

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER SIOUX INDIAN COMMUNITY)	
IN MINNESOTA, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 363
)	(Second Claim)
THE UNITED STATES OF AMERICA,)	(Act of 1904)
)	
Defendant.)	

INTERLOCUTORY ORDER

Upon findings of fact numbered 1 through 28, and the opinion this day entered herein, all of which are made a part of this order, the Commission concludes as a matter of law that:

1. The Sisseton and Wahpeton Sioux Bands, sole plaintiffs herein, had reservation title to the Devils Lake Reservation in North Dakota; that the action of defendant in using 11,313.08 acres of plaintiffs' reservation land for a military reserve for 23.25 years constituted a Fifth Amendment taking; that the action of the defendant in disposing of 64,908.22 acres of plaintiffs' land excluded from the reservation by erroneous survey was a Fifth Amendment taking; and that defendant's disposition of 105,839.30 acres of plaintiffs' unallotted reservation land by enactment of the Act of April 27, 1904, 33 Stat. 319, also constituted a Fifth Amendment taking. Accordingly, defendant is liable to plaintiffs for just compensation, measured by the fair market value of the lands when taken, plus simple interest at a rate of 5 percent per annum.

The fair market value of 11,313.08 acres utilized as a military reserve was \$55,236.19, based upon an annual rental of \$2,375.75 for 23.25 years.

3. The fair market value of 64,908.22 acres of plaintiffs' land excluded from the reservation by erroneous survey and subsequently disposed of by defendant on various dates, between February 23, 1884, and January 7, 1897, was \$426,847.00.

4. The fair market value of 105,839.30 acres of plaintiffs' unallotted reservation land taken by the defendant through issuance of patents under the Act of April 27, 1904, supra, effective January 1, 1910, was \$1,915,867.00.

IT IS ORDERED that this case proceed for the purpose of determining the amount of payments and offsets, if any, allowable.

Dated at Washington, D. C., this 30th day of June, 1973.

James K. Kuykendall
James K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Brantley Blue
Brantley Blue, Commissioner