

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE)
 CHEYENNE RIVER RESERVATION,)
 SOUTH DAKOTA,)
 Plaintiffs,)
 v.)
 THE UNITED STATES OF AMERICA,)
 Defendant.)

Docket No. 192

Decided: March 29, 1957

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiffs herein are Sioux Indians referred to in the Act of Congress approved March 2, 1889 as the Indians, or their descendants, receiving rations and annuities at the Cheyenne River Agency, South Dakota. As such they constitute an identifiable group of American Indians entitled to prosecute actions authorized by the Indian Claims Commission Act (60 Stat. 1049).

2. By the Act approved March 2, 1889 (25 Stat. 888) six separate reservations were carved out of the Great Sioux Reservation. The lands lying outside of the separate reservations were restored to the public domain and opened for settlement. One of these six reservations was set apart for the Sioux Indians receiving rations and annuities at the Cheyenne River Agency. Section 4 of that Act reads as follows:

Sec. 4. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities

at the Cheyenne River Agency, in the said Territory of Dakota, namely: Beginning at a point in the center of the main channel of the Missouri River, ten miles north of the mouth of the Moreau River, said point being the southeastern corner of the Standing Rock Reservation; thence down said center of the main channel of the Missouri River, including also entirely within said reservation all islands, if any, in said river, to a point opposite the mouth of the Cheyenne River; thence west to said Cheyenne River, and up the same to its intersection with the one hundred and second meridian of longitude; thence north along said meridian to its intersection with a line due west from a point in the Missouri River ten miles north of the mouth of the Moreau River; thence due east to the place of beginning.

3. By the Act approved May 29, 1908 (35 Stat. 460) a portion of the Cheyenne River Reservation aggregating 1,612,527.86 acres was described and the Secretary of the Interior was authorized to allot, to reserve and to dispose of the unreserved, unallotted lands within the described area, upon the issuance of a Presidential Proclamation and conformably with the terms stated in the Act. Section 2 of the Act provided:

* * * That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within said reservation, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition until further action by Congress.

Section 3 of the Act provided that the lands opened for settlement should be classified and appraised by three Commissioners: one a resident citizen of South Dakota, one a representative of the Indian Bureau and one person holding tribal relations with the Cheyenne River Sioux; and that the price of the lands entered as homesteads should be fixed by the appraisement.

Sections 4, 5, 6 and 8 provided for payment, and that the expense of surveying, allotment, classification and appraisal should be borne by the Indians, that the net proceeds received should be credited to their account in the Treasury and section 9 said that the United States was acting as trustee for the Indians in the sale of the lands and was not otherwise obligated.

4. On October 28, 1908, the Secretary of the Interior requested the United States Geological Survey to examine the area in order to determine the location of the coal lands. On April 10, 1909, the Secretary of the Interior promulgated Regulations entitled "Classification and Valuation of Coal Lands." These Regulations provided so far as material:

1. For the purpose of classification and valuation, coal deposits shall be divided into four classes:

(a) Anthracite, semianthracite, coking, and blacksmithing coals;

(b) High-grade bituminous noncoking coals having a fuel value of not less than 12,000 B.T.U.
* * *;

(c) Bituminous coals having a fuel value of less than 12,000 B.T.U. * * *, and high-grade subbituminous coals having a fuel value of more than 9,500 B.T.U.;

(d) Low-grade subbituminous coals having a fuel value below 9,500 B.T.U., and all lignite coals.

Classification of Coal Lands

2. Lands underlain by coal beds, none of which contain 14 inches or over of coal, exclusive of partings, of Class a, b, or c, or over 36 inches of class d, shall be classed as noncoal land. (The lignite deposits which constitute the basis of the present claim fall into Class d.)

Valuation of Coal Lands

9. The coal price of lands of Class d shall be the minimum provided by law, \$20 per acre when within fifteen miles of a railroad and \$10 per acre when at a greater distance.

The foregoing Regulations were formulated, not with special reference to the Cheyenne River Reservation or for particular application to Indian reservations. They were regulations applicable to all public lands of the United States opened for settlement.

5. As directed by section 3 of the 1908 Act three commissioners classified the land by legal subdivision and appraised it at prices ranging from \$2.50 to \$6.00 per acre. By proclamation dated August 19, 1909 the President declared the lands embraced in the 1908 Act (excepting lands allotted or reserved) open for entry effective April 1, 1910.

As of June 30, 1925 almost all (1,584,571.16 acres) of the area covered by the 1908 Act had been either allotted, reserved, granted as school land to the State or disposed of, leaving an unsold remnant of only 27,956,70 scattered acres available for entry.

6. The area defined by the 1908 Act consists primarily of rolling grass-covered prairie land. All or parts of eighty numbered townships were involved, or almost 2600 sections containing more than 1,600,000 acres. Calvert, the geologist who examined the area in 1909, reported that the terrain was grass-covered, that outcrops were rare, that exposures were meager and that none attained the 36 inch minimum standard prescribed by the governing regulations. In 1909 it was not the practice of the Government to engage in core drilling as a basis for classifying its own coal-bearing public lands. To have done so at the expense of

the Indians would have cost them an estimated million to a million and a half dollars. The barrenness of drilling results is confirmed by the experience of the past 45 years. Of the 80 townships covered by the 1908 Act, commercially mineable coal discoveries, recoverable even with modern machinery, have been limited to isolated spots located within only two of the townships; T. 17 R. 22 and T. 17 R. 23.

7. The Dewey County Coal Company is a small strip mine near the town of Firesteel, South Dakota. It is virtually the sole commercial producer of lignite in the area involved. The company is owned by Mr. Ben Dollarhide who was formerly general superintendent of a North Dakota coal company. Upon his retirement in 1946 he purchased the company and ran it along with his two sons.

The lignite in the Firesteel area lies in pockets rather than a continuous bed. The coal thickness is variable, averaging $3\frac{1}{2}$ feet under an average 35-foot overburden. The annual production of the Dewey County Coal Company has varied with the weather. For the past three or four years prior to 1954 it has been close to 25,000 tons, but there have always been from five to six thousand tons left over annually. At the time of his testimony in September 1954 Mr. Dollarhide estimated that his operation would cease in 1957 or 1958 because the coal was running out.

Mr. Dollarhide also stated that at the going price of \$3.50 per ton he and his sons made only a "salary" from the business and that a drop of 50 cents in price per ton would make it doubtful that he could continue to operate the mine.

8. Under the mining techniques of 1909 the presence of lignite under a 32 foot overburden, even if known, was economically worthless. The horse and scraper method was not capable of being used to uncover the lignite at that depth. An overburden of 10 - 12 feet was the most that could be economically removed. With the modern methods of today the cost of equipment to strip mine at a depth of 25 to 30 feet was estimated at \$125,000 to \$150,000. To get to a depth of 35 feet the cost of equipment was estimated at close to \$200,000. Anything below that depth was said not to be recoverable. Mr. C. E. Leshar, a consulting engineer and a man of wide experience in the coal industry stated on page 47 of his report prepared for defendant and introduced herein as defendant's exhibit No. 67, that,

The handicap of thin beds and irregular occurrence prevents the lignite operations in the Cheyenne reservation from becoming a profitable coal mining industry.

9. Mr. Robert Curtiss a geologist with the State Geological Survey of South Dakota testified for plaintiffs that there remained in the ground within the area shown on plaintiffs' exhibit No. 4 (map) as the Isabel-Firesteel Coal Area, a total of 166 million plus tons of coal. This estimate did not take into consideration the areas of water, roads, houses, etc. which could not be mined. Neither did it consider the overburden which could not be moved economically. The estimate was admitted to Curtiss to be useless as a basis for determining the amount of commercially recoverable coal in the area.

10. The only testimony offered by the parties herein with reference to the increased value of the land in the area in question due to the

presence of underlying lignite was to the effect that it added nothing to the land values. Mr. Mathews, a realtor from Isabel, testified that the result of his experience as a correspondent for insurance companies in making loans on property in the area had been that the known presence of lignite had added nothing to the value of the land. Mr. Leshner, a coal expert and engineer, stated in his report that had the present day knowledge of the coal deposits been available in 1909 it still would not have added to the then market value of the lands which were being sold as grazing or agricultural lands.

11. Pursuant to the authority conferred by section 3 of the Indian Reorganization Act (48 Stat. 984) the Secretary of the Interior on June 12, 1941 restored to the Cheyenne River Sioux all lands covered by the 1908 Act remaining undisposed of and all lands and mineral rights which had reverted through forfeiture by defaulting purchasers. Subsequently, additional lands and mineral rights reverted through default, cancellation or relinquishment. By Restoration Order dated January 12, 1952, all lands and mineral rights so reacquired were restored to tribal ownership. Of the total area comprising the fourteen townships (320,215.24 acres), 54,964.74 acres of land and the mineral rights in 7,676.58 additional acres, or an aggregate of 62,641.32 acres were restored to the Cheyenne River Sioux by the two restoration orders. Within the same 14-township area 40,319.90 acres previously had been allotted to the Indians. The total acreage within the claimed territory allotted and restored aggregated 102,961.22 acres or almost one-third of the area and some of the lignite discovered underlies Indian allotments or tribal land.

12. The evidence in this case does not indicate that the actions of the Secretary of the Interior were arbitrary or capricious with regard to the classification of the lands of the Cheyenne River Reservation as non-coal lands. He applied the same criteria to this land that were applied to all the public lands. On the contrary, the evidence does indicate that the Secretary acted well within the limits of his rights and performed his duty toward the Indians with due regard to their welfare.

Based upon the preceding findings made herein it is the conclusion of this Commission that the plaintiffs are not entitled to recover of the defendant.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner