

BEFORE THE INDIAN CLAIMS COMMISSION

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

Petitioner,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 61

Decided: August 3, 1959

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. The Confederated Salish and Kootenai Tribes of the Flathead Reservation, petitioner herein, is an identifiable group of American Indians, duly organized under the Wheeler-Howard Act of June 18, 1934 (48 Stat. 984, as amended) and is recognized by the Secretary of the Interior as being authorized to represent the Indian tribes on said reservation and petitioner is therefore authorized to maintain this action under Section 2 of the Indian Claims Commission Act (60 Stat. 1049).

2. Under authority of the Indian Claims Commission Act of August 13, 1946, c. 949, 69 Stat. 1049, 25 U. S. C. Sec. 70(a) petitioner timely filed this claim for the recovery of additional compensation for 14,062,000 acres of land ceded to the defendant by the petitioner for an alleged grossly inadequate and unconscionable consideration which cession was the

result of dealings on the part of the defendant which petitioner claims were not fair and honorable with respect to the petitioner. Petitioner claims the lands, until so ceded, were used, occupied, held, possessed and owned continuously from time immemorial by petitioner or its predecessor in interest.

3. Petitioner herein includes descendants of the Confederated Flathead, Upper Pend d'Oreille and Kootenai tribes which negotiated a treaty with the United States on July 16, 1855, (12 Stat. 975, II Kapp. 722), at Hell Gate, Montana, whereby the tribes ceded to the Government the lands described in Article 1 of said treaty as follows:

(Royce Cession No. 373)

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 Flathead 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.

From the lands so ceded the following tract (Royce No. 374) was reserved by Article 2 of the treaty for the use and occupation of the confederated tribes and other friendly tribes or bands which might agree to consolidate with the tribes parties to the treaty under the common designation of the Flathead Nation, with Victor, the head chief of the Flathead tribe, as the head chief of the said nation:

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.

4. By Article 4 of the Treaty of July 16, 1855, supra, the United States agreed to pay the confederated tribes of Indians in addition to the goods and provisions distributed to them at the time of signing the treaty the sum of \$120,000.00, to be expended under the direction of the President over a number of years. By Article 5 the United States agreed to establish on the reservation an agricultural and industrial school; blacksmith, carpenter and wagon and ploughmaker's shops; to erect one saw-mill and one flouring-mill; to erect a hospital; to maintain and furnish these facilities and to provide employees to service them for twenty years. The United States also agreed by Article 5 to pay to each of the Flathead, Kootenai and Upper Pend d'Oreilles tribe \$500.00 per year for twenty years as a salary to the elected head chiefs of said tribes and to build houses and plow and fence 10 acres for each of them.

5. Linguistically the Flathead and the Upper Pend d'Oreille Tribes are Salish, a language characteristic of many groups of Indians between Montana on the east, and Puget Sound on the Pacific coast. The Kootenai Indians on the other hand constitute a "linguistical island" speaking a

language which has not been related to any other stock.^{1/} The three tribes belonged to the Plateau culture area and being the most eastern of the tribes of that area and in close proximity to the Plains tribes east of the Rocky Mountains they acquired many traits characteristic of the Plains Indians after acquiring the horse in the 18th century.^{2/} The acquisition of the horse resulted in these tribes making buffalo hunting a major activity in their subsistence pattern and their bi-annual hunts east of the Rockies brought them into direct contact with the Blackfoot tribes who contested their right to hunt in such territory.^{3/}

6. Authorities, such as Turney-High, Teit and Claude Schaeffer, who conducted early studies of the Flathead, Pend d'Oreille and Kootenai place these Indians in what is now western Montana even in pre-white times.^{4/} The Flathead according to some authorities in pre-white times consisted of several loosely related bands which upon the acquisition of the horse and plains traits consolidated into a single tribal political entity that later joined forces with the Pend d'Oreille and Kootenai to the north in defensive action against the Plains Indians.^{5/} Little is known of the pre-white organization of the Pend d'Oreille but it

^{1/} Pet. Ex. 5, p. 6; Def. Ex. 24, p. 5

^{2/} Def. Ex. 24, pp. 3 and 4; Pet. Ex. 5, p. 8

^{3/} Def. Ex. 24, pp. 43, 54; Pet. Ex. 5, p. 29

^{4/} Def. Ex. 24, pp. 6, 9, 10

^{5/} Def. Ex. 24, pp. 29, 30

would seem that they at one time formed a single tribe with the Kalispel (Lower Pend d'Oreille) until they gained the horse and became closely allied with the Flathead and Kootenai.^{6/} In historic times they have always been known as a separate tribe, identified as Pend d'Oreille.

7. The so-called Kootenai Tribe consisted in reality of separate, autonomous and independent bands or tribes. Schaeffer and Turney-High separate the Kootenai culturally into two large divisions - the Upper Kootenai who were more under the plains influence and the Lower Kootenai, who were located farther to the west and depended more on fishing than they did on the bison hunt. Each of these divisions in turn consisted of independent bands. Schaeffer states that aboriginally there were seven bands of Upper Kootenai and three bands of Lower Kootenai. Schaeffer's Agiyinik (or Jennings) Band, which he states numbered probably not more than 700 moved at some period before 1850 from Jennings eastward to Kalispel and then south to Elmo, Montana. It is this Agiyinik, or Jennings Band, to which the ancestors of the Kootenai Indians now on the Flathead Reservation belonged.^{7/} Other Upper Kootenai were the Tobacco Plains Band, now on a reservation in Canada, and the Tweed-Warland Band, once located on the Kootenay River between Tweed and Warland, Montana, but which became extinct in early times, and a band once near Libby, Montana, many of whom moved to Fort Steele some years ago. Of the

^{6/} Id. at p. 16

^{7/} Schaeffer, Def. Ex. 40, p. 78; See also Def. Exhibits 37-41; Def. Ex. 29, 42; Pet. Ex. 33

Lower Kootenai, Schaeffer identifies two bands, the Bonners Ferry in Idaho (petitioner in Docket No. 154) and a band which lived west of Nelson, British Columbia, which is extinct.^{8/} The Bonners Ferry Band was not a party to the Treaty of July 16, 1855, and was not represented at said treaty which ceded to the United States certain lands in northern Idaho and northwestern Montana which were aboriginally exclusively used and occupied by said independent band of Kootenai Indians. Petitioner's counsel herein and counsel for petitioner in Docket No. 154 have stipulated that the Bonners Ferry Band at the time of the treaty was a separate and distinct tribe of Kootenai Indians and that it owned or occupied a portion of the area of land ceded by the 1855 treaty separate from the lands owned or occupied by petitioner herein. In Docket No. 154, decided August 9, 1957, this Commission (5 Ind. Cl. Comm. 456) has also so found the Bonners Ferry Band to be separate and distinct and that it exclusively used and occupied the area of land described in Finding 8 in that case.

8. Within historic times the Flathead, Pend d'Oreille and Kootenai Indians were first contacted in western Montana. The first recorded meeting with any of these tribes occurred when Lewis and Clark on their famous expedition to the west coast entered the Bitterroot valley in 1805 and came upon forty lodges of Flatheads, whom they identified as "Tushepaws" on Camp Creek near Ross' hole.^{9/} The name Pend d'Oreille, meaning Ear-bobs, was applied to several Salishan tribes. David Thompson, a fur trader with the Northwest Company in the period 1807-

^{8/} Def. Ex. 39, p. III 44
^{9/} Pet. Ex. 1, p. 10; Def. Ex. 24, p. 35

1812 and Alexander Henry, the younger, also a fur trader, called them Kullyspells and they were also known as Callispellums and Kalispels. The Kootenai Indians, also known as the Kutenai, Flatbows, Lakes, Arcs-a-Plats, and Skalzi were known to the fur traders in the early 19th century in what is now western Montana and northern Idaho and in Canada. Thompson in writing of the Kootenai located them between the Rockies on the east and the Purcell Mountain range on the west and in his travels found camps of them near Bonner's Ferry, Idaho, and at Kootenay Lake. Ross Cox also a fur trader (about 1814) wrote of the Kootenai "who inhabit a small and beautiful district near the foot of the Rocky Mountains, and about sixty miles to the northeast of the Flathead lands." The narrated accounts of the fur traders located the Flatheads and Pend d'Oreille in the Bitterroot and Clark Fork valleys.^{10/}

9. Commencing in 1835 the missionaries began to take an interest in the plateau area. Reverend Samuel Parker, who made an exploring tour in that year west of the Bitterroot Mountains wrote: "The country of the Flatheads (Salish) is still farther east and south-east (of the Coeur d'Alene), and extends to the Rocky Mountains For subsistence they follow the buffalo upon the waters of Clarke and Salmon Rivers and often pass over to the head waters of the Missouri Their country is mountainous, but intersected with pleasant, fertile valleys, large portions of which are prairie." Of the Pend d'Oreilles, Rev. Parker wrote that they lived "on the north of Clarke's river and on a

^{10/} Pet. Ex. 1, pp. 1-32; Def. Ex. 24, pp. 34-41

lake which takes its name from the tribe." Father De Smet established the first mission (St. Mary's) in the Bitterroot valley near the present Stevensville in 1841. This missionary stated that the Bitterroot river was the chief residence of the Flatheads and he recorded that they camped every year in the spring in Camas Prairie for root digging. The Pend d'Oreilles, Father De Smet reported, spent the fall generally along Clark Fork River. In 1841 he wrote that they lived "at a distance of four or five days" from St. Mary's Mission. Of the Kootenai, the priest reported: "The two tribes of the Koetenays and Flatbows number over a thousand souls. They are principally divided into two camps, and are known in their country under the name Skalzi. One of these camps, numbering about three hundred, inhabits sometimes the neighborhood of the great Flathead Lake, and sometimes the great Tobacco Plain * * *. The great chief of the Koetenays, named Michael * * * his camp numbers four hundred souls." In 1851 Father de Smet prepared a map which locates the Flathead territory in the Bitterroot valley area, with the Pend d'Oreilles to the north along the Clark's Fork and the Kootenai to the north and west of the Pend d'Oreilles in the Kootenay river area.^{11/} Father Palladino in his book, "Indian and White in the Northwest" (1904) wrote: "The country of the Flat-Heads was that part of Montana lying west and at the base of the main range of the Rocky Mountains. It was called in their language Spetlemen, which means

^{11/} Pet. Ex. 1, pp. 32-40. (Map is on p. 33a).

the
'place of/bitter root', whence came the name of the Bitter Root Valley.
This was, properly speaking, their land and their home. At times,
however, they could be found for hunting and trading purposes, roaming
about, like other Indians, in almost every part of the Northwest."^{12/}

10. In 1854 Governor Isaac Stevens, who later negotiated the treaty of July 16, 1855, with these tribes in his report to the Commissioner of Indian Affairs stated that the Flatheads inhabited "St. Mary's Bitterroot or Flathead valley, and the neighborhood of the lake of the same name. * * * The tribe was once a powerful one, but has been much diminished by the Blackfeet. * * *"

In this report Governor Stevens estimated the Kootenays and Flatbows (Lower Kootenai) to have a total population of 400 persons. He also submitted with the 1854 report a map (Pet. Ex. 7(A-9)) showing "the territories of the several Indian tribes from the mouth of the Yellowstone to the Pacific, which as regards the several tribes of the Blackfeet nation, and those of the Territory of Washington, may be relied upon as a pretty close approximation." On this map Stevens places the Flathead territory within the area of the Bitterroot river and its tributaries and the Blackfoot Fork and its tributaries with the Rockies as the eastern boundary. To the north Stevens places the Upper Pend d'Oreilles in the area of Flathead Lake and Flathead river with no

^{12/} Def. Ex. 4

boundary separating them from the Lower Pend d'Oreilles. Immediately north of the Upper Pend d'Oreille from the northern point of Flathead Lake Stevens placed the Kootenai in the territory of the Kootenay river and its tributaries from the Rockies westward to his dividing line between them and the Lower Pend d'Oreilles. Stevens did not show a subdivision of the Kootenay territory into sub-tribes or bands.

Compared with the Stevens map of 1857 on which are shown the treaty boundaries there is remarkable similarity between the two maps. The western boundary of the Flatheads on the 1854 map does not follow the crest of the Bitterroot mountains as it does on the 1857 map and appears to take in less territory. On the 1857 map (attached to Pet. Ex. 1) there is a tabular statement showing the population of the Flatheads to be 500, the Upper Pend d'Oreilles 700 and the Kootenai 500 - a total of 1700 in the tribes at the time of the treaty of July 16, 1855.

• 11. Turney-High, anthropologist, made a study of the Flatheads which was published in 1937. In this work the author states, in reporting on the arrival of the Flathead in western Montana in the pre-white era, that "the Bitter Root Valley became the traditional home in the minds of many Flatheads."^{13/} John Ewers in his book on Gustavus Sohon, soldier and artist, who accompanied Governor Stevens on his treaty making journeys, wrote that "from the time of their traditional migration from the west until their final settlement on the Flathead

^{13/} Pet. Ex. 7, p. 17

Reservation in 1891, the true home of the Flathead tribe was the Bitterroot Valley, between the Rocky and Bitterroot Mountains in the southwestern part of the present State of Montana."^{14/} Turney- High in his publication said that the Flathead might be considered "a semi-migratory people" due to their buffalo hunting but that "they considered Montana west of the continental divide their home."^{15/}

According to Teit the earliest recognized main seat of the Pend d'Oreilles was at Flathead Lake.^{16/} In 1850 Indian Agent Joseph Lane reported that the Flathead Indians occupied "from Bitter Root river, a fork of the Columbia, all the country drained by that stream down to what is called the Hell Gate, a distance of probably 150 miles." He reported the Pend d'Oreilles to be two bands occupying a large portion of country, commencing below the Flatheads and "extending to near Fort Colville and northeast among the lakes."^{17/} The report of the Secretary of the Interior for 1857 stated, "The Flatheads proper claim the Bitter Root valley only as their home."^{18/} Hazard Stevens, son of Governor Stevens, who accompanied his father on many of his trips, in his book, "The Life of General Isaac I. Stevens" wrote that the Bitter Root valley was the seat of the Flatheads proper. The

Ex. 7, p. 20; Def. Ex. 19

at p. 21

at p. 22

Id at p. 43 (See also Def. Ex. 19, p. 44)

Id at p. 50

Pend d'Oreilles lived lower down the river, or northward in two bands, the upper Pend d'Oreilles on the Horse Plains and Jocko prairies, and the lower Pend d'Oreilles on Clark's Fork, below the lake of their name, and were canoe Indians, owning few horses. The Kootenays lived about the Flathead River and Lake."^{19/} Indian agent Thompson in 1854 reported the Flatheads occupying the valleys between the Bitter Root and Rocky mountains.^{20/}

12. All through the historic period from the first white contact until at least the time of the Treaty of July 16, 1855, the Flathead, Pend d'Oreille and Kootenay Indians were under constant fear of attack by the Blackfoot tribes. As early as about 1824 Alexander Ross, who was in charge of the Flathead Post, reported the presence of Kootenai Indians at the post who "do not belong here but are driven from fear of the Piegans and Blackfeet."^{21/} The Flathead had to battle the Blackfeet not only on the plains where the latter contested the right of the former to hunt but had to take precautions against the Blackfeet even in their permanent camps in the Bitterroot valley. Governor Stevens in 1854 reported that the Flathead tribe had been almost exterminated by the Blackfeet "and the mass of the nation consist of Pend d'Oreilles, Spokanes, Nez Perce, and Iroquois." In 1850 "on account of the depredations and constant aggressions made upon them (Flatheads) by the

^{19/} Id at p. 60

^{20/} Id at p. 69

^{21/} Pet. Ex. 7, p. 94

Blackfeet and their own migratory habits" St. Mary's mission in the Bitterroot valley was abandoned.^{22/} Hazard Stevens in his book on the life of his father, Governor Stevens, reported that St. Mary's mission was abandoned "as too much exposed" to the incessant raids of the Blackfeet.^{23/} Agent Thompson in 1854 reported the Flatheads gradually decreasing in numbers due to the attacks of the Blackfeet "who make frequent incursions into their country, murdering and pillaging all who may be so unfortunate as to fall into their powers."^{24/}

13. The Flathead, Pend d'Oreille and Kootenai Indians parties to the Treaty of July 16, 1855,^{25/} were semi-migratory Indians. They made two trips yearly to the buffalo hunting grounds, one in the summer for a brief period and the other in the fall which lasted through the winter.^{25/} Small parties remained in their home camps during each of these excursions. In addition to buffalo hunting these Indians had to supplement their diets with roots, such as the camas, berries and game like the deer, elk and mountain goat. Horses being important as a means of transportation and for packing, the tribes had large herds which had to be grazed in their home territories.

14. The Flathead, Pend d'Oreille and Kootenai tribes which negotiated the treaty of 1855 did not have exclusive use and occupancy to all of the area ceded by that treaty. The Bonner's Ferry Kootenai

^{22/} Pet. Ex. 7, pp. 40, 44; Def. Ex. 24, p. 41; Def. Ex. 19, p. 23

^{23/} Pet. Ex. 7, p. 57; Def. Ex. 19, pp. 3 and 21

^{24/} Id. at p. 69

^{25/} Def. Ex. 19, p. 14

Band had exclusive use and occupancy of the lands in the northwestern part of the cession beginning on the northwest on the International Boundary at the crest of the Selkirk Mountains and running along the crest of said mountains in a southwesterly direction to the headwaters of Ross Creek, thence in a northeasterly direction along the crest of the mountains between Ross Creek and Bull River to the crest between Bull River and Libby Creek, thence along said crest to Kootenay Falls, thence in a direct northerly direction to the International Boundary, thence westerly along said boundary to the point of beginning. (See the Kootenai Tribe or Band of Indians v. United States, Docket No. 154, 5 Ind. Cl. Comm. 456, 462-463. See also Fdg. 7 herein.)

15. In the northern part of the ceded territory the Tobacco Plains Band of Kootenai Indians used and occupied part of the ceded area near the International Boundary. Schaeffer's (1935) field notes on the Kootenai Indians states that this band, the Aganahonek, during the early part of the 19th century "was located along a small tributary (Tobacco River) of the Kootenay River in present Montana." This band Schaeffer found rarely went farther south than Rexford.^{26/} Turney-High in his study of the Kootenai reported that the Tobacco Plains Band considered their range as straddling the Montana-British Columbia boundary.^{27/} To the south of the Tobacco Plains band there was another

^{26/} Def. Ex. 39

^{27/} Def. Ex. 29, p. 23

band of Kootenai which occupied the valley of the Kootenay River between Tweed and Warland, Montana. This band, the Agukuatsukink, according to Schaeffer, died off at an early period, that is before 1850.^{28/}

16. On the west there was before the Commission an overlapping claim to the area ceded by the 1855 Treaty. Petitioner filed a disclaimer to this overlap area. The Kalispel Indians in Docket No. 94 before this Commission, claimed this part of the lands ceded by the Treaty of July 11, 1855, to which they were not a party. In Docket No. 94 at a hearing before this Commission the petitioner introduced the testimony of Dr. Allan H. Smith, anthropologist, who prepared two maps, petitioner's exhibits 63 and 64 in that case, on which he plots the boundaries of the Kalispel (Lower Pend d'Oreilles) as determined by him through his research.

Smith's Kalispel boundaries on these maps extend into the 1855 cession lands along both sides of the Clark Fork river from the treaty boundary line near Belknap, Montana, southeasterly to below Paradise, Montana, and northerly to a point above McGregor Lake and Thompson Lakes. Smith locates Kalispel winter villages at Thompson Falls, another eight miles east of the mouth of Thompson Falls, one at Clark Fork at the mouth of Thompson river, one on the Clark Fork river near Plains, Montana, and one near Paradise, Montana. Smith indicates on his overlap map (Pet. Ex. 64) that the Kalispel's hunted deer, elk, caribou, mountain sheep and bear in this area within the cession lands. Chalfant, defendant's ethnologist in the instant case, also notes on his map (Def. Ex. 22)

^{28/} Def. Ex. 39

the presence of Kalispel winter camps within this area of the cession lands. Smith testified that the Pend d'Oreilles hunted occasionally in the Upper Clark Fork in the neighborhood of Plains, Paradise and that portion of the Clark Fork just upstream from Paradise, Montana, but he "assigned it to the Kalispel" because they made "extensive use" of it by hunting and because within this area were sites of Kalispel winter villages. (See Tr. 111-114, Kalispel case, Docket No. 94). In deciding the Kalispel case (6 Ind. Cl. Comm. 353) the Commission determined that the use of the part of the ceded tract in this region was not exclusively used by the Kalispel Indians. The overlap area was disclaimed by petitioner herein.

17. The Flathead and Pend d'Oreille tribes and the Kootenai band, parties to the Treaty of July 16, 1855, had a sense of territorial ownership or attachment to lands which they and others believed to be theirs by right of use and occupancy. The record is replete with reference to the Bitterroot valley being the home of the Flatheads, of Flathead Lake and Flathead valley being the territory of the Pend d'Oreilles and of lands to the north of Flathead Lake being Kootenai country.^{29/} That the Flatheads and the Pend d'Oreilles had deep seated attachments to these localities is clearly set forth in the 1855 treaty journal when the Flathead chief, Victor, refused to consider any location for the proposed reservation other than the Bitterroot Valley, while the Pend d'Oreilles held out for their homeland farther north

^{29/} Def. Ex. 24, p. 83; See Fdg. 9.

near St. Ignatius Mission in the Flathead valley.^{30/} Their territories being contiguous and the tribes being closely allied there was some sharing of the areas of these tribes with general consent that each could use such areas of the others.

18. While the three tribes occupied certain fixed locations which are sometimes called their homeland or the seat of their habitations they did exclusively use lands around those centers of population. As stated by defendant's ethnologist (Def. Ex. 24, p. 79):

The valleys lying outside of these nuclear areas of habitation and within the geographic bounds of the Rockies on the east and south and the Bitterroot Mountains on the west, in western Montana, were used to varying degrees for several economic ends by the three tribes. Such has been shown, but whether or not such lands were considered as their own by these tribes to the exclusion of others is the question raised here. All three tribes consider it their exclusive right to use and roam over these lands, and by right of use claim them as their own. However, this right did not go unchallenged by the Blackfoot, Piegan and Shoshoni, and in actual practice, many other tribes, both friendly and otherwise, made use of portions of the valley system of western Montana.

There is no substantial evidence that any other Indian tribe claimed or occupied the lands ceded by the Flathead, Upper Pend d'Oreille and Kootenai Indians in 1855 with the exception of the Kalispel, Bonners Ferry Kootenai, and the independent Kootenai bands mentioned in the preceding findings of fact. Friendly tribes were granted the right of trespass through Flathead territory. Blackfoot and Piegan entry into the lands of these tribes were raids and not for the purpose of use

^{30/} Def. Ex. 17; see also Def. Ex. 19, p. 24

or occupancy. The evidence of any Shoshoni use is meager and questionable.

19. The Commission based on the findings of fact herein made and all the evidence of record finds that each of the tribes parties to the 1855 treaty exclusively used and occupied certain separate areas of land within the ceded area. The lands to which these tribes held Indian title are as follows:

Upper Pend d'Oreille Tribe - Commencing at the source of Rock Creek on the divide separating the watersheds of Thompson and Little Bitterroot Rivers; thence southerly along said divide and to a point on Flathead River (as delineated on Pet. Ex. 22) east of present-day Paradise, Montana, and just east of the confluence of the Flathead and Clark Fork Rivers; thence in a westerly direction along the crest of the northern watershed of the St. Regis River and southern watershed of the Clark Fork River to the crest of the Bitterroot Mountains (see Pet. Ex. 22); thence southeastwardly along the crest of the Bitterroot Mountains to a point on said crest near the source of the south fork of Fish Creek; thence in a direct northeastwardly direction passing through the present-day town of Evaro to the present-day town of Seeley Lake; thence in a northeastwardly direction to the source of Babcock Creek; thence in a northerly and northwestwardly direction along the divide separating the watersheds of the Swan River and the South Fork of the Flathead River to a point about due east of the present town of Big Fork; thence in a direct southwestwardly direction to the point of beginning.

Flathead Tribe - Commencing on the crest of the Bitterroot Mountains at the southwestern boundary of the Upper Pend d'Oreille territory at the source of the south fork of Fish Creek; thence southeasterly and southerly along the crest of the Bitterroot Mountains to the divide between the headwaters of the Clearwater River and southwestern fork of the Bitterroot River; thence northeasterly along the main ridge or crest of the Rocky Mountains to the divide separating the waters of the Bitterroot River and the waters flowing into the Salmon or Snake River; thence easterly and northerly along the crest of the Rocky Mountains to a point at the source of Spotted Bear Creek

(see Map, Pet. Ex. 22); thence in a direct westerly direction to the eastern boundary of Pend d'Oreille territory; thence southerly and southwesterly along the eastern and southern boundaries of Pend d'Oreille territory to the place of beginning.

Kootenai Tribe (Libby-Jennings Band) - Commencing on the main ridge or crest of the Rocky Mountains at the northeastern corner of Flathead territory near the source of Spotted Bear Creek; thence northwesterly along the crest of the Rocky Mountains to where there is a bend in said mountains just east of Quartz Lake; thence west to the present-day town of Pole Bridge; thence west to the divide separating the watersheds of the Flathead and Tobacco Rivers; thence southwesterly to the source of Good Creek; thence in a direct northwesterly direction to the present town of Rexford; thence due west to the crest of the Purcell Range; thence in a southerly direction along the crest of the Purcell Mountains passing over the Kootenai River between Troy and Libby (see Pet. Ex. 22); thence southerly and easterly along the divide separating the waters of Clark Fork and Kootenai Rivers, and continuing along said divide northwesterly to the west of Thompson Lakes and across Fisher River to the divide north of Thompson Lakes; thence easterly and southeasterly along said divide and across the stream connecting McGregor and Thompson Lakes and in an easterly direction south of McGregor Lake to the divide separating the watersheds of Thompson and Little Bitterroot Rivers; thence southerly along said divide to the source of Rock Creek which is the northwest corner of Upper Pend d'Oreille territory; thence northeasterly along the northern Upper Pend d'Oreille boundary; thence southeasterly along the eastern boundary of Upper Pend d'Oreille territory to where the northeastern boundary of Flathead territory meets it; thence along said northeastern boundary of Flathead territory to the place of beginning at the source of Spotted Bear Creek at the crest of the Rocky Mountains.

20. The Commission finds that the Flathead Tribe, Upper Pend d'Oreille Tribe, and Kootenai (Libby-Jennings Band) Tribe were consolidated and merged into a single tribal entity by the provisions of the Treaty of July 16, 1855, 12 Stat. 975, II Kapp. 722. The Commission

finds that most of the members of the formerly separate tribes eventually settled on the reservation set aside by the 1855 treaty and that descendants of said tribe reside thereon to the present day. Since the date of the treaty when the tribes agreed to consolidate or merge the United States has dealt with the newly formed tribe as a single entity. The Commission finds petitioner, The Confederated Salish and Kootenai Tribes of the Flathead Reservation, to be the successor-in-interest to the formerly separate tribal entities.

21. The Commission finds that the effective date of the Treaty of July 16, 1855, by which the Flathead, Upper Pend d'Oreille and Kootenai Tribes, parties thereto, ceded their Indian title to the separate tracts of land described in Finding 19, is March 8, 1859, namely, the date the treaty was ratified by the Senate. The case will now proceed to a determination of the acreage involved, the value of the lands as of the effective date of the treaty, March 8, 1859, and the issue of whether the consideration paid was unconscionable, leaving to a further proceeding the question of offsets, if any.

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner