

BEFORE THE INDIAN CLAIMS COMMISSION

THE COEUR D'ALENE TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 81
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 3, 1957

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact:

12. By the Agreement of March 26, 1887, 26 Stat. 989, 1027, petitioner agreed to "cede, grant, relinquish and quit claim to the United States" all its lands except the portion thereof within the boundaries of the reservation set apart as such by Executive Order of November 8, 1873.

13. The lands thus ceded, relinquished and quit claimed by petitioner comprise 2,389,924 acres in the present States of Idaho and Washington, 2,055,596 acres of which are in the State of Idaho, and 334,328 acres in the State of Washington. The reservation referred to in Finding 1 contained 598,500 acres, all within the State of Idaho.

14. Description of the Coeur d'Alene Tract: the Coeur d'Alene Tract occupies the central portion of the Panhandle section of the State of Idaho and extends westward into the State of Washington from ten to twelve miles. The northernmost extension of the north boundary of the Tract reaches the southern tip of Lake Pend Oreille and extends

from that point due eastward to the Bitterroot Mountains. The eastern boundary of the Tract is the summit of the Bitterroot Mountain range, which also serves as the boundary line between the States of Idaho and Montana. The Tract extends southward to the spur ranges and hills dividing the drainage basin of Coeur d'Alene Lake from the drainage basin of the Snake River.

The Coeur d'Alene Indian Reservation containing 598,500 acres is located in the west central portion of the Coeur d'Alene Tract. In the main the Tract may be said to consist of the drainage basin of Coeur d'Alene Lake less the Coeur d'Alene Reservation. The area is drained by the Coeur D'Alene River flowing from the summit of the Bitterroot Mountain range westward to empty into the lake; the St. Joe River flowing from the Bitterroot Mountains in a northwesterly direction and emptying into the southern end of Coeur d'Alene Lake; and the St. Maries River heading in the spur ranges and hills dividing the Coeur d'Alene and Snake drainage systems and flowing northward to a junction with the St. Joe River a few miles east of the lake. Lake Coeur d'Alene empties into the Columbia through the Spokane River, which flows directly westward from Lake Coeur d'Alene. In the main the Coeur d'Alene Tract is a mountainous and rugged area. All of the area from Lake Coeur d'Alene to its eastern border is occupied by the westerly slope of the Bitterroot Mountains and by various short spur ranges. In the northern portion of the Tract the mountain area extends to and beyond Pend Oreille Lake, and in the southern portion of the tract the St. Joe Mountains extend nearly to the Idaho-Washington border.

15. While the country had been visited and traversed by white men much earlier, the first permanent settlement among the Coeur d'Alene was in 1842, when the Jesuit priests established a mission there. During the ensuing years, the members of the tribe became thoroughly Christianized. The Jesuits taught them how to farm and cultivate the soil. Long before 1887 they had many acres under cultivation. By 1887, they were generally recognized as one of the most advanced and civilized of Indian tribes.

16. The white man's interest in petitioner's territory may be said to have commenced, in respects material to this case, with the surveying and construction of the Mullan Road about 1855, a military road surveyed and cut through the forests from the east by Captain Mullan under government authorization. The discovery of gold on Oro Fino Creek in Nez Perce territory bordering on the south of the lands involved heightened the interest of the white men in the Coeur d'Alene country. This was in the early 1860's. Idaho Territory was established in 1863. Prospecting on the north fork of the Coeur d'Alene River commenced as early as 1865, when there was a stampede of 600 men into the territory. Three years later 700 prospectors were reported in the Coeur d'Alene country. In 1879 a fort was established at what is now the city of Coeur d'Alene. Small settlements grew up, a sawmill was opened, a post office established, and by 1880 Shoshone County had an officially credited white population of 467 and Kootenai County 518. Thus early, and before the Coeur d'Alenes had ceded their territory, it was invaded by whites. From thence forward, the pressure of white settlement increased. Gold was discovered on the

north fork of the Coeur d'Alene River in 1883 and the following spring ushered in a vast horde of gold seekers. In the ensuing three years the population increased by leaps and bounds. Towns mushroomed overnight. As early as 1884, Eagle City was a town of 2000. The following year, Murray had 1000 people, both towns being on the north fork of the Coeur d'Alene River where placer gold was being mined. The settlement of the south fork of that river followed shortly, with the towns of Mullan, Burke, Gem, Mace, Wardner, Milo, Wallace and Kellogg, all on the south fork where the lode discoveries were being prospected and exploited. Other towns sprang up in the territory outside of the mining district. In 1887, the white population in the petitioner's territory was estimated to be about 11,000.

17. Along the narrow river valleys of the tract are found recent alluvial deposits that on the lower reaches of the streams are subject to seasonal flooding. Otherwise the soils of this area are of residual formation, that is, they have developed in place from the underlying rock formations. This mountainous area extends across the southerly part of Benewah County and into Spokane County. These soils have developed under forest conditions and vary from gravelly, stony loams over the higher and steeper areas to silt loams on the lower elevations. Due to the original heavy forest cover these soils are deficient in organic matter, which is reflected in their light color. The lower lying silty soil types have a rather shallow surface soil overlying a subsoil generally similar but more compact. The underlying bedrock is usually found at less than three feet. Topography is generally fairly steep so that these soils are subject

to erosion on being cleared of their forest cover.

Extending along the northerly side of the subject lands from near the south end of Lake Pend Oreille to the vicinity of Spokane there is a rather broad, flat area known as Rathdrum Prairie. This consists of a dark colored gravelly, sandy loam. It is relatively high in organic content due to having been developed under prairie grass conditions. This soil was developed from glacial outwash material and contains large amounts of water-washed, rounded stones. The surface soils which are of only moderate depth merge gradually into the underlying subsoil of similar, but less developed, coarser material. Because of the gravel content of these soils their drainage is excessive.

The subject lands lying in the southeasterly part of Spokane County and the northeasterly portion of Whitman County consist substantially of silt loam. This is an aeolian or wind-deposited soil of great depth, in places known to be as much as 100 feet. It was developed under a natural cover of bunch grasses and small brush, which has resulted in a very high content of organic material in the soil, and which is responsible for the characteristic dark brown to black color. These soils consist of a deep, silty loam surface soil that overlies a subsoil of similar but lighter color. The topography of this area is characterized by smooth, low, rounded hills, Permeability is excellent and this land is not as subject to erosion as some of the heavier residual types of soils found in the more mountainous sections. The Palouse soils are among the most productive found in the Northwest.

18. The interest of the whites in the Coeur d'Alene country was not confined to mining. By 1887 many settlers had commenced farming, and in the ensuing four years, increasing numbers of settlers came into the Coeur d'Alene territory to follow agricultural pursuits.

19. In early years, the Coeur d'Alene lands were in Washington Territory, and in 1859, the Washington Territorial Legislature established Shoshone County, which included all of the northern half of the present State of Idaho. In 1861, a county government was set up for Shoshone County. In 1863, the Territory of Idaho was established and thereby, also, the portion of Shoshone County which had been in the present State of Washington was cut off and added to Idaho Territory. In 1864, Kootenai County was carved out of the northern portion of Shoshone County. It included the northeastern portion of the Coeur d'Alene lands in the State of Idaho.

20. In the period from 1887 to 1891, inclusive, the Coeur d'Alene Tract, including the 1873 reservation, comprised large portions of Shoshone County and Kootenai County in Idaho (the northern portion of Kootenai County, now making up the Idaho Counties of Bonner and Boundary, and the southern portion of Kootenai County within the present county of Latah and part of the present county of Benewah were outside the Tract) and the southern portion of Shoshone County, now constituting the major portion of the Idaho County of Clearwater, was also outside the boundaries of the Tract). A strip of land about 10 miles wide East and West and 48 miles long North and South along the eastern boundary of the State of Washington is included in the Tract.

21. Until the early 1880's the Coeur d'Alene Tract, as well as the whole of the interior northwest region, was without railroad transportation. The Coeur d'Alene Tract's only means of communication with the rest of the Northwest and with the outside world, aside from Indian trails, was the Mullan Road, constructed from Fort Benton, Montana to Fort Walla Walla in the Walla Walla Valley of the Territory of Washington. This road was constructed between 1858 and 1861 and passed directly through the Coeur d'Alene Tract. Like most military roads of this period, the Mullan Road was little more than a trail hacked through the timber and over the mountains, over which vehicular traffic could be moved only during the summer months. By 1887, however, the transportation and communication facilities available into and through the Coeur d'Alene Tract were substantial. A transcontinental railway line, the Northern Pacific, was completed and extended from St. Paul to the Pacific Coast. This line passed through the extreme northwestern corner of the Coeur d'Alene Tract and extended along its eastern border. A branch railroad line from Hauser Junction on the Northern Pacific extended southward to the northern end of Lake Coeur d'Alene. At least three steamers were operating on Lake Coeur d'Alene and on the Coeur d'Alene, St. Joe and St. Maries Rivers. Steamboats could and did navigate the Coeur d'Alene River to the old Mission (Cataldo), some 25 miles eastward and upstream from Lake Coeur d'Alene. From the mission a narrow gauge railroad was built up the Coeur d'Alene River to the mining towns of Kingston, Wardner, Osborne, Wallace, Mullan and Burke.

Between March 26, 1887 and March 3, 1891 the transportation facilities of the Coeur d'Alene Tract were very materially increased and bettered.

The Washington and Idaho Railway Company's line, a standard gauge branch line of the O.W.R. & N. Company, built from Farmington, Washington east through the Coeur d'Alene Indian Reservation and up the valley of the South Fork of the Coeur d'Alene River, reaching Wallace in the mining region on December 9, 1889, and the Northern Pacific Railway Company extended a standard gauge branch line from DeSmet, Montana westward across the Bitterroot Mountains by the Mullan Pass, reaching Wallace, Idaho in August of 1890. Thus by March 3, 1891 the Coeur d'Alene Tract was served by the transcontinental line of the Northern Pacific which passed through the extreme northwestern corner of the Tract and continued southward just west of the western border of the Tract; by the Corbin narrow gauge from Hauser Junction to Coeur d'Alene Landing; and by the Corbin narrow gauge from Cataldo into the mining region, the two stretches of narrow gauge tract being connected by steamboat service from Coeur d'Alene Landing to Cataldo; by the standard gauge branch line of the O.W.R.&N. system from Farmington to Wallace; and by the standard gauge branch line of the Northern Pacific from DeSmet, Montana to Wallace, Idaho.

22. By 1886 there were telephone lines connecting the principal towns in the territory with the outside world and affording communication within the territory, and by 1888 telegraph lines were in operation linking the entire Coeur d'Alene area with the Western Union Telegraph Company's lines.

23. By 1887 there were flourishing towns in the territory, most of them mining settlements but others in the farming districts and still others

necessitated by transportation, communication and trade. The rapid growth of the city of Spokane in this period was due in large part to the mining activity in the Coeur d'Alene area. By 1887 there were in the territory post offices, flour mills, banks, sawmills and numerous schools. The assessed valuation of property in Kootenai and Shoshone counties amounted to nearly \$2,000,000.00.

24. Of the total lands ceded by petitioner 148,080 acres thereof should be classified as mineral lands, 393,238 acres as agricultural lands, and the remainder, 1,848,606 acres, as timber lands.

Agricultural Lands

25. (a) The lands classified as agricultural lie in part in that portion of the tract which is west of the Coeur d'Alene reservation in the State of Washington and in part in the State of Idaho, generally north of Hayden Lake and the Spokane River. Part of the agricultural lands are in the Palouse wheat belt and other of these lands are found in the Rathdrum Prairie area. The Palouse area is considered one of the select farming regions of the world. Some of the lands within the Tract classified as agricultural for the purposes of evaluation were timbered in the 1887-1891 period and would have required clearing.

(b) By 1891 a fairly active market existed for the agricultural lands of the Coeur d'Alene Tract. A number of sales of farm land within the area had been made by the Northern Pacific Railway Company and by the Oregon Improvement Company. To 1887 the Northern Pacific Railway Company sales of its agricultural lands within the area were all at \$2.60 per acre, the Oregon Improvement Company's at a slightly higher price. During this same period a few homesteads had also been patented

in the agricultural portion of the Tract. That the demand for agricultural land was not confined to the Coeur d'Alene tract, but extended east and south of the area, is demonstrated by the sales data appended to his report by the petitioner's appraiser, Murray. As shown by this report, between 1887 and 1892, Murray found 186 sales from the Northern Pacific Railway Company in Spokane County, Washington, and during the same period 25 sales by the Northern Pacific Railway Company in Whitman County, Washington, and 38 sales during the same period from individual grantors and from the Northern Pacific Railway Company in Kootenai County, Idaho.

(c) During the period 1887 to 1891 the Northern Pacific Railroad made at least 251 sales, according to county records, of its unimproved lands in Whitman and Spokane Counties, Washington and Kootenai County, Idaho, for stated considerations ranging from \$2.50 an acre to \$10.00 an acre for sales usually consisting of 160 acres or less. The average consideration shown by the record of these sales is \$4.12 per acre.

(d) Mr. Henry T. Murray, a qualified appraiser, of Missoula, Montana, testified as an expert witness for petitioner. After assembling the above sales made by the Northern Pacific Railroad, Mr. Murray made certain adjustments to arrive at his conclusion of the value to be placed on the agricultural lands. The witness assumed that an average of five years would be required to put all the agricultural land on the market and to recover the purchaser's investment. He stated taxes were found to average .035 cents per acre and assumed an investor would be satisfied with a return of six percent on his investment. Discounting the average selling

price of \$4.12 to determine its worth five years hence Mr. Murray concluded the wholesale price of the 393,237.75 acres of agricultural land to be \$1,140,389 or \$2.90 per acre. Mr. Murray testified that his opinion of value for the agricultural lands would be the same for either 1887 or 1891 (Tr. 1286).

(e) Mr. C. Marc Miller, a qualified appraiser, testified as an expert witness for defendant. This witness also used the comparable sales or market data approach to arrive at his opinion as to the value of the agricultural lands within the Tract. Mr. Miller stated (Def. Ex. 38, p. 149) that a study of the sales in the area showed the Northern Pacific Railroad between 1881 and 1887 was selling its lands in small tracts for \$2.60 per acre, and after 1887 at from \$2.60 to \$4.00 per acre. The witness limited the agricultural lands of the tract to 260,000 acres which were those agricultural lands that did not need to be cleared of timber. It was Mr. Miller's opinion that a well informed hypothetical purchaser of the Tract as of March 26, 1887, would have believed that he would be able to dispose of approximately 260,000 acres as agricultural lands at an average retail price of \$3.00 per acre but that such a purchaser would have recognized that there would be considerable expense involved in the resale of the lands (Def. Ex. 38, pp. 163-164). Defendant's appraiser was of the opinion that as of March 3, 1891, a hypothetical purchaser would have considered that he could have paid for the agricultural lands of the Tract the sum of \$2.50 per acre (Def. Ex. 38, p. 168; Tr. 1464-1465) and that as of 1887 they were worth \$2.00 per acre (Tr. 1463 and 1514).

(f) Based upon the entire record, including comparable sales, the demand for land, and the presence of timber on some of the lands classified as agricultural, the Commission finds that the agricultural lands of the Tract as of 1891 had a value of \$589,857.00, or at the rate of \$1.50 per acre for 393,238 acres.

Timber Lands

26. (a) The Coeur d'Alene Tract consisted of 2,389,924 acres of land. Of this acreage the Commission has found that 1,848,606 acres should be classified as timber lands. Part of the tract in the southern portion is in what is now known as the best white pin area in the world (Tr. 1451). With the exception of the jack pine area in the north of the Tract and the alpine growth in the higher mountain regions, all of this timber was of good commercial quality. Due to the topography of the area, however, a large part of this timber stand would not have been considered accessible in the period 1887-1891, and for many years thereafter. During the same period, 1887-1891, the timber resources of the area served to supply the local markets, as fuel for developing steam power in the mining operations and steamboats, for timbering in the mines, railroad ties and for building materials.

(b) During the period 1887-1891 there were no sales of timber lands within the Tract. Freight rates were still prohibitive for shipment to eastern markets. The Middle West was the main source of timber at that time and it was not until about 1900 that it was eliminated as a controlling factor in natural lumber production. A well-informed purchaser, however, would have been aware of the potential value of the timber in the

Coeur d'Alene Tract and would have also been aware that in the distant but reasonably foreseeable future the timber lands of the Tract would be in demand.

(c) Any well informed hypothetical purchaser as of 1887-1891 in considering the timber lands as previously found would consider a large amount of the acreage not accessible for timber operations. The same well informed person, however, would realize the importance of this timbered area to the future logging and mining economy of the Coeur d'Alene Tract. The movement of the logs down the rivers of the Tract to the mill sites required a stable and dependable flow of water in these streams. The operation of the mines in the mineral area of the Tract also required a continuous, stable and dependable flow of water. Under natural conditions--that is, with the drainage area of the rivers covered with a dense stand of timber, such a continuous and dependable flow of water down the streams of the area was insured. The removal of the timber from this drainage basin, on the other hand, would have insured a succession of freshets, floods and water depletion in the streams. The protection of the watershed insured a slow and gradual run off of summer rains, and a slow and gradual melting of winter snows, thus maintaining throughout the year the flow of the streams of the area. But the rivers of the Coeur d'Alene Tract are short mountain streams, descending rapidly from the Bitterroot Mountains to Coeur d'Alene Lake, and the removal of the timber from the steep mountain and hillsides, which make up this area, would permit the rains to immediately run off and would permit the melting of the winter snows to accelerate tremendously, thus

producing seasons of freshets and floods followed by periods when the streams of the region would become dry water courses.

27. (a) There being no sales of timber lands on the Coeur d'Alene Tract during the period 1887-1891, the appraisers for the parties attempted to establish the value of the timber lands through sales of such lands elsewhere. Mr. Murray, petitioner's appraiser, located a sale in 1888 made by the Northern Pacific Railroad Company of 53,391.40 acres lying north of the Nisqually River in the State of Washington which took all odd numbered sections in 15 townships. According to this appraiser the terms of sale called for 50 cents per thousand board measure and \$1.25 per acre for the land, and that the \$1.25 for the land and \$1.75 per acre (\$3.00 total) be paid according to certain terms. The remainder would in effect revert to the buyer upon the fulfillment of certain performance such as the building of a railroad line, building and equipping a sawmill and producing a stated amount of lumber for shipment each year. Mr. Murray testified that the timber on this land was generally better than on the Tract. Petitioner's appraiser also took into consideration 24 sales of timber lands in 1887 and 1888 covering 3,719.43 acres of land in Montana on the eastern side of the Bitterroot range not far from the Tract. The sales of these timber lands averaged \$4.58 per acre. The witness also noted 5 sales that were made on a stumpage basis in that region which showed a return of \$1.00 per thousand board feet. These sales, Murray found, were largely in the valley and somewhat easier to log than many parts of the Coeur d'Alene Tract. The witness testified that these sales were probably selective.

(b) In arriving at his conclusion as to the value of the timber lands on the Tract, Mr. Murray considered that Congress by the Timber and Stone Act acknowledged that timber lands were worth at least the sum of \$2.50 per acre. It was his considered opinion, however, that in view of the higher prices received in the sale of timber lands that the minimum price of \$2.50 per acre should be weighted somewhat to reflect a willingness of buyers to pay more than said minimum. Murray therefore was of the opinion that a fair market price of that part of the Tract valuable for timber was \$3.00 per acre. Since the sales he found were of small tracts on a retail basis the witness adjusted the market price of \$3.00 per acre based on certain assumptions. Petitioner's appraiser assumed that a hypothetical purchaser investing in the Tract would not pay the \$3.00 market price since he would require time to either exploit the area or dispose of it. The witness assumed it would require five years as an average time to dispose of the timber holdings. Because of this the appraiser made certain adjustments for charges for taxes, fire protection and administration during such a period and assumed that the purchaser would want a 6% return on the investment for the same period to arrive at the Present Worth (or discounted value) of the fair market value of \$3.00 per acre. Mr. Murray was of the opinion that the value of the timber lands as of March 26, 1887, was \$1.28 per acre and that as of the date of March 3, 1891, their value was at the rate of \$2.21 per acre. (Tr. 1235-1265; Pet. Ex. 144, pp. 12-24).

28. (a) Defendant's appraiser, Mr. C. Marc Miller, concluded in his study of the timber lands of the Coeur d'Alene Tract, that during the

period 1887-1891 the only demand for the lumber of the area was a local demand; that the needs of the Mississippi Valley region were then being met by the lumbermen of the Great Lakes region and the needs of the West Coast by the lumbermen of the Pacific Coast region; that the lumbermen were not interested in acquiring timber lands in the Coeur d'Alene Tract or in any other part of the "Inland Empire" until after the turn of the 20th century. This witness was of the opinion that any value placed upon the timber lands of the Coeur d'Alene Tract as of this period 1887-1891 was a speculative value. During the same period Mr. Miller concluded that only 500,000 acres of the Tract would be considered accessible timber lands and that any price fixed on these timber lands would have been entirely speculative. Mr. Miller concluded that no reasonably prudent and well informed purchaser would have considered paying more than \$1.00 per acre for the accessible lands of the Tract and would have placed nothing more than a nominal value on the remaining timber lands on the Tract in either 1887 or 1891 (Def. Ex. 38, pp. 94-99 and 164-168).

(b) Defendant's appraiser found that during the years 1887-1891 there were no buyers for timber within the Tract or within the eastern part of the State of Washington, except for a few areas located around sites of population, principally along the Columbia River and that the eastern buyers had not moved into the area although there were people who did prospect the region. Mr. Miller found that the buyers for the timber companies started buying in the area principally in 1902 although there had been a few sales prior thereto and that when the timber within the area became marketable it did sell and there was quite an active market.

The witness lists some 58 sales within or near the Tract mostly in 1902 and 1903 at prices ranging from about \$3.50 to \$30.00 per acre and testified that the only sales of timber within the Tract were of the more accessible timber lands. Mr. Miller testified that he searched the county record to find the largest sale of timberland close to the Tract which would be comparable. The sale he reported was the first sale in or around the area and was made by the Northern Pacific Railroad Company of 52,321.57 acres of timber lands located directly north of the Tract in Kootenai County for the sum of \$184,324.50, or about \$3.50 per acre in the year 1902. Mr. Miller also reported the sale by the State of Idaho in 1903 of 8,190 acres of stumpage only in Kootenai County for the sum of \$67,567.50. Mr. Miller testified he did not consider sales of timber lands in western Washington for the reason he did not believe them comparable with the timber lands in the Inland Empire because of the difference in transportation and the greater stand per acre in the lands west of the Cascades. Defendant's appraiser testified that the \$1.00 per acre value that he placed on the 500,000 acres of what he considered to be accessible timber lands was based on many sales in eastern Washington at about the valuation date of more accessible lands at a dollar an acre to threedollars an acre. These sales are not otherwise referred to or listed as comparable sales. Mr. Miller testified he used the sales of timber lands in and near the Tract in the years 1901, 1902 and 1903 only as a check on the value of \$1.00 an acre he placed on the timber lands.

29. In the period 1887-1891 there had been no sales within the Tract of timber lands and only a local market; freight rates were prohibitive during the period with only hope of relief; some of the timber

lands would have been considered inaccessible and a prospective purchaser would have been aware of the necessity of watershed protection both to the needs of the lumbering industry and to the mining region. A well-informed hypothetical buyer would also have been aware that the timber lands were of good commercial quality, that with the rivers and the lake on the Tract there was accessible timber in large quantities, and that the timber lands of the area would be in demand by the lumbering industry in the foreseeable future. The hypothetical purchaser would also take into consideration the size of the area of the Tract classified as timber lands; the necessity of paying taxes and fire insurance on the timber lands; the administrative costs in holding and disposing of the lands; the necessity of probably a number of years to exploit or dispose of his holdings when the timber became marketable; and finally the need of providing for risk and the return of his investment with profit. In considering all the facts of record the Commission finds that the timber lands within the Tract as of March 3, 1891, had a value in the sum of \$1,848,606.00, or at the rate of \$1.00 per acre for 1,848,606 acres.

Value of Water Rights

30. The streams and waters of the Coeur d'Alene Tract are not and cannot be separately evaluated. The value placed upon the agricultural and timber lands and upon the mineral lands of the area comprehend the availability of water and the continuance of an adequate water supply to meet the needs of the farms, mines and forests of the area. Water and its use and need is necessarily included in the valuation of the lands of the Tract.

Mineral Lands

31. The discovery by Prichard of the placers of Prichard Creek ushered in the mineral development of the Coeur d'Alene mining area. The date of Prichard's discovery of placer gold in the creek bed of Prichard Creek is somewhat uncertain, and has been variously fixed by the historical writers at 1880, 1881 and 1882. In any event Prichard kept the news of his discovery strictly to himself for a period, and not until the spring of 1884 did the news of the strike reach the general public. In the spring of that year thousands of miners were on Prichard and Eagle Creek in the Coeur d'Alene area. Petitioner's witness Jones states that his investigation established that a total of 2156 placer claims were filed in the area. In addition to the placer claims located on the tributaries of the North Fork of the Coeur d'Alene River, some gold-bearing lodes were discovered in the same area. Ten claims, later consolidated as the Mother Lode group, six claims, later included in the Daddy group, four claims, later included in the Gold Chest group, and two claims making up the Yosemite group, were staked and developed.

In 1884 and shortly after the placer region of the Coeur d'Alene Tract was brought into production, the first of the lead silver mines of the region were discovered. The Tiger, the Poorman, and several other silver lead prospects were located and staked in this year. In the following year the Bunker Hill and Sullivan mines were located and staked. In fact during this year of 1885 and the following years of 1886 and 1887, a vast number of lode claims in the silver lead district of the Tract were located and staked. Petitioner's witness Jones testified that his

investigation disclosed that a total of 5222 lode claims were eventually located and staked in the silver lead area of the Coeur d'Alene mineral district. That a vast number of claims, both in the placer region of the Tract and in the lead silver region of the Tract, were located and staked in this very short period of time, is not at all surprising. Such is the history of every reported mineral discovery. Actually these locations are extended over all ground which might conceivably at some future time be found to contain mineral values. Much ground is staked which is utterly worthless, and in enumerating the locations filed at a much later date, it is certain that many of the filings are repeated filings upon the same land, and that a number of claims are frequently filed, in part or wholly, covering the same ground. The petitioner's witness Jones stated that much of the placer ground that was staked was valueless for mining purposes. Jones also states that of the lode claims staked, 4262 never were patented, and of the 2156 placer claims staked, 2034 never were patented.

32. The Coeur d'Alene Mining District is located on the western slope of the Coeur d'Alene Mountains in Shoshone County, Idaho. The mineralized zone is approximately 30 miles long by 15 miles wide or about 450 square miles (Tr. 1029). Frederick L. Ransome and F. C. Calkins, of the United States Geological Survey, in their "History of Mining Development" 1908) in writing of the Coeur d'Alene mining area wrote in part as follows (Pet. Ex. 139, pp. 45-51):

Although the chief excitement at this time [1884-85] centered in the rich gold placers near Murray, the lead-silver veins of the South Fork [of the Coeur d'Alene River]

were beginning to attract attention. * * * In 1885 the Tiger mine, in spite of its comparatively inaccessible position, has been opened by three tunnels and had about 3,000 tons of lead-silver ore on the dump. It was bought in this year by S. S. Glidden for \$35,000, Burke and Carton retaining contingent interests. * * *

* * *

The discovery of the Bunker Hill mine by 'Phil' O'Rourke and N. S. Kellogg in 1885, and of the Sullivan mine by 'Con' Sullivan and Jacob Goetz and the evident existence of large bodies of rich ore in the Tiger, Poorman, Granite, San Francisco, Morning and other mines removed all doubts of the future importance of the South Fork mines. The opening of the year 1886 saw a decided rush from the outside and from the waning placers of Murray into this new field, * * *.

* * *

In April, 1887, the Bunker Hill and Sullivan mines were sold to S. G. Reed and in August the Bunker Hill and Sullivan Mining and Concentrating Company was organized with a capital of \$3,000,000. The Poorman, Granite, and Morning mines were also sold at about this time. The completion of the narrow-gauge railway to Burke in this year enabled the Canyon Creek mines to ship their ore. Probably over 50,000 tons of lead-silver ore was mined in 1887, the principal producers being the Tiger, Bunker Hill and Sullivan, Tyler and Stemwinder, Last Chance, Sierra Nevada, Poorman and Granite. The Mammoth and Standard veins were as yet merely good prospects. The ore of the Sierra Nevada was chiefly carbonate, carrying 47 per cent lead and 60 to 90 ounces of silver to the ton. Freight to Portland was \$16 a ton, and the cost of mining and treating ore of an average value of \$96 was \$48.85 a ton.

In 1888 placer mining near Murray and Delta had greatly declined. A pipe line was constructed in 1890 to hydraulic the bench gravels of the so-called Old Wash near Murray, and some hydraulic mining is still occasionally carried on in Dream Gulch. * * *

* * *

In 1891 the Morning mine was sold for \$400,000. About \$200,000 in gold was produced this year, chiefly from the Golden Chest, Golden King, Mother Lode, Occident, Treasure Box, and Buckeye-Bay quartz mines, near Murray.

33. The greater part of the ore mined in the district had to be concentrated prior to shipment. The number of tons of ore reduced to one ton of concentrate varied. When treated in the mills which were required to be built at the mines the production of one ton of concentrates contained from 50 to 60 percent lead and varying ounces of silver. Although in 1887 there was much development and exploration work being done at mines there were only two or three concentrators and apparently only a few of the mines were shipping their concentrates. According to the United States Geological Survey Report for the calendar year 1887 (Pet. Ex. 139, p. 113) the chief producers in the Coeur d'Alene region were the Bunker Hill and Sullivan, the Sierra Nevada and the Stemwinder mines. This report states, "The Bunker Hill and Sullivan shipped about 10,000 tons of argentiferous lead concentrates in 1887, the latter two mines about 500 tons each. These mines are all at Wardner, Shoshone county. The total lead output probably amounted to nearly 7,000 short tons from the Coeur d'Alene region. No new district in the United States promises to play so important a part in the lead markets of the Country as the Coeur d'Alene." The reports of the Director of the Mint show the region produced 5,980 tons of lead in 1887 (Pet. Ex. 139, p. 112). The Geological Survey report in speaking of the aspects of better rail transportation in the mining region stated: "These roads, besides aiding development by lowering freights, would come through districts containing promising mines, like those at Mullan and the Sunset group, which are now too far from the railroad to be worked profitably." While practically all of the ore shipped from the region

in 1887 appears to have been the product of the Bunker Hill and Sullivan mine, development work was being carried on at other mines within the area.

34. (a) Between March 26, 1887 and March 3, 1891, the lead silver belt of the Coeur d'Alene mining region continued its steady development. In 1889 there were seven concentrators in the region. Production figures for lead and silver recovered from tons of concentrates shipped from the area are as follows for the period 1887-1890, inclusive:

<u>Year</u>	<u>Lead</u>		<u>Silver</u>		<u>Gold</u>
	<u>Tons of 2000 pounds</u>	<u>Value</u>	<u>Fine Ounces</u>	<u>Value</u>	<u>Value</u>
1886	1,500	138,300	116,246	115,664	182,371
1887	5,980	538,200	340,000	332,520	152,276
1888	8,000	705,600	554,000	520,760	211,867
1889	17,500	1,333,500	1,095,265	1,025,168	174,310
1890	27,500	2,392,500	1,499,663	1,574,646	165,360

(b) In the main the upswing in the shipment of concentrates from the area during the latter part of this 1887-1891 period may be ascribed to improved transportation facilities. The Washington and Idaho Railway Company's line, financed by the O. W. R. & N. Company, built from Farmington, Washington, east through the Coeur d'Alene Indian Reservation, up the valley of the South Fork of the Coeur d'Alene River, reaching Wallace on December 9, 1889. The Northern Pacific branch line from De Smet, Montana was constructed westward across the Bitterroot Mountains by the Mullan Pass, and reached Wallace in August of 1890. These two roads were standard gauge and offered to the miners of the Coeur d'Alene lead and

silver belt direct, standard railroad facilities to the smelters of the northwest. It is probable that much of the concentrates shipped in 1889 and 1890 was produced from ore which had already been mined and piled on the dumps of the various properties. The period from March 26, 1887 to March 3, 1891, brought about an improvement and enlargement of the transportation facilities of the area and a reduction in shipping costs. These factors in turn produced a material increase in the shipment of concentrates from the region. It is probable that during this period public knowledge of and interest in the district was increased, and that the improvement of transportation facilities, the increase in the production and shipping of concentrates, and the wider knowledge and increased interest of the public in the area, enhanced the value of the mining district.

35. Mr. Frank Lilly, a research statistician, specializing in mining, was one of the expert witnesses appearing for petitioner, Mr. Lilly in his work since 1920 has visited and inspected many mines in the United States and Canada in order to obtain statistics for his service booklets pertaining to the economic outlook of different ores and the markets on metals and the leading stocks. In addition he made analytical reports on mines on which he was consulted. This witness for many years has been familiar with the Coeur d'Alene mining district having a financial interest in mining property in the area and has visited the region frequently. Mr. Lilly, based on his research into the history of production and development of the mining district and the amount of ore which he said was then known to exist, stated that

in his opinion the value of the mining district in 1884-1885 would have been a minimum of ten million dollars and that after the discovery of the Bunker Hill and Sullivan the district in 1887 would have had a minimum value of fifteen million dollars (Tr. 227-228). Mr. Lilly testified that placer mining had never been an important thing in the district and that he would not include it in considering the value of the district (Tr. 199-200, 233).

36. (a) Mr. Fred O. Jones, a consulting geologist, testified as an expert witness for petitioner as to the value of the Coeur d'Alene mining district. Mr. Jones is a graduate of Colorado College where he obtained an A. B. degree in geology. His experience includes a year in mines in the Leadville district of Colorado where he worked in concentrating plants and in general mine mapping; a number of years in the oil fields of Wyoming as an engineer and later was a project geologist for the United States Bureau of Reclamation at Grand Coulee Dam for a term of years analyzing the foundation conditions for engineering structures such as power houses, pumping plants and dams. This witness testified that he was not a land appraiser, that he had never made an appraisal of mining properties for court purposes or for purposes of investment and that he had never acted as a broker for the sale or purchase of mining property (Tr. 1004-1005).

(b) Mr. Jones, based upon extensive research, prepared "A Valuation Study of the Mineral Resources of the Lands Ceded by the Coeur d'Alene Tribe of Indians on March 3, 1891." This study is in a written report bearing petitioner's exhibit number 139 and contains much valuable information pertaining to the geology and mining history of the Tract,

transportation, production, contemporaneous newspaper items concerning the mining district, and early reports by well-informed or expert mining men regarding the mining area. Mr. Jones' research included a determination of the number of lode and placer claims filed in the mining district prior to March 3, 1891. A search of the records of Shoshone County, the witness testified, showed 5,222 lode claims and 2,156 placer claims had been recorded by that date. Of the lode claims so located and filed upon, patents had been applied for on 52 lode claims prior to March 3, 1891, and patents were later issued on them. Including these a total of 960 lode claims have become patented. Of the placer location notices filed, a total of 19 had gone to patent prior to March 3, 1891, and including these a total of 122 have become patented (Tr. 1044-1047). Mr. Jones testified that some of these claims were duplicates, i. e., particularly with the unpatented claims the locator would file his location notice on the same claim year after year (Tr. 1033). The witness testified that prior to March 26, 1887, there had been 2,388 lode claims and 1,661 placer claims filed in the county records.

(c) Mr. Jones testified that a search of the records showed a total of 2400 sales of lode claims and 440 placer claims within the mining district for the four-year period from March 26, 1887 to March 3, 1891 (Tr. 1128) where the consideration was \$10.00 or more. He testified all recorded deeds where the consideration shown on the instrument was ten dollars or less were ignored in his evaluation studies. Many, if not most, of the sales were of fractional parts, that is a fourth, a half, or a sixteenth, which in computing to arrive at an average sales price

were extended to show a full claim price (Tr. 1129). Mr. Jones testified that it was his opinion that these transactions were "the only tangible yardstick as to what mining people were paying for mining properties." Petitioner's appraiser also took into consideration the value of water rights. His research showed a total of 694,786 miner's inches of water rights had been appropriated by filing on the streams and that although there had been about 21 sales of these rights, some fractional, he had used but six sales to obtain an average price for the sales of such rights (Tr. 1153). Mr. Jones admitted that the filings were no doubt for more water than the miners could use and in many cases were for more water than was in the streams (Tr. 1194).

(d) Petitioner's appraiser Jones, based on the recorded deeds or sales, made three evaluation studies. First he assumed that 90% of the total lode locations were "valid" (that is valuable) and he included in this first "Evaluation Study" the \$3,000,000 "sale" of the Bunker Hill and Sullivan Mine in the sales sample. This "sale" of the Bunker Hill and Sullivan Mine was actually a transfer for stock by Simeon G. Reed (who had purchased the property in April 1887 for a reported \$650,000.00) and his wife to the Bunker Hill and Sullivan Concentrating Corporation which was incorporated on July 29, 1887. Mr. Reed's personal papers show no money changed hands in this transaction (Pet. Ex. 139, p. 175). Mr. Jones took 90% of the lode claims or 4700 and computing at the sum of \$8638, the average sale price per claim he arrived at a figure of \$40,598,600 evaluation for lode claims alone in Shoshone County. Applying the same type of computation to placer

locations and water right filings in Shoshone County and assuming them to be 90% valid he arrived at an evaluation of \$3,185,480 for placer locations and \$1,775,872 for water rights, or a total Shoshone County evaluation of \$45,559,952. In addition the witness followed the same method to evaluate the Pend Oreille Mining District in Bonner County, Idaho and the Wolf Lodge and Mission Mining Districts in Kootenai County, Idaho and mining in Spokane County, Washington, all within the Coeur d'Alene Tract. Mr. Jones' total evaluation in Study #1 was \$45,776,222 (Pet. Ex. 139, p. 179). In Studies No. 2 and 3 Mr. Jones eliminated the Bunker Hill and Sullivan stock sale. In Study No. 2, the witness reached an evaluation of \$39,890,702. In Study No. 3 he assumed only 75% of the total lode claims were valid and but 50% of the placer locations and water rights filings were valid and reached a total evaluation of \$31,876,945. Mr. Jones testified that in his opinion the mineral resources of the Tract had a minimum value of \$30,000,000 on March 3, 1891, and a minimum value of \$25,000,000 on March 26, 1887 (Tr. 1166, 1168).

37. (a) Defendant's appraiser, C. Marc Miller, devotes a portion of his written report ("Appraisal of Coeur d'Alene Tract in Idaho and Washington, 1873-1887-1891," Def. Ex. 38, pp. 100-134) to the appraisal of the minerals of the Tract. The report contains much valuable information with respect to the history of mining in the area, development of the mines and transportation, and the early financial difficulties of some of the now successful mining properties. Mr. Miller reports that he found the records of sales of mining properties at or about the

dates of his valuations were of little assistance in determining the value of the mineral lands since it was impossible at this late date to determine the degree of development and the monies expended in the development of the mining properties prior to the date of sale and because he believed the consideration recited in the deeds of sale very frequently bore little relationship to the actual money paid for the property. Defendant's appraiser stated that although many authorities indicate the actual consideration paid for the purchase of the Bunker Hill and Sullivan mine in 1887 by Simeon Reed was no more than \$625,000 or \$650,000 the considerations recited in the deeds to Reed total more than \$1,500,000. Copies of some, if not all, of the deeds to Reed were introduced in evidence by petitioner (Pet. Exhibits 46, 50, 61, 65, 66 and 67) and the consideration recited in said deeds total \$1,453,496. This witness also investigated the reported sale of a mining property known as the Mammoth Lode Claim which was located outside of what is known as the Coeur d'Alene Mining District but in Kootenai County, Idaho, within the Tract. According to his investigation there were two deeds of sales of this property in 1886 at a total recited consideration of ten million dollars. Mr. Miller stated he found the only development work ever done on the property was the driving of four short tunnels into the hillside and that these sales were "another example of the recital of an utterly fictitious consideration in the transfer of mining property."

(b) From his research defendant's appraiser Miller concluded that as of 1887 and 1891 only the Bunker Hill and Sullivan could be considered

as a proven mining property and all others could be considered only as prospects or potential mines. This witness was of the opinion that "Unquestionably, as of March 26, 1887, the mineral deposits of the Coeur d'Alene Tract would have added very appreciably to the value of the Tract in the opinion of a well informed buyer or seller." Mr. Miller stated in his report that the hypothetical purchaser and the hypothetical seller would have in mind the potentialities of the mining region, the fact that the Bunker Hill and Sullivan property was a more or less proven mining property, the need of expending large sums in the development of other properties and the risk involved. Mr. Miller was further of the opinion that "Nevertheless the possibility and perhaps the probability existed that paying properties would be developed in the area, and that the Bunker Hill and Sullivan property would prove to be a profitable mining operation." Mr. Miller concluded that as of March 26, 1887, the known mineral deposits in the Coeur d'Alene mining district would have added perhaps as much as \$1,500,000 to the value of the Tract and the same would have enhanced the value of the Tract on March 3, 1891, to the extent of \$2,000,000.

38. (a) Mr. William W. Staley, professor of mining at the University of Idaho, College of Mines, at Moscow, Idaho, testified as an expert witness for defendant. Professor Staley holds a Bachelor of Science degree in mining engineering, an Engineer of Mining degree and a Master of Science degree. The witness has spent many summers working for the Idaho Bureau of Mines and Geology and has written a number of publications regarding various phases of mining in the State of Idaho. His professorial

duties and his work with the Idaho Bureau of Mines and Geology has included frequent trips to the Coeur d'Alene Mining district. Professor Staley, based upon his research into the early history of mining in the tract, testified that the development, that is openings of any extent into the ground, of mines had not progressed sufficiently so that one could base an opinion in 1887 with respect to the possible future of the mines. By 1891, this witness testified, more would have been known of the future possibilities of the mining area because the mine workings had become deeper and more extensive and because more of the mines had become producers. (Tr. 1353-1357). Mr. Staley testified that one standard which is used today as a means of evaluating a mining property includes consideration of such factors as positive ore (ore in sight), probable ore (based on geology, development of the mine and other similar properties), operating costs and determination of the average selling price over the estimated years of life of the property. The witness testified that as of 1887 due to the extent of development it would not have been possible to have applied this method of evaluation (Tr. 1374-1380).

(b) Professor Staley testified that he was of the opinion that the most practical and reasonable way to evaluate the mining district as of 1887 was to base it on the figures available now that might have been available in 1887. This witness testified that during the period 1883-1887 the production figures for the entire district show that the Bunker Hill and Sullivan mine was responsible for 65% of the production in the district. If the Bunker Hill and Sullivan mine was worth the \$650,000.00 paid for it in 1887, Professor Staley reasoned, then the entire district

was worth one million dollars. This witness further testified that he could arbitrarily add to this sum an additional million dollars based on prospects for the future, thus making the value of the mining district as of 1887 a total sum of \$2,000,000.00. Defendant's witness also explained what he called a check on his estimate based on obtaining a weighted average of the reported operating profit of the Bunker Hill and Sullivan mine for 1887 to 1891, which he stated would be \$4.88 a ton. The witness then estimated the district produced 210,000 tons a year and multiplying this sum by \$4.88 he stated "we come out with \$1,025,00 which appears to be somewhat of a check or indication similar to the one based on the selling price of the Bunker Hill Mine." Professor Staley was of the opinion that the district would have been worth \$2,800,000 as of 1891 (Tr. 1381-1386).

39. A hypothetical willing buyer and a hypothetical willing seller as of March 3, 1891, would have had available, or it could have been obtained, much information of value pertaining to the mining district as of that date. Along with the prospectors and promoters in the area at or about that time were a few experienced mining men among whom was "Professor" J. E. Clayton who had practical mining experience and a comprehension of the science of geology. On February 11, 1888, Mr. Clayton had published in the "Engineering & Mining Journal" an article entitled "The Coeur d'Alene Silver Mines" which no doubt was the result of his study of the mining district in 1887. The article shows that the author was well acquainted with the geology of the area and the properties being developed. In writing of the "Possible Output" of the mining district,

Mr. Clayton had this to report:

* * *

It is difficult to make any close estimate of the possible daily output of the different mining locations on this great lode [Bunker Hill lode and ore zone] until more extensive and complete explorations are made.

The Bunker Hill and Sullivan are extracting about 125 tons of crude ore per day, which yields in the concentrating mills about 30 tons of clean shipping ore that assays about 32 ounces per ton in silver and 65 per cent in lead -- say a gross value of silver and lead of \$60 per ton. With fair rates of transportation and reduction the net profit on the dressed ore ought to be about \$30 per ton -- say \$25 per ton net. This output, judging from what I know of the mine, is about one-half of its capacity; at any rate I think its daily capacity could be easily doubled within one year from this date, say 60 tons of clean shipping ore per day.

If the Stemwinder mine continues as large as it now shows in the cross-cut tunnel and in the surface workings it will be able to furnish about 50 tons of clear ore per day. The Last Chance and Emma can probably produce, when opened and equipped, about 20 tons of dressed ore per day, and the Tyler mine may be rated at about the same quantity, making a total output of 130 tons of clean shipping ore per day.

* * *

To those who are familiar with this great lode the above estimates will appear small or extremely conservative. While I am free to confess that its possibilities are much larger than the estimates, I do not think that the present developments will warrant a larger one. In order to realize the output that I have estimated, the Bunker Hill and Sullivan must double the capacity of their concentration mill; the Stemwinder and Tyler must have its capacity doubled, and the Emma and Last Chance must build a mill of one hundred tons capacity, all of which takes time and a large outlay of money before my estimates can be realized in actual daily output.

After this discussion of the possibilities of the mines in the Wardner group, which Mr. Clayton stated in his personal judgment represented no more than one-fourth of the productive capacity of the district, he reported on the possible output of the mines on Canyon Creek which he

estimated could produce 200 tons of shipping ore per day when properly opened and equipped and that the Tiger and Poorman mines in that group could then furnish half that amount. Mr. Clayton reported on the potentials of the mine groups in other parts of the district which gave promise of being large producers and of dozens of promising discoveries, some of which might be worthless, which had not been opened or prospected enough to include in his estimates. Mr. Clayton concluded that for his estimated output of 500 tons per day to be reached it would require two years of active development, the erection of six or eight more good concentrating mills and very largely increased facilities for shipping ore.

40. (a) As of March 3, 1891, the mines of the Coeur d'Alene tract were in the stage of early development and exploration. The potential of the area as a valuable mining region was readily accepted by the informed persons in the area. The production figures for the time indicate that a large part of the lead-silver ore produced in the mining district had come from one property -- the Bunker Hill and Sullivan mine, by then a more or less proven mining property. Large sums of money were needed and had been expended to build concentrators, tramways, and to otherwise develop the mining properties. Great interest in the area was evidenced by the many transactions involving the sales of mining claims and especially by the large sum of money paid for the Bunker-Hill and Sullivan mining property by Simeon Reed in April 1887.

(b) The Commission finds, based on all the evidence of record, that the mineral lands of the Coeur d'Alene Tract, as of March 3, 1891, had value in the amount of \$2,221,200.00 for the 148,080 acres of mineral land.

41. In addition to those set forth in Finding 8, the Agreement of March 26, 1887, contains the following provisions:

ARTICLE 6.

And it is further agreed that the United States will expend for the benefit of said Coeur d'Alene Indians the sum of one hundred and fifty thousand dollars, to be expended under the direction of the Secretary of the Interior, as follows: For the first year, thirty thousand dollars, and for each succeeding year for fifteen years, eight thousand dollars. As soon as possible after the ratification of this agreement by Congress, there shall be erected on said reservation a saw and grist mill, to be operated by steam, and an engineer and miller employed, the expenses of building said mill and paying the engineer and miller to be paid out of the funds herein provided. The remaining portion of said thirty thousand dollars, if any, and the other annual payments shall be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Coeur d'Alene Indians, parties hereto.

ARTICLE 7.

It is further agreed that if it shall appear to the satisfaction of the Secretary of the Interior that in any year in which payments are to be made as herein provided said Coeur d'Alene Indians are supplied with such useful and necessary articles and do not need the same, and that they will judiciously use the money, then said payment shall be made to them in cash.

ARTICLE 11.

It is further agreed that in addition to the amount heretofore provided for the benefit of said Coeur d'Alene Indians the United States, at its own expense, will furnish and employ for the benefit of said Indians on said reservation a competent physician, medicines, a blacksmith, and carpenter.

As shown by the G. A. O. report (claimant's Ex. 168) at page 12, there was charged the sum of \$150,000 to cover the expenditures the defendant made under said Article 6. However, of such expenditures the following items were not of the character authorized by said article:

Maintaining law and order	\$ 22.73
Miscellaneous agency expenses	560.00
Clerk	<u>2751.12</u>
Total	3333.85

And the following items charged as Article 6 disbursements should be deducted and charged as Article 11 expenditures:

Medical supplies	\$1814.24
Pay and expenses of blacksmith	\$ 641.88
Pay of carpenter	52.50
Pay of physician	<u>550.00</u>
Total	3058.62

Therefore, there is deducted from the amount charged as paid on the consideration under Article 6 the total sum of \$6,392.47, leaving the sum of \$143,607.53 or the amount the defendant is entitled to credit on the award for expenditures under Article 6 of the agreement.

By the statement appearing at page 12 of the G. A. O. report there was properly disbursed by defendant under said Article 11 the following:

Medical supplies	\$2,742.86
Pay of blacksmith	34,641.63
Pay of carpenters	9,324.59
Pay of physician	<u>38,509.74</u>
	85,218.82

To which is added the similar items erroneously charged under Article 6, above	<u>3,058.62</u>
Total Article 11 deductions	\$88,277.44

By reason of the above adjustments the defendant is given credit on the claim in the sum of \$231,884.97.

42. The Coeur d'Alene tract, consisting of 2,389,924 acres, had a fair market value as of March 3, 1891, of \$4,659,663.00 and the petitioner is entitled to an award in that amount, less the sum of \$231,884.97 paid on the claim by defendant pursuant to the Agreement of March 26, 1893,

or the net sum of \$4,427,778.03.

That because of the great disparity between the consideration paid petitioner for the cession of its land and the value thereof at the time of the cession, as hereinabove set forth, the Commission finds that the consideration of \$231,884.97 was unconscionable.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner