specifically  
provided for a breakdown of the acreage  
proposed to be sold in terms of "irrigated"  
acreage, "irrigable" acreage, "timber"  
acreage, "agricultural" acreage, and  
"grazing" acreage. (our emphasis) (App. A, supra)

The REPORT ON INDIAN LAND SALE prepared  
in connection with the sale of this allot-  
ment in fee simple and provided to the  
prospective bidders of the fee simple title  
specifically made a breakdown of irrigated  
acreage and irrigable acreage and listed a  
price per acre for bringing land under  
irrigation. (our emphasis) (App. D)

1                   Following the necessary requirements,  
2                   for the Indian's protection, the property  
3                   was conveyed in fee simple on August 10,  
4                   1925 to Hettie Justice Wham. The fee  
5                   patent provided in part as follows:

6                   . . . "together with all the rights,  
7                   privileges, immunities and appur-  
8                   tenances, of whatsoever nature,  
9                   thereunto belonging, unto the said  
10                  claimant and to the heirs and  
11                  assigns of said claimant forever;".

12                  The fee patents did not reserve to the  
13                  Tribe or to the United States Government  
14                  any appurtenance of water in any manner  
15                  whatsoever. (App. E)

16                  In addition, prior to the issuance of  
17                  the fee patent conveying allotment S-525  
18                  the government required the fee patent  
19                  purchaser, Mrs. Wham, to enter in to a  
20                  contract whereby the United States Govern-  
21                  ment acknowledge that the fee title  
22                  purchaser was acquiring water rights  
23                  entitling the purchaser to water from  
24                  irrigation systems constructed for the  
25                  benefit of the Indians. (See Cir. 1667a)  
26                  (App. F)

27                  The proceeds of this sale went directly  
28                  to the Indian heirs of the allottee and  
29                  not to the U.S. Government in trust or  
30                  to the Tribe.

31                  (b) Walton's Middle 100 Acres (Formerly  
Allotment S-2371)

                  This property was originally allotted  
                  to George Alexander Smitakin who was the  
                  son of Paul Smitakin and the grandson of  
                  Alexander Smitakin on April 7, 1917.

                  On George Alexander Smitakin's death,  
                  his father, Paul Smitakin, requested a  
                  fee patent to his son's allotment and  
                  the government issued a fee patent title  
                  to Paul Smitakin on January 28, 1921.

                  Thereafter, Paul Smitakin sold this  
                  property as a freehold estate on April 20,  
                  1921 to Mrs. Hettie Justice Wham. The pro-  
                  ceeds of this sale went directly to Paul  
                  Smitakin and not to the U.S. Government  
                  in trust or to the Tribe.

                  (c) Walton's Southern Most 150 Acres (Formerly  
Allotment H-894)

1 This property was originally allotted to  
2 William George on April 7, 1917, and as  
3 with the other two parcels referred to above  
4 the trust patent provided that upon the  
5 subsequent issuance of the fee patent to  
6 the property it would be "discharged of  
7 said trust and free from all charge and  
8 encumbrance whatsoever;" (our emphasis)

9 Following the death of allottee William  
10 George, his three heirs petitioned for  
11 appraisement and sale of the allotment  
12 on or about September 1920.

13 Thereafter the property was appraised  
14 as recorded in the certificate of  
15 appraisement prepared by W. A. Talbert,  
16 the then Indian Farmer on the Colville  
17 Reservation. As part of the appraisal,  
18 the appraiser noted that the property  
19 was best adapted for hay and grazing  
20 and "would make a good dairy ranch".  
21 (our emphasis) (App. G)

22 As part of the appraisal, Superinten-  
23 dent of the Colville Indian Agency,  
24 O. C. Upchurch asserted that the  
25 appraisal price reflected the "true  
26 value of the land and improvements  
27 thereon". (our emphasis)

28 The United States Government did issue  
29 a fee patent to this southern portion of  
30 what is now Defendants Waltons' property  
31 to Hattie Justice Wham on May 5, 1923.  
Said patent providing in part as follows,  
to-wit:

"NOW KNOW YEE that the UNITED  
STATES OF AMERICA in consideration  
of the premises, HAS GIVEN AND  
GRANTED, and by these presents  
DOES GIVE AND GRANT unto the said  
claimant and to the heirs of the  
said claimant the land above-  
described; TO HAVE AND TO HOLD  
the same, together with all the  
rights, privileges, immunities  
and other appurtenances of what-  
soever nature, thereunto belonging,  
unto the said claimant and to the  
heirs and assigns of the said  
claimant, forever; and there is  
reserved from the lands hereby  
granted a right of way thereon  
for ditches or canals constructed  
by the authority of the United  
States." (our emphasis)



1           15. Upon sale and conveyance of the trust land  
2 in question to fee simple status the Federal Government pro-  
3 vided the Okanogan County Assessor with the pertinent infor-  
4 mation so the property could be placed on the tax roles of  
5 Okanogan County like any other public domain freehold estate.

6           16. The land in question was placed on the Okanogan  
7 County tax roles and assessed, then as now, at a rate that re-  
8 flects the appurtenance of water.

9           17. The 350 acres of fee title land owned now by  
10 Defendants Walton is located in approximately the center of  
11 No Name Creek Valley being bordered on the north and the south  
12 by land owned by the United States and held in trust for the  
13 benefit of individual Indians or Indian interests.

14           18. Flowing across Defendants Walton's property  
15 is a small intermittent, non-navigable stream originating in  
16 a spring zone at the north boundary of Defendants Walton's  
17 property. The creek is supplimented by additional spring  
18 water as it flows in southeasterly direction across Defendants  
19 Walton's land. At the southern terminus of Defendants Walton's  
20 property boundry the creek continues crossing trust allotments  
21 held by the United States Government for the benefit of  
22 individual Indians being Trust Allotment #901 and #903 and finally  
23 discharging into Omak Lake.

24           19. Omak Lake is a large body of water with no  
25 outlet. It has approximately 3,243 surface acres and the water  
26 quality is extremely saline. No commercially valued indigenou  
27 species of fish live within Omak Lake. No Name Creek discharges  
28 into Omak Lake at the Lake's northern end.

29           20. Some, but not all of, the lands of the No Name  
30 Valley are susceptible of irrigation with certain of the lands  
31 being more fertile than others.

1           21. Following transfer of the respective allotments  
2 comprising Defendants Walton's property to fee simple status  
3 certain portions of lands were placed under irrigation from  
4 time to time until 1948 when Defendants Walton acquired the  
5 land.

6           22. Upon the acquisition of the property by Wilson  
7 Walton in 1948, Defendant Wilson Walton did file an application  
8 with the Department of Hydrolics, predecessor agency of the  
9 State Department of Ecology, for a permit to divert water from  
10 No Name Creek for the purpose of irrigation. On November 28,  
11 1949, the Supervisor of Hydrolics issued a permit to the  
12 Defendant Wilson Walton to divert 1.0 cubic feet per second of  
13 water from No Name Creek to irrigate 75.0 acres of land. On  
14 August 25, 1950 the Supervisor of Hydrolics issued a certificate  
15 of water right to Defendant Wilson Walton for the diversion of  
16 1.0 cubic feet per second of water from No Name Creek for the  
17 irrigation of 65.0 acres of land.

18           23. Thereafter Wilson Walton and eventually his son  
19 Boyd, as a partner, continued to develop the property in full  
20 view and with full knowledge of the Colville Confederated Tribe,  
21 adjoining allottees and the United States Government and the  
22 State of Washington.

23           24. During the course of the Walton's development  
24 of their dairy they continued to expand their irrigation efforts  
25 and at the present time are irrigating approximately 105 acres  
26 with the acreage divided between alfalfa and grass. The Waltons  
27 irrigate by obtaining water from an irrigation well and by means  
28 of two surface diversions in No Name Creek. Although there are  
29 additional lands susceptible of irrigation the Waltons have not  
30 chosen to apply water to the lands in that the quality of the  
31 soil is such that the commercial value to be obtained from

1 irrigation does not justify the cost involved.

2 25. Defendants Walton use of water is approximately  
3 346.5 acre feet per year for their requirements and in any  
4 event does not exceed the amount of water as might be  
5 required to irrigate the irrigable acreage on their land.

6 26. The Waltons use of water from No Name Creek  
7 aquifer does not exceed the amount of recharge naturally  
8 developed on Waltons' portion of the aquifer.

9 27. The irrigation requirements for the Defendants,  
10 Walton, and the Plaintiff, Tribe, combined, amounts to  
11 approximately 867.57 acre feet per year. The amount of recharg-  
12 able water in No Name Creek aquifer exceeds the combined  
13 irrigation requirements for the Defendants, Walton, and  
14 Plaintiff, Tribe.

15 28. Subsequent to the initiation of the suit  
16 by the Tribe and the United States Government to enjoin Walton's  
17 use of water and as recently as two and one-half years ago, the  
18 Tribe embarked on a massive program to develop the heretofore  
19 undeveloped lands adjoining Walton's to the north and lands to  
20 the south. The Tribe has in addition pumped large quantities of  
21 water in connection with a Lahonton Fishery Project artificially  
22 implanted in Omak Lake in the late 1960's.

23 29. The volume of water contributing to and flowing  
24 through the No Name aquifer on a yearly basis is capable of  
25 meeting current irrigable acre requirements including stock  
26 water and domestic uses claimed by the Plaintiff Tribe and the  
27 Defendants, Walton.

28 Based on these Findings of Fact, the court makes  
29 the following:  
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CONCLUSIONS OF LAW

1. Pursuant to Article IV, Sec. III, Clause 2, of the United States Constitution title to all lands acquired by cession or treaty with another nation, which have not been disposed of in accordance with an Act of Congress, continue to reside in the United States. The United States ownership of public land includes the right to use and dispose of the land and all rights pertaining thereto. This right includes the use and disposal of the waters which may run over, through or under the soil which it controls. (U.S. v. California, 33 U.S. 19, 27 (1949); Utah Power & Light Company, v. U.S., 243 U.S. 384 (1917)).

2. With the United States claim of ownership, by treaty with Great Britain, encompassing the lands in question, the United States acquired the right to use and dispose of the land and all rights pertaining thereto. (9 Stat. 869 ).

3. By setting apart a federal enclave denominated as the Colville Indian Reservation by executive order in 1872, the United States Government intended to limit the Indians' occupancy of land to a confined area in order to encourage Indians to abandon their nomadic habits and convert instead to pastoral agrarian civilized persons compatible with the culture of the people governing them. (Winters v. U.S., 207 U.S. 564, 28 S.Ct. 208 (1908)).

4. Water sufficient to carry out the purpose for which the Colville Indian Reservation was created was reserved by the Federal Government in order to allow the Indians to engage in the agricultural pursuits that would facilitate their conversion to pastoral agrarian persons. (Winters v. U.S. supra).

1           5. The priority date of the reservation of the water  
2 is commensurate with the date of the creation of the Reservation.  
3 This implied reservation of waters for the Indians on the  
4 Colville Reservation was done for them by the United States  
5 Government not by the Indians. (Arizona v. California,  
6 373 U.S. 546 (1963)).

7           6. The General Allotment Act of 1887 was enabling  
8 legislation whereby Congress determined and dictated its policy  
9 with respect to Indians and Indian reservations for the next  
10 half century.

11           7. The purpose of the General Allotment Act was to  
12 allot the Indians communal property in severalty to every  
13 man, woman and child having tribal relations on a particular  
14 reservation. By transferring the Indians' property to individual  
15 ownership the government intended for the individual Indian  
16 to be free of inept and corrupt tribal government, free of  
17 great pressure in Congress to divest Indians of the entirety  
18 of their property rights and in addition to allow the individual  
19 Indian to become a citizen with access to the courts to pro-  
20 tect his or her property rights from encroachment from what-  
21 ever quarter. Congress intended that by successful implemen-  
22 tation of the Act over an extended period of time that the  
23 government would be out of Indian Affairs entirely. (Report  
24 of the Secretary of the Interior, Proceedings of Mohonk Lake  
25 Conference, H.R. Exec. Doc. No. 75, 49th Cong., 2d Sess. 992  
26 (1887); 17 Cong. Rec. 191 (1886); Report of the Secretary of  
27 the Interior, 994, supra; Seventeenth Annual Report of Indian  
28 Commissioners, M. Gates, Land and Law as Agents in Educating  
29 Indians, H. R. Doc. No. 109, 49th Cong., 1st Sess. 26 (1885)).

30           8. The government intended that real estate con-  
31 veyed in fee simple to individual Indians would divest it of

1 any interest with respect to that property right so conveyed.  
2 (Report of the Secretary of the Interior, Proceedings of  
3 Mohonk Lake Conference, 992, supra).

4 9. When the federal government issued trust patents  
5 to individual Indians as allotments, the allottee acquired  
6 legal ownership of the land and acquired legal ownership of  
7 so much of a share of the reserved water rights as was avail-  
8 able as an appurtenance to that land. (U.S. v. Alexander,  
9 131, F.2d 359).

10 10. The conveyance by the United States Government  
11 of fee simple title to former allotments included the water  
12 right appurtenant to the real estate and that water right is  
13 owned by subsequent purchasers of the former trust property.  
14 (Anderson v. Spear-Morgan Livestock Co., 79 P.2d 667(1938); ✓  
15 U.S. v. Powers, 305 U.S. 527, 59 Sp.Ct. 344 (1939); F. Cohen,  
16 HANDBOOK OF FEDERAL INDIAN LAW, 220, 1958 Ed.)

17 11. In considering the intent of Congress as to  
18 whether the water right accompanied conveyance of an allot-  
19 ment to fee simple status the legislative history of the act  
20 and acts of the government pursuant to such legislation are  
21 most persuasive in determining Congressional intent. (Confed-  
22 erated Salish and Kootenai Tribes, et al vs. Namen, et al and  
23 City of Poulson, U.S. Dist. Court for the Dist. of Montana,  
24 Missoula Div., Civil No. 2343).

25 12. In that regard it is important to recognize  
26 that Congress was attempting to secure individual tracts of  
27 land to the individual Indian which could be protected from  
28 encroachment not only from the white man but from inept and  
29 unjust tribal government or tribal chiefs. To portend that  
30 the Indian was given a chunk of land (as his capital stake)  
31

1 without water by which to carry out the purposes for which  
2 the Dawes Act was designed flies in the face of rationally.  
3 The following factors are but a few of the indices supporting  
4 the view that Congress intended the fee patents from the  
5 Government to include the appurtenance of water:

6 (a) The Federal Government in appraising and  
7 allotting the land awarded differences in acreage  
8 to the allottees based on whether or not the  
9 land was suitable for agriculture thereby  
10 recognizing the benefit of water where available.

11 (b) In addition to the allotments being  
12 appraised at prices reflecting water rights,  
13 the other prong of the Dawes Act opening the  
14 land to homestead also provided that the land  
15 was to be surveyed and appraised based on  
16 it's potential for irrigation purposes and  
17 that the price charged was to be assessed  
18 accordingly.

19 (c) As for the allotting process designed  
20 by the Dawes Act, the United States Government  
21 in appraising the land prior to allotting the  
22 land in severalty divided the land into  
23 categories including "irrigated" and "irri-  
24 gable" acreage, which information was made  
25 available to potential purchasers of the land  
26 in fee simple status.

27 (d) In addition the government circulars,  
28 advertising allotted property to be sold in  
29 fee simple status advertised the property as  
30 being irrigable where applicable.

31

1 (e) The Government required the property  
2 to be advertised for sale at a price that  
3 reflected water rights as an appurtenance of  
4 the property.

5 (f) The Government even went so far as to  
6 anticipate the fee simple owners participa-  
7 tion of water in Indian irrigation projects  
8 by requiring contracts whereby the purchaser  
9 agreed to pay assessments in connection with  
10 Indian irrigation projects servicing that  
11 land.

12 (g) In addition, the government conveyed  
13 title of the former allotment in fee simple  
14 status specifically incorporating "any and  
15 all appurtenances of whatsoever nature" and  
16 did not reserve or make exception for any  
17 water or water rights in any manner whatso-  
18 ever even though the United States Government  
19 had done so in other situations dealing with  
20 reservation lands. There being no evidence  
21 of any contrary intentions, a conveyance of  
22 the land by fee patent conveyed the water as  
23 an appurtenance. (Anderson v. Spear-Morgan  
24 Livestock, Co. (1938) 107 Mont. 18, 79 P.2d.  
25 667).

26 13. The legislative history of the general allotment  
27 act is replete with reference to the fact that Congress intended,  
28 by allotting reservation land in severalty to each Indian,  
29 that each individual was to get his fair share of capital to  
30 be used as a farm or sold and the money used in another free  
31



1 enterprise endeavor. This was a bold effort to not only  
2 protect the Indians' property before it was taken forever  
3 without just compensation but also to allow the Indian access  
4 to his capital in a manner which had not been available to  
5 him before and thereby allow the Indian to participate in  
6 and become part of the great American experiment in the  
7 capitalistic free enterprise system.

8           14. For approximately half a century after the  
9 property in question was transferred to fee simple status,  
10 the Government and the Indians acquiesced in the beneficial  
11 application of water from No Name Creek and from wells on the  
12 Defendants Walton's property evidencing the Government's  
13 knowledge and intent that the water being used thereon was  
14 an appurtenance of the land.

15           15. Section 7 of the General Allotment Act providing  
16 that the Secretary of Interior was to oversee the just and  
17 equitable distribution of water among Indians on the reserva-  
18 tion was merely a housekeeping function. During the trust  
19 period the State and territorial governments had no jurisdic-  
20 tion to allocate water and there was no tribal government to  
21 administer the same. As such, it made sense to invest some-  
22 body, in this case the Secretary of Interior, with the power  
23 to oversee the just allocation of water in situations where  
24 it was necessary for irrigation purposes.

25           16. The quantification of the appurtenant water  
26 right accompanying allotments and subsequent freehold estates  
27 was necessarily related to the purpose for which the reserva-  
28 tion was originally created (employ the land in agricultural  
29 pursuit). In that regard each tract of land allotted and  
30 ultimately severed was entitled to enough water necessary for  
31

1 the commercially irrigable land within a particular tract of  
2 land. Federal common law respecting water claims, like that  
3 of the State of Washington, was and is based on a policy of  
4 prior appropriation which entitles Defendants Walton to  
5 sufficient water necessary to irrigate 105 acres plus water  
6 for stock and domestic purposes. (Arizona v. California,  
7 supra; Anderson v. Spear-Morgan Livestock Co., supra).

8 17. As further evidence and acknowledgement by  
9 Congress that the General Allotment Act as carried out did  
10 sever property rights including water rights from the reserva-  
11 tion, Congress in returning the undisposed of surplus property  
12 to the Colville Confederated Tribe in 1953 provided that tribal  
13 authority over the property would be "subject to all existing  
14 and valid rights" and further provided that property and  
15 water rights needed by the Tribe could be acquired only in  
16 specified ways such as by purchase, gift, etc. (our emphasis).

17 18. Congress intended that water rights, limited  
18 only to the extent irrigable acres available for agricultural  
19 pursuits, were to be conveyed and passed from trust status  
20 when fee simple patents were issued to former Indian allot-  
21 ment. Neither the Tribe nor the U.S. Government may enjoin  
22 the Defendants within those perimeters nor interfere with  
23 Defendants Walton's prior appropriation. (U.S. v. Powers,  
24 supra; U.S. v. Alexander, supra; Anderson v. Spear-Morgan  
25 Livestock Co., supra).

26 19. Neither the Plaintiff Tribe nor the Plaintiff  
27 U.S. Government are entitled to an injunction in that (a) there  
28 is sufficient water as might be required for irrigation of the  
29 lands in question and (b) Defendants Walton are using no more  
30 water than they are legally entitled to use by virtue of the  
31

1 water appurtenant to their lands and (c) In any event, there  
2 has been no showing of any wrongful diversion or use of water  
3 by Waltons in excess of that to which they are otherwise  
4 entitled by law. (U.S. v. Powers, supra; U.S. v. Alexander,  
5 supra; Anderson v. Spear-Morgan Livestock Co., supra).

6 DATED this 17th day of January, 1978.

7 Respectfully submitted,

8 NANSEN, PRICE, HOWE

9 by: Richard B. Price  
10 Richard B. Price

11 Attorneys for Defendants Walton  
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INDEX TO APPENDIXES

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Appendix A - Petition for the Sale of Inherited Indian Land

Appendix B - Letter dated January 7, 1925 from O. C. Upchurch,  
Superintendent of Colville Indian Agency to  
Mr. W. A. Talbert, the Indian Farmer for the  
Colville Indian Reservation

Appendix C - Public Notice advertising Allotments for Sale

Appendix D - Report on Indian Land Sale

Appendix E - Conveyance by the U.S. Government by fee patent  
of former allotment S-525 to Hattie Justice Wham

Appendix F - Contract between Hettie Justice Wham and the  
U.S. Government for irrigation project charges

Appendix G - Certificate of appraisement prepared by  
W. A. Talbert for Allotment H-894)

APPENDIX "A"

*File 510*

5-110J

This report should be transmitted in duplicate.

PETITION FOR THE SALE OF INHERITED INDIAN LAND.

Allottee Alexander Smitaken, No. S-525 Agency Colville.

December 22, 1924. 19

The Commissioner of Indian Affairs:

Application is hereby made for the sale of 100.00 acres of the allotment of Alexander Smitaken,

described as W2 W2 W2 NE4 and E2 NW4, Sec. 21, Twp. 33 N., R. <sup>27</sup>~~37~~ E.,

W.M., Washington, containing 100.00 acres,

Alexander Smitaken died on the 29th day of July, 1919,

19 , intestate, leaving surviving as only heirs, your petitioners, whose names, ages, relationships, degree of Indian blood, and a statement as to the number of acres and value of the land that will be retained by each in trust, provided the land described in this petition is sold, are as follows:

Name.	Age.	Relationship.	Degree of Indian blood.	No. acres to be retained in trust.	
				Area in acres.	Value.
Louis Smitaken,	1901	Son $1/2$		80.00	\$
Paul Smitaken,	1894	SSon $1/2$		80.00	\$

Will approved January 11, 1921, 9198-20 SHE..

Our reasons for requesting that the land above described be sold are as follows:

We wish to invest the money in business.

Will sell on deferred payments or cash.

We, each and severally, agree that the proceeds arising from the sale of this land may be disposed of in accordance with the regulations prescribed by the Secretary of the Interior.

*Paul Smitakin*

Subscribed and sworn to before me this *29th*

*Louis Smitakin*

day of *Dec.*, 19 *24*

*W.A. Falkert*  
Notary Public in and for the State of Washington, residing at *Omaha*

REPORT OF SUPERINTENDENT.

1. Are the statements made by the petitioners correct? Yes.

2. Have any of the petitioners funds on deposit as individual Indian money? If so, give names and amount.

No.

3. What is the character of the land covered by the application? Farming and grazing land

lies in highland country near Omak Lake. It is possible to cultivate 20 acres, which has been under cultivation and perhaps 10 to 15 acres from which brush and undergrowth must be removed at great expense of labor.

Irrigated 0 acres, irrigable 5.00 acres, timber 0 acres, agricultural 20 acres, grazing 75 acres.

4. What is the value of the land, and if it is offered for sale will it, in your opinion, attract bidders? It may attract bidders, but not very likely to attract anyone except either party who has leased the land or someone locally interested. Value \$1950.00

5. Is there any coal or other valuable mineral in the land or its vicinity; and if so, has the actual, prospective or speculative mineral value been taken into consideration in making the appraisalment? No.

6. Is there any valuable timber on the land? If so, state kind and give estimated number of feet and value, and whether such value has been included in appraisalment. No timber on land.

7. Has the land any value for power-site or reservoir purposes; and if so, has such element of value been included in the appraisalment? No.

8. Have you any reason to believe that a prospective purchaser has used influence with any of the petitioners to have this land offered for sale? If so, what are the circumstances? No.

9. Give reasons why it is desired to sell this land. Report fully whether the petitioners are in any way incapacitated, or whether they need the money for any particular purpose. The heirs wish to provide themselves a home. They are two young men, who do trucking. One carries the mail between Omak and Dischickel, Wash., and the other drives a school van. I believe it to their interests to sell the land for the purposes mentioned, and that they will invest the money judiciously..

10. Is the land covered by this application leased; if so, to whom, when does the lease expire, and what is the annual consideration per acre? Land is not leased until March 1, 1925, annual rental being \$155.00 which is in the nature of improvements on the land.

11. Has any land of like character been sold in the near vicinity to the land covered by this application; if so, when, and what was the price per acre? No.

12. Are there any local conditions, such as surveys or construction of proposed railroads, nearness to proposed town sites, severe droughts, etc., which affect land values generally on your reservation or particularly as to the tract of land covered by this application? No conditions except severe droughts which are common and have been severe during past years, which have seriously affected  
Name of nearest town, and distance therefrom 8 miles from Omak, Wash.

14. Name of nearest railroad, and distance therefrom G.N. Ry. Wenatchee-Oroville branch.

15. Date of determination of heirs by the Secretary of the Interior, and file number of case. Will approved January 11, 1921, file 9198-20.

OFFICE OF THE SECRETARY OF THE INTERIOR (Signed) O. C. Upchurch  
Superintendent.  
6-3056

OFFICE OF INDIAN AFFAIRS

19

It appears from the evidence submitted that it is for the best interests of the heirs of to sell the land described in this petition. The application for sale is therefore approved

and the Superintendent of the Agency is directed to offer the land for sale under the regulations governing the sale of allotted and inherited Indian land.

6-3055

Chief Clerk



= APPENDIX "B" =

3-525  
Sales 510  
511  
512

January 7, 1925.

Mr. W. A. Talbert,  
Umak, Wash.

Dear Mr. Talbert:-

I return herewith certificates of appraisement covering allotments below:

3-525--Alexander Mitakon,  
3-866--Mathias George,  
3-865--Henry George.

We talked over the telephone on this matter. I have inserted in the certificates that there have been no improvements or change in the value of the land.

It was my opinion that you retained a third copy of all your appraisements for quite awhile and that you could furnish the date of any appraisement, but, as you said that you did not view this land with the express idea of appraising it the last time you saw it, that explains it in a degree, but the fact is that it should be gone over and viewed with the purpose of appraising it. I believe, however, that we will be able to list the land if you will initial the changes made on these certificates and as you believe there is no apparent chance to sell the land perhaps we will get by with it.

The regulations require an appraisement within six months prior to date of sale. This seems superfluous in some of our cases, but it is quite clear that as a matter of regulation these appraisements must be insisted upon, not so much because the land values fluctuate frequently but because the Indians are making little improvements and there are being made improvements on account of irrigation etc. which enhance the value and for which the Indians should be compensated in their sales.

The Indian Office I am quite sure would raise objection to any sale submitted on these appraisements, and I would not like to hold up anyone's money for two or three months while attempting to offer an awkward explanation for not complying with the regulations.

- 2 -

Where late appraisements have been submitted in such cases the Office has referred the matter back here invariably almost and it takes a month for mail to go around anyway.

If you have any more of these cases and do not know the dates of former appraisements etc., and you do not feel able to look after the matter very soon, I would rather that you hold them up than to advertise the land.

Very truly yours,

HJB

O. C. Upchurch,  
Superintendent.

P L E A S E   P O S T

List of lands to be sold by COLVILLE INDIAN AGENCY, NESPELEM, WASHINGTON, ON SEALED BIDS TO BE OPENED, Friday, March 27, 1925, at 2:00 o'clock P.M., in accordance with terms mentioned in circular of general information issued by Superintendent of said agency.

O. C. UPCHURCH, Superintendent.

Dated January 26, 1925.

Sale No.	Allot. No.	Particulars.	Appraised Value.
Okanogan District.			
510	S-525	Alexander Smitaken--W2 W2 W2 NE4 and E2 NW4, Sec. 21, T. 33 N., R. 27 E., W.M., Wash., containing 100.00 acres,.....\$1950.00 <u>About 5 acres of this land might be irrigated from creek and 15 acres additional can be farmed; balance suitable for grazing.</u> Informal lease for season of 1925.	\$1950.00
511	S-866	Mathias George--S2 NE4 and N2 SE4, Sec. 18, T. 32 N., R. 27 E., W.M., Wash., containing 160.00 acres,.....1200.00 About 30 acres tillable land; suitable for grazing; has scattered timber on about 30 acres.	1200.00
512	S-865	Henry George--S2 S2 NW4 and N2 SW4, Sec. 17, T. 32 N., R. 27 E., W.M., Wash., containing 120.00 acres,.....1000.00 About 30 acres of good wheat land; balance good grazing land.	1000.00
Boys District.			
373	H-92	Alexis Tu-ya-tink-ha--N2 SW4, Sec. 16, T. 30 N., R. 37 E., W.M., Wash., containing 80.00 acres,.....1000.00 About 20 acres of farm land; balance grazing.	1000.00

Sale No.	Allot. No.	Particulars.	Appraised Value.
506	H-259	Charles F. Brown--S2 NE4, Sec. 35, T. 39 N., R. 33 E., W.M., Wash., containing 80.00 acres,.....	\$760.00
		Contains 8 acres which may be irrigated by gravity ditch, and 8 acres can be farmed by dry-farming; balance grazing land.	

O. C. UPCHURCH,  
Superintendent,  
Colville Indian Agency,  
Nespelem, Wash.

APPENDIX "D"

*Colville* AGENCY

REPORT ON INDIAN LAND SALE

FROM

*Heirs of Alexander Smitakum D. 525*

TO

*Attorney General Wham (Mrs L. Wham)*

*Submitted  
4/16/25*

NOTE.—This folder should contain all the papers relating to this sale and should not be folded, but ~~made~~ <sup>made</sup> flat. In case the sale covers heirship land all the papers relating to notice and hearing should be inclosed in these folders. All testimony taken at the hearing should be typewritten on letter-size sheets.

DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
Colville Indian Agency,

(1110)

Omak Nash

Jan 3 1925

The Superintendent,  
Colville Indian Agency,  
Despelen, Washington

COLVILLE AGENCY  
RECEIVED  
JAN 6 1925

Dear Sir:-

Enclosed herewith I am returning papers, pertaining to  
petition for sale of the allotment of Alexander Smith  
No. A-5-25, and give you below information necessary to  
list the land for sale:

No. of acres covered by petition,..... 100

Character of the Land

1 - Acres of this land irrigated,.....  
Nature of system under which land is  
being irrigated. \_\_\_\_\_

2 - Acres of this land susceptible of irrigation, 5 acres  
Method by which such land can be irrigat-  
ed and estimated cost per acre at which  
such irrigation can be brought to the land

From creek running thru the place  
Cost would be approx \$15 per acre

3 - Acres of this land that can be farmed by dry-farming  
methods only,..... 15

4 - Acres of this land which are adapted only  
to grazing,..... 80

Total acreage ( must be same as shown  
at the top and include total acreage  
petitioned ),..... 100

5 - What is the approximate range of altitude where  
this land is situated? From 1200 to 1400 feet  
above sea level.

No. of acres covered by petition, brought forward... 100

State of the land

1 - Acres of this land which have been tilled..... 20  
State of cultivation at present time Was in

Crop in 1924

2 - Acres of this land which are in cleared meadow, from which hay can be harvested without clearing from brush Etc.....         

3 - Acres of this land which are natural prairie and land from which brush and wood (but not stone) has been cleared (not to include land shown as meadow land or tilled land). 65

4 - Acres of this land, regardless of its nature which is covered with wood and brush (but not timber as shown below)..... 15

5 - Acres of this land on which there is standing timber of any kind, which can be used for lumber, poles, posts, ties, etc., for domestic use or for which there is a prospect of marketing it, including box lumber.....         

Total acreage (must be same as shown at top of page and as total acreage petitioned)..... 100

6 - State value of timber on land shown in Item 5, above..... \$         

The quantity of timber B.M., or by other units such as number of poles, etc., is          B.M.  
or          Est.No.  
of         

Has the value of timber been included in appraised value of the land           
(Yes or No)

Special Information.

1 - Is there water for domestic use on the land?\*\*\* yes  
 What is the quantity of such supply,  
 that is for number of stock, etc.  
 supply is adequate, etc? Supply unlimited for domestic use  
 Is the water good and of wholesome  
 character? yes  
 What is the source and by what means can water  
 be obtained? ..... Spring which forms creek

2 - What are the conditions of the roads to town,  
 market, railroad, etc.? Fair  
 What is the nature of such roads? Are  
 there difficult ascents to make, etc.? No

3 - What is the name and population of and distance  
 from various community centers to which the  
 land is tributary, as follows:

Center	Name	Population	Distance
Post Office	<u>Onah</u>	<u>1400</u>	<u>8 mi</u>
Trading Center	<u>"</u>	<u>"</u>	<u>"</u>
Railroad Point	<u>"</u>	<u>"</u>	<u>"</u>
What railroad?	<u>St Nor.</u>		

4 - What are the names of nearest railroads to the land?

(Give only nearest railroad in case there is but  
 one road within communicable distance from the land.)

5 - If land is near to town or is available for townsite  
 prospects, state fully all facts relating to such  
 prospects, below:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



6 - Has the land any value for power-site purposes; and if so, has such element of value been included in the appraisal?

No

7. Is the land covered by the application lease? If so, to whom, when does the lease expire, and what is the consideration?

No present lease expires Mch 1, 1925-  
L. N. Ham has informal lease for year 1925-

8 - Is there any coal or other valuable mineral in the land or its vicinity; and if so, has the actual, prospective or speculative mineral value been taken into consideration in making the appraisal?

No

9 - Have you any reason to believe that a prospective purchaser has used influence with the allottee to have the land offered for sale? If so, what are the circumstances?

No

10 - Give reasons why, in your opinion, it is for the best interests of the allottee to sell this land. Report fully whether the allottee is in any way incapacitated and whether he needs the money for any particular purpose, or in case of inherited land give such information in relation to the heirs.

Heirs need proceeds to extend  
their business interests and provide  
themselves a home

11- Has any land of like character been sold in the near vicinity

to the land covered by this application? If so, when and what was the price per acre?

Not recently

12- Are there any local conditions, such as surveys or construction of railroads or proposed townsites, severe droughts, etc., which affect land values generally on your reservation, or particularly as to the tract of land covered by this application?

No

113- What is the value of the land (total), and if it is offered for sale will it, in your opinion, attract bidders?

\$1950. I believe it will attract bidders.

14- Are the statements made by the applicant correct?

Yes

15- Have any of the heirs, or has the allottee, funds now, or have they Individual Indian Money to their credit?

No

16- Give reasons why it is desired to sell this land:

See answer to question 10

Certificate of appraisement is enclosed.

Very truly yours,

W. A. Salbit  
Farmer.

# The United States of America

Know all men these presents that the President of the United States of America, in and for the said State of Washington, do hereby certify that the following is a true and correct copy of the original of the same as the same appears in the files of the Department of the Interior, at Washington, D. C.

That the said President of the United States of America, in and for the said State of Washington, do hereby certify that the following is a true and correct copy of the original of the same as the same appears in the files of the Department of the Interior, at Washington, D. C.

BEFORE ME, the undersigned authority, on this day personally appeared Calvin Coolidge, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

IN TESTIMONY WHEREOF: Calvin Coolidge

President of the United States of America, have caused these letters to be signed by me and the Seal of the Central Trust Office to be hereunto affixed.

GIVEN under my hand and the Seal of the Central Trust Office, this 15th day of

AUGUST

in the year of our Lord one thousand

and no hundred and TWENTY-FIVE

and of the Independence of the

United States the one hundred and FIFTIETH

By the President: Calvin Coolidge  
V. B. C. P.  
W. P. L. R.

APPENDIX "F"

Circular No. 1677a.

THIS FORM OF AGREEMENT TO BE EXECUTED BY PURCHASER TO PAY THE CONSTRUCTION AND OPERATION AND MAINTENANCE CHARGES ASSESSED AGAINST THE IRRIGABLE LANDS PURCHASED UNDER INDIAN IRRIGATION PROJECTS.

(THIS FORM NOT TO BE USED IN CASES OF IRRIGABLE LANDS SOLD UNDER THE BLACKFEET, FORT PECK, FLATHEAD, FORT BELKNAP, AND CROW RESERVATIONS IN MONTANA; FORT HALL RESERVATION, IDAHO; YAKIMA RESERVATION, WASHINGTON; LANDS ON THE COLVILLE RESERVATION UNDER THE WEST OKANOGAN VALLEY IRRIGATION DISTRICT, WASHINGTON; AND LANDS ON THE GILA RIVER RESERVATION, ARIZONA.)

WHEREAS, on the 24th day of January, 1925, Superintendent Walter C. G. Spitzer of the Colville Indian Reservation, in accordance with the prescribed rules and regulations advertised certain Indian allotments for sale, and

WHEREAS, Allotments Nos. 1-526 included in said list described as 1/2 sec 27 N., E. 2 E., T. 27 N., R. 27 E., W. 2 E., Wash., containing 100.00 acres,

contain irrigable lands now under constructed ditch, being part of the irrigation system on the Colville Indian Reservation constructed by the United States on behalf of the Indians, and

WHEREAS, an act of February 14, 1920 (41 Stat., 408), provides that the Secretary of the Interior shall require the owners of irrigable land under any irrigation system previously constructed or to be constructed in the future for the benefit of the Indians and to which water for irrigation purposes can be delivered to begin partial reimbursement of the construction charges at such times and in such amounts as he may deem

best, credit upon a per acre basis to be made in favor of the land in behalf of which payments are made, and

WHEREAS, instructions have been issued in pursuance to this act requiring the collection of such charges annually, and

WHEREAS, there are assessed annual operation and maintenance charges for the operation and maintenance of the project under which the land lies which are payable on a per acre basis by the lands benefited, and

WHEREAS, my bid for said allotment or allotments has been accepted subject to the conditions herein contained governing payment of charges on irrigable land,

NOW THEREFORE, in consideration of the premises and the sum of one dollar in hand paid, it is mutually agreed that, in addition to the covenants contained in the contract of purchase which is annexed hereto and made a part hereof, I, *Hettie Justice Wham*, will pay on a per acre basis all irrigation charges assessed or to be assessed against this land, including accrued assessments, which accrued assessments shall be paid prior to approval of this sale; and agree to pay said construction, operation, and maintenance assessments on the due dates each year; and further covenant and agree, should any part of said land not now irrigated, at a subsequent date be brought within an Indian irrigation project, to pay all irrigation assessments against the lands when so assessed in the same manner as if the lands were now under constructed irrigation works. This agreement shall be binding upon the purchaser, his heirs,

executors, administrators and assigns. The purchaser further agrees to pay recordation fees at time of executing this agreement.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 29<sup>th</sup> day of May, 1925.

WITNESSES:

J. R. Bann

Hattie Justice Wham

P. O. Conok, Wash

Edward D. Clench

[Signature]

P. O. Conok, Wash

State of Washington

Superintendent, Colville  
Indian Reservation.

(ss:  
County of Okanagan

On this 29<sup>th</sup> day of May, in the year 1925, before me,

E. D. Clench, a Notary Public, personally appeared  
(Here insert the name and quality of the officer.)

Hattie Justice Wham, known to me (or proved to me on oath of \_\_\_\_\_) to be the person whose name is subscribed  
(Name.)

to the within instrument, and acknowledged to me that he (or they) executed the same for the uses and purposes therein mentioned.

My commission expires July 11, 1925  
E. D. Clench  
Notary Public  
Residing at Conok

The acknowledgment to be modified to meet the requirements of the State in which the reservation lies.

## CERTIFICATE OF APPRAISEMENT

Allottee William George No. S-894 Agency Colville

I hereby certify that on the 3rd day of Sept., 1920, 1911,  
I personally visited and made a careful inspection of the following-  
described lands: SE $\frac{1}{4}$  SE $\frac{1}{4}$  & E $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  & E $\frac{1}{2}$  W $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  sec.  
21 and W $\frac{1}{2}$  NE $\frac{1}{4}$  sec. 28, T. 33, R. 27.

being the allotment of William George

That I find the character of the land to be as follows:

Approximately 80 acres level land lying in a canyon  
through which a creek runs. Brush along the creek in which there  
is always good pasture. About 50 acres of rough rocky land.

A good three room plastered house. This would make a good  
dairy ranch.

and that it is best adapted for hay and grazing

That in my best judgment the value of the land is as follows:

Land	- - - - -	\$ 2700
Improvements	- - - - -	800
Total	- - - - -	\$3500

W. A. Talbert  
Farmer. Superintendent.

NOTE.—The appraisement should be made to correspond with the legal divisions for which bids will be received. The appraisement should be made by the superintendent, but in cases where it is not possible for him to personally appraise the land, he should appoint an appraiser and fill out the following blank:

I hereby certify that W. A. Talbert was appointed by me to appraise the land above described; that he is well acquainted with the value of lands in the vicinity of the tract above described, and fully competent to make such appraisement, and that I verily believe the above appraisement is the true value of the land and improvements thereon.

Dated 4th day of Sept., 1920, 1911.

W. A. Talbert  
Superintendent.



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
\* \* \* \* \*

COLVILLE CONFEDERATED TRIBES, )  
 )  
 ) Plaintiff, )  
 )  
 ) -vs- )  
 )  
 ) BOYD WALTON, JR., et ux, )  
 ) et al, )  
 )  
 ) Defendants. )  
 )  
 ) STATE OF WASHINGTON, )  
 )  
 ) Defendant Intervenor. )  
 )  
 ) UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
 ) -vs- )  
 )  
 ) WILLIAM BOYD WALTON, )  
 ) et ux, et al, )  
 )  
 ) Defendants. )  
 )  
 ) STATE OF WASHINGTON, )  
 )  
 ) Defendant. )

NO. 3421

NO. 3831

CERTIFICATE OF SERVICE

I certify that on January 17, 1978, the following documents were mailed to the attorneys of record of each of the parties herein by mailing, postage prepaid, to the addresses listed on the mailing list attached.

- 1. Certificate of Service
- 2. Proposed Finding of Facts and Conclusions of Law

NANSEN, PRICE, HOWE  
Attorneys for Defendants Walton

by Richard S. Price



1 William H. Veeder  
4808 W. Braddock Rd.  
2 Alexandria, VA 22311

3  
4 Robert Sweeney, Assistant  
United States Attorney  
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