

BEFORE THE INDIAN CLAIMS COMMISSION

THE NEZ PERCE TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 175-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER AMENDING FINDINGS OF FACT AND
ENTERING CONCLUSIONS OF LAW

Upon its own motion and in compliance with the decision of the Court of Claims in the subject case, being Appeal No. 5-64, decided July 15, 1966, 176 Ct. Cl. 815, cert. denied 386 U. S. 984 (1967) and for the reasons set forth in the opinion this date filed herein, the Commission orders:

(1) That Finding of Fact No. 26, entered on April 7, 1964, be stricken and there be set forth in lieu thereof the following:

26. Based on all the evidence of record in this case and upon the findings of fact entered herein, the Commission finds that the subject area had a fair market value, as of August 15, 1894, of \$3,022,575.00, or an average per acre value of approximately \$5.50.

(2) That Finding of Fact No. 27, entered on April 7, 1964, be stricken.

IT IS FURTHER ORDERED that all other findings of fact entered by this Commission on April 7, 1964, are re-entered and affirmed.

IT IS FURTHER ORDERED that the following Conclusions of Law be entered:

Conclusions of Law

The consideration paid by the defendant for the cession was \$1,634,664.00 or an average of about \$2.97 per acre. This leaves a difference of \$1,387,911.00 in the fair market value of the tract and the amount paid for the cession. Accordingly, the lands were worth about

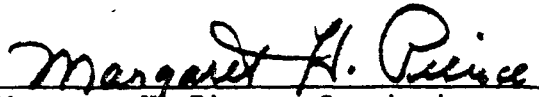
80% more than the consideration which was paid the plaintiff. The Commission concludes that the consideration of \$1,634,664.00 paid to the plaintiff for the cession of its lands having a fair market value of \$3,022,575.00 was so grossly inadequate as to make the consideration unconscionable.

Under the provisions of Article 3 of the Nez Perce Agreement (28 Stat. 286, 326-332, 1 Kappler 536), the plaintiff was entitled to have interest on that portion of the consideration which was not immediately paid. The Commission concludes that the plaintiff is likewise entitled to have interest on that portion of the revised treaty consideration which it never received. Accordingly, plaintiff is entitled to an additional amount required by Article 3 of the agreement, measured by simple interest at the rate of 5% per annum on \$1,387,911.00 from the date of the ratification of the agreement, August 15, 1894, to the date of payment of said \$1,387,911.00.

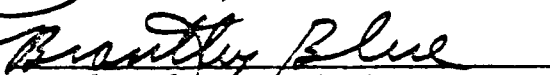
Since the parties have agreed that there are no gratuitous offsets to be claimed in this case, the plaintiff is entitled to entry of a final award.

The interest through the date of this judgment amounts to \$5,222,015.14. Accordingly, the plaintiff is entitled to an award in the amount of \$6,609,926.14 plus simple interest at the rate of 5% per annum on the principal sum of \$1,387,911.00 from November 15, 1969, to the date of payment of said principal sum.

Dated at Washington, D. C., this 14th day of November, 1969.

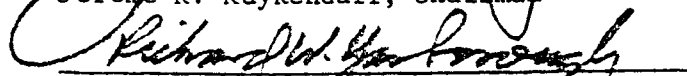

Margaret H. Pierce, Commissioner


John I. Vance, Commissioner


Brantley Blue, Commissioner

Concurring except as to award of interest:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner