

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED SALISH AND)
 KOOTENAI TRIBES OF THE FLATHEAD)
 RESERVATION, MONTANA,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant.)

Docket No. 61

Decided: September 29, 1965

Appearances:

Robert W. Barker, with whom was
Claron C. Spencer, Attorneys for
Petitioner.

John D. Sullivan, with whom was
Mr. Assistant Attorney General,
Edwin L. Weisl, Jr., Attorneys for
Defendant.

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

This case is before the Commission for the determination of acreage and the valuation of the lands ceded to the United States by the petitioner under the Treaty of July 16, 1855 (12 Stat. 975; 2 Kapp. 722), and for the determination of whether the consideration for the cession of the subject lands was unconscionable. In the title decision of August 3, 1959 (8 Ind. Cl. Comm. 40) the Commission directed that the

valuation of the subject lands was to be as of March 8, 1859, when the Treaty of July 16, 1855 was ratified.

The subject lands are generally that part of Montana west of the Continental Divide, bounded on the southwest by the Bitterroot Mountains, on the northwest by the divide between the tributaries of the Clark Fork and the Kootenai Rivers, and on the north by the Canadian border. The subject lands lie wholly within the drainage basins of the Clark Fork and the Kootenai Rivers, both of which flow into the Columbia River. The acreage of the area was stipulated between the parties at a total of 12,005,000 acres, including 55,000 acres of the surface of Flathead Lake. The area is some 240 miles in length and about 150 miles in width, although it is by no means rectangular in shape. It is, for the most part, rough and broken mountainous country, with a number of long narrow valleys centering in the vicinity of the present Missoula, then Hell Gate, Montana. The elevation of the subject lands varies from about 2000 feet to 4500 feet in the valleys to the mountain tops at about 10,000 feet. The mountain sides are usually covered with a rich growth of timber: lodgepole pine, ponderosa pine, white pine, larch, Douglas fir, and Engleman spruce. Most of the timber was inaccessible in 1859; and bulk transportation facilities were virtually non-existent then and for the foreseeable future. There was, however, some local need for timber for building, fencing and placer mine construction. By 1875 there was to be a considerable lumber industry in western Montana, but

there was none in 1859. Between 1897 and 1908 about eight and one-half million acres of the timber land in the subject tract was taken for conservation as part of the National Forest Reserve. Between the mountains and the valleys lay large expanses of good grazing, or range land; and even as early as 1859 Bitterroot Valley was favorably known as a grazing and wintering place for cattle, and the fine Blackfoot-bred horses were highly regarded. Six major rivers flow through the subject lands, the Clark Fork, Bitterroot, Blackfoot, Flathead, Kootenai, and St. Regis. The water flow to the valley lowlands is stabilized by the heavy growth of timber in the uplands. The stable water flow and the many lakes, the largest Flathead Lake, provide ample water for the subject lands. Western winds leave the Pacific at sea level, heavily moisture-laden. When the air flow generated by the western winds reaches the Bitterroot and Rocky Mountains, the result is a generous deposit of winter snow or rain in other seasons. Snow deposited in the mountains of the area is stored there as effectively as it would be in a dam or reservoir. With the warmer weather, the melting snow becomes a bonus water supply for the rivers and lakes of the subject lands.

The prevailing western moisture-laden winds, besides insuring an adequate water supply to the subject lands, also act as a climate stabilizing influence. Western Montana is not given to the frequent and sudden climatic changes that are common in eastern Montana, east of the Great Divide. In terms of temperature, average readings rise from a

winter low of about 24 degrees through spring and fall readings of about 43 degrees to a summer average high of 62. The farmer or rancher may usually expect a growing season of four to five months. Also, of course, the farmer or rancher may expect to find the richest and deepest soils in the valleys, much of it alluvial, and the product of river silt, capable of supporting a considerable variety of vegetables and cereals. The area soils generally become more shallow, less fertile, and more rocky and arid as the elevation rises. Nevertheless, the foothill soils, though shallow and stony, have enough mineral and organic fertility to support the growth of forage grass and forest. An 1859 settler would have classified the soils of the subject lands as bottom land for crops, pasturage for cattle, forest land for summer grazing, and higher mountain lands as waste land. Furthermore, the 1859 settler would have considered as waste land that part of the forest land too densely timbered for forage, marshlands, and high mountain alpine lands. He would be aware that the great bulk of good bottom land for farming was to be found in that general part of the valleys near present Missoula. To be sure, he might know that there were pockets of good bottom or prairie land in other higher locations in the subject lands; but such a settler would probably show little enthusiasm to own such a pocket because of its remoteness and difficulty of access.

Missionaries were in the subject lands before 1859. They encouraged the early settlers to plant crops in the fertile valleys. One of

the earliest missions was St. Mary's, near the present Stevensville, in the Bitterroot Valley, founded in 1843. The St. Ignatius Mission, south of Flathead Lake, was founded in 1853. Major John Owen purchased the St. Mary's Mission in 1850, and operated there the Fort Owen Trading Post for about the next ten years. Fort Owen dealt in all sorts of supplies needed by the earlier settlers and by the Indians; and, most importantly to the development of the subject lands, the Fort did a brisk business in horses, mules, cattle, and various accessories to the cattle trade.

Engineers, surveyors, and others entered the subject lands to investigate and explore the terrain in connection with a proposed trans-continental railroad which would cross the State of Montana. At the same time cattlemen and traders were coming into the area by the Emigrant Road, upon which Major Owen's trading post was located. By 1859, Fort Owen had become relatively the busiest trading post within a radius of several hundred miles. The Fort, though its business volume would today be considered small, enjoyed great prosperity by frontier standards. Governor Isaac Stevens of Washington Territory, a towering figure in the development of the nineteenth century west, came to the subject lands in 1855 to conduct the treaty councils preliminary to the 1855 treaty. He had been in the area several years before 1855 and returned many times thereafter to promote the proposed railroad which he enthusiastically supported.

Access to the subject lands on March 8, 1859 can be described as possible, but very inconvenient, limited as it was to passage over crude wagon roads and almost exclusively through passes in the surrounding mountains.

Coming to the subject area from the south, the traveler along the Oregon Trail, possibly coming from Salt Lake City, would get into the area through Deer Lodge Pass, Gibbon's Pass, or Nez Perce Pass. From the west the traveler would have come across Idaho, and he might enter the area through Lookout Pass at the head of the St. Regis River, or he might enter along the Clark Fork River. From the north, it is a safe bet that nobody, except the occasional tough old fur trader, would enter the subject lands at all. The northern boundary was rugged and rocky, and in addition it was a political boundary. From the east, entry was pretty much restricted to mountain passes; and the traveler would usually have come from the Missouri Valley through Fort Benton, and then to the subject lands through Rogers' (Clark's) Pass, Mullan's Pass, McDonald's Pass, or Marias Pass. All in all, then, in 1859 it was possible to enter or leave the subject lands; but such access was so difficult as to be next to impossible for all but the most rugged characters.

A buyer of the subject tract would have known, however, that transportation to and from it was in the course of being somewhat improved in 1859. The Congress made an appropriation in 1855 for a military road

across Montana, from Fort Benton to the east to Walla Walla to the west. A second appropriation was made by the Congress in 1859 for the construction of the road, to be known as Mullan Road, after Lieutenant John Mullan, who had charge of the reconstruction. In addition, Governor Stevens arranged exploration and survey through the subject lands in 1853 and 1854 of the transcontinental railroad route. This became the Northern Pacific Railroad, which was chartered in 1864. Construction began in 1870, and it was finished in 1883. A well-informed buyer of 1859 would most certainly have known of the Mullan Road, then nearly complete; and he may well have known of the less advanced plans for the Northern Pacific, though it was in 1859 not much more than a gleam in the eye of Governor Stevens.

The petitioner's principal appraiser was Mr. Mont H. Saunderson of Bozeman, Montana. He was assisted by Mr. John R. Host, forestry expert of Missoula; by Dr. Merrill G. Burlingame, a professor of history of Bozeman; by Mr. William H. Richards, a cadastral engineer; by Mr. Melvin S. Morris, a professor of forestry; and by Mr. Charles C. O'Boyle, a consulting geological engineer, of Denver, Colorado.

The defendant's principal appraiser was Mr. Henry R. Fenton of Bellevue, Washington. He had the help of the engineering knowledge of Mr. Charles R. Stark of Kent, Washington.

Classification

A little over two-thirds of the subject lands, about 8,500,000 acres of timber and alpine land, was taken 30 to 40 years after 1859 as forest reserve by the United States. The takings were: Flathead National Forest (2,090,000 acres) and Bitterroot National Forest (1,155,000 acres) in 1897; Missoula National Forest (1,335,000 acres), Kootenai National Forest (1,660,000 acres), and Lolo National Forest (1,206,000 acres), in 1906; Cabinet National Forest (1,030,000 acres) in 1907; and Blackfoot National Forest (1,052,000 acres) in 1908. The listed National Forests lie wholly or partly within the subject lands.

Cabinet National Forest is almost wholly without the subject lands, as are substantial parts of Kootenai and Blackfoot National Forests. These exclusions total about 1.3 million acres, which is just about balanced by the inclusion of about the same area, with approximately equivalent timber density and alpine land, the substantial portion of Glacier National Park which lies within the northeastern corner of the subject lands.

Mr. Saunderson classified the timber and alpine lands before stipulation of the total tract area as 7,500,000 acres and 1,050,000 acres respectively. After the total acreage stipulation, in formal testimony at the hearing, Mr. Saunderson cut his estimate on waste land acreage by 50,000 acres to a flat million. Since Mr. Saunderson's pre-stipulation acreage was 12,300,000 acres, as against the stipulated 12,005,000 acres,

there was still to be a 245,000-acre adjustment to be made somewhere in the Saunderson classifications on which we shall have further comment below.

The defendant does not dispute the 7,500,000 timber land classification, except to point out that it lacked both a market and transportation in 1859, and hence was then pretty much a useless white elephant. We think the views of the parties on timber land reflect, not so much a difference in the realities of the situation, but rather a difference in attitude. The realities seem to be that there was rich timber growth on seven and a half million acres of the subject lands, that it was non-exportable in 1859, and that there was considerable local use of the timber for building, fencing, and later placer mining. We therefore accept Mr. Saunderson's classification of 7,500,000 acres as timber land.

At this point it may be well to list briefly the defendant's entire classification. It was as follows: waste land, 7,858,161 acres; grazing land, 2,614,096 acres; grass land, 921,138 acres; and arable land, 611,605 acres. These figures are adjusted to the stipulated total of 12,005,000 acres. Counsel for the defendant certainly could not object to Mr. Saunderson's post-stipulation classification of a million acres of waste land as excessive, because the defendant puts almost 8,000,000 acres in that category. Mr. Saunderson's testimony was solidly based upon the actual extensive forest survey made by the government.

Counsel for the petitioner argues forcefully in his brief, six months after the give and take of the hearings, that not only Mr.

Saunderson's 50,000 acres, but the further necessary adjustment of 245,000 acres, or a total of 295,000 acres, should all be taken from Mr. Saunderson's pre-stipulation figure of 1,050,000 acres of waste land. The counsel for the petitioner offers with his brief his proposed finding of fact No. 35: that the waste land was only 755,000 (1,050,000 minus 295,000) acres, to which defendant's counsel poses the objection that the general stipulated acreage adjustment to the 12,005,000 acreage figure should not all be taken from the one classification which the petitioner recognizes as worthless. The argument of defendant's counsel, we think, is well taken. When we consider this argument of unfairness in the light of Mr. Saunderson's post-stipulation estimate of a million acres of waste land, we are of the opinion that 1,000,000 acres of the subject lands should be classified as waste land, and we so classify it.

It will be noted that we are generally accepting the petitioner's estimates in classification. We have done so because, though apparently radically different from those of the defendant's, the actual differences between the parties are relatively small ones. We would also note that, though we have generally followed the petitioner's classification figures, we have in each instance considered any objections posed by the defendant.

The Commission accepts the petitioner's classification of 350,000 acres of the subject lands as crop lands. The figure is soundly based on recent agricultural statistics of the Montana counties containing

the fertile valleys of the subject lands most suitable for growing crops. In addition, it strikes us as obvious that the clear term "crop land" is preferable to the larger and less specific classifications by the defendant: "grass land" (921,138 acres), and "arable land" (611,605 acres). We are buttressed in our opinion that the total of 1,532,743 acres classified by the defendant as grass land and arable land includes at least the 350,000 acres of crop land by the fact that counsel for the defendant also accepts the 350,000 acre classification. To consider the proposition of fairness, which we must and do at each turning point of the case, the Commission feels that it would be less than fair to take the 245,000 acre adjustment to stipulated total acreage, or any part of it, from the petitioner's 350,000 acre classification as the highest priced land, crop land.

Now we come to the final classification of range land. We have accepted Mr. Saunderson's acreage classifications in all other categories, as we have shown above. We could find no sufficient reason, based on fact or evidence, to disagree with Mr. Saunderson's waste land classification, though this was urged by counsel for the petitioner in his brief.

The Commission is logically bound to apply the remainder of the adjustment to the stipulation between the parties, amounting to 245,000 acres, to the range land category. Mr. Saunderson's "estimate" of

3,400,000 acres of range land is precisely that, an estimate. We say this not in any criticism of Mr. Saunderson, but rather to point out that the figure on this type of land could be nothing more than an estimate. The 3,400,000 acres is what is left after subtracting the well-founded figures for the other categories (forest, waste, and crop) from the estimated total of 12,300,000. The Commission feels that we, like Mr. Saunderson, must arrive at the range land acreage through elimination by analysis of the acreage of the other land types, as stated above. Or, to repeat, there seems no alternative to the application of the entire 245,000 acre adjustment, still inescapable because of the stipulated total, to the range land. Indeed, Mr. Saunderson himself states in his report, in the paragraph following his ranch land estimate, that perhaps as much as half of the timber land could have been regarded as range land concurrent with use for timber production. In his testimony, Mr. Saunderson described range land as a considerable acreage of foothill land in the lower reaches between the valleys and the forest land. The Commission classifies 3,155,000 acres of the subject lands as range land.

The Commission classifies 7,500,000 acres of the subject lands as timber land; 1,000,000 acres as waste land; 3,155,000 acres as range land, and 350,000 acres as crop land.

Large Sales

The petitioner offered the details of five large sales as perhaps the main feature of its valuation evidence. These sales, though all

large as compared with the usual 160-acre farm unit, vary greatly in size, running from 16,000 to 200,000 acres. The five sales took place from 20 to 40 years after the Homestead Act of 1862, which made the subject lands part of the public domain and restricted sales for the most part to 160-acre units.

One of the five sales, the Northern Pacific Railway Company sale to the Big Blackfoot Milling Company, concerned land within the subject tract. The railroad entered into the usual interest-bearing contract of sale, finally dated July 15, 1901, with Marcus Daly, a well-known dealer in real estate in the Missoula valley area and other parts of the subject lands. Daly had assigned his interest in the contract to the Big Blackfoot Milling Company on February 9, 1899. The Big Blackfoot area was finally determined at approximately 148,770 acres, and the final selling price of approximately \$315,220.00 reflected an average price of \$2.12 per acre. The Big Blackfoot land was choice timber and range land within the Clark Fork drainage area and right on the Northern Pacific Railway. In Mr. Saunderson's opinion, the Big Blackfoot sale supports a valuation of a dollar an acre for all the timber land in the subject tract.

The second large sale offered by Mr. Saunderson, a railroad grant sale 20 years before Big Blackfoot, transferred 149,010 acres of range and crop land in the Palouse area of Whitman County in eastern Washington to the Oregon Improvement Company for \$387,427.09. President Villard

of the Northern Pacific also headed the Oregon Improvement Company. The land was sold at \$2.60 an acre, the figure at which the Northern Pacific priced all its grant lands in the 1880's as a matter of policy.

There is no doubt that the Oregon Improvement Company got a large tract of choice range and crop land in this sale. The Palouse land is considered prime farm land, one of the best wheat-growing areas in the United States. Mr. Saunderson testified that the country in and about Whitman County was developed earlier than the subject lands.

It was Mr. Saunderson's opinion that the Oregon Improvement sale at \$2.60 an acre in 1881 could reasonably be thought to reflect \$2.50 and \$1.40 an acre respectively for all the crop and range land (3,505,000 acres) embraced by the subject lands. As some kind of a measure of stability, Mr. Saunderson introduced a graph with accompanying list of figures showing national price levels from 1855 to 1960. The graph and list indicate that the price level for the commodities chosen by the U. S. Bureau of Labor Statistics, without regard to changes in the commodities chosen and over-all adjustments of the price level mathematical calculations from time to time, was 39.7 in 1859, 47.9 in 1881 (Oregon Improvement sale), and 35.9 in 1901 (Big Blackfoot sale).

We note in passing that the two sales just discussed may be considered the chief foundation for Mr. Saunderson's appraisal of 11,005,000 acres of the subject lands; \$2.50 an acre for crop land; \$1.40 an acre

for range land; and \$1.00 an acre for timber land. To be sure, he offered three other large sales in Canada, which will be discussed below; but it seems reasonable to suppose that the other sales, the supplementary approaches to value, and most of Mr. Saunderson's other testimony on value were offered for the purpose of corroborating values already set up in his study of the Big Blackfoot and Oregon Improvement sales.

Mr. Saunderson stated in his report that he regarded such large sales as wholesale ones. He also thought that, due to the levels of the Bureau of Labor Statistics graph discussed above, comparable sales and other market data might be used throughout the 45 year period of his appraisal studies without adjustment for the passage of time. Aside from the fact that the graph is somewhat meaningless in and of itself for the measure of over-all national prices, there is no possibility of ignoring the fact that there actually exists no "average" state. It is hard to see how the B.L.S. chart (which, incidentally, has never reflected prices for land) can give any insight as to the value of real estate in Montana in 1859. In addition, Mr. Saunderson's implication of stability, possibly over the same 45 years of wholesale prices for the big sales and the tract itself had rather heavy going on cross-examination.

Defendant's counsel was able to help Mr. Saunderson remember that if the prices he constructed were reasonable because they were wholesale, they would also be subject to certain costs that would arise when the buyer at Mr. Saunderson's wholesale price sought to resell at retail.

A few of the charges that Mr. Saunderson was able to remember, and for which he had made no allowance, were interest charges on vast sums over a long span of years; taxes over the same period, possibly 45 years, that it took to dispose of the wholesale purchase at retail; fees to real estate agents for disposition of the portions sold at retail; very substantial sums needed for surveying, the cost of which would of course be borne by the seller; and very substantial subtractions from the land mass itself for public roads, school houses and various other public buildings, and large land grants for transportation other than railroads.

On the whole, the Commission finds it more meaningful (than the generalities of the B.L.S. averages and the "wholesale" land concept) to note some of the peculiarities of the sales themselves. The Big Blackfoot sale took place more than 40 years after 1859. In that 40 years, vital changes had come to Western Montana. For example, there were no facilities at all for bulk transportation in 1859. At the time of the Big Blackfoot sale, which contained some of the richest timber land in the subject tract, there was a railroad in being, and the Big Blackfoot property was right on it. Another important transformation during the more than 40 years was the development of Montana as the home of a major lumber industry; and there had been no lumber industry in Montana in 1859. Beyond these obvious and decisive differences brought about by the passage of 40 years, and assuming that bulk transportation

facilities were excellent in the subject tract and that there was a large lumber industry there in 1859, we are still left with some doubt of the wisdom of measuring the value of 7,500,000 acres of timber land by a large fraction (about one-half) of the price of the best two percent of that acreage. We can't help but think, aside from the facts of no transportation and no lumber industry, that a good part of the remaining 98 percent of the timber land was worth a lot less in 1859 than one-half of the cost of the prime property sold to Big Blackfoot.

We now turn to the Oregon Improvement sale of 149,010 acres in Whitman County, Washington, for \$387,427.09, or \$2.60 an acre. Since this was a sale of mixed range and crop land, Mr. Saunderson felt the selling price might be reflected as fair market value of the range and crop lands of the subject tract at \$1.40 an acre and \$2.50 an acre respectively. Here again, our remarks on the wholesale price concept and the B.L.S. chart, set forth above, will apply. And here again we shall not discuss these generalities. We shall, as in the Big Blackfoot case, confine ourselves to the specifics of the sale in question.

First of all, it seems to the Commission that any resemblance between the price of the Oregon Improvement sale and fair market value is merely coincidental. There are two reasons for this view: (1) President Villars of the Northern Pacific sold the land to President Villars of Oregon Improvement; and (2) the per-acre price of \$2.60 was one dictated, not by the contending forces of a free economy, but rather

by the policy of Northern Pacific in the 1880's that all railroad grant land sold by the railroad was to be sold for \$2.60 an acre.

Whatever qualifications might have applied to the Oregon Improvement sale in 1881, it was sold under what now would be considered an administered price, further affected by a possible conflict of interest.

The Washington sale embraced as crop land the large, flat Palouse tract, some of the best crop land, notably wheat land, in the United States. Further, the Whitman County lands were contiguous to a railroad almost finished, something more than the gleam in the eye of Governor Stevens in 1859. The sale was in 1881. The Northern Pacific was finished in 1883. To set a value on the rather indifferent agricultural lands of the subject tract in 1859 of 96 percent of the 1881 selling price of the fine agricultural land in Whitman County, under the very different circumstances brought about in the passage of more than 20 years, seems to the Commission to set that price at an altitude that no seller could have hoped to reach for the crop land in the subject tract in 1859. As for the range land, Mr. Saunderson's reflection of \$1.40 an acre, a little more than half the price of the Oregon Development land 22 years later, was also too high for the range land in the foothills of western Montana in 1859. Actually, the real time span as distinguished from mere chronology, was more than 22 years; for, as Mr. Saunderson testified, the Washington land was surely more developed in 1859 or 1881 than the Montana land, due no doubt to its geographical position, and to greater

desirability and intrinsic value as land. Also, as we have heard several times in the record of this case, the free range system, legal in Montana in 1859, a handicap not suffered by the Washington seller in 1881, made range lands in the subject tract all but worthless at the critical date. The Commission is of the opinion that the range and crop land of the subject tract could have been purchased for a small fraction of the \$2.50 and \$1.40 prices set by Mr. Saunderson in a sale of the subject lands in 1859.

The remaining three large sales offered by Mr. Saunderson were in Alberta, Canada, generally north of the subject lands. Two of these sales were not large in comparison with Big Blackfoot or Oregon Improvement, but may be classified as large in relation to the usual 160-acre limitation on sales of United States public lands.

The first Canadian sale we consider is one of 16,000 acres by the government to the Cochrane Ranch Company at \$1.25 an acre of Crown lands which had been under lease to the buyer. The 16,000 acre tract was about 12 miles north of the American-Canadian border. The character of the land was in the main foothill grassland, or range land, with timber stands on its higher slopes. This sale was in May, 1895, 36 years after 1859. Mr. Saunderson offered it as a reasonable basis for a comparable valuation of the range lands (lower mountain lands) of the subject area in 1859; or, in other words, a kind of corroboration of the \$1.40 price for range land in the subject tract, which he had already arrived at

from the Whitman County sale. The land was about 20 miles south of the Canadian Pacific Railroad right of way.

Although Mr. Saunderson testified that there is a time lag in the Canadian economy as compared with ours, the fact seems to be that the time lag was the other way around in 1859, due in great part to the fact that Alberta had an organized government in 1859 (and a much better organized one in 1895) than did Montana in 1859.

Mr. Saunderson offered a second Alberta sale in 1896 by the Alberta Railway and Coal Company to James A. Cunningham at one dollar an acre. This again was range land, and again Mr. Saunderson thought it comparable to the range land in western Montana. Or, as in the Cochrane sale, it may be said that Mr. Saunderson offered the Cunningham sale as another general corroboration of the \$1.40 an acre price he had fixed for range land in the subject tract. The observations we made on governmental organization and economic time lag, proximity to the Canadian Pacific Railroad right of way, and the late date of the Cochrane sale, seem equally applicable to the Cunningham sale.

The largest Canadian sale, if it was a sale, was based on a conditional agreement between the Alberta Railway and Irrigation Company and Jesse Knight in July, 1901, more than 42 years after March 1859. Mr. Saunderson classified the land, as he did that of his other Canadian sales, as range land; but there is a difference. The price mentioned in Mr. Saunderson's report was \$2.00 an acre, and the contract appears to have been for 200,000 acres. In his testimony Mr. Saunderson expanded a bit:

his information on the transaction, which he believed concerned land north of the town of Shelby and at about the same latitude as the Cunningham sale, was from two books, The Jesse Knight Family and The Galts, Father and Son, which "indicated" \$1.50 an acre. There was no consideration mentioned in the deed. As we mentioned above, there is some doubt whether this was a sale, and also some doubt as to the consideration. Like the transaction and consideration Mr. Saunderson reported his opinion based on them is also less than firm. Although Mr. Saunderson, as we have said, had extracted his land prices from the Big Blackfoot and Oregon Improvement sales, he relied on the Knight matter to escalate his range land value to \$1.50 an acre. We have explained in detail our reasons for doubt that Big Blackfoot and Oregon Improvement justified anything like the values Mr. Saunderson put in the subject lands. We certainly do not see any reason to change that opinion because of Mr. Saunderson's reading in the Knight case.

We are discussing land in western Montana in 1859. Montana in 1859 was a remote and almost isolated part of the Washington Territory, and had no government of its own of any kind before 1864 when the Montana Territory was established. Indeed, there was no effective political structure until 1889. Montana became the forty-first state that year. As we stated in our discussion of the Cochrane sale above, Alberta had an organized government as a District of the Northwest Territories in 1859. And by the time of the Canadian sales used by Mr. Saunderson,

Alberta was a thoroughly organized political entity, to become formally a Province of the Dominion of Canada only four years after the Jesse Knight transaction in 1905.

The defendant was unable, as was the petitioner (except for Big Blackfoot) to find any large sale within the subject lands. The defendant did find what appears to be a large sale in the Utah Territory, although the evidence of an actual sale is shaky. The transaction did, however, concern land situated in the same type of undeveloped economy as Montana in 1859, and the transaction took place, not later (as was the case with sales offered by the petitioner), but actually three years earlier, in 1856 Mr. Fenton testified, and his evidence bears him out, that he confined himself to matters, comparable sales for the most part, that a buyer would actually know of in 1859.

On December 23, 1856, a deed was recorded purportedly transferring a tract of about 17,600,000 acres in Sanpete County, Territory of Utah. The grantor was Siegerouch, or Arrowpine; and the grantee was Brigham Young, Trustee. The stated consideration was \$155,000.00, or about nine cents (\$0.088+) an acre. Mr. Fenton was of the opinion that the \$155,000.00 price was probably a reflection of the intrinsic value of certain relatively small areas where water and forage were plentiful and access not difficult. He may have felt that the nine-cent average acre price, based on but a small part of the Utah land, confirmed his own opinion that almost 8,000,000 acres of the subject lands was, like most of the Utah tract, really waste land in 1859.

The defendant offered another Utah sale of the large category in the Utah Territory in 1856. A copy of the deed was found in the pamphlet "Division of Land in Pioneer Days" (as was the Brigham Young sale discussed above). According to the source, 256,000 acres were sold for \$8,000.00 on August 3, 1855, by James Bridger and Louis Vasquez to the Mormon Church. The transfer included unspecified personal property. The source indicates some doubt of the validity of the title of the grantors. On the other hand, the very fact that such a transfer took place is evidence that the Mormon Church accepted the validity of the Bridger-Vasquez title; and the Mormon Church was not known for any weakness in business affairs. Furthermore, the same astute grantee, as well as the grantors, must have thought that the price of three cents an acre for a large tract of wild and mountainous Utah land was adequate in the Utah of the 1850's. The same may be said of the parties to the Sanpete County sale, of broadly similar land the same year in the same general area at nine cents an acre.

A third indication of a large sale to Mormon grantees was offered by the defendant in the form of a letter from Amasa Lyman to Mormon President Richards. The latter told of the proposed purchase in 1851 of 80,000 acres at about ninety-seven cents an acre or 100,000 acres at about seventy-eight cents an acre, from the Williams Ranch in San Bernardino, California. The defendant offered evidence of resale of

25,000 acres of this land in 1858 for \$18,000.00 (\$0.72 an acre) to extinguish the mortgage. Without pretending to absolute accuracy in the matter, as indeed the defendant did not, the probability seems strong that the larger tract was the one purchased. If this be the case, as it seems to us it is, the necessary conclusion is that there was fine range and crop land available in large tracts, situated in a more moderate climate than Montana, even before 1859, at less than eighty cents an acre. This is certainly somewhat less than the \$1.40 an acre for range land, and the \$2.50 an acre for crop land, that Mr. Saunderson was able to justify to himself due to the Big Blackfoot and Oregon Improvement sales.

Small Sales

The only pre-1859 sale within the subject lands was that of the St. Mary's Mission to Major John Owen in 1850. It appears that even Major Owen, who was the only established settler in the Flathead (subject) lands, occupied his land without the benefit of title. He was put to great trouble about 20 years after 1859 to try to perfect his title after settlers began to arrive in numbers and after the sudden life and the beginning of the slow death of the Montana gold strike. The evidence is contradictory as to whether Major Owen bought (a) the mission land, or (b) only the improvements. The greater probability seems to be that he bought only the improvements, for the good reason that the grantor Mission had, to say the least, a dubious title to the land. In any case, his purchase price (\$250.00) in 1850 is not much help in valuation of

the land as land, because it certainly included, even if it was not limited to, all the buildings and personal property he received.

There was, then, no evidence of small sales in the subject lands in 1859 or any year near 1859. Since both appraisers felt that a study of small sales was necessary to a full coverage of their respective assignments, both decided on studies of such sales.

Mr. Saunderson offered index sales from the time recording began in the valley counties of the subject lands. It should be noted that though the sales offered in evidence always have a date after recording began in the particular county, that date is the date of recording, and as likely as not the sale took place before any records were kept or any surveys made. In other words, the following discussion of land sales, with the exception of those in the late 1880's and after, show only (assuming that the stated consideration was actually paid) what some buyer was willing to pay for small tracts of choice valley land on or before the dates the sales were recorded. The small farm sales appraisals, or leases in evidence were in Missoula, Flathead, Deer Lodge, and Ravalli (Bitterroot Valley) Counties.

It is not seriously disputed by either party in this case that the rough, undeveloped state of the subject lands in 1859, and for many years thereafter, would make any part of the lands, with the exception of the extremely small acreage in the fertile valleys around Missoula, something less than tempting to a prospective purchaser.

The petitioner furnished the details of 27 sales in Missoula County totaling 2,330 acres of unsurveyed land, mostly in tracts of about 160 acres where acreage was stated, dating from 1869 to 1876. The consideration for a quarter section, when more than merely nominal, was from \$75.00 (\$0.47 an acre) to \$12,000.00 (\$75.00 an acre). For a better understanding of the situation, it may be well to eliminate these two extremes, since they are out of line with the other 25 sales. Save for the highest and lowest sale prices then, the quarter sections sold at \$400.00 (\$2.50 an acre) to \$1500 (\$9.37 an acre), with a median price of \$500.00 (\$3.12 an acre.)

Also furnished by the petitioner were the details of sales of surveyed land. In Missoula County there were 20 sales, a total of 3200 acres, from 1869 to 1874. These were all quarter sections, and they were priced from \$100.00 (\$0.63 an acre) to \$1500.00 (\$9.40 an acre), or at an average price of \$3.75 an acre and a median price of \$3.12 an acre. Also in Missoula County there were 15 sales by the Northern Pacific Railway Company from 1885 to 1889, with a total area of 4,853 acres. Of course these were selected tracts on or near the railroad. Areas varied from 160 to 560 acres; and the prices varied from \$2.00 to \$6.00 an acre. The average per-acre price was \$3.25. The median per-acre price was \$2.00.

In Flathead County, there were appraisals of 57 allotments embracing eighty-one 40-acre tracts making a total of 3,240 acres patented to members of the Flathead Tribe. The appraisals were by a special agent of the Secretary of the Interior. The appraised land was within the

Stevensville Township. Some of the appraised units had rich soils, others were barren; some had good timber stands, others had no timber; and some had ample water supply while others were arid. But the appraisals were made in 1890, and all had one favorable characteristic, unknown in 1859: they were all contiguous to railroad or good public road transportation. The appraisals were made in accordance with the direction of the United States Congress, expressed in the Act of March 2, 1889 (25 Stat. 871), to sell the land quickly at good prices, as distinguished from a higher price that the land might bring were it not for the admonition to sell it quickly. To put it differently, the special agent appraised these units at prices which he believed the settlers could afford, rather than at the highest possible selling price. The results of the appraisals were per-acre prices from \$5.00 to \$20.00.

Mr. Saunderson also provided details of 50 land leases in 1892 in Flathead County. The leases embraced a total of slightly more than 8377 acres of good farm land (mostly in 160-acre units) with excellent transportation facilities. The total of the annual leases of the 8377 acres was \$5580.39, an average of \$0.67 an acre. The price range of the leases was from \$20.00 (\$0.13 an acre) to \$176.00 (\$1.10 an acre). The median figure on the leases was \$120.00 (\$0.69 an acre). We have studied these leases and Mr. Saunderson's capitalization of them, as we have small sales many years after 1859, because they were within the subject lands. As to the leases, whatever may have motivated them, there is no doubt that the one vital element of a lease, the lessee, was absent

in 1859. There were certainly no lessees, or potential ones, to be found in the subject lands in 1859; and hence there was no demand for rental land in 1859.

Mr. Saunderson furnished details of 17 sales of the period, 1865-1873 in Deer Lodge County. One was a bit over 151 acres, and all the rest were 160 acres. The total area, 2711 acres, sold for \$8,115.00. The price range of the unit sales varied from \$100.00 (about \$0.69 an acre) to \$1200.00 (about \$8.25 an acre). The average price was \$3.06 an acre, and the median price was \$3.12 an acre.

There were also 14 railroad sales in Deer Lodge County between 1883 (when the Northern Pacific was completed) and 1889. These railroad sales embraced areas varying from 160 acres to 2,080 acres, at prices per acre from \$1.00 to \$4.75. The total area of the 14 tracts was 9,237.73 acres, and the total price \$27,421.32. The average sale price was \$2.97 an acre. The median per-acre price was \$3.00.

Mr. Saunderson also gave the details of 17 sales by Marcus Daly in the political subdivision of the Bitterroot Valley known as Ravalli County, near Hamilton, Montana. Mr. Daly, whom we had occasion to mention in our references to the Big Blackfoot Milling Company sale, was to some extent able to find a legal stratagem which widened somewhat the 160-acre restriction of public land sales: the purchase by himself, his employees, or his friends of adjoining tracts of 160 acres or less and combining several of such purchases into an integrated whole. Some of the 17 Ravalli County sales were of such integrated totals. Marcus

Daly, as our further comment will set forth, had a sure instinct for finding under 160-acre units of potentially high intrinsic per acre value, and assembling over 160-acre combinations of high per-acre intrinsic value in contravention of the acreage limitations envisaged by the pre-emption and homestead laws. The 17 Marcus Daly sales totaled a bit over 3,255 acres, and his total selling price was \$55,050.00. His lowest per acre selling price was \$2.50; his highest, \$40.00; his average, \$16.91; and his median sale price was \$10.00.

By way of comment on Mr. Saunderson's collection of small sales in the subject lands, we quote him at page 64 of his report: "The search of Montana County Clerk and Recorders offices yielded mostly small sales that are not indicative of early values of large acreages of undeveloped lands." And, as he testified at page 397 of the Transcript, after stating that most of the index sales included buildings and other improvements: "I have not relied on them in any important way in support of my appraisal process."

These small sales, including the Flathead County leases, comprised about 37,200 acres, less than one-third of one percent of the subject lands (.32%), though they were in many cases selected from land which had enjoyed more than 40 years of development after 1859. The Commission agrees that they lend little support to his appraisal process and little corroboration to the per-acre prices Mr. Saunderson had already extracted from the Big Blackfoot and Oregon Improvement sales.

As we remarked above, there had been no sales in the subject lands in 1859. So Mr. Saunderson, in search of sales, departed from the critical date, sometimes over 40 years in time. Mr. Fenton, on the other hand, felt restricted as to time in his sales research to 1859 or earlier; but he, too, in order to find any sales as a research base, had to break away from 1859 Montana: in Mr. Fenton's case, the departure was in distance, sometimes many hundreds of miles, from the subject lands.

Mr. Fenton studied a great number of sales of public lands in the first half of 1859. The sales took place throughout the central and western areas of the United States, and in other sections of the country. These sales were for the great part in quarter sections: but the buyers, with the help of friends or relatives, usually managed to checkerboard the area. The typical case then reveals a buyer who paid for 160 acres enjoying and using not only that but a good part of all the lots on four sides of his land for free grazing or even free agricultural use. He studied the sales of about 2,000,000 acres in the first half of 1859 ranging from Florida to Nebraska, and westward to the Pacific. He felt that, by combining the statistics of all these sales, he could hope to establish an actual, factual, contemporary sales statistical basis for an opinion on the value of crop and range areas of the subject lands. He extracted the actual sales of 2,080,798 acres of public lands for \$1,031,896.00, at an average price of about fifty cents an acre (\$0.4995). He was of the opinion that the fifty-cent price

was the average upper limit that the purchaser of the subject lands could hope to realize from the resale of the agricultural useful portion of the subject lands.

Supplementary calculations

The Commission feels that most of the petitioner's case, once acre prices had been extracted based on the Big Blackfoot and Oregon Improvement sales, was supplemental to them, or corroboration, really secondary to those two large transactions. But Mr. Saunderson himself seems to offer other calculations as supplemental, and we shall discuss those in some detail now.

It will be remembered that Mr. Saunderson furnished the Commission details of 50 leases in Flathead County: rental of about 8377 acres in 1892 at \$5,580.39 a year. Capitalized at 8%, these rentals gave Mr. Saunderson a per-acre figure of \$5.50. Admittedly, this land was in units of small acreage, was some of the best land in the entire subject tract, had good transportation immediately convenient, and the rentals were over 30 years later than 1859. With all this in mind, Mr. Saunderson thought the \$5.50 should be halved, and was of the opinion that the resultant \$2.75 an acre was some justification for the \$2.50 an acre be allotted to crop lands. The Commission takes due note of this argument; but we are more impressed by Mr. Fenton's: There was absolutely no market for land rental in 1859. It would not be too much to say that the Commission is of the opinion that this rental evidence in 1892 is somewhat irrelevant in deciding the value of the subject lands in 1859.

Mr. Saunderson and his associates also made a calculation of the number of cattle supportable on the range lands, making adjustments for inability to support cattle in Montana for part of the year because of the rigorous climate. His figure here was 151,078 head of cattle cow year long (CYL): that is, the mathematical equivalent of 151,078 the entire year after adjustments. This is, of course, theoretical, as is his \$30 figure per CYL. Nevertheless, Mr. Saunderson applied the \$30 figure to the CYL 151,078 figure, and produced a theoretical total of \$4,532,340.00 for the range land, as corroboration of his \$4,760,000.00 figure already arrived at by putting \$1.40 on the range land (extracted from the Oregon Improvement sale) and applied to his early estimate of 3,400,000 acres of the range land (since adjusted to 3,155,000 acres, as we have explained in detail above). Once again we have duly noted the method and the mechanics of this CYL theory as applied to that part of the subject tract Mr. Saunderson classified as range land; but, here again, we are impressed by Mr. Fenton's counter argument: due to the free range system, there was absolutely no demand for range land as such; there was no demand for cattle in anything like the scope of more than 150,000; and, even if there were, for the sake of argument, demand for a large acreage of range land and a large number of cattle, even as large as 150,000, the indubitable fact remains that there were no transportation facilities for any considerable number of cattle in or out of the subject lands in 1859.

To corroborate his valuation of forest lands, Mr. Saunderson applied the 1900 average of \$1.18 per thousand (board feet in western Montana), modified to \$0.40 per thousand as adjustment for the 40-year time span to 27 billion estimated board feet of timber stands in the subject tract in 1859. This is a second estimate by Mr. Saunderson: he and Mr. Host had previously, in calculating the forest acreage, estimated some 32,026,000,000 board feet of standing timber. At any rate, by applying the \$0.40 figure to 27 billion board feet, Mr. Saunderson was able to produce the figure of \$10,800,000.00 as the value of the forest lands measured by stumpage estimates. This was more than \$3 million in excess of Mr. Saunderson's valuation calculation of his estimated seven and a half million acres of timber land at a dollar an acre, or \$7,500,000.00. To this, as to the other supplementary methods of justification used by Mr. Saunderson, Mr. Fenton pointed the blinding light of reality in 1859. There was absolutely no evidence of any demand for timber grown in the subject lands in 1859, except for the very small amount used locally; and, in the absence of any evidence to the contrary, the timber used locally wasn't paid for at all. In addition, and again assuming for the purpose of argument that Mr. Saunderson's stumpage volume and figures were right, and that there was demand at \$0.40 a thousand board feet, again the indubitable fact remains: there were absolutely no transportation facilities for bulk timber from the subject lands in 1859. We are reminded of another

case decided by this Commission on the value of nearby timber land. In Crow Tribe v. U. S., 6 Ind. Cl. Comm. 98, 112, we said, at page 122:

. . . There is no substantial evidence that the timbered area of the ceded tract at the time of the cession or for a long period thereafter was ever in demand except for local use. The timber was predominately lodgepole pine which for years was to remain without commercial value. The timber of the ceded area was largely inaccessible at the time of the cession and for many years thereafter until transportation became available to the various parts of the ceded area. The sale of the timber lands to the Big Blackfoot Milling Company, many years after the cession following the construction of the railroad, and many miles distant from the ceded tract consisting of timber substantially better than that on the ceded lands, is hardly comparable. Any increment to the value of the lands because of the presence of timber as of the valuation date would be speculative and nominal.

Mineral Enhancement

By minerals in this case we mean gold. There would be discovery of silver, copper, and lead; but all of this was much later than our valuation date.

The general trend of the evidence in this case indicates that there had been (1) discovery of traces of placer gold in the subject lands in 1852; (2) that the discovery had received little or no publicity or interest for some years after 1852; and (3) that there was no measurable extraction of gold in the area until 1862 (\$500,000.00).

Apparently the first really serious search for gold in the subject tract was undertaken by Granville Stuart in 1860. As Mr. Stuart said, even if the early discovery stories were true, they did nothing to

hasten the day when substantial amounts of placer gold might be mined in Montana. He and his brother found what they considered a profitable gold strike in 1861, at Willard's Creek, and they gave wide publicity to their good luck. By 1862, a number of gold hunters began arriving in the Deer Lodge area; and that year, 1862, was the first one that the Montana Bureau of Mines published a figure (\$500,000.00) on gold extraction. Figures were published by the bureau on silver, copper and zinc, in 1869, 1882, and 1905, respectively. But, for the purpose of this case, gold is the only mineral for which any value is claimed. As to the chronology of events, set forth above, we think it useful to quote Mr. Saunderson, at pages 45 and 46 of his valuation report, as follows: "It was known as early as 1852 that there was placer gold on Clark Fork River, and probably it was known on the valuation date (1859) that there was placer gold on Flint Creek, in the general location of Phillipsburg, Montana, and in the Butte area. Placer gold mining began in both of these areas soon after 1860." The book Contributions to the Historical Society of Montana, Vol. II, p. 63, tells us " * * * The first paying mines discovered in Montana were in Willard's Creek in 1862." There was no evidence in this case of any operating gold mine before 1862, though Mr. Fenton supplied some evidence of preparation for placer mining in 1861. There is no evidence of any measurable gold extraction in the subject lands until years after March 9, 1859.

Mr. Charles C. O'Boyle, a consulting geological engineer, testified at some length for the petitioner to arrive at theoretical net profit and royalties from gold extracted in Deer Lodge County between 1862 and 1869. Mr. R. W. Raymond, U. S. Commissioner of Mining Statistics, stated in his book, Statistics of Mines and Mining in the States and Territories West of the Rocky Mountains that gold mined in Montana through 1869 was valued at \$24,270,000.00. Mr. O'Boyle adopts this figure, taking off a million for gold extracted in French Gulch outside the subject lands, and takes the figure \$23,270,000.00 as the absolute and only foundation to his calculations of toyalty, which we shall discuss presently. With all due credit to Mr. O'Boyle's source, R. W. Raymond, such a figure was reached by Mr. Raymond, as it could only be reached, by digesting huge amounts of data from a large number of claims, many of which kept no figures, and more of which did not keep them accurately. We think it necessary to stress again that Mr. Raymond's figure is the basis of all Mr. O'Boyle's calculations, and that that figure (\$23,270,000.00) is at best an educated guess.

To begin, Mr. O'Boyle explained that, historically, some land owners, sometimes a government, demanded from prospectors on their land a percentage of the value of minerals extracted from the land, and that such a royalty would customarily be 25% of the gross value or 50% of the net profit.

In addition to Mr. Raymond's \$23 million figure and information on royalty customs, Mr. O'Boyle testified that statistical studies of gold mining in Montana in the 1862-1869 period showed an average man-day yield of \$12.09, and an average man-day cost of \$5.40, or 45 (44.7) percent. Simple application of these figures to the assumed gross production of \$23,270,000.00, gives a cost of \$10,401,690.00, and a net profit of \$12,868,310.00. Applying what Mr. O'Boyle testified were the customary royalty rates to the assumed gross production and the derived net profit, 25% of the gross would be \$5,817,500.00, and 50% of the net would be \$6,434,155.00. It came as no surprise that Mr. O'Boyle chose the latter figure as the amount that should be added to the value of the subject lands as "mineral enhancement". We are a bit surprised, however, that Mr. O'Boyle thinks that the rough equivalence of the two figures (50% of the net is only about \$600,000.00 more than 25% of the gross) demonstrated the truth and accuracy of the two royalty methods, and of his own figure for mineral enhancement. All that is really demonstrated by the O'Boyle arithmetic is that 25% of 100% (25%) and 50% of 55.3% (27.65%) are roughly equivalent: in other words, he has proved that two figures (25 and 27.65) that are roughly equivalent themselves, bring roughly equivalent results when applied to a number (of dollars, men, sheep, cattle, or any other unit).

We do not doubt the honesty of Mr. Raymond's educated guess, or the testimony of Mr. O'Boyle that 25% of the gross or 50% of the net

had historically been used to measure royalties for gold extraction to a landowner. What bothers the Commission is something else: there is no evidence before us, absolutely none, of any measurable gold extraction from the subject lands prior to March 8, 1859; or, to put it another way, as Mr. Saunderson did, "Placer gold mining began in both these areas (Phillipsburg and Butte) soon after 1860."

It is nevertheless evident to this Commission that on March 8, 1859, the discovery of placer gold was known to a substantial part of the small population of the subject lands, and to some persons elsewhere, and that a well-informed buyer of the subject tract on March 8, 1859 would have expected to pay somewhat more for the tract than would have been the case if gold had not been discovered there. But we are of the opinion that the extra amount the well-informed buyer would have expected to pay would have been but a fraction of the petitioner's claim for enhancement of more than \$6 million.

Value

The petitioner has valued the subject lands as follows:

<u>Type</u>	<u>Acreage</u>	<u>Per Acre Price</u>	<u>Value</u>
Timber land	7,500,000	\$1.00	\$7,500,000.00
Waste land	1,050,000	--	--
Range land	3,400,000	1.40	4,760,000.00
Crop land	350,000	2.50	875,000.00
Mineral enhancement			<u>6,434,155.00</u>
Total			\$19,569,155.00

The defendant has valued the subject lands as follows:

<u>Type</u>	<u>Acreage</u>	<u>Per Acre Price</u>	<u>Value</u>
Waste land	7,858,161	\$.01	\$ 78,581.61
Grazing land	2,614,096	.10	261,409.60
Grass land	921,138)	.25	383,185.75
Arable land	611,605)		
Total			\$723,176.96

Faced with such a drastic difference in the interpretation of the same factual situation, we repeat part of a former opinion by this Commission. Prairie Band of Potawatomi Indians, et al v. U. S., 4 Ind. Cl. Comm. 409, 460, 469-470; Aff'd. 143 C. Cls. 131, 1958; Cert. den. 359 U. S. 908, 1959.

The most difficult problem in this case is to determine the fair value of those 5,909,565 acres of land as of June, 1846 -- over a hundred and ten years ago. The petitioners contend for a value of \$4.00 per acre or nearly \$24,000,000, while the defendant contends for a value of 45 cents per acre for the Iowa land and 35 cents per acre for the Osage river land, or a total value of \$2,568,347. Obviously, even if fruitful, it would be impossible to reconcile these extremes of value between petitioners and defendant, and we shall not attempt to do so.

The Commission has given serious and detailed consideration to all the matters discussed above, the remote date of the cession and the enormous size of the ceded tract. Taking all these matters into consideration as well as the findings of fact herein made and the record as a whole, this Commission concludes that the fair market value of the subject lands, containing 12,005,000 acres, including mineral enhancement, as of March 8, 1859, was \$5,300,000.00. The Commission further

concludes that the consideration of \$593,377.82 was unconscionable.

The petitioner, The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, as successor to the Flathead, Kootenai (Libby-Jennings Band) and Upper Pend d'Oreille Tribe, is entitled to recover from the defendant the sum of \$5,300,000.00, less the consideration of \$593,377.82, or \$4,706,622.18, less whatever offsets, if any, the defendant may be entitled to under the Indian Claims Commission Act.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner