

Record Group 279, Indian Claims Commission

Docket 61

BOX 666, Flathead Petition

FILED

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James A. Langston CHIEF
INDIAN CLAIMS COMMISSION

*Amended by order
Jan 13, 1958
95, 13, 15, & 17*

Record copy
(3)

BEFORE THE
INDIAN CLAIMS COMMISSION

NO. 61

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

Petitioner,

v.

THE UNITED STATES OF AMERICA

Defendant.

PETITION

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.

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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,

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1934 (48 Stat. 984 as amended, 25 U. S. C. A. Sec. 476) with a constitution 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, 1934, 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 other 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. From time immemorial on the continent of North America, petitioner and the members of petitioner tribe held, occupied, possessed and owned the land and territory hereinafter described. Such holding, occupation, possession and ownership by petitioner existed long prior to the formation of the

United States of America and at the time of the formation thereof and continuously thereafter until 1855.

On July 16, 1855 petitioner and the members of petitioner tribe held, occupied, possessed and owned, and for many years immediately prior thereto from time immemorial had continuously held, occupied, possessed and owned that certain land and territory contained within the present borders of the United States of America, and within the present borders of the states of Montana and Idaho, described generally, according to geographical landmarks as then known, as follows:

Commencing on the main ridge of the Rocky Mountains at the forty-ninth between the head-waters of the Koos-koos-kee or Clearwater River and of the southwestern fork of the Bitterroot River; thence easterly along the divide separating the waters of the several tributaries of the Bitterroot River from the waters flowing into the Salmon and Snake Rivers and the waters flowing into the Big Hole River to the main ridge of the Rocky Mountains; thence northerly along said main ridge to the place of beginning.

*Amended
order of
Jan 13, 1958*

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 Forke, 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.

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The total area embraced and contained within said territory was and is 25,000 square miles comprising 16,000,000 acres in area. The right of petitioner to said territory and the occupancy, possession and ownership thereof was at all said times undisputed and acknowledged by the United States. A plat showing the location of said territory appears at the end of this Petition, pages 18-19. In a general way said territory may be described as a parallelogram commencing at the Canadian line about the center of Glacier National Park, thence west along the Canadian line to the middle of the north border of Idaho; thence southwest along the crest of the Bitter Root Mountains to the south end of the Bitter Root Valley; thence easterly to the main range of the Rocky Mountains south and east of Butte and Anaconda, thence north and northwest to the place of beginning.

The total area embraced and contained within said territory was and is approximately 14,255,370 acres. The right of petitioner to said territory and the occupancy, possession and ownership thereof was at all said times undisputed and acknowledged by the United States.

~~The total area embraced and contained within said territory was and is 25,000 square miles comprising 16,000,000 acres in area. The right of petitioner to said territory and the occupancy, possession and ownership thereof was at all said times undisputed and acknowledged by the United States. A plat showing the location of said territory appears at the end of this Petition, pages 18-19. In a general way said territory may be described as a parallelogram commencing at the Canadian line about the center of Glacier National Park, thence west along the Canadian line to the middle of the north border of Idaho; thence southwest along the crest of the Bitter Root Mountains to the south end of the Bitter Root Valley; thence easterly to the main range of the Rocky Mountains south and east of Butte and Anaconda, thence north and northwest to the place of beginning.~~

5. The territory from the western slope of the continental divide, to the Pacific Ocean, comprising the present states of Oregon, Washington, Idaho and western Montana where the tribal lands are located, was largely explored early in the nineteenth century. Up to that time the land was occupied exclusively by the Indians.

Lewis and Clark came through petitioner's territory in 1805. In 1809 David Thompson of the British Northwest Fur Company established the Salish House near Thompson Falls. In 1821 the Hud-

son Bay Company and the Northwest Company merged. In 1841 Father P. J. DeSmet, S. J., founded St. Mary's Mission in the Bitter Root Valley. In the late 1840's the Hudson Bay Company established Fort Connah in the Flathead Valley. Owen Brothers trading post was established in the Bitter Root Valley in 1850.

During the period from about 1800 to 1846 conflicting claims existed for the present states of Oregon, Washington, Idaho and Montana west of the continental divide, by England, Russia, Spain and the United States, based on discovery and exploration. Through a series of acts and events these conflicting claims were finally disposed of in favor of the jurisdiction of the United States in the treaty of June 15, 1846, 9 Stat. 869, when the present international boundary between the United States and Canada was fixed. Despite unsettled conditions settlers were coming into the area and as early as July 5, 1843 they set up a "Provisional Government for the Oregon Territory." By the Act of August 14, 1848, 9 Stat. 323, Congress created the Territory of Oregon which included the present states of Oregon, Washington, Idaho and Montana west of the Continental Divide. In March 1853 Congress formed the new Territory of Washington out of the northern half of what was then Oregon, same being the territory extending from the Columbia River and the 46th parallel northward 250 miles to the British pos-

sessions and the 49th parallel, and from the crest of the Rocky Mountains westward 600 miles to the Pacific. Included therein and lying at the most easterly portion thereof were the lands of petitioner. The country extending east thereof from the crest of the Rocky Mountains was then a portion of the Territory of Nebraska.

6. On March 17, 1853 President Franklin Pierce appointed Major Isaac I. Stevens, of the corps of engineers of the U. S. Army, Governor of the new Territory of Washington. As such he was ex officio Superintendent of Indian Affairs for said Territory. Also he was directed by Jefferson Davis, Secretary of War, to explore the route for a railway from St. Paul, Minnesota to Puget Sound. He promptly entered upon the performance of his duties. Governor Stevens was an able man of strong physique, great energy and iron will.

7. Proceeding west from St. Paul across what are now the states of Minnesota, North Dakota and Montana Governor Stevens crossed the Rocky Mountains and entered the territory of the Confederated Tribes. His party consisted of 11 officers and 76 enlisted men of the regular U. S. Army, also scientific and engineering personnel. He found that the Bitter Root Valley was the seat of the Flatheads proper. The Pend d' Oreilles made their headquarters on the Horse plains and Joeko prairies, and the Kootenays camped mostly about Flathead Lake and River. The

three tribes, now known as the Confederated Salish and Kootenai tribes, owned, occupied and used the entire territory hereinbefore described and shown on the plat. Said tribes received Governor Stevens and his party in a courteous and friendly manner. He pushed on to the coast and established the territorial government of Washington, at Olympia, in January 1854. He promptly appointed Indian agents for the coast Indians and the Indians east of the Cascades and impressed on the various tribes the necessity of making treaties to prevent future trouble. In his first message to the territorial legislature, which assembled on February 25, 1854, he dwelt on the importance of extinguishing the Indian title and providing for the construction of a transcontinental railroad.

8. In May of 1854 Governor Stevens returned to Washington and reported the results of his explorations and surveys to President Pierce, to the Secretary of State, to the Secretary of War and the Secretary of Interior. He was appointed Commissioner to make treaties with the Indians of Washington Territory and to purchase their lands for the United States. He secured an appropriation for a wagon road across the mountains from Ft. Benton on the Missouri to Walla Walla on the Columbia. He returned to Olympia in December 1854 and promptly set in motion plans to extinguish the Indian title and clear the route for the Northern Pacific Railway. He began with the coast Indians and worked east. His

party comprised a military detachment of 50 soldiers and an equal number of Indian Service employees, and attendants. Meanwhile settlers had been coming into the country and demanding that the Indian title be extinguished to provide for permanent habitations for the whites

9. In July 1855 Governor Stevens and his party crossed the Bitter Root Mountains and arrived at the Hell Gate council ground in the Bitter Root Valley near the site of the present city of Missoula, Montana. His agents had diligently summoned petitioner tribes to attend and they were there. Governor Stevens told them he had made treaties with other tribes west of the Bitter Roots and now wished to make a treaty with the Flatheads, Pend d'Oreilles and Kootenays; that he required them to sell their land to the United States and live on one reservation; that he was determined to push the matter through; that the United States would make certain payments, over a period of 20 years, for the land sold and furnish certain teachers and schools, a blacksmith, a farmer, a miller, and a wheelwright, and certain supplies for a period of 20 years. He told them the rest of their territory, outside the reservation, was to belong to the Great Father for his white children.

The Indians replied that their country was already too small, not large enough for them. Governor Stevens replied that it was necessary for the tribes to go on one piece of land and be under one

Indian agent. He referred to the treaty he had made with the Indians of the Columbia at Walla Walla in May and June of 1855 at which a delegation of petitioner tribes was present at his invitation. It was there stated by General Palmer, Superintendent of Indian Affairs for Oregon, that the whites were coming like the grasshoppers on the plains; that the Indians could not resist them and that those tribes who resisted and attempted to defend their country were soon decimated but that those tribes who acquiesced and went upon reservations prospered.

The Indians again protested that the proposed reservation was too small for them. Governor Stevens replied that the terms offered by the Government were the only terms available. There was no bargaining.

Finally, with reluctance and at the insistence of Governor Stevens, and with no alternative being offered, the Indians signed the treaty on July 16, 1855, 12 Stat. 975, 2 Kappler 722. Governor Stevens signed for the United States. The treaty was ratified on March 8, 1859 and proclaimed April 18, 1859. A copy of said treaty is hereto attached and made a part hereof as Exhibit A.

10. At the time of signing said treaty the chiefs and members who signed for the tribes and the members of said tribes were full-blood, blanket Indians, unable to read, write, speak or understand English, with little previous contact with whites. They had

no conception of the value of money or the value of the property they were surrendering to the Government. In all of their contacts with the whites they had been friendly and never waged war upon or attacked whites. They were a primitive, uncivilized people, wholly unlettered and unskilled and inexperienced in the conduct of negotiations or the protection of their interests and easily imposed upon and misled. They fully trusted and placed confidence in defendant and its representatives. They had no appreciation of the value of their lands or of their own necessities and the need for preserving them intact for their use, enjoyment and sustenance. They were a nomadic people depending for a living upon hunting buffalo and other wild game which then abounded in their territory. Their manner of living and their means of sustenance required that all of their territory be held and preserved for them and protected against the encroachments of civilization and invasion of white men.

11. Shortly after the execution of said 1855 treaty defendant seized and took possession of all of said lands and territories of petitioner described in paragraph 4 hereof except the reservation set apart for petitioner and by threats, duress, force and other methods drove petitioners from the lands so seized and forced them to reside upon and occupy only the limited reservation set aside for them. The total amount and quantity of said lands so seized and taken

by defendant was 14,255,370 acres, less the area of the present reservation, viz. 1,256,000 acres, thus leaving the area so taken 12,999,370 acres.

stituting the eastern and southern boundary of said territory, rises to an approximate elevation of 10,000 feet. The Bitter Root mountains on the western boundary rise to an elevation of approximately 8,000 feet. The territory is protected from the elements by these two ranges of mountains and comprises the choicest and best watered portion of the state of Montana. The character of the land ranges from precipitous mountains on the eastern, western and southern borders down through heavily timbered upland, lower down through well-grassed bench land, to a series of river valleys with level, deep soil. Among the larger of said rivers and valleys are the Kootenai, Flathead, Clarke Fork, St. Regis, Missoula, Bitter Root, Blackfoot, Swan and Deer Lodge. There are hundreds of smaller streams and valleys.

The territory is made up in part of unsurpassed mountain scenery, including approximately half of present Glacier National Park. The mountains are the source of some of the largest rivers on the North American continent and contain within their recesses

~~by defendant was 16,000,000 acres, less the area of the present reservation, viz., 1,243,969 acres, thus leaving the area so taken 14,756,031 acres.~~

12. The territory hereinbefore described so taken by defendant is located in the western part of what is now the state of Montana and a small portion at the north end of what is now the state of Idaho. The main range of the Rocky Mountains, constituting the eastern and southern boundary of said territory, rises to an approximate elevation of 10,000 feet. The Bitter Root mountains on the western boundary rise to an elevation of approximately 8,000 feet. The territory is protected from the elements by these two ranges of mountains and comprises the choicest and best watered portion of the state of Montana. The character of the land ranges from precipitous mountains on the eastern, western and southern borders down through heavily timbered upland, lower down through well-grassed bench land, to a series of river valleys with level, deep soil. Among the larger of said rivers and valleys are the Kootenai, Flathead, Clarke Fork, St. Regis, Missoula, Bitter Root, Blackfoot, Swan and Deer Lodge. There are hundreds of smaller streams and valleys.

The territory is made up in part of unsurpassed mountain scenery, including approximately half of present Glacier National Park. The mountains are the source of some of the largest rivers on the North American continent and contain within their recesses

numerous fresh water lakes, well-stocked with trout and water fowl and on whose banks live beaver, otter and other fur-bearing animals. Flathead Lake covers 189 square miles. It is one of the largest fresh water lakes, outside of the "Great Lakes," on the continent. The mountains contain several million acres of valuable timber. The river valleys are level, easily irrigated and contain a warm, rich, and productive soil. Stock lives the year round without other feed than being herded on the grasses growing from the mountain tops to the lowest valleys affording feed and range for livestock in the mountains in the summer season and in the lower reaches in the fall and winter seasons. The water is pure and the climate is mild and regular. The wind velocity is low.

The soil and climatic conditions are well-suited for the production of alfalfa, sweet clover, wheat, oats, barley, beans, peas, sugar beets, garden vegetables, small fruits and melons. The agricultural land has a high average yield of crop. Ample water is available to irrigate agricultural land in the territory; also ample water power for the production of electric light and power.

The territory was known in 1855 to contain substantial deposits of gold. It also contains large deposits of silver, lead, copper and other minerals. The territory in and about Butte and Anaconda, within the southeast limits of said territory, has been designated "the richest hill in the world."

At the time of the execution of the Treaty of 1855 buffalo, elk, deer, antelope, bear, beaver and other wild animals suitable for food were in great abundance on the territory. Such game was native and indigenous to the mountains and valleys and streams of the reservation and was adequate for subsistence of the Indians for many years. The Indians went on annual hunts into the mountains for food and the skins of certain wild animals were used for clothing and other necessary uses by members of the tribe. Timber for building and fencing purposes was plentiful. No part of the territory could be considered valueless.

13. The total consideration paid to petitioner, as stipulated in said 1855 treaty, did not exceed in value the sum of \$360,000 or ~~2 1/2~~^{2.77} cents per acre for ~~14,766,081~~^{12,999,370} acres of land so taken and no other or further consideration was ever paid to petitioner for said taking. Said lands so taken from petitioner by defendant had a value, at the time of taking, of at least \$1.25 per acre, that being the minimum price of public land under the laws of the United States. The value of the lands so taken was ~~\$18,445,039~~^{16,249,212.50} or more than fifty times the consideration paid. Said consideration so paid was grossly inadequate and unconscionable, of which fact petitioner and the members of petitioner's tribes were wholly ignorant but of which defendant was then well aware. The defendant, in entering into said treaty with petitioner and in tak-

ing petitioner's said lands, in the manner and under the circumstances aforesaid, dealt unfairly and dishonorably with petitioner. Fair and honorable dealings, in the aforesaid circumstances, required defendant to pay petitioner the full value of said lands.

14. There is no suit now pending in the Court of Claims or in the Supreme Court of the United States upon or involving the claim herein presented or any part thereof. The claim herein presented has not been filed in the Court of Claims under any legislation in effect on the date of the approval of the said Indian Claims Commission Act.

15. The Act of Congress of July 30, 1946, Public Law 566, 79th Congress, Chapter 701—2d Session, conferred jurisdiction on 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. Suit thereunder may be brought within five years after the approval of said Act. No suit has been brought under said Act. It is expected that suit will be brought under said Act within the time limited, but the matters and things to be presented in said suit relate to the acts and dealings of the United States with petitioner respecting petitioner's treaty reservation and are no part of the claim presented here-

in. A copy of said Act is hereto attached and made a part hereof as Exhibit B.

Wherefore petitioner prays that it be awarded judgment against defendant, after the allowance of all legal credits and offsets, for the amount which will provide just compensation for the lands taken by defendant from petitioner as hereinbefore alleged, viz. ~~\$18,445,000~~ ^{\$16,249,312.50}, together with interest thereon at a reasonable rate as a part of just compensation, from 1855 to date of payment, and for such further relief as to the Commission may seem fair and equitable.

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

George M. Tunison
By GEORGE M. TUNISON,
Attorney of Record,

1212 First National Bank
Building,
Omaha, Nebraska.

Dated March 31, 1950.

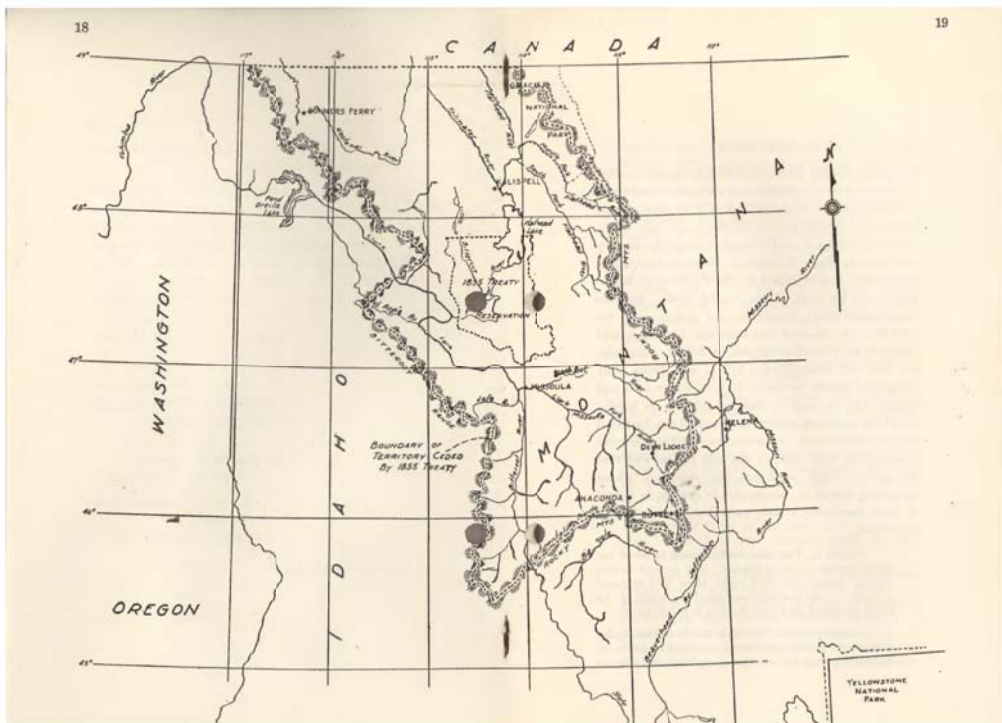


EXHIBIT A

TREATY WITH THE FLATHEADS, ETC., 1855

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 plough-maker'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, keep-

ing 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 proper, 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 B

[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 prosecu-

tion 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.