

CSKT filings with the United States Court of Claims and Indian Claims Commission

PETITION GRIEVANCE (original petition language)	Docket 50233 US Court of Claims (Petition filed 07/14/51)				Docket 156 Indian Claims Commission (Petition Filed 07/20/51)			
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Since the execution of said 1855 treaty, the defendant has not made or furnished to plaintiff an accounting of its property and fund. The Jurisdictional Act provides, Sec. 2: "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 J 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." Plaintiff asks that such account be had and stated and that the court render judgment for plaintiff in accordance therewith.	7	4 of 14	86 Stat. 64 March 8, 1971 a compromise settlement was awarded.	\$6,000,000	1	6 of 15	Dismissed with Prejudice 08/13/69	See 50233
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.: " <i>half way in latitude between the northern and southern extremities of the Flathead Lake</i> " 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 plaintiff a tract of land six (6) miles in width, north and south, and thirty (0) miles in length, east and west, comprising approximately 180 square miles of land containing approximately 115,200 acres. Such erroneous and illegal action by defendant constituted a taking of plaintiffs property by defendant for which plaintiff is entitled to judgment against defendant for just compensation in an amount to be fixed by the court.	8	4 of 14	41 FR 41428 55 FR 24936 Paragraph 8 & 9 judgments were approved pm November 11, 1971	\$552,169	2	6 of 15	Dismissed with Prejudice 08/13/69	See 50233
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.; " <i>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</i> " but was in fact fixed and ever since maintained by defendant on a line several miles north and east of the true southwest line of said reservation, as called for by the treaty. By such action defendant took from plaintiff a tract of land several miles in width and containing many thousands of acres. Such erroneous and illegal action constituted a taking of plaintiff's property by defendant for which plaintiff is entitled to judgment against defendant for just compensation in an amount to be fixed by the court.	9	5 of 14	See Paragraph 8		3	7 of 15	Dismissed with Prejudice 08/13/69	See 50233
The 1855 treaty, after stating the boundaries of the reservation, provided: " <i>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,</i> " Following their occupation of their treaty reservation, plaintiff 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 plaintiff tribe. But the westward trend of the whites would not be staved. Several attempts were made by defendant to secure plaintiff'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	10	6 of 14	86 Stat. 64 April 23, 1971 judgment included 1912 value of 485,171.31 acres of reservation land, minus the \$1,343,331.22 already paid plus interest of \$16,294,880.29	\$22,361,549	4	8 of 15	Dismissed with Prejudice 08/13/69	See 50233

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attached and made a part hereof as Exhibit D. Said Act as originally drafted and introduced in Congress as H. R. 1 2231, 58th Congress, 2d Session, contained an additional section, Sec. 17, requiring approval by plaintiff 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 the Interior. The opening of the treaty reservation, without the consent and over the objections of plaintiff, resulted in great damage to plaintiff. 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. Plaintiff is entitled to judgment for damages against defendant for the aforesaid treaty violation in an amount to be fixed by the court.								
The defendant wrongfully and unlawfully appropriated, used and expended several hundred thousand dollars of plaintiff'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 plaintiff and will be disclosed by the accounting herein prayed for. Plaintiff is entitled to judgment for damages against defendant for said amount.	11	7 of 14	83 Stat. 123 December 18, 1967 awarded reimbursement for these items in breach of the Hell Gate Treaty	\$190,400	5	9 of 15	Dismissed with Prejudice 08/13/69	See 50233
Plaintiff's 1855 treaty reservation is surrounded by high mountains on the east, south and west, 'With Flathead Lake and mountains on the north. Plaintiff still owns these mountainsides, most of which are covered with timber and are the source of many streams flowing down into the lowlands. Plaintiff 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 plaintiff's land is of large value for irrigation purposes. Beginning with the Act of April 30, 1908, 35 Stat. 70, defendant, without the consent and over the protests of plaintiff, 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 plaintiff 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 thereat for irrigation of said individually owned lands pursuant to the purposes of defendant, and plaintiff is entitled to recover from defendant just compensation therefor in an amount to be determined by the court.	12	8 of 14	Dismissed without prejudice - Letter from DOI 8/19/64 says the following: "under the constitution and bylaws, the Tribal Council adopted Resolution No. 1527 on May 15, 1964, at a meeting in which a quorum was present, directing the tribal claims attorneys to file motions for dismissal of the sixth cause of action in Indian Claims Commission Docket 156 and the twelfth paragraph of Court of Claims Docket 50233."		6	10 of 15	Dismissed without Prejudice 09/11/1964	See 50233
Section 22 of the Act of March 3, 1909, 35Stat. 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 purposes 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, L5 Stat. 212, authorized the Federal Power Commission upon terms	13	9 of 14	12/15/67 defendant's motion for summary judgment denied and case remanded for trial or other appropriate further proceedings. 12/14/69 a second trial was ordered to allow the defendant's to prove damages 10/13/1972 Petition Dismissed "The evidence does not establish		7	11 of 15	Dismissed with Prejudice 08/13/69	

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<p>satisfactory to the secretary of the Interior to issue licenses 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 s hall also make available, at the voltage of the line from m1ch 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 an behalf of the Flathead irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 21/2 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 2; 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 plaintiff for which plaintiff is entitled to just compensation from defendant in an amount to be determined by the court.</p>			<p><i>that the defendant breached its fiduciary obligations to plaintiffs with respect to the negotiation for and the establishment of the presently relevant terms of License No.5, Montana. (e) The evidence does not establish "what, if anything", plaintiffs have lost in consequence of the presently relevant provisions of License No.5, Montana.</i></p> <p><i>Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiffs are not entitled to recover on the claim stated in Paragraph 13 of the petition and as to that claim the petition is dismissed."</i></p>					
<p>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 1856 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.</p>					8	14 of 15	Dismissed with Prejudice 02/24/71 and Docket 156 was closed	