BEFORE THE INDIAN CLAIMS COMMISSION

THE BLACKFEET AND GROS VENTRE TRIBES OF INDIANS, Residing Upon the Blackfeet and Fort Belknap Reservations in the State of Montana,

Petitioners,

THE ASSINIBOINE TRIBES OF INDIANS, Residing upon the Fort Belknap and Fort Peck Reservations, Montana, and

THE SIOUX TRIBE OF THE FORT PECK RESERVATION, Montana,

Intervenors,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Decided: March 31, 1967

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Petitioners, The Blackfeet and Gros Ventre Tribes of Indians, timely filed their claim pursuant to the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049). The claim is for additional compensation for reservation lands ceded by petitioners to defendant by the agreement of cession ratified by Congress on May 1, 1888 (25 Stat. 113).

2. Petitioners are bands or tribes of Indians, commonly known as the Blackfeet and Gros Ventre Tribes, attached to the Blackfeet and Fort Belknap Indian agencies in Montana. The Blackfeet were for many years included in the Blackfoot Nation of Indians. Included in the petitioner,
Blackfeet Tribe, are the former Blood and Piegan Tribes of Indians. The Gros Ventre Tribe, once known as the Falls Indians, were formerly associated and affiliated with and a part of the Blackfoot Nation. Each of the petitioner tribes has a tribal organization recognized by the Secretary of the Interior as having authority to represent said tribes.

3. The Blackfoot Nation was composed of three tribes, the Blackfeet, the Blood, and the Piegan. All of these were of Algonkian origin and were closely related by blood, language and tradition. The Gros Ventre were Arapahoe in origin. Some time prior to the Treaty of October 17, 1855 (11 Stat. 657) with the Blackfoot Nation the Gros Ventre were pushed out of their ancestral home in eastern Wyoming and Montana by the Sioux and Assiniboine, and had become associated and affiliated with and a part of the Blackfeet Nation.

The Blackfoot Nation in early times had roamed over a vast region of country extending from the North Fork of the Saskatchewan River in Canada to the headwaters of the Musselshell River and from the Rocky Mountains on the west to 106 degrees of longitude on the east. They were a nomadic people and depended upon the buffalo for their existence. Their country was the home of vast herds of buffalo which ranged on the plains of the Musselshell and Judith, the Missouri, the Milk, and the Saskatchewan Rivers in countless numbers.

While these Indians were truly nomadic, there were certain sections of their territory which in time became recognized as their home territories. The Blackfeet proper and the Bloods occupied principally the country about the sources of the Marias and Milk Rivers, while the
Piegans occupied generally the country between the Milk River on the north and the Marias and Teton Rivers on the south. The Gros Ventre occupied the country bordering on the Milk River from its mouth to the territory of the Piegans.

4. On October 17, 1855, a treaty was made between the United States and the Blackfoot Nation by which a reservation area was set aside for the Blackfeet. It was described as follows:

... the tract of country lying within lines drawn from the Hell Gate or Medicine Rock Passes, in an easterly direction, to the nearest source of the Muscle Shell River, thence down said river to its mouth, thence down the channel of the Missouri River to the mouth of Milk River, thence due north to the forty-ninth parallel, thence due west on said parallel to the main range of the Rocky Mountains, and thence southerly along said range to the place of beginning, ... 

On July 5, 1873, an Executive Order transferred the area between the Musselshell and Missouri to the public domain. This order altered the boundaries of the reservation as set up in the 1855 Treaty so as to leave the following:

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; hence along said summit in a northerly direction to the north boundary of Montana; hence along said north boundary to the place of beginning, excepting and reserving therefrom existing military reservations.

It will be noted from the above description that by this Executive Order of July 5, 1873, there was added the area of land from the Milk
River line eastward to the Dakota line. The added area contained 4,332,440 acres. This description includes what came to be known as Royce Areas 565 and 574, Montana.

An Act of Congress approved April 15, 1874 (18 Stat. 28) established a reservation as delimited in the Executive Order of July 5, 1873, except the following area was excluded:

Commencing at a point on the south bank of the Missouri River, opposite the mouth of the Marias River; thence along the main channel of the Marias River to Birch Creek; thence up the main channel of Birch Creek to its source; thence west to the summit of the main chain of the Rocky Mountains; thence along said summit in a southerly direction to a point opposite the source of the Medicine or Sun River; thence easterly to said source, and down the south bank of said Medicine or Sun River to the south bank of the Missouri River; thence down the south bank of the Missouri River to the place of beginning, . . .

The area excluded under the above Executive Order description came to be known as Royce Area 574, Montana.1

By Executive Order of August 19, 1874, the President restored to the public domain all that portion of the reservation as established by the Executive Order of July 5, 1873, which was not included within the boundaries of the reservation as established by the above Act of April 15, 1874. The area restored was Royce Area 574, Montana 1, referred to immediately above.

Thereafter, by Executive Order dated April 13, 1875, there was added to the reservation established by Act of April 15, 1874, a certain area on the southeast boundary of the former reservation, of approximately 5,865,900 acres (Royce Areas 622 and 623). Subsequently, under
Executive Order of July 13, 1880, the said addition was reduced by approximately 4,622,750 acres (Royce Area 622) and added to the public domain, thus leaving as a net addition in that quarter an area of 1,243,240 acres (Royce Area 623).

This addition of 1,243,240 acres plus the 4,332,440 acres added by the Executive Order of July 5, 1873, and retained under the Act of April 15, 1874, made a total net addition of 5,575,680 acres to that portion of the original 1855 reservation then remaining. However, there was involved under the Act of 1888 only 4,332,440 acres of the 5,575,680 additional acres. Area 623 lying south of the Missouri River was not ceded.

5. The land which is the subject matter of this suit is located in northern Montana, north of the Marias and Missouri Rivers to the Canadian boundary and eastward from the east boundary of the present Blackfeet Indian Reservation to a line due north from the mouth of the Milk River to the Canadian boundary. This territory is known as Royce Area 565, Montana 1. Under a stipulation entered into by petitioners and defendant and made a matter of record herein it was agreed that the above described territory contained 13,338,589 acres (Tr., p. 830).

Petitioners, based upon a percentage of population figure with regard to the Fort Belknap area, have reduced the acreage by 316,979 acres, making a total in which they claim a 100% interest of 13,021,610 acres. Petitioners also assert alternative claims which will be discussed in the opinion along with the alternative descriptions involved in such claims.
6. Intervenors are the Assiniboine Tribe and the Sioux Tribe of the Fort Peck Reservation in Montana. The Assiniboine Tribe is composed of two groups - one residing on the Fort Peck Reservation and the other on the Fort Belknap Reservation, also in Montana.

The Assiniboine Tribe of the Fort Peck Reservation, the Assiniboine Tribe of the Fort Belknap Reservation, and the Sioux Tribe of Fort Peck each has a governing body duly recognized by the Secretary of the Interior as authorized to speak for it and to represent it in the matter of this claim.

Each of the intervenors, Assiniboine and Sioux Tribes, is authorized to maintain this suit under Section 2 of the Indian Claims Commission Act (60 Stat. 1049).

Intervenors each allege an undivided one-fourth interest in the lands ceded by the Agreement of May 1, 1888, as tenants in common with the Blackfeet and Gros Ventre. They base their claim on the theory that the Act of April 15, 1874 (18 Stat. 28) created a joint reservation of some 14,969,156 acres, thereby destroying the 1855 treaty title of the Blackfeet and Gros Ventre and investing intervenors with a one-half interest along with the Blackfeet and Gros Ventre. This area is known as Royce Area 692, Montana 2, and this larger acreage also is the subject of one of petitioners' alternative claims.

7. The Act of April 15, 1874 (18 Stat. 28) upon which intervenors rely for their alleged recognized title reads in its entirety as follows:
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described tract of country, in the Territory of Montana, be, and the same is hereby, set apart for the use and occupation of the Gros Ventre, Piegan, Blood, Blackfoot, River Crow, and such other Indians as the President may, from time to time, see fit to locate thereon, viz:
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 the Maria's River; thence along the main channel of the Maria's River to Birch Creek; thence up the main channel of Birch Creek to its source; thence west to the summit of the main chain of the Rocky Mountains; thence along the summit of the Rocky Mountains to the northern boundary of Montana; thence along said northern boundary to the place of beginning.

8. It appears that between 1868 and 1870 the Assiniboines voluntarily occupied a part of the 1855 Blackfoot Reservation. There was no formal order made placing them on the reservation but they were permitted by defendant to remain and draw rations. Previous to the occupation by the Assiniboines of a part of the Blackfoot Reservation they had been driven from their Fort Laramie Treaty lands by the Sioux Indians.

After taking up residence on the reservation of the Blackfeet, Blood, and Piegan Tribes in the period from 1868 to 1870, the Assiniboines became separated into two bands, the Long Hair Band living chiefly in the western part of the reservation with the Gros Ventres and being known as the Upper Assiniboines, and the Canoe Band living in the vicinity of the mouth of the Milk River and being known as the Lower Assiniboines.

In 1873, a separate agency was established on this reservation at Fort Belknap, and to it were assigned the Gros Ventre and the Upper
Assiniboines. In the same year the Milk River Agency was removed to Fort Peck on the Missouri River near the mouth of the Milk River and to this agency were assigned the Lower Assiniboines and the Sioux then upon the reservation.

9. The annual report of A. J. Simmons, Agent at Fort Browning, later Milk River Agency, dated August 31, 1871, contains the first mention of the Sioux upon the Blackfeet Reservation. Agent Simmons reported as follows:

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The tribes belonging here and under my charge are the Assiniboines, Gros Ventres of the Prairie, River Crows, and more recently large bands of Santee and other Sioux, who, having roamed for a number of years without being under the supervision of the Department, or receiving anything therefrom, have now with its consent, attached themselves to this agency. These Sioux number as follows: Santees proper, under Standing Buffalo's brother, about 2,500; Yanktons, Yanctonais, Cutheads, and others, under Medicine Bear as principal chief, about 4,300.

Every effort in my power has been made to induce them to go to the Sioux agencies east, but without effect. They close their ears to my words of advice in this regard, and assign some cogent reasons for their conduct. They declare they will remain in this country, and urge that they may receive supplies and be treated as other Indians are at the agency. I have issued flour and other supplies to them for the last four months, during which time they have behaved remarkably well.

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In addition to the Agent's report there was correspondence from General P. H. Sheridan, the Secretary of War, and a man by the name of Winfred S. Hancock, all of which indicated the Sioux occupancy and the fear that any attempt to remove them by force would precipitate an uprising.
The situation apparently remained in this posture, with periodic recommendations that the Sioux be removed, until the creation of the Northwest Indian Commission which was instructed to remove the Sioux to the Great Sioux Reservation in Dakota, if possible. There is no evidence of a formal order placing the Sioux on the lands in suit.

The minutes of the Commission made during the council with the Sioux at Fort Peck on December 27, 1886, indicate that the Commission was unable to follow the instructions regarding removal and instead reassured the Sioux that they recognized their rights in the land and that they would be given a reservation and paid a sum of money each year for a number of years.

It was during the course of these negotiations that the Agreements of December 28 and 31, 1886 and January 21, 1887, were concluded with the Indians of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Reservation in Montana. This Agreement, despite its heading, was signed by Assiniboine and Sioux as well as the other Indians.

These Agreements ceded the land in suit and established the Indian parties thereto on their reservations as delimited by the treaty. They were ratified by Congress on May 1, 1888.

10. The Commissioners who negotiated the agreements made the following report dated February 11, 1887:

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The first question to engage the attention of the Commission was as to the advisability and practicability of attempting the removal of the Sioux of Fort Peck to the Great Sioux Reservation, in Dakota, our instructions contemplating such a step if deemed expedient.
After a thorough investigation of the matter the Commission decided that it was unadvisable to make the attempt. The Indians were decidedly opposed to such change, and manifested a good deal of surprise and uneasiness at the mere suggestion of the plan. It was learned that the few who went to the Standing Rock Agency last spring would have returned had they been allowed to do so, and some did return. *** The Sioux at the Fort Peck Agency have occupied the country there for nearly a quarter of a century, and claim equal rights with the other Indians in the Blackfeet Reservation, which claim is not disputed by any of the other Indians occupying the reservation. By reference to the Act of Congress establishing the reservation (18 Stat., p. 28) it will be observed that the reservation was set apart for certain tribes or bands specified by name, "and such other Indians as the President may, from time to time, see fit to locate thereon." The Sioux were placed upon the Blackfeet Reservation by the Government over twenty-three years ago, and it does not appear that their right of occupancy has ever been questioned. By long residence they have become greatly attached to the country, and would not voluntarily abandon it. The Assinaboinés of the Fort Peck Agency, who number about 1,100, are for the most part settled at Wolf Point, about 20 miles from the agency. The Sioux have their habitations in the immediate vicinity of the agency.

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The promise of stock cattle was the principal inducement which led to the cession of the vast territory relinquished to the Government. The agreement was satisfactory alike to the Indians and their friends present during the negotiations; and we believe that if strictly carried out the Indians will require no further aid from the Government.

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Negotiations were immediately opened with the Fort Belknap Indians and after three days counciling the agreement was accepted and signed by a large majority of the male adults attached to the agency. A reservation was selected, embracing the region of country between Milk River and the Little Rocky Mountains, and extending from Snake Creek to Peoples Creek on the north, and from one extremity of the Little Rockies to the other on the south. The Indians were unwilling to remove, either to the Fort Peck Agency or to any distant reservation, but they consented, unanimously, to take the lands above described for their permanent home.

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Leaving Fort Belknap Agency on the 23d of January, the Commission returned to Sun River Crossing, 5 miles northeast from Fort Shaw, en route to the Blackfeet Agency, 100 miles distant from the latter place.

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On the 5th of February the storm abated to such extent as to allow the Commission to continue its journey to the Blackfeet Agency.***

The chiefs began by complaining of ill-usage and bad faith on the part of the Government in past time, and charged that an immense tract of country had been wrested from them without any compensation in return, and that they had been left to starve, while their white neighbors had grown rich out of their misfortunes. They demanded $3,000,000 for the relinquishment of their interest in the surplus lands of the reservation and stubbornly refused to accept an offer of $125,000 per annum for ten years, which was made to them. Finally, however, after long and patient reasoning with them, they agreed to accept $150,000 per annum for the period mentioned.

Upon mature deliberation we decided to accede to their demand. The sum agreed upon is, proportionately, greater than the amount agreed upon with the Indians of the other two agencies, Fort Peck and Fort Belknap, but the argument was used, and it can hardly be disputed, that the needs of these Indians are in a large measure greater than those of the other Indians. ***

Furthermore, these Indians, no doubt, have the most ancient claim upon the ceded territory, at least as far eastward as the mouth of Milk River. They occupied it as far back as their history is known, and they naturally feel that they have a stronger claim to it than any of the other Indians. They were earnest and persistent in demanding recognition on that account.

While this did not go far in influencing our decision, it undoubtedly made the Indians more stubborn and exacting in their demands.

By the terms of the agreement a tract of country, estimated to contain 17,500,000 acres, is ceded to the United States. Three separate reservations are retained for the Indians.

11. The following are the terms of the agreements executed by the Blackfeet, Blood, and Piegan; Gros Ventre; Sioux; and Assiniboine as ratified by the Act of Congress of May 1, 1888 (25 Stat. 113). Only the treaty articles through VIII are quoted herein.
Whereas, John V. Wright, Jared W. Daniels, and Charles F. Larabee, duly appointed commissioners on the part of the United States, did, on the twenty-eighth and thirty-first days of December, anno Domini eighteen hundred and eighty-six, and the twenty-first day of January, anno Domini eighteen hundred and eighty-seven, conclude an agreement with the various tribes or bands of Indians residing upon the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Reservation in Montana Territory, by their chiefs, head-men and principal men, embracing a majority of all male adult Indians occupying said reservation, which said agreement is as follows:

Agreement concluded December twenty-eighth and thirty-first, eighteen hundred and eighty-six, and January twenty-first, eighteen hundred and eighty-seven, with the Indians of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Reservation in Montana, by John V. Wright, Jared W. Daniels, and Charles F. Larabee, Commissioners.

This agreement, made pursuant to an item in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirty-first, eighteen hundred and eighty-seven, and for other purposes," approved May fifteenth, eighteen hundred and eighty-six, by John V. Wright, Jared W. Daniels, and Charles F. Larabee, duly appointed commissioners on the part of the United States, and the various tribes or bands of Indians residing upon the Gros Ventre, Piegan, Blood, Blackfoot, and River Crow Reservation, in the Territory of Montana, by their chiefs, head-men, and principal men, embracing a majority of all the male adult Indians occupying said reservation, witnesseth that--

Whereas, the reservation set apart by act of Congress approved April fifteenth, eighteen hundred and seventy-four, for the use and occupancy of the Gros Ventre, Piegan, Blood, Blackfoot, River Crow, and such other Indians as the President might, from time to time, see fit to locate thereon, is wholly out of proportion to the number of Indians occupying the same, and greatly in excess of their present or prospective wants; and whereas the said Indians are desirous of disposing of so much thereof as they do not require, in order to obtain the means to enable them to become self-supporting, as a pastoral and agricultural people, and to educate their children in the paths of civilization: Therefore, to carry out such purpose, it is hereby agreed as follows:
ARTICLE I

Hereafter the permanent homes of the various tribes or bands of said Indians shall be upon the separate reservations hereinafter described and set apart. Said Indians acknowledging the rights of the various tribes or bands, at each of the existing agencies within their present reservation, to determine for themselves, with the United States, the boundaries of their separate reservation, hereby agree to accept and abide by such agreements and conditions as to the location and boundaries of such separate reservation as may be made and agreed upon by the United States and the tribes or bands for which such separate reservation may be made, and as the said separate boundaries may be hereinafter set forth.

ARTICLE II

The said Indians hereby cede and relinquish to the United States all their right, title, and interest in and to all the lands embraced within the aforesaid Gros Ventre, Piegan, Blood, Blackfoot, and River Crow Reservation, not herein specifically set apart and reserved as separate reservations for them, and do severally agree to accept and occupy the separate reservations to which they are herein assigned as their permanent homes, and they do hereby severally relinquish to the other tribes or bands respectively occupying the other separate reservations, all their right, title, and interest in and to the same, reserving to themselves only the reservation herein set apart for their separate use and occupation.

ARTICLE III

In consideration of the foregoing cession and relinquishment the United States hereby agrees to advance and expend annually, for the period of ten years after the ratification of this agreement, under direction of the Secretary of the Interior, for the Indians now attached to and receiving rations at the Fort Peck Agency, one hundred and sixty-five thousand dollars; for the Indians now attached to and receiving rations at the Fort Belknap Agency, one hundred and fifteen thousand dollars, and for the Indians now attached to and receiving rations at the Blackfeet Agency, one hundred and fifty thousand dollars, in the purchase of cows, bulls, and other stock, goods, clothing, subsistence, agricultural and mechanical implements, in providing employees, in the education of Indian children, procuring medicine and medical attendance, in the care and support of the aged, sick, and infirm, and helpless orphans of said Indians, in the erection of such new agency and school buildings, mills, and blacksmith, carpenter, and wagon shops as may be necessary, in assisting the Indians to build houses and inclose their farms, and in any other respect to promote their civilization, comfort, and improvement: Provided,
That in the employment of farmers, artisans, and laborers, preference shall in all cases be given to Indians residing on the reservation who are well qualified for such position: Provided further, That all cattle issued to said Indians for stock-raise purposes, and their progeny, shall bear the brand of the Indian Department, and shall not be sold, exchanged, or slaughtered, except by consent or order of the agent in charge, until such time as this restriction shall be removed by the Commissioner of Indian Affairs.

ARTICLE IV

It is further agreed that whenever in the opinion of the President the annual installments provided for in the foregoing article shall be found to be in excess of the amount required to be expended in any one year in carrying out the provisions of this agreement upon either of the separate reservations, so much thereof as may be in excess of the requirement shall be placed to the credit of the Indians of such reservation, in the Treasury of the United States, and expended in continuing the benefits herein provided for when said annual installments shall have expired.

ARTICLE V

In order to encourage habits of industry, and reward labor, it is further understood and agreed, that in the giving out or distribution of cattle or other stock, goods, clothing, subsistence, and agricultural implements, as provided for in Article III, preference shall be given to Indians who endeavor by honest labor to support themselves, and especially to those who in good faith undertake the cultivation of the soil, or engage in pastoral pursuits, as a means of obtaining a livelihood, and the distribution of these benefits shall be made from time to time, as shall best promote the object specified.

ARTICLE VI

It is further agreed that any Indian belonging to either of the tribes or bands, parties hereto, who had, at the date of the execution of this agreement by the tribe or band to which he belongs, settled upon and made valuable improvements upon any of the land ceded to the United States under the provisions of this agreement, shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantity as follows: To the head of the family, one hundred and sixty acres; to each child over eighteen years of age, eighty acres; to each child under eighteen years of age,
forty acres; and the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto. Upon the approval of said allotments by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the lands thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs, according to the laws of the Territory of Montana, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of said lands, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: Provided, That the laws of descent and partition in force in said Territory shall apply thereto after patents therefor have been executed and delivered: Provided further, That any such Indian shall be entitled to his distributive share of all the benefits to be derived from the cession of lands to the United States under this agreement, the same as though he resided within the limits of the diminished reservation to which he would properly belong.

ARTICLE VII

The out boundaries of the separate reservations, or such portions thereof as are not defined by natural objects, shall be surveyed and marked in a plain and substantial manner, the cost of such surveys to be paid out of the first annual installments provided for in Article III of this agreement.

ARTICLE VIII

It is further agreed that, whenever in the opinion of the President the public interests require the construction of railroads, or other highways, or telegraph lines, through any portion of either of the separate reservations established and set apart under the provisions of this agreement, right of way shall be, and is hereby, granted for such purposes, under such rules, regulations, limitations, and restrictions as the Secretary of the Interior may prescribe; the compensation to be fixed by said Secretary and by him expended for the benefit of the Indians concerned.
12. No council minutes of the meetings with the Fort Belknap and Blackfeet Agency Indians were kept because of physical difficulties. The same was true of the Assiniboine council at the Wolf Point Agency. However, minutes were kept of the Sioux council at the same agency. The following are excerpts from those minutes.

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* * * Many people have denied that the Sioux have any right or title to this land here; they say that they do not belong here, but down in Dakota. When the Government sent us here we were told that we could make such agreement with you as we thought best -- to remain or go away, just as you liked. During our stay here we have talked with many people--the military officers, your agent, late agent, and other friends, and it is the united opinion that it is better for you to remain.

We also think it is better, and therefore shall not advise you to remove. And in treating with you we state in the outset that we recognize your right to this land, and we propose to treat with you as having equal rights in this reservation with all the other Indians; that is, the Assiniboines, Gros Ventre, and Blackfeet. I know that you have sometimes been uneasy yourselves because white men are continually saying that you have no right or title here, and that you should be sent from your present homes, and I know it will make you feel good--your heart strong--to hear us say that we think and believe that you have rights, and equal rights, in this vast domain, with all the other Indians located upon it, and that we propose to award to you a share of it, sufficient for you and your children now and for years to come.

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Our proposition is to leave to you and the Assiniboines at Wolf Point a reservation here. To the Indians at Belknap, a reservation that they may select, and to the Indians at Blackfoot, a reservation they may select. In addition to this we also propose to give you and the Assiniboines at Wolf Point, and to each of the other bands or tribes, a certain sum of money each year for a term of years, so that you will have the means to provide yourselves comfortable homes, gather around you stock, cattle, and sheep; and give you a good start in life.

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13. Based upon the preceding findings of fact and the record as a whole, it is the conclusion of this Commission that the petitioner, the Blackfeet Nation, owned a one hundred percent (100%) interest in the remainder of their 1855 reservation which was ceded under the Act of May 1, 1888 (25 Stat. 113). This area contained 13,338,589 acres including the Fort Belknap Reservation and that portion of the Fort Peck Reservation which extended west of the line running north from the mouth of Milk River to the Canadian boundary. Since the Gros Ventre Tribe benefited from the Fort Belknap Reservation to the extent of 316,979 acres, this 13,338,589 acres has been reduced to 13,021,610 acres.

14. The Act of May 1, 1888 (25 Stat. 113) defined the interest of the Blackfeet Nation in that portion of the 1874 reservation which lay east of the Blackfeet 1855 treaty boundary and which was ceded under the said Act of May 1, 1888. Based upon a percentage of population as compared with the Sioux and Assiniboine Tribes, that interest amounted to 54.3% of the 1,630,567 acres ceded.

Therefore, the petitioner, Blackfeet Nation, is entitled to 885,398 acres of the area as its proportionate share, thereby making a total cession by the Blackfeet Nation of 13,907,008 acres under the Act of May 1, 1888 (25 Stat. 113).

15. Based upon the preceding findings of fact and the record as a whole it is the conclusion of this Commission that the intervenors, the Sioux Tribe and the Assiniboine Tribe, acquired recognized title to a proportionate share of the 1874 reservation under the Act of
May 1, 1888, and that by the same Act they joined in the cession of a stipulated 14,969,156 acres of what became known as Royce Area 692, Montana 2, and their proportionate part of this area based upon a percentage of population is 45.7%. The division between the Sioux and Assiniboine Tribes, based upon their respective populations in 1888, would be 43.2% to the Sioux and 56.8% to the Assiniboine.

Under the stipulation filed herein the total acreage ceded under the Act of May 1, 1888, was 14,969,156 acres. Then 45.7% of 14,969,156 acres would be 6,840,904 acres. The share of the Sioux Indians therein would be 43.2%, or 2,955,271 acres. The remainder, or 3,885,633 acres, would be the proportionate share of the Assiniboine.

Valuation

16. Nearly all of the subject area lies within the drainage basins of the Marias and Milk Rivers, tributaries to the Missouri River. Most of the drainage basin of the Marias River is a flat glacial plain, broken only by the uplift of the Sweet Grass Hills. This uplift is some seven or eight townships in area and is the extrusion of the batholith that has found the Sweet Grass Arch which extends roughly between Great Falls, Montana and Lethbridge, Alberta. The Sweet Grass Hills rise to an elevation of 6,983 feet. The elevation at Cut Bank, Montana, is 3,751 feet.

The drainage basin of the Milk River consists principally of a flat glacial plain formed by the last Pleistocene ice sheet. The eastern part of the Milk River Plains is undulating to hummocky. This is the result of less glaciation and of glacial moraine formation.
Southeast of Havre, between Milk and Missouri Rivers, the plain is extensively broken by the Bear Paw Mountain uplift. This area and the associated foothills and benchlands occupy some forty-five townships of land. At the highest point, the Bear Paw Mountains rise to 6,906 feet. Southeast of the Bear Paw Mountains there occurs another small mountainous area called the Little Rocky Mountains. Eastward of this small mountain uplift, between the junction of the Milk and Missouri Rivers, there is a sizeable area of rough land, with some interspersed badlands formations, known as the Larb Hills area. This area covers some twenty-one townships. It received little or no glaciation and has heavy residual soils that have weathered into rough lands.

The valley of the Milk River is a flat, alluvial valley which is mostly unbroken with low and generally smooth escarpments. However, the valley of the Missouri has considerable rough lands and breaks along its course. Between the mouths of the Marias and the Milk Rivers, the Missouri is deeply entrenched below the plains and the breaks of the river extend back as far as five to ten miles on both sides of the river.

The extreme eastern portion of the area, beyond the confluence of the Milk River and the Missouri, is drained by a series of short streams. In this area, the Missouri is not deeply entrenched and its escarpment is not much broken. The Missouri here flows through a wide and flat flood plain.

17. Almost the entire subject area was covered by the Pleistocene ice sheet. As a result, most of the area is a glacial plain, smooth to undulating. Because of this glaciation, the locally underlying geological
formations generally do not determine the soil characteristics. A small part of the subject area received little or no glaciation, and in those areas the underlying geologic formations are important in determining the soil characteristics. The glacial drift which occurs over almost the entire area varies in depth from ten to sixty feet.

The prairie soils that cover most of the area are known to soil science as the "Brown" soils. These soils have a top soil of medium-brown color, a medium or loam texture, and a depth varying from six to fourteen inches. These soils are good grassland soils. The prairie loam soils which have formed upon the glacial drift consist mainly of those grouped under three soils. These are Joplin loam, Scobey loam, and Williams loam.

In the Marias plains, the top soil varies from medium to light brown in color, and from five to ten inches in depth. These are fairly good grassland soils. As the Marias plains slope upward to the Sweet Grass Hills, the soil depth increases and the color darkens, a result of higher rainfall as the elevation increases. In some parts of the plains of the Marias and Milk Rivers, there occur local areas of "Solonized" soils. These soils have a columnar top soil structure which tends to seal when wet. These soils make inefficient use of water and may be bare of any vegetation. This type of soil does not occur extensively enough within the area to be of any significance or of any economic importance.

Those soils of the Milk River plains that have formed upon residual materials, as in parts of Blaine, Phillips, and Valley Counties,
may be heavy-textured and not as good for tillage as the Joplin, Williams, and Scobey loams. The heavier soils are, however, good grassland soils. The residual soils of northern Blaine, Phillips, and Valley Counties are better grassland soils than are the Joplin loam soils of the Marias plains.

In the Bear Paw Mountains, the elevation has resulted in higher precipitation and resulting good soil formation. Nearly all of the Bear Paw Mountains and surrounding uplift have adequate soils for good range production.

South of the Bear Paws, the soils are residual, formed on the Pierre shales and other marine shales. These soils are moderately fertile and are classed as fair in range forage production. This also applies to the land south of the Little Rocky Mountains though the soils south of the Little Rocky Mountains appear somewhat better and more productive than those south of the Bear Paws.

The soils of the Badlands Basin of South Valley County are also residual, formed principally upon the Lance formation. These heavy soils are derived from marine shale deposits and are fair grassland soils where not too eroded. These soils are the least productive grassland soils of the entire area.

In the northeastern part of the subject area, in the present Sheridan, Daniels, and Roosevelt Counties, some of the best Scobey and Williams loam soils of the area are found. This part of the area was quite heavily glaciated, resulting in a drift mostly favorable for
good soil formation. Due to the favorable growing season and precipitation, a good grassland resource is present there.

18. The subject area has a northern climate. Summer days are long, warm and sunny. Winter days are short and sometimes quite cold. Moisture evaporation rates are much lower than those of southern climates. The duty of water is much higher in the production of vegetative growth. Lower evaporation rates extend the use of surface water for livestock. Summer temperatures range between 50 and 95 degrees. Winter temperatures fall between minus 20 and 45 degrees. Wind velocities are typical of the northern plains, five to twenty miles per hour except during storms. Winter "Chinook" winds are fairly common in the western part of the area. These warm, dry winds quickly clear the rangelands of snow cover and are very helpful from the standpoint of winter use of rangeland by livestock.

At Havre, the long-run average annual precipitation is 13.9 inches. This amount of precipitation is adequate for the development of good soil and range land resources. In the drier parts of the area, the average precipitation may be as low as eleven inches. This would not be favorable for native plant growth and soil development were it not for the very favorable seasonal distribution. Seventy-five percent of the average annual precipitation falls during the months of the growing season. The heaviest precipitation falls in the month of June, with an average of about three inches for that month.

As a result of this precipitation pattern, native grasses achieve most of their growth during the months of May, June and July, and cure
well on the stem during the warm and dry month of August. Thus, with dry winters and light snow cover, the grasses are not leached or matted down, and remain available for feed during the winter. The range land grazing season of the area is ten to twelve months.

The growing season of the entire area is adequate for good range forage production. The northernmost part of the area along the Canadian border has an average frost-free season of 120 days. About two-thirds of the subject area has an average of 140 frost-free days, ample for grain and hay crops.

19. The major portion of the subject area consists of grassland in native range land types. The mixed-prairie grasslands of the northern plains consist of a native range plant association which is a combination of midgrasses and shortgrasses. This range land type provides a very highly productive combination as the midgrasses are cool weather grasses and the shortgrasses are warm weather grasses. The principal midgrasses of the area are western wheat grass and needle grass, which are of medium height in their growth habits. These form the overstory of the prairie grasslands. The principal shortgrass which forms the understory of the combination is the blue grama grass, a strong sod former. Other important grasses of this area are the Junegrass, sandgrass and slender wheat grass.

In the southern portion of the area, on the residual soils south of the Bear Paws and the Little Rockies, brush grasslands are found. This area has a dominant overstory of shrubs but a considerable understory of native range land grasses. In the Badlands Basin of South Valley County,
the range land is a shrub type with the big sagebrush and saltbrush as the overstory and wheat grasses as the dominant understory.

In the mountainous parts of the area, the range land type is a grassland with some locations having a marked shrub or tree aspect. The grasses in the mountainous areas are principally bluebunch wheatgrass or a combination of the plains grasses and the mountainous bunch grasses. These grasses form very productive range lands.

20. By 1870, Montana had a population of 20,595. By 1880, it had increased to 39,159 and by 1890, to 142,924. The discovery of gold and the presence of steamers on the Missouri River had given impetus to the development of the area. By 1867 steamers were plying between St. Louis and Fort Benton along the Missouri River which forms the south boundary of the subject tract. In 1877, twenty-five steamers arrived at Fort Benton. In 1878, forty-six steamers arrived there. In 1881, five lines of steamers, comprising from 25 to 30 boats, made their headquarters at Bismarck, Fort Benton being the western terminus of these lines.

In 1877, the value of exports from Montana, by the Missouri River, of ore, bullion, wool, robes, skins and hides, was approximately $1,270,600.00. In 1881, imports by way of the Missouri, amounted to 34,760,000 pounds with a value of $5,214,000.00.

Steamboat traffic on the Missouri did not begin to wane until the advent of the Great Northern Railroad into the area in 1887.

21. By 1880, the Secretary of the Interior had announced his opposition to preservation of large Indian reservations. The proposal
was made that division of land be made among the Indians in severalty with the remainder of the land to be sold to whites. It was argued that this land pattern would bring the two races into closer relationship and promote the more rapid assimilation of the Indian.

As early as 1883, pressure began to build up for cession of the Blackfeet Reservation. Reacting to pressure of important persons and groups interested in expansion, Territorial Governor Crosby recommended a reduction in size of the Blackfeet Reservation. He again made this recommendation in 1884.

The Great Northern Railway substantially traversed the subject area by 1887, running to Havre and then down to Great Falls, Montana. There was also rail transportation available in adjacent Canada. This added to the pressure to obtain a cession of the Blackfeet area.

The influential citizens and the Sun River Sun, a Montana newspaper, exerted pressure on Congress to get the Blackfeet Reservation opened. The reason for this pressure lay in the serious overstocking of the existing Montana range by 1884.

This pressure resulted in the Congress authorizing the Secretary of the Interior to negotiate with the Indians of northern Montana for a reduction of their reservation. This culminated in the Act of May 1, 1888 wherein the cession under consideration was made.

22. Prior to the cession of the Blackfeet Reservation the cattle and sheep industry had begun.

The destruction of the buffalo paved the way for cattle operators to move onto the Montana plains. Cattle and sheep were first brought
into Montana to meet the needs of the mining camps. These early herds were located in the western valleys near the mining areas. At the height of the mining activity, large herds were driven in to meet the demand for meat. When the population began to stabilize in the mining regions, the demand declined, a surplus of cattle accumulated and, by 1870, the range of the western valleys had become seriously crowded. It was then that the movement to the eastern plains began. In that year Robert S. Ford and Thomas Dunn took one thousand cattle into the Sun River Valley. In 1873, Conrad Kohrs and John Bielenberg moved large herds into the same region.

Camp Baker was constructed in 1879 in the Smith River Valley to provide protection to the herds which were being raised there and in the upper Musselshell, and provided a market for some of the beef as well. During the late 1870's, a movement of cattle and sheep from Oregon and California was pushing its way into the eastern Montana plains.

The extension of the Union Pacific Railroad through Cheyenne in 1867 and the cession by the Crow Indians of a huge portion of their reservation in 1868 led to a great influx of cattle into the grazing area offered by Montana. This northward migration proceeded steadily through the 1870's with additional encouragement in the early 1880's by the building of the railroad into Montana. During the early 1880's cattle were being shipped to St. Paul by the Canadian Pacific Railroad.

The growth of large herds in the areas immediately adjacent the Blackfeet Reservation resulted in pressure from the cattle industry to have the Blackfeet Reservation opened.
The reservation was not immune from use by cattlemen, however. In 1880, 1000 head of cattle and 50 head of horses were moved into the area of the Bear Paw Mountains. Another 100 head came into the Bear Paws in 1885. 5000 head were moved to the foot of the Little Rockies in 1885. By 1886, accounts of cattle moving into the area were numerous.

The area of the Blackfeet Reservation was well adapted to sheep and the industry developed rapidly. By 1884, it was estimated that there were 100,000 sheep in Chouteau County.

23. With the close of the Civil War tremendous herds of Texas longhorn cattle that had accumulated during that war began to be moved out by means of the railroads in Kansas, Missouri, and Nebraska. These trail herds began in 1866 and in 1867 when the demand and prices were up more than 1000 carloads left Abilene, Kansas. The Secretary of Agriculture in response to Senate Resolution No. 289 in reporting on "The Great Boom in Range Cattle" covering the 1880-1885 period, on this phase of the matter said that

*** Actual demands reached such a volume in 1871 that 600,000 cattle were driven north and to the railroad in that year. The heavy range use in western Kansas and Nebraska that began with these drives never ceased until the grass was plowed under, although dropping prices decreased the profits and hence the number of drives. By 1885 a total of more than 5 million cattle had been driven northward from Texas.

Many of these Texas herds were soon headed for the Wyoming and Montana free open range. The number of cattle in the Wyoming Territory had increased from 90,000 in 1874 to 450,000 in 1879 and 530,000
in 1880; however, a lack of railroad connections, a change from placer to deep vein mining, and a shift from the use of oxen to horses and mules in freighting, brought the boom to a close, and the Montana ranchers for the same reasons soon found a surplus of about 17,000 head, chiefly four and five year olds. They could be purchased for $10.00 a head.

Open range ranching in central and eastern Montana was held up since this region was still Indian country and had no railroad connections to the market in the east until the Northern Pacific Railroad was completed in 1883. The great possibilities of the region as an open range were fully appreciated by those interested in the cattle business. It was well watered, and its short buffalo grass cured on the stem during July and August made excellent feed. Its thickets of small trees and bushes along the deep bedded creeks afforded natural shelter for stock while its buttes and mesas broke the force of the winter winds.

24. Between 1880 and 1886 every available bit of range in central and northeastern Wyoming and central and eastern Montana (below the Missouri River) was filled to overflowing. It was estimated that in 1880 Montana contained 250,000 head of stock including dairy cattle and work oxen with the central and eastern portions practically unoccupied. By the fall of 1883 the number had increased to 600,000 and those central and eastern ranges had been rapidly taken over. By 1886 the ranges of both Wyoming and Montana had reached the point of saturation.
Many large cattle companies were organized during this period (1880-86); in 1883 alone twenty companies were capitalized at more than twelve million dollars and the membership of the Wyoming Stockgrowers' Association increased from 267 in 1883 to 363 in 1885, at which time its members owned some two million head of stock. While the Montana Stockgrowers' Association organized in 1884 with 63 members, and never equalled in size that of the Wyoming Association, it took a very active part in protecting the rights of the stockmen of Montana during that period of time.

25. Cattle raising under the open range system, dependent as it was upon weather conditions, had always been recognized as hazardous and the periodic severe winters were soon forgotten by the stockmen despite the warnings of some of the old-timers and the boom gained momentum. The culmination of this boom period occurred during the winter of 1886-87.

The following description of that winter was taken by an author from the files of territorial newspapers:

*** The story of the calamitous winter of 1886-87 has been told many times. It closed down from the northwest fully six weeks earlier than usual, holding the cattle ranges in its iron grip for more than four months, relaxing at last only to leave ruin and destruction in its wake. The first storm began on November 4 with a very low temperature and a terrible blizzard. The fine snow packed into the coulees and depressions and covered the river bottoms. The storm finally spent itself but the extreme cold continued. Then followed blizzard after blizzard, throughout the months of November, December, January, and even into February, with the temperature often dropping to forty degrees below zero. The snow in many places lay four to five feet on the level
and the drifts were of monstrous size. With what little grass there was buried under successive layers of snow, it is easy to foretell the results.

The newspapers of Wyoming, Montana, and Dakota were filled with stories of the terrible suffering and loss of stock.

Many of the large companies went into the hands of the receiver in the summer of 1887 and had the remnants of their herds disposed of as their creditors demanded payment. The catastrophe of 1886-87 demonstrated to cattlemen, both large and small, the dangers of open range feeding and over-expansion, and adjustments were made. Large herds were no longer turned loose without shelter to graze and drift where they willed. Herds were smaller and were kept under careful control, shelter being provided for the weaker animals and hay cut for emergency feeding.

Cattle decreased in Montana from 1,050,000 in 1886 to 990,000 in 1887; in Wyoming from 970,000 in 1886 to 960,000 in 1887. However, the 1888 figures show an increase in Montana to an estimated 1,015,000 head.

The House Report (1889) in discussing the nature of the open range operation said:

*** The range-cattle business in the Western States and Territories is carried on chiefly upon the public lands. With the exception of a small percentage of lands, the title of which has been secured under the provisions of the homestead and pre-emption laws and desert land acts of the United States or the timber-culture acts, the cattle upon the northern ranges feed upon the public lands of the United States, their owners being simply tenants by sufferance upon such lands.

It was well known that land acquired in checkerboard patterns from the railroad during this period couldn't be controlled or
exclusively used. Every owner of a herd of cattle or band of sheep insisted on using it, and in actual practice, did so with impunity.

The Swan Land and Cattle Company purchased 555,890 acres of land from the Union Pacific Railroad Company in 1884 and after making two annual $150,000 payments on the purchase price voluntarily relinquished 253,226 acres to the railroad. John Clay, who was manager of this company for several years, set forth the reason for the relinquishment as follows:

*** The Carbon Co. railroad lands (intermediate sections) to the extent of 283,226 acres were allowed to revert to the railroad. Two payments had been made and eight more were due. We got no use of these lands. Everybody with a flock of sheep or a bunch of cattle ranged over them. In those days you had only the redress of damages for trespass and as the sheepmen kept an attorney by the year, and the juries would only give a cent damages, it was a wearisome business and unprofitable. *** The lands were let go under my advice because it incurred a payment of $150,000.00 for which there was then no return. ***

26. During this open range era both the agriculturist and the rancher were having their difficulties. The line of frontier farmers steadily moved into Dakota, Montana, and Wyoming and at first they did little to bother the cattleman, but as time went on they increased in numbers and by acting together began to construct fences around their homestead tracts. These fences interfered with many of the stockmen's waterholes and freedom of the range. By the late nineties the open range had largely disappeared except a small area in northeastern Montana where it lingered on for another decade. The "homesteaders" had prevailed upon the legislatures to enact stock laws which prohibited
the stockman's cattle and sheep from destroying their crops without payment of damages. The open range era was considerably limited and the ranching methods had undergone a complete change.

27. For many years the westward movement of the population was halted at the edge of the Great Plains by the presence of Indians and by the different nature of the land from what the farmer from the humid east was familiar with.

The homestead law of 1862 encouraged the farmer to move into the Great Plains where he settled along the river bottoms beginning in the 1860's. At first the cattlemen were not disturbed, but by the latter half of the 1880's the number of homesteaders had increased to the point where they were taking up watering places that cattlemen had used for years. Since it was impossible to run cattle without watering places the fencing of waterholes by homesteaders led to friction and bloodshed between the two groups.

It had long been recognized that the homestead policy of 1862 was not suited to the Great Plains area. The rainfall which was sufficient for grass was insufficient for crops. In 1878 Major J. W. Powell had recommended to Congress certain changes in the homestead law with a view to making it more adaptable to conditions on the Great Plains. Although these recommendations were not adopted in toto they did lead to the creation of the Geological Survey and a commission to further study and report on the homestead situation in the Great Plains.

This Commission spent the summer of 1879 conducting an investigation
on the Plains. The cattlemen who were asked about certain aspects of Powell's report with regard to creating pastoral homesteads of 2,560 acres, leasing of the range, etc., were opposed to any change. They wanted a continuation of the open range policy.

By 1884, after seeing homesteaders file on bottom lands and hay lands which they had been using; after seeing the more prudent cattlemen acquiring title to such lands, and seeing water holes fenced, many of these same cattlemen were in favor of a leasing program.

Homesteaders, along with other problems of the range cattle industry set the stage for the winter of 1886-87, described heretofore, which brought the industry to its knees and forced a recognition on the part of cattlemen that the free and easy days were fading. Thereafter, the industry generally recognized and accepted the fact that proper range management was necessary in order to exist. The presence of sheep in ever increasing numbers made the need for range control most apparent.

28. The parties hereto agree and the Commission finds that the subject area had a highest and best use as grazing land for the raising of cattle and sheep.

The Commission, based upon the findings of fact and the record as a whole, finds that there existed as of May 1, 1888, a demand for the subject lands in large tracts for the purpose of grazing livestock.

29. Sales of comparable land were nonexistent within the subject area prior to May 1, 1888. The following sales from the general area were introduced by petitioners:
(1) The Musselshell Cattle Company made seven purchases from the Northern Pacific Railway Company, consisting of a total of 23,026.66 acres for a total price of $33,269.11, an average price of $1.44 per acre. The contracts were signed at various times from 1886 to 1889. These lands lay on the Musselshell River drainage about fifty miles northwest of Billings, Montana, and were prairie grasslands similar to those in the subject area. These were sales of smaller tracts making a total of 23,026.66 acres and were not contiguous.

(2) The Montana Cattle Company purchased 58,101.05 acres for $1.00 an acre in 1875, 1896, 1897 and 1899. Those lands were located in the Musselshell and Yellowstone River drainages approximately sixty miles due west of Billings. All of those lands were prairie grasslands of the range land type. The purchase was from the Northern Pacific Railway Company.

(3) David Auchard purchased 56,356 acres for an average price of $1.16 an acre from the Northern Pacific Railway Company in 1891, 1893, 1894, 1896, and 1897. Those lands were located about forty miles northwest of Great Falls. They compared in range land types to the Bear Paw Mountains and Sweet Grass Hills of the subject area.

(4) Alonzo Van Duzee purchased 12,808 acres for a contract price of $1.00 per acre in 1899. Those lands were located about fifteen miles northeast of the present city of Dickinson, North Dakota. These were prairie grasslands quite comparable to the subject area and were purchased from the Northern Pacific Railway Company.
(5) Mr. Arthur C. Huidekoper purchased 11,520 acres under a contract with the Northern Pacific Railway Company dated December 3, 1883, for an average price of $2.00 per acre. The land of this sale was located in the drainage of the Little Missouri River, just east of the Montana-North Dakota line and about forty miles south of the present site of the town of Medora, North Dakota. This was range land of the prairie rough land type.

(6) W. D. Washburn purchased 113,917.93 acres under a contract with the Northern Pacific Railway Company dated February 28, 1899, for an average price of $1.00 per acre. This land was located just east of the Missouri River in west-central North Dakota. At the time of the sale it was prairie grassland.

(7) Mr. John R. McGinley purchased 29,373.93 acres from the Northern Pacific Railway Company in September, 1899, for $49,935.09. This was an average price of $1.70 per acre. This land was located in central North Dakota and was in the farm belt with a rainfall of 16 to 18 inches.

30. Petitioners also introduced certain Canadian sales from the Southern Alberta Land District:

(1) On April 22, 1896, the Alberta Railway and Coal Company sold 28,661.7 acres to James A. Cunningham for $1.00 per acre. This land is located on the Milk River Ridge, about fifteen miles east of the town of Cardston, Alberta, Canada, and was range land.
(2) The Department of Interior of the Dominion of Canada sold twenty-five sections to the Cochrane Ranch Company on May 30, 1895, at a price of $1.25 per acre. That land was located between the Waterton and Belly Rivers in southern Alberta, west of the southern portion of the Blood Indian Reservation and twelve miles north of the Montana-Alberta border. It was principally foothill grassland comparable in type and productivity to the Sweet Grass Hills and the Bear Paw Mountains.

(3) The Alberta Railway and Coal Company sold to Jesse Knight and Oscar Raymond Knight 21,920 acres of land in one piece and 10,471 acres in another for an average price of $2.50 per acre. These transactions occurred in September, 1901. The land involved in these sales was range land of the prairie grassland type. This land was located near Cardston, Alberta. This sale is not sufficiently established by the evidence as to consideration.

(4) The Alberta Railway and Coal Company on July 10, 1901, sold 200,000 acres to Jesse Knight for a consideration of $2.00 per acre. This land was located west of the present town of Warner, Alberta, on the Milk River Ridge and was prairie grassland. This sale is not sufficiently established by the evidence as to size or consideration.

(5) The Calgary & Edmondton Land Company, Ltd. sold 36,245 acres of land to the Cochrane Ranch Company on May 2, 1904, for a consideration of $45,307.00, an average of $1.25 per acre. This was prairie grassland.

31. In addition to sales from the general area petitioners also presented certain supplemental methods of valuation for the purpose of
confirming the opinion of their expert witness as to the value of the subject area as arrived at on the basis of the sales presented in evidence.

The first of these methods was capitalization of income. Petitioners' expert presented as a basis for their supplemental method certain leases by the State of Montana in Meagher County which lies south of the subject area. The first of these leases were made in 1895 and by 1896 there were 37,440 acres of range land leases in Meagher County. These leases ran for five-year terms at an average rental rate of 10.31 cents per acre. Since the State of Montana had no taxes or upkeep to pay, this figure was taken as the net rental on the reasoning that leases by the State of Montana have, historically, been lower than private leases, with the differential being approximately equal to the taxes and upkeep that a private landlord would have to pay from his rental income.

In the absence of adequate information on the subject the petitioners' expert chose 8% as a general average interest rate on land mortgages during 1888. A capitalization of the 10.31 cents at 8% produces an approximate value of $1.30 per acre for Meagher County range land which was considered as being comparable to the subject area on an average.

32. A second supplemental method of confirming the value arrived at by means of sales in the general area as employed by petitioners' expert consisted of a statistical average of value per animal unit of capacity of the subject area.
This process involves the determination of the value of the ranching property and lands as of the date of taking. This value is assigned by petitioners' expert as being $30 during the period in question.

This $30 estimate per animal unit value of ranching lands as of 1888 when multiplied by the 509,970 CYL's (see Finding No. 33) the result divided by the 14,969,156 acres of the subject area yields a per acre value of $1.02.

33. The commonly accepted method of determining the productivity or grazing capacity of range lands is the animal unit month, known as the A.U.M. This is the acreage of grazing land required to sustain one animal unit for one month. An animal unit in livestock is commonly accepted to be a cow, a mature steer or five ewes. A mature horse is rated as 1.2 and a yearling cow as .65. The term "cow year long", known as a C.Y.L. is a calculation of the number of animals an area would support for year around grazing.

In order to apply the above criteria it is necessary to determine the various types of range within a given area. Petitioners' expert shows in Item No. 9 of the Addenda to his report, Petitioners' Exhibit 114, his classification of the various types of range land within the subject area. His estimate of the carrying capacity of the subject lands as of 1888 is shown by the following table:
The above figures show an average of 2.44 acres per A.U.M. or approximately 30 acres per animal per year and a total of 509,970 CYL. This means that, according to petitioners' expert, the subject area could have carried 509,970 head of cattle over the grazing season, which he states to be approximately 10 months of the year.

34. A third supplemental valuation process used to confirm the valuation derived from the sales was a valuation based upon range land types. This method consisted of comparing the several principal range land types in the actual sales with the similar range land types of the subject area. Where carrying capacities were significantly different for similar range land types of the actual sale and of the subject area, the value was interpolated on a capacity basis.

The following table shows the results of this method:

<table>
<thead>
<tr>
<th>Rangeland Type</th>
<th>Acreage</th>
<th>Value per acre</th>
<th>Total Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prairie Grassland (west)</td>
<td>8,983,246</td>
<td>$1.20</td>
<td>$10,779,895.00</td>
</tr>
<tr>
<td>Sagebrush Grasslands</td>
<td>1,502,750</td>
<td>.85</td>
<td>1,277,377.00</td>
</tr>
<tr>
<td>Badlands Basin</td>
<td>481,300</td>
<td>.60</td>
<td>288,780.00</td>
</tr>
<tr>
<td>Missouri River Creeks</td>
<td>665,700</td>
<td>.60</td>
<td>399,420.00</td>
</tr>
<tr>
<td>Bear Paw Mountains</td>
<td>1,030,920</td>
<td>2.00</td>
<td>2,061,840.00</td>
</tr>
<tr>
<td>Sweet Grass Hills</td>
<td>176,805</td>
<td>2.00</td>
<td>353,610.00</td>
</tr>
<tr>
<td>Prairie Grassland (east)</td>
<td>2,128,435</td>
<td>1.50</td>
<td>3,192,652.00</td>
</tr>
<tr>
<td><strong>Total acreage</strong></td>
<td><strong>14,969,156</strong></td>
<td><strong>Total value</strong></td>
<td><strong>18,353,534.00</strong></td>
</tr>
</tbody>
</table>

The table shows the results of the valuation process for different range land types. The total acreage of the subject area is 14,969,156 acres, with a total value of 18,353,534.00 CYL.
These estimates result in a price of $1.23 per acre for the subject lands.

35. Petitioners' expert submitted his opinion of the value of the subject lands as a unit of 14,969,156 acres, based upon comparable sales data and productivity, as being $16,466,071.00, or approximately $1.10 per acre.

36. Defendant's expert appraiser listed three generally accepted methods of land appraisal. The first of these was comparable sales of land. The second was the capitalization or income approach, and the third was reproduction, less depreciation of buildings and improvements. The latter two methods were dismissed as being unsuitable for measuring the value of the subject land.

The sales used by defendant's appraiser for comparison were the following:

(1) The purchase in 1880 of between 3 and 4 million acres of land by Munson and Gunter of Denison, Texas, located in northern and western Texas was financed with Reconstruction Government script which had been obtained at $16.00 per section or 2½ cents per acre. Most of this land was sold between 1880 and 1890 in small tracts at 25 to 50 cents per acre. Land without surface water was 25 cents per acre and that with surface water was 50 cents.

(2) The purchase of 3,000,000 acres in 1881 by the XIT Ranch located in the Texas Panhandle at an agreed value of 50 cents per acre in return for the construction of the Texas State Capitol. The ultimate cost of this land exceeded $1.00 per acre because of the construction difficulties encountered.
(3) The purchase in 1881 of 120,000 acres for 20 cents per acre by Charles Goodnight of land located in the Texas Panhandle bordering the Palo Duro Canyon.

(4) The purchase in 1884 of 1,059,560 acres of land at .472 cents per acre from the Santa Fe Railroad by the Aztec Land and Cattle Company. This land was located in New Mexico and Arizona.

(5) The purchase in 1883 of 580,000 acres of land at 17 cents per acre known as the Amarilla Spanish Grant. This land was located in northern New Mexico and southern Colorado and had a U. S. patent.

(6) The Swan Land and Cattle Company in 1884 purchased from the Union Pacific Railroad 555,890 acres for $460,900 to be paid in 10 installments. After two payments were made 286,473.08 acres of this purchase were cancelled, leaving 269,416.92 acres. These were checkerboard lands and carried control of additional acreage of the public lands. They were located in Wyoming. The price paid for this land is subject to question.

(7) The purchase of 2,430,000 acres of land by J. W. McCammon in 1886 from the Northern Pacific Railway Company for the sum of $2.00 per acre. This purchase was made under a rather complicated agreement involving the preferred stock of the railway company receivable at par though purchased at a lesser price which varied. The land was located in North Dakota and was principally agricultural land.

Defendant's expert felt that all of these lands were equal or superior to the subject land.
37. Subsequent to the introduction of the evidence concerning the above sales defendant's expert prepared a list of "hindsight" sales. These sales varied in date from 1895 to 1904:

(1) Northern Pacific Railway Company to Marcus Daly, contract dated February 9, 1899, on which the assignee, the Big Blackfoot Milling Company, subsequently purchased about 900,000 acres of timbered land located in Flathead, Sanders, Lincoln, Powell, Granite, and Missoula Counties, Montana, at 50 cents per acre with an additional 50 cents per thousand board feet for stumpage.

(2) Northern Pacific Railway Company to 77 buyers on contracts dated 1895 to 1903 for 1,053,033 acres of land for $1,000,371.65, or 95 cents per acre. These contracts averaged about 13,000 acres-plus per contract, the largest sale to one person being 86,875.40 acres. This land is located in Dawson, Custer, Yellowstone, Fergus, and Meagher Counties, Montana.

(3) Northern Pacific Railway Company to W. D. Washburn, a ten year contract dated February 28, 1899, for the sale of 113,917.93 acres of land for $113,917.93, or $1.00 per acre. This land was located in North Dakota.

(4) Northern Pacific Railway Company to Hackney-Boynton Land Company, Contract No. 20239, dated March 14, 1901, sale of 1,174,680.64 acres for $1,233,414.48, or $1.05 per acre. This was located in North Dakota.

(5) Northern Pacific Railway Company to Hackney-Boynton Land Company, Contract Nos. 20239-21323, dated August 31, 1904, sale of
1,003,778.24 acres for $409,871.90, or about 41 cents per acre. This was North Dakota land lying between the Missouri and James Rivers.

The above lands were considered by defendant's expert to equal or exceed the quality of the subject lands.

38. In addition to citing the sales mentioned above defendant's expert also used the capitalization or income method as a supplementary approach to confirm his appraised price of 27 cents-plus per acre.

This capitalization approach was based upon the estimate of defendant's witness as to a reasonable return to the purchaser of the subject tract through a leasing program at a figure of four cents per acre. This leasing program at four cents per acre was considered to be a losing one for about the first twenty years because of overhead, according to defendant's witness.

39. Defendant's witness placed a value of approximately 27 cents per acre on the 14,969,156 acres of the subject area which were ceded on May 1, 1888, for a total unit value of $4,050,000.00.

40. Defendant introduced the testimony of a range economist who placed a value of 24 cents per acre on the subject lands as of 1888. This figure was determined by taking the price of beef on the Chicago market in 1888, figuring the production of a model ranching operation and the income from that production, and deducting certain fixed costs of operation to arrive at the amount of money available for land charge. This figure was then divided by the number of animal units on the ranch to obtain the return for use of the land. This figure was then divided
by the carrying capacity of the range to obtain the return per acre. This in turn was divided by a figure representing interest and taxes to arrive at the final value per acre of 24 cents.

41. Defendant's expert witness prepared a sampling of the subject area based upon notes made by the men who surveyed the subject area. This sampling was made in a pre-determined pattern within the subject area prior to reading the survey notes. The sample consisted of 120 townships, with nine of them being partial townships because of the irregular boundary. The size of the sample was approximately 2,764,800 acres. As shown by Defendant's Exhibit No. 156 the sample was fairly arranged to take in both the width and breadth of the subject area.

Based upon our interpretation of these survey notes and keeping in mind the highest and best use of the area as grazing land, the following results are shown:

<table>
<thead>
<tr>
<th>Total sample</th>
<th>120 townships</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total acres (approximate)</td>
<td>2,764,800</td>
</tr>
<tr>
<td>Townships classified good grazing</td>
<td>76</td>
</tr>
<tr>
<td>&quot; fair &quot;</td>
<td>28</td>
</tr>
<tr>
<td>&quot; poor &quot;</td>
<td>16</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
<tr>
<td>Percentage good grazing</td>
<td>63 1/3</td>
</tr>
<tr>
<td>&quot; fair &quot;</td>
<td>23 1/3</td>
</tr>
<tr>
<td>&quot; poor &quot;</td>
<td>13 1/3</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
<tr>
<td>Percentage of good to fair grazing</td>
<td>86 2/3</td>
</tr>
</tbody>
</table>
42. The present day oil and coal resources of the subject area were unknown as of the valuation date on May 1, 1888, and so had no value to a prospective purchaser on that date.

There are still some 1,854,153 acres of public domain in the State of Montana. Of this amount some 750,000 acres lie within the subject area. Most of this area of 750,000 acres, except for the badlands basin of south Valley County and the shaly buttes of the lower breaks of the Missouri River, was capable of use as grazing lands, although having a smaller rainfall than the average. Even the worst of this land formed a sheltered winter grazing possibility.

43. Economic conditions during the period from 1870 to about 1895 were of a stable nature generally although depressed. As shown by Petitioners' Exhibit No. 114, Addenda No. 5, the general price level had started down sharply after 1865 and while it slowed momentarily about 1870, it continued its downward trend until 1895 when it hit bottom at an index of about 32.

During this period the panics of 1873, 1883, and 1893 occurred and it wasn't until the later 1890's when the banking system had improved and gold production increased that sufficient monetary reserves were available to stabilize the market and begin the upward trend. This trend, with the exception of the period 1910-1915 continued until about 1920.

This was a period of subsistence agriculture rather than commercial agriculture and while produce prices remained stable they were at a low level.
As shown by Addenda No. 6 of Petitioners’ Exhibit No. 114 cattle prices on the Chicago market remained fairly consistent from 1870 through 1900 when they ranged from a high of $6.34 per hundred weight in 1870 to a low of $3.90 per hundred in 1889. The price range from 1880 to 1890 was as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Price (per hundred weight)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1880</td>
<td>$4.75</td>
</tr>
<tr>
<td>1881</td>
<td>5.25</td>
</tr>
<tr>
<td>1882</td>
<td>6.25</td>
</tr>
<tr>
<td>1883</td>
<td>5.60</td>
</tr>
<tr>
<td>1884</td>
<td>5.90</td>
</tr>
<tr>
<td>1885</td>
<td>5.35</td>
</tr>
<tr>
<td>1886</td>
<td>4.75</td>
</tr>
<tr>
<td>1887</td>
<td>4.20</td>
</tr>
<tr>
<td>1888</td>
<td>4.70</td>
</tr>
<tr>
<td>1889</td>
<td>3.90</td>
</tr>
<tr>
<td>1890</td>
<td>4.15</td>
</tr>
</tbody>
</table>

As can be seen from the above range of prices and the generally low level of the economy, the sale of the subject tract in 1888 would have been more difficult than in 1882 for instance when cattle prices were at their peak of the 1880-1890 decade.

44. Based upon the preceding findings of fact and upon the record as a whole, it is the conclusion of this Commission that the subject area as a unit of 14,969,156 acres had a value on May 1, 1888, of $11,975,324.80, or at the rate of 80 cents per acre.

45. The consideration promised under the Agreement of May 1, 1888, amounted to $4,300,000 for a cession of 14,969,156 acres. This amounts to approximately 29 cents per acre for land with a unit value of $11,975,324.80, or at the rate of 80 cents per acre on May 1, 1888.

46. Based upon the preceding findings of fact and the record as a whole, it is the conclusion of this Commission that a consideration
of 29 cents per acre for land having a value of 80 cents per acre on
May 1, 1888, is unconscionable on its face and that defendant is liable
to petitioners and intervenors for the difference between the amount of
consideration paid the parties and the value of their respective in-
terests on May 1, 1888, as found by this Commission in Findings Nos.
13, 14 and 15 made herein.

47. The respective shares referred to in Finding of Fact No. 46 are as follows:

(1) The Blackfeet Nation ceded their interest in a total of
13,907,008 acres with a value of $11,125,606.40 as of May 1, 1888.

(2) The Assiniboine Tribe ceded their interest in a total of
3,885,633 acres with a value of $3,108,506.40 as of May 1, 1888.

(3) The Sioux Tribe ceded their interest in a total of 2,955,271
acres with a value of $2,364,216.80 as of May 1, 1888.

48. Based upon the preceding findings of fact, and the record
as a whole, it is the conclusion of this Commission that:

(1) The Blackfeet Nation shall have and recover from defendant
the sum of $11,125,606.40, subject to the amount of consideration paid
or which may be credited any party and to offsets, if any, to which
defendant may be entitled under the Indian Claims Commission Act.

(2) The Assiniboine Tribe of the Fort Peck and Fort Belknap
Reservation in Montana shall have and recover from defendant the sum
of $3,108,506.40, subject to the amount of consideration paid or which
may be credited any party and to offsets, if any, to which defendant
may be entitled under the Indian Claims Commission Act.
(3) The Sioux Tribe of the Fort Peck Reservation in Montana shall have and recover from defendant the sum of $2,364,216.80 subject to the amount of consideration paid or which may be credited any party and to offsets, if any, to which defendant may be entitled under the Indian Claims Commission Act.

An order to the above effect will be entered.

/s/ Arthur V. Watkins  
Arthur V. Watkins  
Chief Commissioner

/s/ Wm. M. Holt  
Wm. M. Holt  
Associate Commissioner

/s/ T. Harold Scott  
T. Harold Scott  
Associate Commissioner