BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT BELKNAP INDIAN COMMUNITY,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 250

Decided: November 20, 1962

FINDINGS OF FACT

1. The petitioner is an identifiable group of American Indians residing within the territorial limits of the United States, and a tribal organization exists, recognized by the Secretary of the Interior as having authority to represent the group.

2. The petitioner has presented to the Commission certain claims which it alleges accrued prior to August 13, 1946, and further alleges that such claims fall within the jurisdiction of the Indian Claims Commission under the Act of August 13, 1946, 60 Stat. 1049.

3. Gros Ventre and Assiniboine Indians comprise the Fort Belknap Indian Community. Historically, the Gros Ventre Indians were composed of two bands known as the Gros Ventre (Atsina) of the prairie and the Gros Ventre (Hidatsa) of the river.

The Assiniboine Indians took up residence on the reservation created by the Treaty of 1855 with Blackfeet, Blood, Piegan and Gros Ventre Tribes. Later they separated into two groups known as the
Long Hair or Upper Assiniboines, and the Canoe or Lower Assiniboines.
In 1873 the Commissioner of Indian Affairs recommended establishment
of a reservation "for the Gros Ventre, Piegan, Blood, Blackfeet, River
Crow and other Indians." The lands subsequently withdrawn from the
public domain and set aside were described as:

Commencing at the northwest corner of the Territory
of Dakota, being the intersection of the forty-ninth
parallel of north latitude and the one-hundred and fourth
meridian of west longitude; thence south to the south bank
of the Missouri River; thence up and along the south bank
of said river to a point opposite the mouth of Medicine or
Sun River; thence in a westerly direction, following the
south bank of said Medicine or Sun River as far as practicable,
to the summit of the main chain of the Rocky Mountains, thence
along said summit in a northerly direction to the north bound-
ary of Montana; thence along said north boundary to the place
of beginning, excepting and reserving therefrom existing
military reservations.

This was approved by the Acting Secretary of the Interior, and
on July 5, 1873, an Executive Order was issued by the President providing:

It is hereby ordered that the tract of country above
described be withheld from entry and settlement as public
lands, and that the same be set apart as a reservation for
the Gros Ventre, Piegan, Blood, Blackfeet, River Crow, and
other Indians, as recommended by the Secretary of the Interior
and Commissioner of Indian Affairs. (I Kappler, 855)

4. Congress, by the Act of April 15, 1874, 18 Stat. 28, set aside
a tract of land in Montana for the use of the Gros Ventre, Piegan,
Bloods, Blackfeet, River Crows "and such other Indians as the President
may, from time to time, see fit to locate thereon." This order covered
the same lands described in the Executive Order of July 5, 1873,
excluding, however, lands lying between the Marais River on the East,
the Medicine or Sun River on the South, and the Rocky Mountains, which
lands subsequently were restored to the public domain.
5. By Executive Order dated April 13, 1875, more than five million acres were added to the reservation, but again by Executive Order dated July 13, 1880, some 4-1/2 million acres were withdrawn from the reservation and restored to the public domain.

6. Congress, on May 15, 1886, 24 Stat. 29, 44, appropriated $15,000 for use by the Secretary of the Interior "to negotiate with the various bands or tribes of Indians in Northern Montana and at Fort Berthold in Dakota, for a reduction of their respective reservations, or for the removal therefrom to other reservations. . ." (Def. Ex. 1)

Under the provisions of the Act, the Secretary of Interior appointed three Commissioners to negotiate with the Indians and on July 27, 1886, instructed them as follows:

The Indians in Northern Montana with whom it is proposed to negotiate, are the tribes occupying the Gros Ventre, Piegan, Blood, Blackfeet and River Crow Reservation. They are under three separate Agencies, viz: the Blackfeet in the extreme western part of the reservation, The Fort Belknap, near the centre of the reservation on the Milk River, and the Fort Peck Agency, on Poplar River, near its junction with the Missouri, in the eastern portion of the reservation.

The location of this reservation with reference to the International boundary, is unfortunate, and has been the occasion of no little embarrassment to the service.

If possible the Fort Belknap Indians should be removed: the Gros Ventres and River Crows to the Crow Reservation, with the consent of the Indians of that reservation, and the Assiniboines to the Fort Peck Agency, where are large number of that tribe now reside. The Sioux of Fort Peck, should if possible, be induced to remove to the Great Sioux Reservation in Dakota. But if it should be found inexpedient to remove the tribes belonging to either of the three Agencies, to other reservations, the next step should be to negotiate with them for the cession
of so much of their reservation, as they do not require
and are not likely to need in the future. The reservation
is now entirely out of proportion to the number of Indians
occupying it, and it is not likely that any difficulty will
be experienced in securing the relinquishment of a very
large portion thereof. As in the case of the other Indians
it is desirable to procure the consent of at least three-fourths
of the male adult Indians occupying the reservation, or if that
be found impracticable, a majority of the male adults. (Def. Ex. 2)

The Indians had previously indicated their desire to dispose
of surplus lands in order to purchase stock, implements, and other
necessities in the pursuit of a civilized life. The Commissioners
arrived at Fort Belknap on January 18, 1887, and, after two days of
consultation, found the Indians were opposed to their removal to
another area, and consequently the Commissioners bargained with them
for reduction of the area included in Fort Belknap, it being apparent
that there was more land than the Indians had need for. Further it
was hoped that the Indians, if placed on their own lands and provided
with implements and stock, would become agricultural and eventually
self supporting.

7. On January 18, 1887, the Fort Belknap Indians signed the
agreement which stated that the territory which had been set apart
by Congress under the Act of April 15, 1874, for the use and occupancy
of the Gros Ventre, Piegan, Blood, Blackfeet, River Crows, "and such
other Indians as the President might, from time to time, see fit to
locate thereon" was in excess of the needs of the Indians then occupying
it, and disproportionate to their number.

The agreement provided in substance:

(1) That the various tribes would locate permanently
in separate reservations selected and accepted by the tribes and described in the agreement.

(2) That the tribes relinquished to the United States any right, title and interest which they might have to lands within the larger reservation not specifically set aside for their use.

(3) That the United States would advance and expend $115,000 annually for 10 years, $115,000 for the benefit of the Indians, for the purchase of livestock, goods, clothing, agricultural implements, subsistence, education for children, medicine and medical care, assistance in building of homes and enclosing of farms, and in any other manner to promote their civilization, comfort, and improvement.

(4) That if payments were in excess of sums needed to accomplish these ends, the excess would be placed in the Treasury to the credit of the Indians for future use.

(5) That those who diligently tried to support themselves by agriculture or stock raising would be given preference in the allocation of assistance.

(6) That allotments would be made to those who made valuable improvements upon lands ceded at the rate of 160 acres to the head of a family, 80 acres to each child over 18, 40 acres to each child under 18, provided, however, that such lands would be held in trust for 25 years by the United States for the benefit of the Indians.
(7) That the reservations were to be surveyed and marked, the cost to be paid out of the first installment.

(8) That the United States reserved the right to construct highways, railroads and telegraph lines through the reservations, subject to regulation by the Secretary of the Interior. (Def. Ex. 3)


FIRST CLAIM

(For the Value of Timber, Grass and Water Rights Conveyed in 1896)

9. In 1894, Senator Powers of Montana transmitted to the Commissioner of Indian Affairs a petition signed by residents of the Little Rocky Mountain District, Choteau County, Montana, requesting that a Commission be appointed to obtain cession from the Indians of any rights which they might have in a part of the southeast portion of the Little Rocky Mountains for mining purposes. (Def. Ex. 9) The request was forwarded to the Secretary of the Interior with the recommendation that an inspector be sent to investigate the circumstances and report as to the advisability of negotiation. On July 2, 1894, an Inspector Duncan, acting under authority given by the Secretary of the Interior, reported:

   The lands sought to be ceded contain neither timber nor water, except perhaps a few acres of timber land at the head of a spring. The land is therefore valuable only for its mineral deposits and no injury can result to the Indians by disposing of this land, either by sale or lease. (Def. Ex. 9)

10. An undated report filed by Walter Weed, Geologist, stated:
... A careful examination of this area shows that the larger part of the mineral bearing country lies within the boundaries of the reservation. ...

After careful examination of the ground, going over the country to note mineral character, timber and water, I am convinced that the mineral deposits are of sufficient extent and importance to warrant the setting off of a portion of the mountain part of the reservation. ...

... This area includes but a few acres of timber, being mainly covered by young pines of 2 ft. to five feet in height. It includes no land capable of cultivation.

... This will include all the mineral bearing porphyry area, & the contact zone, & will exclude all timber lands. (Pet. Ex. 8)

11. The Secretary of the Interior was authorized by Congress under the Act of March 2, 1895, 28 Stat. 876, to appoint a Commission to negotiate with the Fort Belknap Indians for cession of a portion of the reservation lands along the southern border thereof. A Commission consisting of three members was appointed and instructions issued, stating that the Fort Belknap Reservation as reserved and set apart for the Indians had the southern crest of the Little Rocky Mountains for a southern boundary, and that these mountains were supposed to contain rich mineral deposits. In order to open these lands to exploration and mining, certain non-Indians had obtained legislation authorizing negotiations for relinquishment and cession from the Indians of that portion of the reservation. The original objects in setting the south boundary along the crest of the mountains were to give Indians benefit of timber and building stone needed for building houses and improvements, and to secure control of the water which was needed for irrigation and domestic use. He admonished the
Commissioners that great care should be taken to protect these resources, and "should the Indians be willing to cede and relinquish the mountain region, a sufficient area of timber and stone bearing land might be retained to meet their future needs." (Pet. Ex. 5, p. 4)

The Commissioners, accompanied by members of both the Gros Ventre and Assiniboine bands proceeded to inspect the lands "in order to ascertain their extent, and to obtain a description thereof."

Subsequently, on October 6, 7 and 8, councils were held at which the terms of the agreement were considered and discussed. There was a political feud existing between the young men who opposed "sale" and the older men of the tribe who favored "sale" of the lands.

In the course of this, one Commissioner stated:

This land which some of you are ready to sell is not used by anybody . . . There is no timber there; there is no grass there; there is no place that you could plow and sow oats or wheat; you can grow nothing there. As we said before, we don't want you to part with any of your grass lands; we don't want you to sell any of your timber lands; and we want you to keep it so that you will have all the water that you need . . ." (Pet. Ex. 7 & Def. Ex. 9)

Another Commissioner who had visited the proposed cession stated:

There is no timber in there and no grass. It is a little small strip of land where nothing grows; where there is nothing but rock, where there is no game so far as I could see and I could see no water on it . . ." (Pet. Ex. 7 & Def. Ex. 9)

12. On December 14, 1895, Commissioners Pollock and Grinnell submitted their report stating that despite differences between two factions of Indians, an agreement had been reached with assent of a majority of the Indians; that the United States would pay a total consideration of $360,000 for an area of approximately 40 square miles, to be paid in
annual installments of $90,000 beginning at the expiration of the
existing contract, with 4% interest, and the Indians agreed to convey,
relinquish and release to the United States all their right, title and
interest in and to all the following land:

Beginning at the 54 miles boundary monument, at a
point about the middle of the crest of Mission Butte,
and following a straight line, bearing (magnetic) north
17 degrees 30 minutes West, to the highest point on a
limestone ridge on the South side of the north fork of
People's Creek, and running at right angles to the course
of said Creek at this point, thence in a straight line,
bearing (magnetic) north 2 degrees 45 minutes west to a
rounded timbered knob on the crest of the limestone reef
on the north side of the north fork of People's Creek,
and parallel with its general course, thence Easterly,
following the crest of the last-mentioned limestone reef
north of the north fork of People's Creek to a low rounded
hill on said limestone reef, where it dips down to the
valley of Lodge Pole, or Red Mountain Creek; thence in a
straight line north 74 degrees east (magnetic) to the
wooded limestone ridge known as Travois Butte, where a
line drawn from the summit of Granite Butte (the peak
south of the 61 1/2 mile boundary monument) north 15
degrees east (magnetic) would intersect it; thence along
said straight line to the southern boundary line of the
present Reservation; thence along said southern boundary
line of the present reservation to the point of beginning. (Pet. Ex. 8 -
Def. Ex. 9)

Such sums as were deposited annually to Indians' credit, should be
expended for the purchase of cows, bulls and other livestock, goods,
clothing, subsistence, agricultural implements, education and medical
care of sick, aged and orphans, erection and repair of agency and
school buildings, mills, blacksmith shops, carpenter and wagon shops, and
in assisting the Indians to build and keep in repair houses, enclose and
irrigate farms, and other ways to promote civilization and improvement.

13. This Commission finds that the agreement was interpreted to
and understood by the Indians to cover the land within the boundaries
described without any reference to reservation of surface rights and that grass, timber and water were of little or no value to the Indians for agricultural or grazing purposes; that it was carefully explained to the Indians that $9.00 or $10.00 per acre was a high price for land; and that the Indians had need of the money for livestock, food and supplies.

14. While the cession was originally represented to include 40 square miles, or about 40,000 acres, it was later represented that the area was more nearly 36,000 acres. However, when an accurate survey was made, it was found to contain 14,758 acres, or 21,242 acres less than originally bargained for. Accordingly, the government paid more than $24.00 per acre for the land which was later sold under the mineral land laws at a uniform price of $10.00 per acre in accordance with the Act of Congress (29 Stat. 321, 353) which ratified the agreement of October 9, 1895.

15. As to the timber on the lands conveyed, the Commission finds that all evidence indicates that the boundary lines were carefully drawn to exclude from the land to be conveyed the valuable timber lands which surround the area on the west, north and east sides (identified on maps as the "Tribal Timber Reserve"); that the timber on the lands conveyed was sparse and consisted mainly of small lodgepole pine of little or no commercial value with some Douglas fir and yellow-pine.

16. An official Inspection Report of the Forest Service - Little Rockies National Forest - dated February 4, 1908, while covering some 32,000 acres of which the former Ft. Belknap land of some 12,000 acres
was a part, indicates that numerous fires over the previous one hundred years had destroyed much of whatever timber there may have been and that in the gulches and on southern exposures remnants of the Douglas fir and yellow pine accrued and "made up the merchantable timber on the Forest." From this, it is concluded that the greater portion of merchantable timber in the forest was not to be found on the lands ceded by the Ft. Belknap Indians since the southern boundary of that land was the southern crest of the Little Rocky Mountains, and the lands conveyed would lie on the north side of the range. (Comm. Ex. 6)

Further geological reports of the area indicate that the terrain is not conducive to the growth of timber of marketable size and quality. The Journal of Geology, Volume IV, 1896, The Geology of the Little Rocky Mountains, at pages 416 and 417, contains the following:

Mission Butte is the sharp, somewhat isolated mountain that is the most prominent point of the western part of the mountains. It is composed of granite-porphyry weathering in crags that form a sharp summit..." and

The hilly country lying between Mission Butte and the limestone ridge which forms the northern limit of the mountain mass is devoid of larger timber and the surface appears to be covered entirely by porphyry.

17. Finally, the Commission finds that the evidence presented as to the First Claim does not establish that there was any understanding and agreement between the parties that timber, grass and water rights would be reserved from the area ceded on October 9, 1895 (29 Stat. 321).

SECOND CLAIM

(For Land Taken by Erroneous Survey of the East Boundary of the Reservation)

18. The agreement with the United States and signed by the Fort Belknap Indians on January 18, 1887, ratified by the Act of
May 1, 1888, 25 Stat. 113, provided inter alia:

1. That the boundaries of the Fort Belknap Reservation were described as follows:

   Beginning at a point in the middle of the main channel of Milk River, opposite the mouth of Snake Creek; thence due south to a point due west of the western extremity of the Little Rocky Mountains; thence due east to the crest of said mountains at their western extremity, and thence following the southern crest of said mountains to the eastern extremity thereof; thence in a northerly direction in a direct line to a point in the middle of the main channel of Milk River opposite the mouth of Peoples Creek; thence up Milk River, in the middle of the main channel thereof to the place of beginning * * *.

2. That the various tribes would live on separate reservations and would accept and abide by agreements as to the boundaries of their respective reservation;

3. That the Indians relinquish to the United States all such right, title and interest which they might have in the land of the larger reservation not set aside for their use by this agreement;

4. That the United States should set aside $115,000 annually for 10 years to be used for benefit of Indians, and

5. That each reservation not marked by natural boundary lines should be surveyed and marked, the cost to be paid out of the first annual installment of $115,000. (Def. Ex. 3, pp. 15-25)

19. In compliance with that agreement, the United States contracted with Robert J. Walker (Contract No. 226) to survey the Fort Belknap Reservation along with several others. This contract provided that he should survey the west, south and east boundaries of the Fort Belknap
Reservation, and special instructions given him contained the following:

* * * commence at a point in the middle of the main channel of the Milk River opposite the mouth of Snake Creek, thence due South to a point due West of the Western extremity of the Little Rocky Mountains; thence due East to the crest of said mountains at their western extremity, and thence following the southern crest of said mountains to the eastern extremity thereof setting corners at each 40 chs. Thence run, on a random line, to a point in the middle of the main channel of Milk river, opposite the mouth of Peoples' Creek, and correct back, setting corners at each 40 chains, throwing excess or deficiency in the most northern 1/2 mile. (Def. Ex. 10, p. 1)

In running the southern boundary of the Fort Belknap Reservation in compliance with his instructions "and thence following the southern crest of said mountains to the eastern extremity thereof * * *," and being in doubt as to the exact location of the "eastern extremity," he inquired among the settlers as to what they considered to be the "eastern extremity." Subsequently he set the southeast corner at "the eastern extremity of the Rocky Mountains on the southern crest which is about 800 feet below top of mountains and 400 feet above foot (of the mountain)." (Def. Ex. 11, p. 568)

20. Subsequently, on December 1, 1890, the United States entered into Contract No. 244 with one Rodney W. Page to resurvey a portion of the south and east boundaries of the Fort Belknap Reservation. The instructions to Mr. Page from the Surveyor General stated:

The original survey, made by U.S. Deputy Robert J. Walker, in 1889, was properly surveyed according to this description, but it afterwards appeared that the most Eastern crest of the most Eastern of the Three Buttes was really the point intended by the Commission. Thence the occasion for another survey of part of the North (South) and all of the Eastern boundary to correct the mistake inadvertently made in surveying the first boundaries. (Def. Ex. 13, p. 6)
Special instructions issued by George O. Eaton, Surveyor General for Montana, to the surveyor directed him to:

**commence at a corner on the South boundary already surveyed by U.S. Deputy Robert J. Walker, in 1889, which is the nearest on line with the line to be surveyed, and thence survey and mark the line along the southern crest of the ridge or water-shed leading to the Three Buttes, and thence to the Eastern extremity of the most Eastern of the said Buttes. This extremity may not be the summit, but the crest of the Butte may extend partly down towards the Eastern slope. This point can only be determined by yourself by an accurate inspection of the ground, and must therefore be left to your judgment. SECOND. From this point, you will run a random line, setting temporary corners at each 40 chs. to a point in the middle of the channel of Milk River, opposite the mouth of People's Creek, and correct back, throwing the excess or deficiency into the most Northern 1/2 mile. **(Def. Ex. 13, p. 1)

21. As a result of the Page Survey, the south boundary of the Fort Belknap Reservation was extended east from the corner established by the first survey (66+ miles S.E. corner) to 71½ miles southeast corner at a point established after reaching the summit of the east butte, described as: "Then N. 1° 30' E. 800 chains to Eastern extremity of East Butte" or "528 feet east from the summit of the East Butte."

The southeast corner, as established by the Page Survey, was thus about five miles farther east than the southeast corner established by the Walker Survey. (Def. Ex. 14, p. 617)

22. The field notes made by Page contain statements that along the eastern boundary of the reservation he found fine agricultural land. The Commission is of the opinion that this, together with other evidence, including geologic maps of the area, establish that lands lying east of the southeast corner of the reservation established by the Page Survey,
could not be considered as forming a part of the Little Rocky Mountains, and that no mountainous terrain exists for many miles eastward.

23. The Commission further finds that oral testimony and other evidence introduced establish that Coburn Butte is the easternmost expression of the Little Rockies uplift, that the country east of the Little Rockies and from Coburn Butte the area is all gumbo flat and rolling land for about 70 to 80 miles, and that the rocky formation which forms the top of the Coburn Butte dips sharply to the eastward into terrace gravel, sedimentary rock and gumbo shale.

24. It is the finding of the Commission that Page determined the southeast corner after carefully inspecting the ground on the crest of the East Butte of the Little Rocky Mountains, or Coburn Butte, and locating the eastern extremity at a point about 528 feet from the summit of the Butte and 300 feet above the foot of the Butte.

25. The Commission further finds that between the first of the Buttes and the second and third, there is a flat table land, and that a person standing on the place established as the southeast corner by the Walker Survey could reasonably, in looking across the intervening land to the second and third butte, see about four or five miles to the east a high ridge comprised of those two buttes. On the easternmost of these the southeast corner was placed in 1890 by the surveyor, Page.

Further, the Commission finds that petitioner's contention that the southeast corner of the Fort Belknap Reservation was in fact located several miles west of the corner established by the Page, or second survey, is not sustained by the evidence. Rather, the Commission finds that the point fixed by the Page survey as the
southeastern corner of the Fort Belknap Reservation was located by following the southern crest of the Little Rocky Mountains well down the eastern side of the most eastern butte, and includes all the land defined by the boundary description contained in the Agreement of January 21, 1887, ratified by the Act of May 1, 1888, 25 Stat. 113.

26. Finally, the Commission finds that, considering all of the evidence at hand, the southeast corner as established by the Page survey is not only the eastern extremity of the southern crest (of the mountains) but also the eastern extremity of the mountains.

THIRD CLAIM

(For Land Taken by an Alleged Erroneous Survey, by the Agreement of October 9, 1895, Ratified by the Act of June 10, 1896, 29 Stat. 321)

27. Under the Agreement of October 9, 1895, ratified by the Act of June 10, 1896, 29 Stat. 321, the boundaries of the area to be ceded were described as set forth in Finding No. 12 hereof. Pursuant to Article VI of that agreement, the United States employed one George K. Reeder to survey the west, north and east boundaries of the ceded land. Following the boundaries set forth in the agreement and instructions, the area contained within those boundaries was determined to be 14,758 acres, or 21,242 acres less than the 36,000 acres the government and the Indians contemplated, as shown by the minutes of the Council meeting, the report of the Commissioners and the Act by which the agreement was ratified. (29 Stat. 321)

Therefore, the Commission finds that the area ceded was far less in acreage than that contemplated by both parties to the agreement, and that
the party which suffered loss was not the plaintiff but the defendant, and plaintiff has no right of recovery.

FOURTH CLAIM

(Mismanagement of Tribal Herd and Wasteful and Improper use of Tribal funds; Accounting for Construction of Fence)

28. On May 15, 1886, Congress approved an Act which provided for the appointment of a Commission to negotiate with several tribes for reduction in size of various reservations and for removal to new reservations. This Commission, in reporting on the site chosen for the Fort Belknap Agency, stated that "the lands selected for them are as good, if not the best, for agricultural purposes in all that region of the country, being well watered and susceptible of irrigation at a small cost. They are also admirably adapted to stock raising." (Def. Ex. 3, p. 14).

As a result of such negotiations, an agreement was made with the Fort Belknap Indians in 1887 (confirmed by Act of May 1, 1888, 25 Stat. 113) whereby they relinquished their interest in the larger reservation, in consideration of a smaller reservation also known as Fort Belknap Reservation, and payment of $115,000 annually for 10 years to be expended by the United States for the Indians for "purchase of cows, bulls, and other stock . . . and in any other respect to promote their civilization, comfort, and improvement . . . Provided, further that all cattle issued to said Indians for stock-raising purposes and their progeny shall bear the brand of the Indian Department, and shall not be sold, exchanged or slaughtered, except by consent or by order of the agent in charge, until such time as this restriction shall be removed by the Commissioner of Indian Affairs." (Def. Ex. 3, p. 16)
29. During negotiations for the sale of the mineral lands in 1895 conducted by three Commissioners named by the United States and the Indians, reference was made many times to the importance of cattle-raising to the economy of the Indians, and many Indians stated one of the considerations for sale of the lands would be that they receive breeding cattle through which they could increase their herds and incomes.

On October 9, 1895, an agreement was concluded (confirmed by Act of June 10, 1896, 29 Stat. 321) which contained provisions that $360,000 should be deposited in the Treasury of the United States for the Indians, to be expended at the rate of $90,000 yearly, and that "such sums, or so much thereof as may be necessary in any one year, shall be expended in the purchase of cows, bulls and other livestock . . . and in such other ways as may best promote their civilization and improvement."

Article III of the agreement contained the provision that all cattle issued to the Indians for stock raising purposes, as well as their progeny, should bear the brand of the Indian Department and should not be sold or slaughtered without consent of the agent. (Pet. Ex. 8).

Article V stated that because scarcity of water rendered agriculture difficult, and since the reservation was well suited to stock raising, especially cattle, it was agreed that no allotments of land should be made to individuals during the term of the agreement and until the majority requested allotments, but rather that the entire reservation would be held as a communal grazing tract. The only exceptions were to be made under approval of the agent in charge.

30. In 1893 the first attempt was made to irrigate portions of the land, and in 1894 the Indians of Fort Belknap meeting in council
asked that funds be set aside for irrigation purposes to prevent continued loss of crops. The government, in an attempt to carry out its agreements with the Indians in assisting them in their transition to an agricultural state, and to promote their civilization and improvement, commenced the construction of irrigation systems along the Milk River in the north and in two mountain valleys in the southern part of the reservation. In 1905 the United States filed suit in the U. S. District Court which was successful and assured the Indians the use of 5000 miners' inches of much needed water from the Milk River.

31. However, the area between the Milk River and the mountains to the south was more adaptable to grazing and was used by the Indians to graze their herds of horses.

In an effort to put these lands to use and obtain additional income for the Indians, it was decided to advertise the lands as open for bid as grazing lands. In 1909 no bids were received, the reasons given being that stockmen who would lease such a large acreage were scarce, and there was adequate grass elsewhere.

In 1910 the grazing of sheep on the reservation was considered, and, with the Indians' consent, a six months permit was issued for 40,000 sheep at 10¢ per head. During 1910-1911 as many as 48,000 sheep were permitted to graze on the lands between the Milk River and the southern mountains. In 1913 the Indians, through the Superintendent, registered their objection to continued permits for sheep.

32. In April 1913, the bid was received from the Matador Land Company offering a 5-year lease at $1.50 per head for 10,000-12,000 cattle. This bid was approved by the Assistant Commissioner of Indian
Affairs on the following conditions: The permittee was to graze not
less than 10,000 and not more than 11,000 cattle on the land at $1.50
per head per annum for a period of 5 years beginning June 1913 and
ending June 1918; each Indian family residing on the reservation
would be allowed to graze without charge 100 head of horses or cattle;
the permittee was required to repair and maintain in good repair the
boundary fences, to purchase hay from the Indians in preference to
other sources, to cut hay only after the Indians had been given an
opportunity to cut the amount necessary to meet needs of the permittees' stock; the permittee was responsible for any damage from trespass of
its stock on Indians' crops unless it could be proven the Indians were
negligent; the Indians were required to fence their hay and grain
stocks; and the instrument was to be construed as a permit rather than
a lease, and specifically limited to one head of stock to each 30 acres.

The horses and cattle of the individual Indians, in number about
2000 cattle and 4000 horses, which were also grazed on the land under
the agreement, were to be rounded up by permittees' crews the same as
permittees' stock.

33. In the summer of 1915, 1800 Hereford heifers and 173 bulls
were purchased by the United States for a tribal herd at a total price
of $122,429.26 and placed on the reservation. Soon thereafter the Com-
missioner of Indian Affairs sent the Superintendent of Livestock to
Fort Belknap to inspect the herd and report as to their condition. On
September 8, 1915, he reported that the herd of Holstein cattle belonging
to the school were in excellent condition as were the individual
Indians' horses and range cattle; that the 1800 heifers placed on the
reservation as the tribal herd were in fair condition; that the bulls were also in fair condition but young and small; that 2000 tons of good hay had been purchased at from $5.00 to $6.00 per ton, which should carry the herd through the winter. He recommended that a division fence be built between the tribal herd and permittees' cattle to cut down cost of handling, prevent commingling of stock, and to prevent stealing. He also recommended the purchase of an additional 30 two-year old bulls for service with the tribal herd, and the purchase of 4 stallions for use of the mares owned by the individual Indians. In December 1915, the Commissioner of Indian Affairs approved the report and recommendations.

34. Despite lack of cooperation from the Indians, the Superintendent reported in January 1916, along with cost of maintenance of the cattle, that there was plenty of feed, cattle were in good condition and their shelter was good. Later, in February 1916, he reported loss of a number of calves due to calving in severe winter weather rather than in spring or summer. The heifers were already bred when purchased and losses were unavoidable. Because of this, he recommended purchase of unbred stock in the future.

35. The Assistant Secretary of the Interior advised the Matador Cattle Company on March 23, 1916, that it had been determined it would be necessary to construct a fence separating their cattle from the tribal herd, and the permittee protested that it would be in violation of its contract. The Department replied that such a fence was for the good of both parties, and that if it required that they graze a lesser number of cattle, they might deduct for all less than the 10,000 minimum agreed
upon. Permittee accepted the reduced area for balance of contract under protest. On May 31, 1918, a new 5-year permit was granted to the Matador Land and Cattle Company without advertising for bids @ $4.00

per head which required that permittee:

   (1) erect new boundary fences around area covered by permit;

   (2) develop sufficient water to allow development of and full use of range;

   (3) furnish sufficient salt for Indians' stock as well as permittees';

   (4) permit grazing of individual Indian horses and cattle on range, and round them up along with permittees' cattle;

   (5) purchase hay produced by the Indians at market price;

   (6) cut hay only after Indians had opportunity to cut sufficient to meet permittees' needs; and

   (7) assume liability for damage resulting from trespass of permittees' stock on Indians' land.

36. In reply to Senatorial criticism of the permit and its issuance, the Commissioner of Indian Affairs, in justification, stated that the Matador Land and Cattle Company accepted all of the conditions set out in Finding No. 35, while the permit with which the comparison was made provided that the Department of the Interior should erect boundary fences at a cost of $12,000 and permittee was granted exclusive use of the range; that the permit was extended to the Matador Company without advertising because it had through the years been a completely satisfactory tenant.

37. This Commission finds that the tribal herd was maintained on the Fort Belknap Reservation from June 1915, the date of purchase of
the original herd, until the summer of 1923, when resistance by the Indians to its continuance made it impossible to retain it.

In 1921, a delegation of stock owners at Fort Belknap journeyed to Washington to request that Congress enact a special allotment act covering lands in the reservation, and to urge immediate sale of the tribal herd. A letter, dated February 25, 1921, and sent to Senator Charles Curtis by the delegation, then in Washington, stated that the herd had been a liability rather than an asset; that the lands used by it could have been more profitably leased; that the herd would have to be sold at a loss; and demanding that the herd be sold, removed from the reservation, and return of all tribal funds together with a sum commensurate with that which could have been realized had the lands been leased for grazing. The letter further asserted that the tribal herd was placed on the lands without the consent of the Indians.

A copy of this letter was sent by Senator Curtis to the Commissioner of Indian Affairs with a request for a report upon the situation which prompted the demands of the Indians. On March 5, 1921, the Commissioner replied that the herd was originally established to provide a market for hay and to enable Indians to purchase acclimated stock at reasonable prices in order that they might establish themselves in the stock business; that the initial expenditure and a considerable portion of the cost of maintenance had been paid from reimbursable funds; that the herd was beginning to show a profit, and was then in a state where it could fulfill the purposes for which it was established; and, further, that to sell it under existing market conditions would be unwise.
In April 1921, the Gros Ventre Council, with Rufus Warrior as Chairman, wrote Senator Albert B. Fall, requesting the tribal herd be removed from the reservation that fall, and that the Indians should be reimbursed for tribal funds spent on herd together with monies which would have been paid in grazing fees had the lands been leased or under permit. In addition, the letter stated the herd had been mismanaged as well as money wasted by running them on the reservation, and if the Department did not wish to ship them out for sale they should be distributed to individual Indians to guarantee repayment of Indian tribal funds used.

In reply on April 30, 1921, the Commissioner stated that the herd was originally purchased with reimbursable funds which would have to be repaid, that such tribal funds as were used in handling the herd were proceeds from sale of stock from the herd, which funds for accounting purposes, were carried on books as tribal funds and used for regular expenses of the herd. Further, he reiterated that the herd was originally purchased to provide a market for hay and to give the Indians an opportunity to purchase acclimated cattle and thus encourage them to engage in stock raising; that the Indians had been paid for their labor and hay provided for the herd; that young breeding stock had been sold Indians at nominal prices; that during the first two winters there had been losses caused by a combination of unfortunate circumstances, but the herd at that time was on a paying basis and showed a small profit on an over-all basis. He proposed that the tribal herd be disposed of gradually by not purchasing new stock, continuing sales of breeding stock to Indians, selling on market when conditions
were advantageous. In this manner, the tribal herd, as such, would be closed out by the time lands were allotted and the disposal would not create a debt payable to reimbursable funds to be paid out of tribal funds.

38. A letter dated May 9, 1921, to the Commissioner of Indian Affairs, signed by F. E. Brandon, Special Supervisor, reported that while making a survey of certain conditions on the Fort Belknap Reservation he inspected the herd and surroundings with respect to Indian interests and found that the total cost of the herd as of March 31, 1921, consisting of 1939 head of cattle was $118,179.26, and total expenditures to date were $162,585.27, representing an outlay of $280,764.53 as of March 31, 1921. He further reported that inventory of stock as of March 31, 1921, was 2265 head of a total value of $123,680, with supplies on hand valued at $24,680.01; that the total sales of stock, hides for the period 1915-1921 were $138,278.76. Accordingly, the total value of the herd and receipts therefrom as of March 31, 1921, was reported to be $286,638.77 and the original cost plus upkeep and expense was $280,764.53 - resulting in a profit of $5,874.24 in 5 years 9 months. Further, he reported that no consideration was given to value of the range used by the cattle during that time. He also stated that, with the exception of a comparatively small amount, all the expenses of the tribal herd, including the original investment, had been paid from tribal funds, these funds being created and replenished from time to time from grazing leases and coal royalties.

At the conclusion of this report there appeared a statement as to the ranch property with emphasis on the excellent location and condition
of operation together with emphasis on the good condition of the cattle and surplus of feed. Recommendation was made that due to the surplus of cattle on ranges and generally low price because of forced sales of the preceding fall, the tribal herds be carried for two years or more to prevent sale at a loss.

39. In accordance with the policy of gradual disposal set out by the Commissioner of Indian Affairs in his letter of April 30, 1921, confirmed by authority and instructions dated August 20, 1921, addressed to the Superintendent, Fort Belknap Agency, 247 head of cattle from the tribal herd were shipped to Chicago and sold for $16,446.45 with costs incurred of $2,548.51, leaving a balance realized of $13,897.94. The superintendent observed that only old steers and dry cows were shipped, and this combined with an unfortunately heavy sale and low market, produced the small returns.

40. A letter from J. T. Marshall, Superintendent, dated January 19, 1922, contained a report of the status of the herd of December 31, 1921, indicating that the herd had, despite poor market conditions, shown a profit for the calendar year of $16,220.22. The superintendent further stated that the Indians on the whole had not taken advantage of the opportunity offered them to become stockmen, but that only 30 Indians had purchased a total of 175 cattle in 1919, 1920 and 1921. This disinterest he attributed to a misunderstanding at the time the herd was placed on the reservation, the Indians claiming they were promised that at the end of five years the cattle would be issued to them in payment for range fees on the tribal range used by the herd and they should not be required to pay for cattle. His report further indicated
that the prejudice against the herd was almost impossible to overcome; it apparently was the wish of everyone that the herd be sold and it further appeared that the most practical solution was to accede to their wishes.

As an alternative, if the herd was not disposed of, he suggested that either 40,000 acres be reserved from allotment, and the grazing fees thereon be paid to the tribe or the land allotted and grazing fees be paid the individual Indians from the proceeds of sales of cattle each year until the herd could be disposed of.

41. On April 19, 1922, the Fort Belknap Tribal Business Council addressed to the Secretary of the Interior and to the Commissioner of Indian Affairs identical letters which read as follows:

Dear Sir:

The members of the Fort Belknap Indians through their Council want the Tribal Herd of cattle removed from their reservation.

We understand that the Herd was established on our reservation for the purpose of enabling us to get acclimated cattle at a reasonable cost and get into the cattle industry, but it does not serve the purpose as the majority of the Indians are not interested and will not buy the cattle out of the Herd.

The Herd is a detriment instead of a benefit to our reservation. They have been on our reservation for nearly seven years and during that time only a few of the reservation people have taken interest enough to buy cattle and the majority will not have them. The herd is now occupying about a third of our reservation, the very best part for stock and are depriving us of at the very least $25,000 per year that we would be getting if the pasture they are using was rented to some cattle company, this money in one year alone would have bought more cattle than our people could take care of.

It is understood that the Government now wants to reserve about 55,000 acres of our tribal grazing lands, the very cream of the range, for the purpose of maintaining the herd. This means a reduction of about 50 acres per capita in land that would be available for allotment to the Indians, besides, it seems that a large part of the grazing money paid in every year
for leasing the West side of our reservation to the Matador Land and Cattle Co. is used to pay the operating costs of the tribal herd. Since the people will not have the cattle, you can see that it is not serving its purpose.

We therefore want the cattle sold or disposed of and removed from our reservation. We do not want any part of our lands set aside for the purpose of maintaining a tribal herd, because as said the people do not want the cattle and will not buy them.

Trusting that you will see to it that the cattle are removed as the people want, we are,

Sincerely yours,
THE FORT BELKNAP TRIBAL BUSINESS COUNCIL

(Def. Ex. 65)

On April 20, 1922, the Fort Belknap Tribal Business Council, by another letter to the Secretary of the Interior, registered its protest against reserving large tracts of land for the tribal herd and for the beef herd maintained by the Boarding School on the reservation.

42. Under date of December 15, 1932, Secretary of the Interior Wilbur submitted to the House of Representatives for approval, pursuant to the Act of July 1, 1932 (47 Stat. 564, the Leavitt Act), a list of cancellations and adjustments in regard to tribal herds stating "the expenditures so made and herewith listed for cancellation are the results of what proved to be experimental failures." Included in these was the sum of $893.71 for the Fort Belknap tribal herd. Concerning this cancellation, the following statement was made:

* * * The Fort Belknap tribal herd was established in 1915 by the expenditure of $112,192 of the fund "Industry among Indians, 1915," and "Industry among Indians, 1915-16." Additional amounts were advanced from time to time for the care and handling of the herd and for winter feed. This herd was the only breeding herd in Montana that came through satisfactorily the severe winter of 1919-20 and the unfavorable range and weather conditions of the following summer season. The reservation was allotted under the provisions of the act of March 3, 1921 (41 Stat. 1355), and as the Indians were unwilling to agree on an arrangement for running the tribal herd on their allotments, it was
necessary to dispose of it. This activity was on a satisfactory paying basis at the time it was sold, but the selling became necessary at a time when the market price of cattle was low. The entire expenditures were reimbursed except for a small amount, $893.71 for expenses in connection with the sale of the herd. The fund to the credit of this tribe is so small that this indebtedness should be canceled. **

(Def. Ex. 82, p. 14)

43. Accordingly, the Commission finds that the tribal herd was purchased and placed on the Fort Belknap land to afford the Indians an opportunity to learn cattle raising and to obtain healthy acclimated cattle for a reasonable price; that the Indians had repeatedly asked that they be furnished with cattle; that at the time the herd was purchased the range land on the reservation was under lease to the Matador Land Company at an annual rental of $15,000; that to protect the tribal herd from permittees, a division fence was built which reduced permittees' acreage while fees remained the same. Further, the Commission finds the tribal herd was maintained on Fort Belknap from June 1915 until October 1923 when the remainder of the herd, after partial sales, was sold at auction because the Indians would not permit it to remain.

The Commission finds that regardless of the fact that there were some mistakes and errors in judgment, and some mismanagement, and considering the transaction as a whole, the United States carefully protected the rights of the Fort Belknap Indians in the care and management of the tribal herd; that the construction of the division fence was necessary to protect the tribal herd and to insure rental of the balance of the land for grazing purposes from which the tribe would realize a sizeable sum; that the loss from the sale of the tribal herd was caused at least in part by the Indians'
insistence upon allotment of their lands and refusal to allow the tribal herd to remain on the land. Further, bearing in mind that the actions of the defendant were not wholly without fault, the record does not substantiate the contentions of the Fort Belknap Indians that the agents of the United States for the most part did not exercise reasonable diligence in the care and management of the tribal herd, but rather would generally indicate the use of the same degree of care and diligence as a reasonably prudent man under like conditions.

FIFTH CLAIM

(Unlawful Expenditure of Tribal Trust Funds for Payment of Non-tribal Horses Destroyed in Extinction of Dourine Epidemic)

44. During 1913 an epidemic of dourine, a contagious disease, broke out among horses in Montana and neighboring states, including some of the horses owned by individual Indians on the Fort Belknap Reservation.

During the year 1914 the United States Bureau of Animal Husbandry began testing horses belonging to the reservation Indians. Instructions were issued to an inspector accredited by that agency to slaughter diseased animals belonging to Indians, and submit a claim for reimbursement "attested by the veterinarian who made the inspection and two disinterested witnesses, who were to appraise each animal before it was slaughtered . . . but that in no case should appraisement of any animal exceed $100.00." (Pet. Ex. 18)

From 1914 through 1919 the U. S. Bureau of Animal Husbandry destroyed a number of animals belonging to individual Fort Belknap Indians which reacted to the tests, and the United States compensated the Indian individual owners for such horses from tribal funds.
45. The record shows that in 1916 Congress appropriated the sum of $100,000 to reimburse Indians for horses which might thereafter be destroyed because they were infected with dourine. Subsequently, in 1917, Congress appropriated $75,000 for reimbursement for stock killed because of infection, $15,000 of which should be used in reimbursing Indians for horses killed prior to May 18, 1916, for which they had not been reimbursed. Neither statute made any reference to or provision for reimbursement of tribal funds used to compensate for the destruction of infected horses. The Fort Belknap Indians had in fact already been compensated for their losses from tribal funds earmarked for use to promote their well-being. (Pet. Exs. 20 and 21)

46. The Commission finds that the United States government was not, in these circumstances, under a legal duty or obligation to use public funds to replace the destroyed stock when tribal funds were available to cover such expense. Further, the Commission finds that the agreements under which the tribal funds were created authorized use for such emergencies where the general well-being of the entire community was concerned, and that the beneficial use of such funds inured to the benefit of the community, and were consonant with fair and honorable dealing between the parties within the meaning of the Indian Claims Commission Act.

Accordingly, the Commission finds that the petitioner is not entitled to recover the tribal funds expended by defendant to replace the destroyed livestock.
SIXTH CLAIM

(Use of Tribal Funds to Reimburse the Defendant for Expenditures on Irrigation Systems)

47. The Fort Belknap Reservation was established by an Act of Congress, May 1, 1888 (25 Stat. 113), which ratified an agreement of January 21, 1887. The land which comprised the reservation was originally a part of a larger tract, set aside by Executive Order of July 5, 1873. The Agreement of January 21, 1887 (25 Stat. 113), between the Indians of Fort Belknap and the United States authorized, inter alia, the expenditure of money to assist the Indians "to promote their civilization, comfort and improvement." (Def. Ex. p. 16)

The Fort Belknap Indian Reservation is located in north-central Montana in Blaine and Phillips Counties, is about 25 miles wide (from east to west) and 40 miles long, and has a gross area of about 622,917 acres. It is bounded on the north by the Milk River, on the south by the Little Rocky Mountains, and on the east and west by surveyed lines.

The greater portion of the reservation is a rolling plains country broken occasionally by buttes and coulees. In the southern portion, the Little Rocky Mountains, which are very rugged, rise abruptly from the plain to a maximum height of about 5600 feet. Elevation of the irrigable areas varies from 2300 to about 3500 feet.

48. The climate is characterized by cold, long winters and short, warm summers. Killing frosts as late as May 20 and early as September 20 are not unusual, and snows occur from November to April in the plains, and September to May in the mountains. Chinooks may occur in December, January and February.

The temperature ranges from about 105° to 110° above zero to about 50°
to 60° below zero. A report prepared in 1948 stated that a ten year precipitation record at Harlem, Montana, shows a yearly average of 12.76 inches, 42 year average of 12.87 inches at Malta (47 miles east of Harlem) and a 37 year average of 13.22 inches at Chinook (21 miles west of Harlem).

A slightly higher rainfall was recorded in the mountainous area to the south.

In 1941 the Bureau of Indian Affairs reported that there were 566,396 acres of land within the reservation mainly valuable for the grazing of livestock, and that 100,520 acres were used as grazing lands by Indians and 418,307 acres were used by non-Indians.

49. The first attempt to irrigate lands came in 1893 when school gardens were watered by taking water from the river by windlass and then through open ditches. In 1895 a windmill was added to operate a pump, and by 1896 a steam engine was used.

On March 13, 1894, the Indians of Fort Belknap in full council meeting asked that "funds should be set apart for irrigation purposes" to prevent continued loss of crops. The superintendent of the reservation also urged construction of irrigation works as vitally important to the welfare of the Indians. (Def. Ex. 89-A, p. 3)

On May 10, 1894, an estimate as to the cost of a "practical & feasible" irrigation system, prepared by a civil engineer, was submitted to the Commissioner of Indian Affairs. (Def. Ex. 90)

50. On June 10, 1896, Congress ratified the Agreement of October 9, 1895 (29 Stat. 321) between the United States and the Fort Belknap Indians, which provided $360,000 to be used for the benefit of the Fort Belknap Indians, including so much as might be necessary "in assisting the Indians to build and keep in repair their houses, enclose and irrigate their farms,
and in such other ways as may best promote their civilization and improvement." (Def. Ex. 9)

51. In early 1894 surveys and approximate estimates of expense for "first class" construction of an irrigation system for the Fort Belknap Reservation, including the Milk River valley on the north side, People's Creek on the east side, Lodge Pole and Upper People's Creek systems, were compiled. It was estimated that the Milk River projects would supply water for about 21,500 acres at a cost of $27,984.50; People's Creek would supply about 15,000 acres at a cost of $8250; and Lodge Pole system would supply about 7500 acres at a cost of $20,000.

52. A letter dated February 4, 1895, addressed to the Commissioner of Indian Affairs by the Acting Secretary of the Interior concerning authority for expenditure of permanent Indian funds from Congressional appropriations for their "support" stated:

To attain the condition of self-support, it is necessary not only to provide these Indians with lands, which they already have, but with appliances and facilities for making those lands fertile and productive. If irrigation be one of the necessary means to that end, an expenditure is as essential for that purpose as for any other.

Therefore, upon review and reconsideration of the matter, I am of the opinion that authority for the expenditure of these funds, for the "civilization, comfort and improvement" of these Indians, rests within the discretion of the Secretary of the Interior, and that further legislation to authorize their use for irrigation purposes is unnecessary . . . (Def. Ex. 91)

53. The superintendent of the reservation proceeded with construction of the project. In 1905 the defendant brought suit in the U. S. District Court asking adjudication of certain water rights in the Milk River to the Fort Belknap Reservation. W. B. Hill, the
Assistant Irrigation Engineer for the Montana area, in 1907, after an investigation of the project, recommended that all sums available or obtainable should be spent in perfecting the Milk River Project so that the Indians could raise sugar beets, a crop with which non-Indian farmers in the region had been successful and thereby became self-supporting and prosperous farmers. This work was approved by the Chief Engineer of the Indian Irrigation Service, and on October 28, 1907, the Acting Secretary of the Interior approved the report and the recommendation contained therein. On January 6, 1908, the Supreme Court confirmed the adjudication of 5000 miners' inches of water in the Milk River to the Fort Belknap Reservation. Congress approved an appropriation of $25,000 (Act of April 30, 1908, 35 Stat. 83) for construction of the Milk River project, and a like sum was appropriated in 1909.

Under the Act of March 1, 1911 (36 Stat. 1066) all prior appropriations including 1908 and 1909, and all subsequent appropriations for Indian irrigation projects were made reimbursable.

54. The Fort Belknap project consisted of several projects which were by virtue of the topographic features of the reservation widely separated, the three northern units covering possibly 17,000 acres along the Milk River and the four mountain units covering about 7,000 acres in the south, with the superior soil located in the northern units.

Work on these irrigation projects continued, together with an attempt to teach the Indians agricultural science, and in January 1917,
the Assistant Engineer, U. S. Indian Service, submitted a report stating total cost of projects to date of December 31, 1916, to be $287,751.02.

55. On February 13, 1930, the Commissioner of Indian Affairs, in reply to a letter from Senator Walsh of Montana requesting information regarding the Fort Belknap Irrigation projects, stated:

1. That total expenditures to June 30, 1929, were $631,927.76, of which $353,004.84 were for construction and $269,966.24 for operation and maintenance.

2. That $5,159.35 had been collected from lessees and white owners for operation and maintenance.

3. That an estimated $320,700 would be needed to provide additional facilities to supply water to then dry land.

4. That there were estimated to be 25,285 acres of irrigable land within the project, of which 16,974 acres were presently under the existing system.

5. That in 1929, 10,722 acres were irrigated by Indians, 551 by lessees of Indian lands and 291 acres by non-Indian owners.

6. That the expenditures for both construction and operation and maintenance constitute a lien against all the land within the project on a pro rata basis, or 25,285 acres, and will remain a lien against the allotments until paid. (Acts of April 4, 1919 (36 Stat. 277) and March 3, 1911 (36 Stat. 1066)).

7. Prior to 1908 tribal funds in the amount of $102,697.25 were expended for construction of the project. However, these funds, although not included in the reimbursable clause contained in the Act of March 3, 1911 (36 Stat. 1066), were made reimbursable to tribal funds by Act of August 1, 1914 (38 Stat. 593). (Def. Ex. 143)

56. Pursuant to a Resolution of the 70th Congress, a Subcommittee of the Committee on Indian Affairs of the United States Senate in 1929 conducted hearings concerning conditions of Indians in the United States, during which the testimony indicated that it was necessary that the
Indian lands have irrigation; that they raised only hay rather than sugar beets or other crops which would have required more complicated farming techniques. However, a non-Indian lessee of the Indians testified that the soil on the reservation was as good as any soil he had worked in for beets and potatoes and other cultivated crops; that there was plenty of water if it was properly distributed.

57. By letter dated November 6, 1929, the Tribal Council requested Senators Frazier, Wheeler and Pine to consider certain suggestions for the good of the Indians, among which was that legislation be immediately enacted whereby the irrigation debt, which is charged against the irrigable land of the reservation be cancelled, or that at least the cost of construction paid for out of tribal funds be cancelled.

58. As a result of these investigations, reports (Meriam, Preston and Engle, Pet. Ex. 32), and repeated requests from the Indians that reimbursable charges outstanding against them be adjusted or cancelled, Congress on July 1, 1932, passed the "Leavitt Act" (47 Stat. 364) which authorized and directed the Secretary of the Interior "to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: Provided, That the collection of all construction costs against any Indian-owned lands within any government irrigation project is hereby deferred, and no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished, and any construction assessments heretofore levied against such lands in
accordance with the provisions of the Act of February 14, 1920 (41 Stat. 409), and uncollected, are hereby cancelled." Provision was also made for an annual report to the Congress showing such adjustments, and for final approval by the Congress. (Def. Ex. 82, p. 2)

59. Pursuant to the Leavitt Act, the Commissioner of Indian Affairs forwarded to the Secretary of the Interior on December 3, 1932, the report made by the Committee appointed by the Secretary of the Interior to investigate the irrigation projects and other charges. In turn, the Secretary of the Interior, on December 15, 1932, submitted to the Congress a list of cancellations and adjustments made with the various tribes and individual Indians, of which $231,476.54 was for cancellation of reimbursable expenditures for the Fort Belknap project. This sum did not include moneys in the amount of $107,759.78 expended from tribal funds during the first years (1893-1913) of construction, which sum according to law (Act of August 1, 1914, 38 Stat. 583) will be "credited back to tribal funds" when the Indians or lessees pay in the amount in operation and maintenance assessments. (Def. Ex. 82, pp. 1-3, 38-48)

Accordingly, the outstanding debts owed to the United States by the Indians for the project were cancelled; no assessments against the Indians were provided for; only lands owned by non-Indians and Indian-leased lands were subject to assessment; the Indians had enjoyed the use and benefit of the project during its entire existence; the Indians were able to lease their lands to non-Indians for sums higher than they would have realized had they farmed them themselves, and in addition, they were exempt not only from assessments but land tax as well.
60. On January 18, 1941, the Comptroller General of the United States held that the Leavitt Act (Act of July 1, 1932, 47 Stat. 564) did not authorize cancellation of debts of individual Indians or tribes of Indians which represent expenditures of tribal funds. (20 Comp. Gen. 388)

61. In 1941 Reports of the Bureau of Indian Affairs, Department of Interior, showed a total of 20,136 acres of Indian-owned land and 120.5 acres of non-Indian land under constructed irrigation works (Fort Belknap); a total of 14,018 acres of land irrigated by Indians; 1488 acres Indian land leased, and 120 acres non-Indian owned, with 156 families benefited and a total crop value of $112,364.

In 1943 reports show a total of 18,768 acres under constructed works; 9,444 acres irrigated by Indians; 2,355 acres irrigated by lessees, with a total crop value of $143,252. In this year 6,969 acres provided with irrigation facilities were idle for various reasons including complicated heirship, owners working for wages, lack of subjugation of the land, owners too old to work and project not completed.

To supplement the natural flow of the Milk River during irrigation season, the Indian Service negotiated and contracted for a one-seventh (1/7) share in the waters of the Fresno Dam which would further insure an ample supply of water.

In 1944 assessments against Indians for operation and maintenance were authorized in the amount of $1.25 per year.

In 1945 recommendation was made by the Superintendent of the Fort Belknap Agency and concurred in by the District Engineer, modifying the order for operation and maintenance assessments to permit elimination
from assessable status those lands to which water could then be actually
delivered, but not beneficially applied.

62. From the evidence submitted, the Commission finds that the irrigation system was originally requested by the members of the Fort Belknap Community; that its construction was compatible with the agreements contained in the Treaties of 1888 and 1895 wherein the United States assumed the obligation to assist the Indians by such means as might be necessary "to promote their civilization, comfort and improvement" and "in assisting the Indians to build and keep in repair their houses, enclose and irrigate their farms, and in such other ways as may best promote their civilization and improvement"; that the Indians have received a continuing benefit from the irrigation of their lands; that the greater part of the cost of such irrigation projects has been cancelled by Congressional action and that portion of Indian tribal funds used represents only a small percentage of the entire cost and is not an unconscionable price to pay for the benefits accruing thereunder; and that the tribal funds used for construction in equity should not be restored by the defendant, but in due course by the collection of assessments.

This Commission further finds, after giving full and careful consideration to all the evidence, that although there may have been some mistakes, some errors in judgment and some mismanagement on the part of the defendant, considering the transaction as a whole, the project has been of great benefit to the community; that its construction and
maintenance have been consonant with fair and honorable dealings within
the meaning of the Indian Claims Commission Act; and that the petitioner
is not entitled to the relief requested.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner