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Affidavit of S. Strack

Steven W. Strack
Deputy Attorney General, State of Idaho

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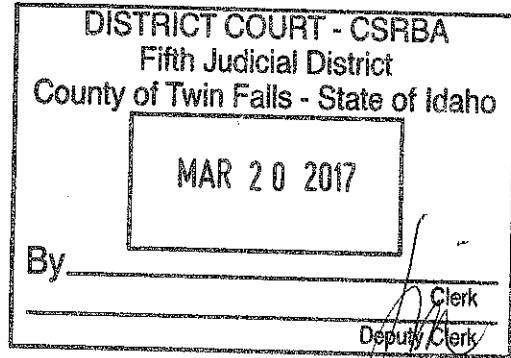
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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re CSRBA) Consolidated Subcase No. 91-7755
Case No. 49576)
) FOURTH AFFIDAVIT OF STEVEN
) W. STRACK
)
)
)
)

State of Idaho)
 : ss
County of Ada)

STEVEN W. STRACK, under oath, deposes and states as follows:

1. That I am over eighteen years of age and employed as a Deputy Attorney General for the State of Idaho, and I represent the State of Idaho in in this matter.
2. That I have caused to be gathered true, accurate and correct copies of the following documents from the sources identified below:

Exhibit 33: Indian Claims Commission, Docket No. 81, *Coeur d'Alene Tribe v. United States*, Additional Findings of Fact (Dec. 3, 1957), downloaded from <http://digital.library.okstate.edu/icc/v06/v06toc.html> (last visited March 15, 2017).

Exhibit 34: Page 6-38 and pages 6-57 through 6-67 of Indian Claims Commission, Docket No. 81, *Coeur d'Alene Tribe v. United States*, Opinion of the Commission (Dec. 3, 1957), downloaded from <http://digital.library.okstate.edu/icc/v06/v06toc.html> (last visited March 15, 2017)..

Exhibit 35: Pages 124, 233-42, 273, 317-18, and 329-30, from E Richard Hart, *A History of the Coeur d'Alene Tribe's Claim to Lake Coeur d'Alene: Volume 2, United States Conveyance of Lakes and Rivers to the Coeur d'Alene Tribe and Subsequent Tribal Cessions, 1873-1911* (Expert Testimony Submitted to the United States Department of Justice, *United States v. Idaho*, June 15, 1996).

Further your affiant sayeth not.

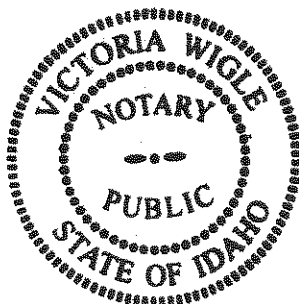
Dated this 16th day of March 2017.



STEVEN W. STRACK
Deputy Attorney General

Subscribed and sworn to before me this 16th day of March, 2017.

S
E
A
L



Notary Public
Residing at Boise, Idaho Attorney General's Office
My Commission expires on 11/22/22

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Fourth Affidavit of Steven W. Strack was sent on March 17, 2017, by overnight delivery to the SRBA Court, 253 3rd Avenue North, Twin Falls, Idaho, 83303-2702, and mailed on March 17, 2017, with sufficient first-class postage to the following:

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Exhibit 33

Indian Claims Commission, Docket No. 81, *Coeur d'Alene Tribe v. United States*,
Additional Findings of Fact (Dec. 3, 1957)

Fourth Affidavit of Steven W. Strack
CSRBA Consolidated Subcase 91-7755

BEFORE THE INDIAN CLAIMS COMMISSION

THE COEUR D'ALENE TRIBE OF INDIANS,)
)
) Petitioner,)
)
) v.)
)
) THE UNITED STATES OF AMERICA,)
)
) Defendant.)

Docket No. 81

Decided: December 3, 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 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'Alene 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 northwestern 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 O.W.R.&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, more 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 these 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. 1464-1465) and that as of 1887 they were worth \$2.00 per acre (Tr. 1463 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 1,848,606 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 pin area in the world (Tr. 1451). 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 53,391.40 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 sawmill 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 of March 3, 1891, their value was at the rate of \$2.21 per acre. (Tr. 1235-1265; Pet. Ex. 144, pp. 12-24).

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 record 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 threedollars 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 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 \$1,848,606.00, or at the rate of \$1.00 per acre for 1,848,606 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 2156 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, has 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 N. 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 occasionally 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 Stemwinder 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:

<u>Year</u>	<u>Lead</u>	<u>Silver</u>		<u>Gold</u>	
	<u>Tons of 2000 pounds</u>	<u>Value</u>	<u>Fine Ounces</u>	<u>Value</u>	<u>Value</u>
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	554,000	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 O. 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 gauge 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 in 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 139 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. 1044-1047). 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 1,661 placer claims filed in the county records.

(c) Mr. Jones testified that a search of the records showed a total of 2400 sales of lode claims and 440 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. 1194).

(d) Petitioner's appraiser Jones, based on the recorded deeds or 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 90% 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 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."

(b) 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 W. 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 tract, testified that the development, that is openings of any extent into the ground, of 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 could 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 \$4.88 a ton. The witness then estimated the district produced 210,000 tons a year and multiplying this sum by \$4.88 he stated "we come out with \$1,025,00 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. 1381-1386).

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. E. 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 Emma 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 Stemwinder 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 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 land.

41. 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.

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 G. A. O. 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	<u>2751.12</u>
Total	3333.85

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

Medical supplies	\$1814.24
Pay and expenses of blacksmith	\$ 641.88
Pay of carpenter	52.50
Pay of physician	<u>550.00</u>
Total	3058.62

Therefore, there is deducted from the amount charged as paid on the consideration under Article 6 the total sum of \$6,392.47, 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 G. A. O. report there was properly disbursed by defendant under said Article 11 the following:

Medical supplies	\$2,742.86
Pay of blacksmith	34,641.63
Pay of carpenters	9,324.59
Pay of physician	<u>38,509.74</u>
	85,218.82

To which is added the similar items erroneously charged under Article 6, above	<u>3,058.62</u>
Total Article 11 deductions	\$88,277.44

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 2,389,924 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, 1833,

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

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner

Exhibit 34

Excerpts from
Indian Claims Commission, Docket No. 81, *Coeur d'Alene Tribe v. United States*,
Opinion of the Commission (Dec. 3, 1957)

Fourth Affidavit of Steven W. Strack
CSRBA Consolidated Subcase 91-7755

BEFORE THE INDIAN CLAIMS COMMISSION

THE COEUR D'ALENE TRIBE
OF INDIANS,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 81

Decided: December 3, 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

O'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

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

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 \$88,277.44 for Article 11 expenditures, a total of \$231,884.97.

The petitioner contends that the defendant should not be allowed credit for the Article 11 expenditures because it is expressly provided in that Article that such expenditures were to be made by defendant "at its own expense." We believe such disbursements were as much a part of the consideration as was the \$150,000 provided for in Article 6. Article 11 provided that the cost of providing medicines, a physician, carpenter and 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 \$150,000 provided for in Article 6 and were to be made indefinitely at the expense 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 this Commission has found that 148,080 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, and 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 \$10,000,000 and 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. 1166, 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 herein classified as agricultural for the purposes of evaluation were timbered 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 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 (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, 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 \$2.50 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 operations while others 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 1,848,606 acres of timber lands have been found to

have the value as of March 3, 1891, in the amount of \$1,848,606.00, 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 value 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 market value of the mining district. As of 1891, Mr. Jones, petitioner's expert, was of the opinion that the minimum value of the mineral resources was \$30,000,000.00. Mr. Lilly estimated a minimum value about 1887 for the mining district 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 \$2,800,000 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. This expert then assumed that 90% of the total claims filed were valid (valuable) 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 duplicates, 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 \$625,000.00 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 that no development work ever done on the property was the driving of shafts and 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.'

Any 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 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 exorbitant 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 unknown 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 \$113,607.53 expended under Article 6 of the Agreement of March 26, 1887, and the sum of \$88,277.44 expended under Article 11 of said Agreement, or a total sum of \$231,884.97, 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.

Louis J. O'Marr
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner

Exhibit 35

Excerpts from

E Richard Hart, *A History of the Coeur d'Alene Tribe's Claim to Lake Coeur d'Alene: Volume 2, United States Conveyance of Lakes and Rivers to the Coeur d'Alene Tribe and Subsequent Tribal Cessions, 1873-1911* (June 15, 1996).

Fourth Affidavit of Steven W. Strack
CSRBA Consolidated Subcase 91-7755

~~SECRET~~

A History of the Coeur d'Alene Tribe's Claim to Lake Coeur D'Alene

by

E. Richard Hart
Institute of the North American West

**Volume II:
United States Conveyance of Lakes and Rivers to the Coeur d'Alene Tribe
and Subsequent Tribal Cessions,
1873-1911**

Expert Testimony Submitted to the United States Department of Justice
United States v. Idaho
July 15, 1996

This was a highly advantageous agreement to the Coeur d'Alene. They would receive a reservation larger than the one for which they had previously petitioned, one which specifically mentioned the rivers and lakes with which they were concerned, whose waters were to be protected and they were to receive all "privileges" with the area found within the boundaries. The line was drawn down the center of the channel of the Spokane River (see Maps 11 and 12), indicating that in fact riverbeds and lakebeds were meant to be a part of the reservation. Both the reference prohibiting water diversions and the line in the channel of the river indicate that both parties considered the channels, riverbeds and lakebed to be a part of the reservation. Tribal requests indicate they were concerned with future economic development and were thinking about future investment and use of natural resources on their proposed reservation. The tribal concern with economic development during this period is further evidenced and corroborated by Seltice's agreement with Frederick Post two years earlier.²⁰⁴ Shrewdly, Seltice and the tribe were working to protect their natural resources, both for their traditional uses, and for future economic development.

The Commissioner reported that pending the recommended ratification of that agreement, he arranged for a new Executive Order to set aside the land described in the agreement, "in order that white persons may be prohibited from settling thereon and claiming compensation for improvements from the Government." This was seen as a temporary measure, until the

²⁰⁴United States. *The Statutes at Large of the United States of America, from December, 1889, to March 1891...*, Vol. XIXVI, Washington, Government Printing Office, 1891, p. 1031 (26 Stat. 1031). [221]

States succeeded in obtaining, through this cession, the greater portion of Lake Coeur d'Alene, including that which was most valuable for navigation to the mines. The United States clearly wanted to obtain the complete steamer route from Coeur d'Alene City to the Old Mission. Transcripts of negotiations show that the United States believed the lake was being partitioned, with the tribe retaining the southern third and the United States obtaining the northern two-thirds. The official report to Congress also included the entire text of the official reports on the 1887 agreement.³⁹¹

The Commissioners telegraphed the Indian Office on September 11, 1889, reporting that they had concluded a treaty with the Coeur d'Alenes, providing a description of the boundaries and the cost to the government.³⁹² On the same day, the Coeur d'Alene Commission sent a letter to Indian Commissioner Morgan, which was also signed by "General" Andrew Seltice, Interpreter Steven Liberty, Agent Cole and three other Coeur d'Alene leaders, saying that an agreement had been reached. The commissioners said that they had pledged themselves to recommend that the Department send the Agent and the head Chiefs of the tribe to Washington along with their interpreter, "in order that they--the representatives of the Indians--might satisfy themselves as to the good faith of the Government in this matter." Former commissioners and the railroad had done this in the past, they said, and in view of the tribe's efforts to become

³⁹¹United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D'Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889. [215]

³⁹²Simpson, Shupe and Humphrey to Commissioner, September 11, 1889, telegram, Letters Received, Record Group 75, National Archives. [539]

civilized, the commissioners recommend approving this request.³⁹³

Within a week Seltice had concluded a supplemental transaction, this one to the great benefit of Frederick Post. On September 16, 1889, Seltice signed an agreement and had it notarized in the office of the Kootenai County Recorder [see Appendix IX]. Seltice said in this agreement that Frederick Post had purchased what is now known as Post Falls from the Coeur d'Alene for a "valuable consideration" in 1871 and that this property should be deeded to him and exempted from the 1889 cession. No other parties signed this document. The document was submitted to authorities in Washington. Although the Post cession was not mentioned in the official reports on the 1887 and 1889 agreements, it was examined and found valid by the Interior Department and Congress. It was later ratified and made law by Congress, along with the 1887 and 1889 agreements. Seltice later explained this action by saying Post had purchased the property from his father for \$500.00.³⁹⁴ This agreement is important because it indicates that both the United States and Seltice were firmly aware of the value and importance of river channels and that this cession of such property had been made with all parties aware of riverbed values.

The historical evidence shows that the 1889 agreement included a cession of the lakebed

³⁹³Simpson, *et. al.*, to Commissioner Morgan, September 11, 1889, Letters Received, Record Group 75, National Archives. [540]

³⁹⁴Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur D'Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990, pp. 215, 233, 315-316, and 358. [101]

The Statutes at Large of the United States of America, from December, 1889, to March 1891..., Vol. XIXVI, Washington, Government Printing Office, 1891, p. 1031 (26 Stat. 1031). [221]

north of the line, but was not a cession of the St. Joe River channel, nor the lakebed south of the line. It clearly shows that Seltice and the United States were aware of the economic value of river channels and lakebeds at the time of the 1889 agreements. The action of the United States in ratifying these agreements thus expressly indicated title to lakebeds and riverbeds being divided between the United States and the Cœur d'Alene Tribe. Further, the supplementary agreement indicates that Post's agreement with the tribe was contingent upon his building a mill and improving the water-power. Thus, they were aware of and dependent on the future implications of their maintained lakebed and riverbed rights as a result of the 1889 agreement.

Suggestions that there was inadequate interpretation during these negotiations seem to be completely erroneous. Reichard published a Coeur d'Alene story in 1934 dealing with white encroachment on Coeur d'Alene land, and in which "the false coyotes are the interpreters who are blamed for misrepresenting the Indian's cause in the talks with Government officials."³⁹⁵ Steven Liberty seems to have greatly benefited personally from his position as interpreter for the tribe, but there is no evidence that he was in any collusive arrangement with authorities. In fact, Liberty's knowledge of law may have helped the tribe.³⁹⁶ Father Joset spoke Coeur d'Alene and many of the Coeur d'Alenes spoke English. The records of the meetings held with the commissioners suggest that negotiations were understood well on both sides of the table. Certainly the United States pressured the tribe to cede the lands, but did not force them to sell

³⁹⁵Reichard, Gladys A. "The Style of Coeur D'Alene Mythology." In *Verhandlungen Des XXIV. Internationalen Amerikanisten-Kongresses Hamburg*, edited by R. Grossmann and G. Antze, pp. 243-253. Hamburg: Friederichsen, De Gruyter & Co., 1934, p. 252. [149]

³⁹⁶Murray, Alberta. *These My Children*. Fairfield, Washington: Ye Galleon Press, 1976, p. 61. [119]

lands. Coeur d'Alene tribal leadership, especially Chief Seltice, was in close contact with the Jesuit priests, and certainly consulted with them on all important political matters. Likewise, they consulted with other white confidants, like Steven Liberty. Priests and other whites certainly had personal, religious, and professional agendas which colored their advice. Seltice, himself, may have been an imperfect leader. However, none of this suggests that the tribe had abandoned sovereign decision-making. The record suggests that these contacts helped Seltice to achieve his own objectives. The commissioners later praised Seltice's and the Coeur d'Alenes' business acumen, while at the same time saying they had made a bargain purchase.³⁹⁷

The Commissioner of Indian Affairs reported on the 1889 agreement, pointing out that the United States had been able to obtain a portion of Lake Coeur d'Alene.³⁹⁸

Councils with the Indians were held in August last and as a result of the negotiations an agreement was concluded on the 9th day of September following, whereby the Indians agreed to sell a considerable portion of their reservation (in the northern part), valuable chiefly for minerals and timber, and embracing by far the greater portion of the navigable waters of the reservation. The terms agreed upon are regarded by the commissioners as reasonable and just alike to the Indians and the government.

³⁹⁷Dozier, Jack. "Coeur D'Alene Country: the Creation of the Coeur D'Alene Indian Reservation in North Idaho." *Idaho Yesterdays* (1962), p. 7. [63]

³⁹⁸United States. Department of the Interior. Commissioner of Indian Affairs. "Annual Report," 1889. Washington, D. C.: Government Printing Office, pp. 21-22. [250]

Peltier, Jerome. *A Brief History of the Coeur D'Alene Indians, 1806-1909*. Fairfield, Washington: Ye Galleon Press, 1981, pp. 60-66. [132]

The historical record provides conclusive evidence that the United States and the Coeur d'Alene discussed in detail, understood, and explicitly agreed to a 243,000 acre cession which included a 37,000 acre portion of the Lake Coeur d'Alene lakebed, and of the Coeur d'Alene riverbed in 1889. The Tribe retained ownership of the southern portion of Lake Coeur d'Alene and a portion of the St. Joe River. The United States acknowledged Coeur d'Alene title to the tribal portion of Lake Coeur d'Alene and the St. Joe River (see Maps 9 and 17).

XIII Ratification, 1890-1891

Late in 1889 the Secretary of the Interior formally reported on the 1889 "Purchase of a Part of the Coeur d'Alene Reservation" in a letter to the Senate.³⁹⁹ In January, 1890, Senator J. H. Mitchell transmitted a draft of a bill to ratify the agreements made with the Coeur d'Alenes.⁴⁰⁰ Controversy over Post's holdings on the Spokane River had continued, and the Indian Office referred the matter to the Senate Committee on Indian Affairs. The Senate Committee on Indian Affairs had reviewed the 1887 and 1889 agreements and submitted draft legislation to the Secretary of Interior for review. The Secretary referred the draft to the Commissioner of Indian Affairs who responded to the Senate providing details on how the appropriations act should be worded, with instructions on funding the required grist/saw mill, the hiring and payment of a blacksmith, per capita payments to tribal members, the survey of the reservation, and the disposal of lands opened to settlement. The Commissioner determined

³⁹⁹United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D'Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889. [215]

⁴⁰⁰Mitchell to Indian Office (note to file), January 28, 1890, Letters Received, Record Group 75, National Archives. [541]

that only one and not two mills would satisfy the treaty language. The Indian Office provided evidence that Seltice had indeed made the agreement with Post in 1871 and pointed out that he had also begun developing the river channel for the purpose of water-power, as required in the agreement. The Indian Office hoped that the Committee could attach the Seltice/Post agreement to the legislation.⁴⁰¹

Pressure to open the northern portion of the reservation now increased dramatically as whites realized the 1889 agreement was before Congress. Hundreds, if not thousands, of miners and prospectors flooded into the northern portion of the reserve. Many more individuals queried officials about when they could legally enter the reservation. The Spokanes were also becoming

⁴⁰¹Morgan to Cole, May 6, 1890, Letters Received, Colville Agency, RG 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [542]

Morgan to Cole, June 28, 1890, Letters Received, Colville Agency, RG 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [543]

United States. Congress. Senate. *Letter of the Secretary of the Interior Transmitting Correspondence in Relation to the Ratification and Confirmation of Certain Agreements Between the United States and the Coeur D'Alene Indians in Idaho Territory*. Misc. Doc. No. 95. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [216]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 1109. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [206]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 2988. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [205]

Mitchell to Indian Office (note to file), January 28, 1890, Letters Received, Record Group 75, National Archives. [541]

Parker to Ingalls, March 16, 1890, Letters Received, Record Group 75, National Archives. [544]

Lee to President Harrison, May 9, 1890, Letters Received, Record Group 75, National Archives. [545]

Eleanor Lee to Commissioner of Indian Affairs, March 16, 1891, Letters Received, Record Group 75, National Archives. [546]

impatient about relocating on the Coeur d'Alene Reservation. And of course the Coeur d'Alenes, who had effectively already lost the use of the northern portion of the reservation, were impatient themselves to be paid for their ceded territory, both aboriginal and reservation.⁴⁰² Despite the pressures on Congress to ratify the agreements, the Coeur d'Alenes were still uneasy about Congress. They entered into a contract (approved by the Indian Office) with their old associate John Mullan to lobby in Congress for ratification of the two agreements.⁴⁰³

⁴⁰²Gildea to Cole, April 21, 1890, Letters Received, Record Group 75, National Archives. [547]

Notes to file, 1890, Letters Received, Record Group 75, National Archives. [548]

Conner to Commissioner of General Land Office, June 20, 1890, Letters Received, Record Group 75, National Archives. [549]

Conner to Commissioner of Indian Affairs, June 20, 1890, Letters Received, Record Group 75, National Archives. [550]

Thom to Secretary of the Interior, July 18, 1890, Letters Received, Record Group 75, National Archives. [551]

Thompson to Post Adjutant, August 22, 1890, Letters Received, Record Group 75, National Archives. [552]

Morgan to Cole, July 5, 1890, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [553]

Act'g Commissioner to Cole, November 15, 1890, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [554]

Acting Commissioner to Cole, October 1, 1890, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [555]

⁴⁰³Secretary of the Interior John W. Noble to Commissioner of Indian Affairs, June 27, 1890, Letters Received, Record Group 75, National Archives. [556]

Belt to McCammon, May 10, 1890, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [557]

Mullan to Gildea, May 15, 1890, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [558]

In March, 1890, the House Committee on Indian Affairs joined the Senate in officially calling for ratification of the two agreements. The House report reprinted the resolution sent to the President in 1885, in which the Coeur d'Alenes stressed the fact that the negotiations were focused on a business agreement, and said the 1889 agreement was a good one, which included acquisition of important property for the United States.⁴⁰⁴

It contains a magnificent sheet of water, the Coeur d'Alene Lake, and its chief tributary, to wit, the Coeur d'Alene River, over the waters of which steamers now ply daily form the city of Coeur d'Alene to the old Coeur d'Alene Mission, there connecting with a railway system penetrating into the very heart of said Coeur d'Alene mineral belt. It also controls the outlet of said lake, to wit, the Spokane River.

On July 3, 1890, "An act to provide for the admission of the State of Idaho into the Union" became law and Idaho entered the Union.⁴⁰⁵ The Idaho State Constitution had been written at a convention held in the summer of 1889 and was passed by the Idaho voters in November of 1889. The July 3, 1890 Act making Idaho a state included a section (Article XXI,

Acting Commissioner to Cole, October 11, 1890, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [559]

Magnuson, Richard G. *Coeur D'Alene Diary; the First Ten Years of Hardrock Mining in North Idaho*, 1968, p. 79. [109]

⁴⁰⁴United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 1109. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [206]

⁴⁰⁵United States. Congress. *The Statutes at Large of the United States of America from December 1889, to March, 1891*, Washington, D. C.: Government Printing Office, 1891, pp. 215-219. [221]

Section 19) disclaiming ownership of Indian lands:⁴⁰⁶

And the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States...

By late 1890, Indians and non-Indians in the region believed that the agreements would be ratified. It had become practically impossible to prevent settlers and prospectors from entering the reservation. "Boomers" had begun gathering in neighboring towns throughout the winter in anticipation of the land rush. Despite the fact that the Coeur d'Alenes favored the agreements and had even hired a lobbyist to ensure congressional ratification, some New England religious groups expressed opposition to the agreements, because the tribe would be losing some of its land base. Some land speculators in Spokane opposed ratification because of the special agreement with Frederick Post. But as winter passed, large numbers of settlers waited on the borders of the reservation for their opportunity to make entries on the newly opened territory. Early in 1891 Idaho citizens petitioned Congress to approve the Coeur d'Alene

⁴⁰⁶Schwantes, Carlos A. *The Pacific Northwest: An Interpretive History*. Lincoln and London: University of Nebraska Press, 1989, pp. 212-215. [160]

Idaho State. *Idaho Code*. Charlottesville, Virginia: The Michie Company, 1993, p. 19. [92]

agreements and yet another measure was introduced to ratify both agreements.⁴⁰⁷

Finally, on March 3, 1891, Congress ratified both the 1887 and the 1889 agreements, including the agreement with Frederick Post. A provision to that effect was included in the Indian Appropriations Act for the year.⁴⁰⁸ It is ironic that in the 1887 agreement the promise was made that the 1873 reservation will "be held forever as Indian land and as homes for the

⁴⁰⁷United States. Congress. *Congressional Record*. 51st Congress, 2nd Session, pp. 966, 1525. Washington, D. C.: Government Printing Office, 1891. [190]

Magnuson, Richard G. *Coeur D'Alene Diary; the First Ten Years of Hardrock Mining in North Idaho*, 1968, pp. 79-80, 95, 124-126. [109]

Acting Commissioner to Cole, December 24, 1891, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [560]

Acting Commissioner to Cole, August 28, 1891, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [561]

Acting Commissioner to Cole, August 6, 1891, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [562]

Acting Commissioner to Cole, May 27, 1891, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [563]

Acting Commissioner to Cole, June 8, 1891, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [564]

Acting Commissioner to Cole, March 28, 1891, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [565]

⁴⁰⁸United States. Congress. *The Statutes at Large of the United States of America from December 1889, to March, 1891*, Washington, D. C.: Government Printing Office, 1891, pp. 989-991, 1027-1032. [221]

United States. Department of the Interior. General Land Office. "Report of the Commissioner of the General Land-Office for the Fiscal Year Ended June 30, 1891," 1891. Washington, D. C.: Government Printing Office, p. 352. Post lost no time in obtaining a survey of his holdings, a contract for which was let by July, 1891. [272]

United States. Department of the Interior. General Land Office. "Report of the Commissioner of the General Land-Office for the Fiscal Year Ending June 30, 1893," 1893. Washington, D. C.: Government Printing Office, p. 333, reported that both the survey of the ceded lands and Post's lands were completed by July, 1893. [274]

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.

When that objective was achieved, the remaining lands would be opened to non-Indian use. The year 1906 also happened to be the year of the last of the \$8,000.00 payments promised to the tribe under the treaty of 1889 (from the 1887 agreement) and begun in 1891. The *Coeur d'Alene Evening Press*, on November 17, 1906, correctly anticipated that Lake Coeur d'Alene would become an important resort area for the region once the reservation was opened.⁴⁶⁹ During the same year a dam at Post Falls was completed. The site had passed from Post to Coeur d'Alene mine owners, who wanted electricity delivered to the mining district. Washington Power Company acquired the site from the owners and constructed a hydroelectric facility, which was completed in 1906, and which eventually raised the level of Lake Coeur d'Alene nearly 15 feet, and encompassing some of the smaller lakes into its greater extent.⁴⁷⁰

Between 1907 and 1909 the process of allotment was carried out. Newspapers had

⁴⁶⁹Cotroneo, Ross R. and Jack Dozier. "A Time of Disintegration: the Coeur D'Alene and the Dawes Act." *Western Historical Quarterly* Vol. V, No. 4 (October 1974): p. 409. [42]

⁴⁷⁰Crosby, Edward J. *The Story of the Washington Water Power Company and its part in the History of Electric Service in the Inland Empire, 1889-1930 Inclusive*, n.p., n.d., p. 19-20. [48]

Cross, Alden. "Indians Claim Ownership to Site of Post Falls Dam," *Spokesman Review*, July 3, 1973, p. 1, reported that in 1973 the Coeur d'Alene Tribe claimed ownership of the Post Falls site, saying through their attorney that the agreement with Frederick Post has been spurious. [49]

to build a house, a barn, purchase wagons and farm implements and establish a large farm, with considerable living expenses left over.

The members of the Coeur d'Alene Commission forwarded the agreement (Appendix IX) to the Commissioner of Indian Affairs a few days after the agreement was signed, describing the territory that was to be acquired from the Coeur d'Alenes and the amount to be paid to them.⁵⁸⁸ A few days later Chief Seltice signed and had notarized an attachment to the agreement (Appendix X), documenting the cession of the Post Falls area to Frederick Post.⁵⁸⁹ The subsequent report by the Commissioner of Indian Affairs makes it abundantly clear that the United States was fully aware it was acquiring a portion of Lake Coeur d'Alene and the Coeur d'Alene River through purchase and cession from the tribe.⁵⁹⁰ The historical record provides conclusive evidence that in 1889 the United States and the Coeur d'Alene discussed in detail, understood, and explicitly agreed to a 243,000 acre cession which included a 37,000 acre portion of the Lake Coeur d'Alene lakebed, and a cession of the Coeur d'Alene riverbed. The Tribe retained ownership of the southern portion of Lake Coeur d'Alene and a portion of the St. Joe River. The United States acknowledged Coeur d'Alene title to the tribal portion of Lake Coeur d'Alene and the St. Joe River.

⁵⁸⁸Simpson, Shupe and Humphrey to Commissioner, September 11, 1889, telegram, Letters Received, Record Group 75, National Archives. [540]

Simpson, *et. al.*, to Commissioner Morgan, September 11, 1889, Letters Received, Record Group 75, National Archives. [539]

⁵⁸⁹*The Statutes at Large of the United States of America, from December, 1889, to March 1891...*, Vol. XIXVI, Washington, Government Printing Office, 1891, p. 1031 (26 Stat. 1031). [221]

⁵⁹⁰United States. Department of the Interior. Commissioner of Indian Affairs. "Annual Report," 1889. Washington, D. C.: Government Printing Office, pp. 21-22. [250]

Detailed, extensively documented reports produced by Congress in 1889 and 1890 record the careful congressional scrutinization of the 1887 and 1889 agreements prior to their ratification.⁵⁹¹ Interior Department correspondence also documents congressional consideration of the proposed ratification, including an analysis of the amended agreement with Frederick Post. Congress determined the Post agreement was valid, and noted that improvements to the river channel that had been required by the tribe had been carried out.⁵⁹² A House report of March, 1890, recommended ratification of the agreements, and demonstrated that Congress knew the United States was acquiring a portion of Lake Coeur d'Alene and the Coeur d'Alene River

⁵⁹¹United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D'Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889. [215]

United States. Congress. Senate. *Letter of the Secretary of the Interior Transmitting Correspondence in Relation to the Ratification and Confirmation of Certain Agreements Between the United States and the Coeur D'Alene Indians in Idaho Territory*. Misc. Doc. No. 95. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [216]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 1109. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [206]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 2988. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [205]

⁵⁹²Morgan to Cole, May 6, 1890, Letters Received, Colville Agency, RG 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [542]

Morgan to Cole, June 28, 1890, Letters Received, Colville Agency, RG 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [543]

Mitchell to Indian Office (note to file), January 28, 1890, Letters Received, Record Group 75, National Archives. [541]

Parker to Ingalls, March 16, 1890, Letters Received, Record Group 75, National Archives. [544]

Lee to President Harrison, May 9, 1890, Letters Received, Record Group 75, National Archives. [545]

Eleanor Lee to Commissioner of Indian Affairs, March 16, 1891, Letters Received, Record Group 75, National Archives. [546]

the subsequent 1889 agreement, in 1891.⁶¹³

The 1889 agreement between the Coeur d'Alene Tribe and the United States was a document by which the Coeur d'Alene Tribe ceded the northern portion of their reservation to the United States. This cession included the northern portion of Lake Coeur d'Alene and the portion of the Coeur d'Alene River from the Old Mission to its mouth. The cession boundary line clearly is intended to provide for non-Indian use and access to all of the waters from the head of the Spokane River to the Old Mission, encompassing the northern portion of the lake and the Coeur d'Alene River. The manner in which the boundary line is drawn evidences the fact that the lake and river beds are considered to be part of the cession. The boundary line is drawn down the bank of the western shore of the lake until opposite the mouth of the Coeur d'Alene River, thus ceding the lakebed north from the mouth of the river, even though lands beyond the western shores were not all ceded. The 1889 agreement, ratified in 1891, was an express cession of lakebed and riverbed to the United States from the Coeur d'Alene Tribe.⁶¹⁴ An additional 1889 agreement, also ratified in 1891, between Chief Seltice and Frederick Post, represented a small cession of territory on the Spokane River from the Tribe to Post. Language in this agreement demonstrated that the United States considered lake and river beds to be part

⁶¹³"A letter of the Secretary of the Interior relative to the Purchase of a part of the Coeur d'Alene Reservation," 51st Congress, 1st Session, Senate Executive Document Number 14, pp. 67-70. [215]

26 Stat. 1027-1029. [659]

⁶¹⁴"A letter of the Secretary of the Interior relative to the Purchase of a part of the Coeur d'Alene Reservation," 51st Congress, 1st Session, Senate Executive Document Number 14, pp. 13-16. [215]

"Agreement," Letters Received, #26974, 1889, Record Group 75, National Archives. [646]

26 Stat. 1029-1030. [659]

of areas ceded in 1889 (and ratified in 1891).⁶¹⁵

The agreement of 1894, ratified during the same year, represented a cession of a narrow strip of territory located along the northern border of the existing reserve from the Tribe to the United States. While arranging this cession, United States authorities paid careful attention to establishing a line that would include harbor facilities for the town of Harrison. For that reason, the cession line included two right angles over Lake Coeur d'Alene, thus encompassing in the ceded territory a small section of Lake Coeur d'Alene Lakebed. This also was an explicit cession.⁶¹⁶

The 1911 patent to the State of Idaho, authorized by a statute of 1908, conveyed a section of Coeur d'Alene Reservation to the State of Idaho for the purpose of establishing a state park. The language of the patent is drafted so as to include the lakebeds in the ceded area. The boundaries are drawn in a clear and consistent manner to include three small lakes--Lake Chatcolet, Benewah Lake, and Hidden Lake--within the territory ceded for the Idaho State park.

⁶¹⁵*The Statutes at Large of the United States of America, from December, 1889, to March 1891...*, Vol. XIXVI, Washington, Government Printing Office, 1891, p. 1031 (26 Stat. 1031). [221]

⁶¹⁶United States. Congress. House. "Agreement with Coeur d'Alene Indians," 53rd Congress, 2nd Session, House Executive Document No. 158, 1894. [207]

28 Stat. 322-323. [660]

"Agreement concluded on the 7th day of February, 1894 between John Lane, Special United States Indian Agent, on the part of the United States, and the Indians of the Coeur d'Alene Reservation in the State of Idaho," Special Case No. 200, Record Group 75, National Archives. [613]