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James A. Ferguson Clerk
INDIAN CLAIMS COMMISSION

**BEFORE THE
INDIAN CLAIMS COMMISSION**

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No. **156**

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**THE CONFEDERATED SALISH AND KOOTENAI
TRIBES OF THE FLATHEAD RESERVATION,
MONTANA,**

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

— 0 —

PETITION

— 0 —

The Confederated Salish and
Kootenai Tribes of the Flathead
Reservation, Montana,

By **GEORGE M. TUNISON,**

Attorney of Record,

1212 First National Bank
Building,
Omaha, Nebraska.

BEFORE THE
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THE CONFEDERATED SALISH AND KOOTENAI
TRIBES OF THE FLATHEAD RESERVATION,
MONTANA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

PETITION

Petitioner respectfully states:

1. The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, Petitioner, is an Indian Tribe having a tribal organization recognized by the Secretary of the Interior of the United States as having authority to represent said tribe. Said tribe is organized under the act of June 18, 1934 (48 Stat. 984 as amended, 25 U. S. C. A. Sec. 476) with a con-

stitution and by-laws approved by the Secretary of the Interior October 28, 1935. Pursuant to said Act, as amended (25 U. S. C. A. Sec. 477), a Federal Charter of Incorporation was submitted to said tribe by the Secretary of the Interior on April 21, 1936 and was duly ratified by said tribe on April 25, 1936, whereupon said tribe became, and ever since has been, a Federal Chartered Corporation with full power to sue.

2. Petitioner has retained George M. Tunison, Attorney, whose address is 1212 First National Bank Building, Omaha, Nebraska and who is designated the attorney of record, to represent its interests in the presentation of its claims. Said Tunison is employed by petitioner under contract approved by the Secretary of the Interior and the Commissioner of Indian Affairs as provided by the Act of June 18, 1945, Sec. 476, 25 U. S. Code Annotated.

3. Petitioner prosecutes this claim under authority of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049, 25 U. S. C. A. 70), which contains, among others, the following provisions:

Jurisdiction

Sec. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all oth-

er claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after the date of the approval of this Act shall be considered by the Commission.

All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made

to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

4. The Act of Congress of July 30, 1946, Public Law 566—79th Congress, authorized petitioner to submit claims to the Court of Claims. A copy of said Act is attached and made a part hereof as Exhibit A. Suit under said Act has been filed in the Court of Claims by petitioner within the time therein provided. No action has been had in said suit. The claims herein asserted are included in that suit.

5. From time immemorial on the continent of North America, petitioner held, occupied, possessed and owned exclusively 16,000,000 acres of land within what is now the United States of America and within the borders of the present states of Montana and Idaho. By treaty dated July 16, 1855, 12 Stat. 975, 2 Kappler

722, petitioner ceded, relinquished and conveyed said lands to the United States, reserving therefrom, however, to petitioner a reservation of 1,243,969 acres. Said treaty was ratified March 8, 1859 and proclaimed April 18, 1859. A copy of said treaty is attached and made a part hereof as Exhibit B. A plat of the lands so ceded and of the lands reserved to petitioner is attached and made a part hereof as Exhibit C, pp. 18-19 hereof.

6. Following the execution, ratification and proclamation of the treaty of 1855, petitioner has continuously occupied its reservation therein specified, with the exceptions hereinafter noted. No action has been taken by Congress or any department of the Government with respect to the claims herein alleged except the enactment of the Jurisdictional Act, Exhibit A, and the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 25 U. S. C. A. 70. Petitioner is and has always been the sole and absolute owner of the claims alleged in this petition; no person other than petitioner has ever had any interest therein. No assignment of or transfer of the claims alleged in this petition, nor any part thereof, nor any interest therein, has been made. Petitioner has not been paid for the claims herein made, nor any part thereof, and is justly entitled to recover thereon from the United States after allowing all legal credits and offsets. Petitioner has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted, or given encouragement to rebellion against said Government.

7. At all times mentioned in this petition defendant was and is now guardian and trustee of the affairs and property of petitioner. In the determination of the validity of each of the claims herein asserted, and in its consideration of the facts pleaded, the attention of the Commission is especially called to clause (5) of Sec. 2 of the Indian Claims Commission Act, viz., "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity."

"8. Petitioner incorporates and makes a part of each Cause of Action hereinafter pleaded the matters and things stated in paragraphs 1 to 8, inclusive, hereof.

FIRST CAUSE OF ACTION

Since the execution of said 1855 treaty defendant has not made or furnished to petitioner an accounting of its property and funds. Petitioner alleges that large amounts of its property and funds have been wrongfully misappropriated by defendant, the exact amount of which will be disclosed by said accounting. Petitioner asks that such accounting be had and stated and that the Commission render judgment for petitioner in accordance therewith.

SECOND CAUSE OF ACTION

When the 1855 treaty reservation was surveyed and the boundaries thereof fixed by defendant, the northern boundary thereof was not fixed, as required by the treaty, viz.:

"half way in latitude between the northern and southern extremities of the Flathead Lake"

but was in fact fixed and ever since maintained by defendant on a line six miles south of the true northern and southern extremities of Flathead Lake. By such action defendant took from petitioner a tract of land six (6) miles in width, north and south, and thirty (30) miles in length, east and west, comprising approximately 180 square miles of land containing approximately 115,200 acres. Such illegal action by defendant constituted a taking of petitioner's property by defendant for which petitioner is entitled to judgment against defendant for just compensation in an amount fixed by the Commission. Such taking was without the payment of compensation therefor agreed to by petitioner.

THIRD CAUSE OF ACTION

When the 1855 treaty reservation was surveyed and the boundaries thereof fixed by defendant, the southwestern boundary thereof was not fixed, as required by the treaty, viz.:

"Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke's Fork between the Camash and Horse Prairies; thence northerly to, and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of Flathead Lake:"

but was in fact fixed and ever since maintained by defendant on a line several miles north and east of the true southwest boundary of said reservation, as called for by the treaty. By such action defendant took from petitioner a tract of land several miles in width and containing many thousands of acres. Such illegal action constituted a taking of petitioner's property by defendant for which petitioner is entitled to judgment against defendant for just compensation in an amount to be fixed by the Commission. Such taking was without payment of compensation therefor agreed to by petitioner.

FOURTH CAUSE OF ACTION

The 1855 treaty, after stating the boundaries of the reservation, provided:

"All of which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes,"

Following their occupation of their treaty reservation, petitioner tribe and its members lived a peaceful, happy, pastoral life thereon. The members had ample grazing for large herds of cattle, horses and sheep. On the better lands good crops of hay and grain were produced by the Indians. The Indians were self-supporting and prosperous. The area of the reservation was sufficient to insure a comfortable living, in

perpetuity, to the members of petitioner tribe. But the westward trend of the whites would not be stayed. Several attempts were made by defendant to secure petitioner's consent to opening the reservation and sale of so-called surplus lands. Each time the Indians refused. Finally the reservation was opened by defendant by the Act of April 23, 1904, 33 Stat. 302, 3 Kappler 79. A copy of said Act is attached and made a part hereof as Exhibit D. Said Act as originally drafted and introduced in Congress as H. R. 12231, 58th Congress, 2d Session, contained an additional section, Sec. 17, requiring approval by petitioner before said Act should be effective. This protective section, which was similar to those appearing in other Acts opening Indian Treaty reservations to settlement, was stricken from the bill on the recommendation of the then Secretary of Interior. The opening of the treaty reservation, without the consent and over the objections of petitioner, resulted in great damage to petitioner. The Indians were obliged to dispose of livestock for lack of range and at the present time 85% of the good agricultural lands on the reservation have passed into the ownership of whites. Petitioner is entitled to judgment for damages against defendant for the aforesaid treaty violation in an amount to be fixed by the court. Said taking by defendant was such as entitles petitioner to just compensation therefor. Such taking was without payment of compensation therefor agreed to by petitioner.

FIFTH CAUSE OF ACTION

The defendant wrongfully and unlawfully appropriated, used and expended several hundred thousand

dollars of petitioner's funds to pay the expenses of survey, classification, appraisal and opening of the reservation lands pursuant to the Act of April 23, 1904 and amendments thereto, the exact amount of which is unknown to petitioner and will be disclosed by the accounting herein prayed for. Petitioner is entitled to judgment for damages against defendant for said amount.

SIXTH CAUSE OF ACTION

Petitioner's 1855 treaty reservation is surrounded by high mountains on the east, south and west, with Flathead Lake and mountains on the north. Petitioner still owns these mountainsides, most of which are covered with timber and are the source of many streams flowing down into the lowlands. Petitioner still owns the south half of Flathead Lake and the Flathead River which flows out of the south end of the lake. The water in these streams arising on and flowing through petitioner's land is of great value for irrigation purposes. Beginning with the Act of April 30, 1908, 35 Stat. 70, defendant, without the consent and over the protests of petitioner, initiated and has carried through the construction and operation of an extensive irrigation project on said reservation known as Flathead Irrigation Project. In so doing, defendant has appropriated and used and is using large quantities of valuable water belonging to the petitioner tribe as a whole, for the use and benefit of the owners, mostly whites, of allotted lands lying on the lower portions of the reservation. No compensation has ever been paid to the

tribe for said water or the use thereof for irrigation of said individually owned lands pursuant to the purposes of defendant, and petitioner is entitled to recover from defendant just compensation therefor in an amount to be determined by the court. Said taking of said water was without payment of compensation agreed to by petitioner.

SEVENTH CAUSE OF ACTION

Section 22 of the Act of March 3, 1909, 35 Stat. 795, provides:

“That the Secretary of the Interior be, and he is hereby authorized, in his discretion, to reserve from location, entry, sale, or other appropriation all lands within said Flathead Indian Reservation chiefly valuable for power sites or reservoir sites, and he shall report to Congress such reservations.”

Pursuant to above authority several thousand acres of land valuable for power-site purposes along Flathead River, within the reservation, were withdrawn by defendant from entry, sale or other form of appropriation. The most valuable of the power sites along the river, within the reservation, commonly referred to as Site No. 1, lies about four miles below where Flathead Lake discharges into Flathead River. By Act of March 3, 1911, 36 Stat. 1066, as amended August 24, 1912, 37 Stat. 527, Congress directed:

“That an easement in, to and over all lands bordering on or adjacent to Flathead Lake, Montana, which lie below an elevation of nine feet above the high water mark of said lake for the year 1919, is hereby reserved for uses and pur-

poses connected with storage for irrigation or development of water power, and all patents hereafter issued for any such lands shall recite such reservation."

The Act of March 7, 1928, 45 Stat. 212, authorized the Federal Power Commission upon terms satisfactory to the Secretary of the Interior to issue license for the use and development of power sites on the Flathead Reservation and for the use of water rights reserved or appropriated for irrigation projects. Said Act further provided:

"That rentals from such licenses for use of Indian lands shall be paid the Indians of said reservation as a tribe."

Under date of May 23, 1930, defendant issued a license for Flathead Site No. 1 to Rocky Mountain Power Company, a subsidiary of Montana Power Company, providing for annual payments to the plaintiff on a schedule therein specified and also providing, as a part of the consideration for said license:

"Art. 26. Coincident with the beginning of commercial operation of the project works and thereafter throughout the remainder of the term of the license, licensee shall make available, at the project boundary at or near the licensee's generating station, and the United States, for and on behalf of the Flathead irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 1 mill per kilowatt-hour: (1) Electrical energy in an amount not exceeding 5,000 horsepower of demand to be used exclusively for pumping water for irrigation; and (2) electrical energy in an amount not exceeding 5,000 horsepower of demand for all project and

farm uses and for resale. Such deliveries shall be made at such standard voltage as may be selected by the commission. The licensee shall also make available, at the voltage of the line from which service is taken, either at the project boundary at or near the licensee's generating station or at some more convenient place on the project to be agreed upon, and the United States, for and on behalf of the Flathead irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 2½ mills per kilowatt-hour, additional electrical energy in an amount not exceeding 5,000 horsepower of demand for all project and farm uses and for resale."

The rate so provided for power for the use of Flathead irrigation district, viz., 1 mill per kilowatt-hour for 10,000 horsepower and 2½ mills per kilowatt-hour for the next 5,000 horsepower, was and is much less than the fair and reasonable market value of said power and has already resulted in a net profit of over one million dollars to said Flathead irrigation project. By granting said preferential low rate to said Flathead irrigation project, defendant wrongfully and unlawfully deprived plaintiff of the full and fair value of its power and has appropriated same for its own use and benefit and for the use and benefit of water users on said Flathead irrigation project and power customers of said project, and defendant continues so to do. Therefore, the total rentals from said license for use of said Indian lands is not being paid the Indians of said reservation as a tribe. By such action defendant has appropriated property of petitioner for which petitioner is entitled to just compensation from

defendant in an amount to be determined by the Commission.

EIGHTH CAUSE OF ACTION

Petitioner incorporates into and makes a part of this its Eighth Cause of Action those allegations of its Sixth and Seventh causes of action, supra, which describe the water and power resources of its 1855 reservation. Defendant wrongfully and unlawfully appropriated the waters of Hell Roaring Creek located in the northwestern part of petitioner's 1855 treaty reservation for a power plant and for a source of water supply for the city of Polson, which is located at the south end of Flathead Lake. Purporting to act under the authority of the Act of May 10, 1926, 44 Stat. 453-465, as amended, the receipts from the use of water from said Hell Roaring Creek for power and water supply have been appropriated and used by defendant through its agency, the Flathead irrigation project. By such action defendant has appropriated property of petitioner for which petitioner is entitled to just compensation from defendant in an amount to be determined by the Commission and which amount will be determined in the accounting hereinbefore, in this petition, prayed for.

Wherefore, by reason of the matters and things stated in the foregoing petition, petitioner prays for damages and compensation and final accounting and settlement as provided in the Indian Claims Commission Act, and prays that the court render judgment for petitioner against defendant The United States of

America for such sums as shall be found due after allowance of all proper credits and offsets, and for such other and further damages and relief as may be just and equitable.

The Confederated Salish and
Kootenai Tribes of the Flathead
Reservation, Montana,

By GEORGE M. TUNISON,

Attorney of Record,

1212 First National Bank
Building,
Omaha, Nebraska.

Dated July 20, 1951.

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } SS

George M. Tunison, being duly sworn, deposes and says:

That he is attorney employed by petitioner in the above entitled cause, under contract approved in accordance with existing law to prosecute said claims; that the matters and things stated in the foregoing petition are true, to the best of my knowledge, information and belief.

George M. Tunison
GEORGE M. TUNISON (signed)

Subscribed and sworn to before me this 20th day of July, 1951.

Thomas P. Leary
THOMAS P. LEARY
Notary Public

My Commission expires September 24, 1953.

(SEAL)

EXHIBIT A

[PUBLIC LAW 566—79TH CONGRESS]

[CHAPTER 701—2D SESSION]

[H. R. 6983]

AN ACT

Conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and render judgment in any and all claims which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, or any tribe or band thereof, may have against the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims, subject to review by the Supreme Court of the United States on writ of certiorari as in other cases, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims of whatsoever nature which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation of Montana, or any tribe or band thereof, may have against the United States.

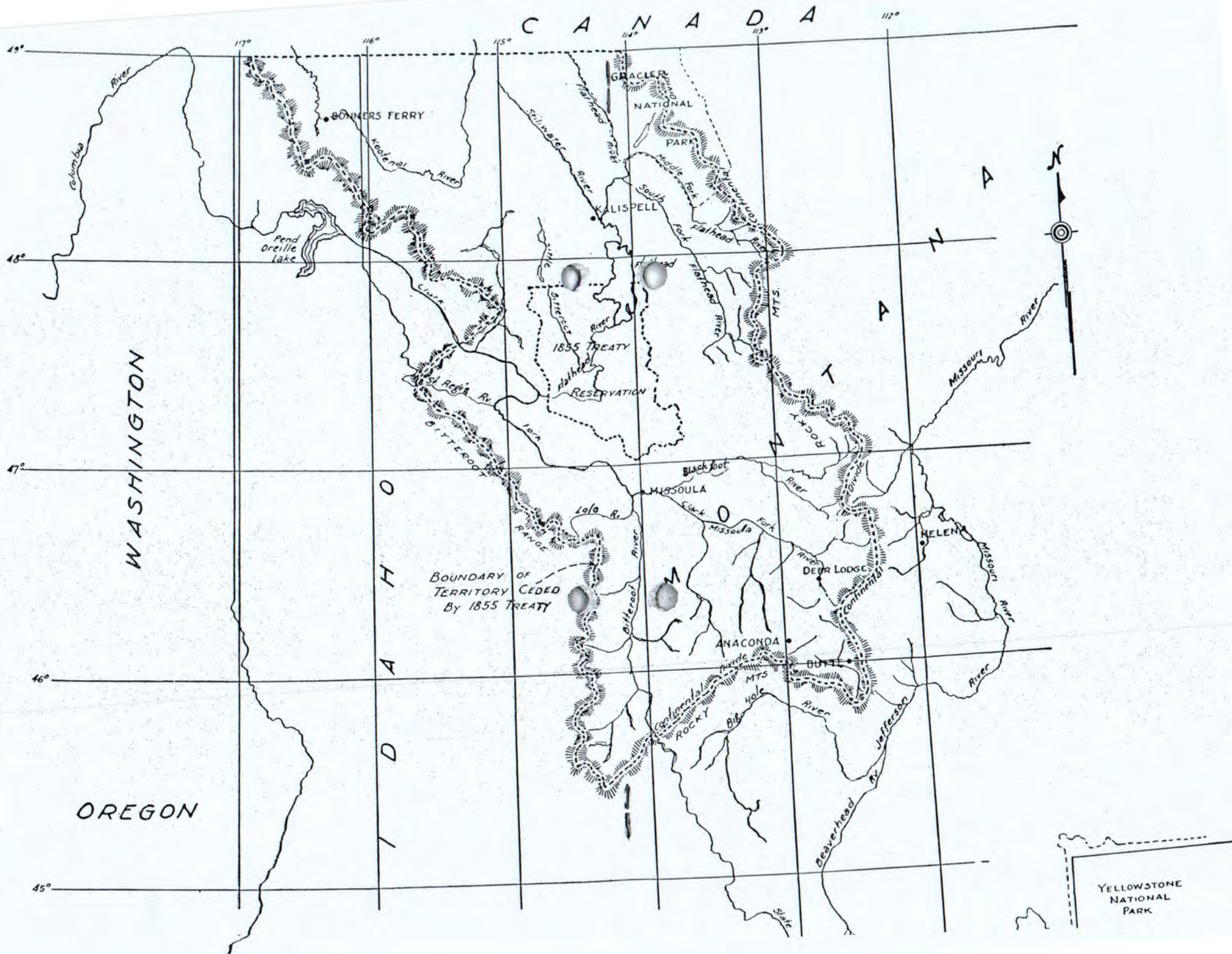
SEC. 2. That suit or suits under this Act may be instituted by the Confederated Salish and Kootenai Tribes of Indians, or any tribe or band thereof, either separately or jointly, as party or parties plaintiff, against the United States as party defendant, by filing within five years after the approval of this Act a petition or petitions in the Court of Claims and serving with respect to each suit a copy thereof on the Attorney General of the United States, who, either in person or by some attorney from the Department of Justice to be designated by him, shall appear and defend the interests of the United States. Such petition or petitions

shall set forth the facts upon which the claim or claims is or are based and shall be verified by the attorney or attorneys employed by said Indians, under contract approved in accordance with existing law, to prosecute said claims, which may be made upon information and belief, and no other verification shall be necessary. The petition or petitions shall be subject to amendment at any time prior to final submission of the case to the Court of Claims. Such petition or petitions may, in addition to alleging specific claims, demand a general accounting of all funds and property expended or used by the United States for the account of said Indians, in which event the General Accounting Office shall within a reasonable time from date of filing said petition or petitions make a complete audit of said accounts, and, in addition to the usual copies furnished the Attorney General, shall furnish a copy thereof to the attorney or attorneys for said Indians; and the court, after full hearing, shall state the account and render judgment in accordance therewith.

SEC. 3. That at the trial of any suit instituted hereunder the court shall settle and determine the rights therein, both legal and equitable, of said Indians against the United States, notwithstanding lapse of time or statutes of limitation. In the determination of the validity of any claim asserted or defense interposed hereunder, the court shall have the full power and authority of a court of equity.

SEC. 4. That the court shall have authority, by proper orders and process, to make parties to any suit or suits instituted hereunder any other tribe, band, or group of Indians deemed by it necessary or proper to a final determination of the matters in controversy.

SEC. 5. That in any suit instituted hereunder any letter, paper, document, map, or record in the possession of any officer or department of the United States (or certified copies thereof) may be used in evidence,



and the departments of the Government of the United States shall give full and free access to the attorney or attorneys for said Indians to such letters, papers, documents, maps, or records as may be useful to said attorney or attorneys in the preparation for trial or trials of such suit or suits.

SEC. 6. That no payment or payments which have been made by the United States upon any claim or claims asserted in any suit brought hereunder, or expended for any of the said Indians, shall operate as an estoppel against any suit brought hereunder, but there shall be set off against any recovery obtained by said Indians hereunder any payment made by the United States on any claim asserted by said Indians, together with such gratuity expenditures as are directed to be set off by the Act of Congress, approved August 12, 1935 (49 Stat. 596): *Provided*, That no moneys expended for the benefit of said Indians under the Wheeler-Howard Act, approved June 18, 1934 (48 Stat. 984), shall be applicable as set-offs.

SEC. 7. That upon the final determination of any suit or suits instituted hereunder, the Court of Claims, in the event of judgment for said Indians, shall determine such fees or compensation to be paid the attorney or attorneys as said court shall find reasonable or equitable, and in addition thereto such actual and necessary expenses as shall have been incurred by the attorney or attorneys in the prosecution of said claims. In no case shall the fees or compensation decreed by said Court of Claims be in excess of the amount stipulated in the contract or contracts approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and in no event to exceed 10 per centum of the amount of the recovery, and shall be paid out of any money appropriated by Congress for the benefit of said Indians pursuant to any judgment hereunder.

SEC. 8. That the amount of any judgment recovered for said Indians, less attorneys' fees and expenses,

shall be placed to the credit of said Indians in the Treasury of the United States and shall draw interest at the rate of 4 per centum per annum from date of judgment and shall thereafter be subject to appropriation by Congress and used for the benefit of said Indians, including, but without limitations, the purchase of lands, livestock, farming implements, erection of buildings and improvements, and for productive enterprises, with the approval of the Secretary of the Interior and consent of said Indians.

Approved July 30, 1946.

EXHIBIT B

TREATY WITH THE FLATHEADS, ETC., JULY 16, 1855

12 Stat. 975. 2 Kappler 722. Ratified March 8, 1859

Proclaimed April 18, 1859.

Articles of agreement and convention made and concluded at the treaty-ground at Hell Gate, in the Bitter Root Valley, this sixteenth day of July, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the confederated tribes of the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, on behalf of and acting for said confederated tribes, and being duly authorized thereto by them. It being understood and agreed that the said confederated tribes do hereby constitute a nation, under the name of the Flathead Nation, with Victor, the head chief of the Flathead tribe, as the head chief of

the said nation, and that the several chiefs, head-men, and delegates, whose names are signed to this treaty, do hereby, in behalf of their respective tribes, recognize Victor as said head chief.

Article 1. The said confederated tribe of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit:

Commencing on the main ridge of the Rocky Mountains at the forty-ninth parallel of latitude, thence westwardly on that parallel to the divide between the Flatbow or Kootenay River and Clarke's Fork, thence southerly and southeasterly along said divide to the one hundred and fifteenth degree of longitude (115°), thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and the Coeur d'Alene Rivers, thence southeasterly and southerly along the main ridge of the Bitter Root Mountains to the divide between the head-waters of the Koos-koos-kee River and of the southwestern fork of the Bitter Root River, thence easterly along the divide separating the waters of the several tributaries of the Bitter Root River from the waters flowing into the Salmon and Snake Rivers to the main ridge of the Rocky Mountains, and thence northerly along said main ridge to the place of beginning.

Article 2. There is, however, reserved from the lands above ceded, for the use and occupation of the said confederated tribes, and as a general Indian reservation, upon which may be placed other friendly tribes and bands of Indians of the Territory of Washington who may agree to be consolidated with the tribes parties to this treaty, under the common designation of the Flathead Nation, with Victor, head chief of the Flathead tribe,

as the head chief of the nation, the tract of land included within the following boundaries, to wit:

Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke's Fork between the Camash and Horse Prairies; thence northerly to, and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of the Flathead Lake; thence on a due east course to the divide whence the Crow, the Prune, the So-ni-el-em and the Jocko Rivers take their rise, and thence southerly along said divide to the place of beginning.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and the superintendent and agent. And the said confederated tribes agree to remove to and settle upon the same within one year after the ratification of this treaty. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner or claimant.

Guaranteeing however the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named. *And provided,*

That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President of the United States, and payment made therefor in money, or improvements of an equal value be made for said Indian upon the reservation; and no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money or improvements of an equal value shall be furnished him as aforesaid.

Article 3. *And provided*, That if necessary for the public convenience roads may be run through the said reservation; and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways.

The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

Article 4. In consideration of the above cession, the United States agree to pay to the said confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty the sum of one hundred and twenty thousand dollars, in the following manner—that is to say: For the first year after the ratification hereof, thirty-six thousand dollars, to

be expended under the direction of the President, in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, and for such other objects as he may deem necessary. For the next four years, six thousand dollars each year; for the next five years, five thousand dollars each year; for the next five years, four thousand dollars each year; and for the next five years, three thousand dollars each year.

All which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them, and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

Article 5. The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, an agricultural and industrial school, erecting the necessary buildings, keeping the same in repair, and providing it with furniture, books, and stationery, to be located at the agency, and to be free to the children of the said tribes, and to employ a suitable instructor or instructors. To furnish one blacksmith shop, to which shall be attached a tin and gun shop; one carpenter's shop; one wagon and ploughmaker's shop; and to keep the same in repair, and furnished with the necessary tools. To employ two farmers, one blacksmith, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades, and to assist them in the same. To erect one saw-mill and one flouring-mill, keeping the same in repair and furnished with the necessary tools and

fixtures, and to employ two millers. To erect a hospital, keeping the same in repair, and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provide the necessary furniture the buildings required for the accommodation of said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

And in view of the fact that the head chiefs of the said confederated tribes of Indians are expected and will be called upon to perform many services of a public character, occupying much of their time, the United States further agree to pay to each of the Flathead, Kootenay, and Upper Pend d'Oreilles tribes five hundred dollars per year, for the term of twenty years after the ratification hereof, as a salary for such persons as the said confederated tribes may select to be their head chiefs, and to build for them at suitable points on the reservation a comfortable house, and properly furnish the same, and to plough and fence for each of them ten acres of land. The salary to be paid to, and the said houses to be occupied by, such head chiefs so long as they may be elected to that position by their tribes, and no longer.

And all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said tribes. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

Article 6. The President may from time to time, at his discretion, cause the whole, or such portion of such reservation as he may think prop-

er, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

Article 7. The annuities of the aforesaid confederated tribes of Indians shall not be taken to pay the debts of individuals.

Article 8. The aforesaid confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or, in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities. Nor will they make war on any other tribe except in self-defense, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the jurisdiction of the United States, the same rule shall prevail as that prescribed in this article, in case of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Article 9. The said confederated tribes desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same; and therefore it is provided that any

Indian belonging to said confederated tribes of Indians who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Article 10. The United States further agree to guaranty the exclusive use of the reservation provided for in this treaty, as against any claims which may be urged by the Hudson Bay Company under the provisions of the treaty between the United States and Great Britain of the fifteenth of June, eighteen hundred and forty-six, in consequence of the occupation of a trading-post on the Pru-in River by the servants of that company.

Article 11. It is, moreover, provided that the Bitter Root Valley, above the Loo-lo Fork, shall be carefully surveyed and examined, and if it shall prove, in the judgment of the President, to be better adapted to the wants of the Flathead tribe than the general reservation provided for in this treaty, then such portions of it as may be necessary shall be set apart as a separate reservation for the said tribe. No portion of the Bitter Root Valley, above the Loo-lo Fork, shall be opened to settlement until such examination is had and the decision of the President made known.

Article 12. This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chiefs, chiefs and principal men of the Flathead, Kootenay, and Upper Pend d'Oreilles tribes of Indians,

have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS, (L. S.)
Governor and Superintendent Indian Affairs W. T.

VICTOR, head chief of the Flathead Nation,
his x mark (L. S.)

ALEXANDER, chief of the Upper Pend d'Oreilles,
his x mark. (L. S.)

MICHELLE, chief of the Kootenays, his x mark.
(L. S.)

AMBROSE, his x mark. (L. S.)

PAH-SOH, his x mark. (L. S.)

BEAR TRACK, his x mark. (L. S.)

ADOLPH, his x mark. (L. S.)

THUNDER, his x mark. (L. S.)

BIG CANOE, his x mark. (L. S.)

KOOTEL CHAH, his x mark. (L. S.)

PAUL, his x mark. (L. S.)

ANDREW, his x mark. (L. S.)

MICHELLE, his x mark. (L. S.)

BATTISTE, his x mark. (L. S.)

Kootenays.

GUN FLINT, his x mark. (L. S.)

LITTLE MICHELLE, his x mark. (L. S.)

PAUL SEE, his x mark. (L. S.)

MOSES, his x mark. (L. S.)

JAMES DOTY, Secretary.

R. H. LANSDALE, *Indian Agent.*

W. H. TAPPAN, *sub Indian Agent.*

HENRY R. CROSIRE,

GUSTAVUS SOHON, *Flathead Interpreter.*

A. J. HOECKEN, *sp. mis.*

WILLIAM CRAIG

EXHIBIT D**FLATHEAD INDIAN RESERVATION**

AN ACT For the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, directed to immediately cause to be surveyed all of the Flathead Indian Reservation, situated within the State of Montana, the same being particularly described and set forth in article two of a certain treaty entered into by and between Isaac H. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the chiefs, headmen, and delegates of the confederated tribes of the Flathead, Kootenai, and Upper Pend d'Oreille Indians, on the sixteenth day of July, eighteen hundred and fifty-five.

SEC. 2. That so soon as all of the lands embraced within said Flathead Indian Reservation shall have been surveyed, the Commissioner of Indian Affairs shall cause allotments of the same to be made to all persons having tribal rights with said confederated tribes of Flatheads, Kootenais, Upper Pend d'Oreille, and such other Indians and persons holding tribal relations as may rightfully belong on said Flathead Indian Reservation, including the Lower Pend d'Oreille or Kalispel Indians now on the reservation, under the provisions of the allotment laws of the United States.

SEC. 3. That upon the final completion of said allotments to said Indians, the President of the United States shall appoint a commission consisting of five persons to inspect, appraise, and value all of the said lands that shall not have been allotted in severalty to

said Indians, the said persons so constituting said commission to be as follows: Two of said commissioners so named by the President shall be two persons now holding tribal relations with said Indians—the same may be designated to the President by the chiefs and headmen of said confederated tribes of Indians, two of said commissioners shall be resident citizens of the State of Montana, and one of said commissioners shall be a United States special Indian agent or Indian inspector of the Interior Department.

SEC. 4. That within thirty days after their appointment said commission shall meet at some point within the boundaries of said Flathead Indian Reservation and organize by the election of one of their number as chairman. Said commission is hereby empowered to select a clerk at a salary not to exceed seven dollars per day.

SEC. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of forty acres each, all of the remaining lands embraced within said reservation. In making such classification and appraisal said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, timber lands, the same to be lands more valuable for their timber than for any other purpose; fourth, mineral lands; and fifth, grazing lands.

SEC. 6. That said commission shall in their report of lands of the third class determine as nearly as possible the amount of standing saw timber on legal subdivisions thereof and fix a minimum price for the value thereof, and in determining the amount of merchantable timber growing thereon they shall be empowered to employ a timber cruiser, at a salary of not more than eight dollars per day while so actually employed, with such assistants as may be necessary, at a salary not to exceed six dollars per day while so actually em-

ployed. Mineral lands shall not be appraised as to value.

Sec. 7. That said commissioners, excepting said special agent and inspector of the Interior Department, shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection and classification of said lands; such inspection and classification to be fully completed within one year from date of the organization of said commission.

SEC. 8. That when said commission shall have completed the classification and appraisal of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the general provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections sixteen and thirty-six of each township, which are hereby granted to the State of Montana for school purposes. And in case either of said sections or parts thereof is lost to the said State of Montana by reason of allotments thereof to any Indian or Indians now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract under consideration, to locate other lands not occupied, not exceeding two sections in any one township, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That the United States shall pay to said Indians for the lands in said sections sixteen and thirty-six, or the lands selected in lieu thereof, the sum of one dollar and twenty-five cents per acre.

SEC. 9. That said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry

thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish wars, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged: *Provided further*, That the price of said lands shall be the appraised value thereof, as fixed by the said commission, but settlers under the homestead law who shall reside upon and cultivate the land entered in good faith for the period required by existing law shall pay one-third of the appraised value in cash at the time of entry, and the remainder in five equal annual installments to be paid one, two, three, four, and five years, respectively, from and after the date of entry, and shall be entitled to a patent for the lands so entered upon the payment to the local land officers of said five annual payments, and in addition thereto the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre, and no other and further charge of any kind whatsoever shall be required of such settler to entitle him to a patent for the land covered by his entry: *Provided*, That if any entryman fails to make such payments, or any of them, within the time stated, all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and canceled: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed by said commission, receiving credit for payments previously made.

SEC. 10. That only mineral entry may be made on such of said lands as said commission shall designate

and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by said commission as mineral lands or otherwise, such classification by said commission being only prima facie evidence of the mineral or nonmineral character of the same: *Provided*, That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian.

SEC. 11. That all of said lands returned and classified by said commission as timber lands shall be sold and disposed of by the Secretary of the Interior under sealed bids to the highest bidder for cash or at public auction, as the Secretary of the Interior may determine, under such rules and regulations as he may prescribe.

SEC. 12. That the President may reserve and except from said lands not to exceed nine hundred and sixty acres for Catholic mission schools, church, and hospital and such other eleemosynary institutions as may now be maintained by the Catholic Church on said reservation, which lands are hereby granted to those religious organizations of the Catholic Church now occupying the same, known as the Society of Jesus, the Sisters of Charity of Providence, and the Ursuline Nuns, the said lands to be granted in the following amounts, namely, to the Society of Jesus, six hundred and forty acres, to the Sisters of Charity of Providence, one hundred and sixty acres, and to the Ursuline Nuns, one hundred and sixty acres, such lands to be reserved and granted for the uses indicated only so long as the same are maintained and occupied by said organizations for the purposes indicated. The President is also authorized to reserve lands upon the same conditions and for similar purposes for any other missionary or religious societies that may make application therefor within one year after the passage of this act, in such quantity as he may deem proper. The President may also reserve such of said lands as may be convenient

or necessary for the occupation and maintenance of any and all agency buildings, substations, mills, and other governmental institutions now in use on said reservation or which may be used or occupied by the Government of the United States.

SEC. 13. That all of said lands classified as agricultural lands of the first class and agricultural lands of the second class and grazing lands that shall be opened to settlement under this act remaining undisposed of at the expiration of five years from the taking effect of this act shall be sold and disposed of to the highest bidder for cash, under rules and regulations to be prescribed by the Secretary of the Interior, at not less than their appraised value, and in tracts not to exceed six hundred and forty acres to any one person.

SEC. 14. That the proceeds received from the sale of said lands in conformity with this act shall be paid into the Treasury of the United States, and after deducting the expenses of the commission, of classification and sale of lands, and such other incidental expenses as shall have been necessarily incurred, and expenses of the survey of the lands, shall be expended or paid, as follows: One-half shall be expended from time to time by the Secretary of the Interior as he may deem advisable for the benefit of the said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Kalispel thereon at the time that this act shall take effect, in the construction of irrigation ditches, the purchase of stock cattle, farming implements, or other necessary articles to aid the Indians in farming and stock raising, and in the education and civilization of said Indians, and the remaining half to be paid to the said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Kalispel thereon at the date of the proclamation provided for in section

nine hereof, or expended on their account, as they may elect.

SEC. 15. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of Montana and for lands reserved for agency, school, and mission purposes, as provided in sections eight and twelve of this act, at the rate of one dollar and twenty-five cents per acre; also the sum of seventy-five thousand dollars, or so much thereof as may be necessary, the same to be reimbursable out of the funds arising from the sale of said lands to enable the Secretary of the Interior to survey the lands of said reservation as provided in section one of this act.

SEC. 16. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, and the reserved tracts mentioned in section twelve, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received.

Approved, April 23, 1904. (33 Stat. L., p. 302.)