

BEFORE THE INDIAN CLAIMS COMMISSION

THE YANKTON SIOUX TRIBE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 332-C
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 31, 1978

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 through 14 previously entered herein on December 14, 1970, 24 Ind. Cl. Comm. 208 (1970).

15. Lands to be Valued. There are two separate but contiguous tracts of land to be valued in this case. The smaller tract of some 11,168,731 acres is situated east of the Missouri River in the state of South Dakota and is more readily identified as the "Royce 410 lands", or "Royce 410 area."

The larger tract lying west of the Missouri River and identified as the "Sioux-Fort Laramie lands" contains some 60,308,000 acres in the states of North and South Dakota, Montana, Nebraska, and Wyoming.

The valuation date for both tracts is February 26, 1859, the effective date of the April 19, 1858, treaty of cession between the Yankton Sioux and the United States. 11 Stat. 743.

The Royce Area 410 Lands

16. Topography. The overall topography of the Royce 410 lands, which were glaciated, is that of a flat, featureless plain with minimal relief. Within the Royce 410 lands there are several major topographic divisions.

The James River Lowland, by far the longest, is 50 to 60 miles wide, 200 miles long and 200 feet below the surrounding uplands. Its topography is that of a gently rolling, amorphous plain whose relief rarely exceeds 30 feet except along river and streams.

The James River Highlands are at the southern tip of this lowland and consist of three rock-covered ridges, James Ridge, Turkey Ridge, and Yankton Ridge.

A small section of the Lake Dakota Plain lies at the northern periphery of the Royce 410 area, near the present town of Redfield, South Dakota. It was the site of the ancient Lake Dakota and is a formless plain now drained southward by the James River, whose 100 foot-deep trench forms the only major relief.

The Coteau (edge) du Prairies, a steep-edged plateau, lies to the east of the James River Lowland, rising some 600 to 800 feet above its surroundings. The general slope of this Coteau is westward and southward, and it ends abruptly on the west in a 300-foot escarpment. In the eastern section of this Coteau, relief is low, while in the western (the Lakes region) there are rugged hills, separated by smooth flatlands. This latter region is dotted by lakes, which are mostly fresh water and spring-fed.

The Coteau du Missouri is the major physiographic feature of the Missouri River uplands, which constitute the drainage divide between the Missouri and the James Rivers. The hills lie 700 feet above the James River Lowland. The northeastward-facing escarpment of this Coteau marks the boundary between the Great Plains Physiographic Province on the west and the Interior Lowland on the east.

Finally, the Missouri River Trench occupies a narrow band of land, running along the eastern bank of the Missouri River. The bluffs of this river valley average 400 feet in height.

17. Climate. The Royce 410 lands lie near the center of the North American continent and their distance from the oceans dictates the climate.

Average annual temperatures decrease from 49° F. in the extreme southeast corner of the Royce 410 lands to 47° F. in the northern reaches of the subject area. Mean winter temperatures (December - February) range from 24° F. in the south to 15° F. in the north, while mean summer temperatures (June - August) vary from 73° F. to 70° F. from south to north.

The wind prevails from the northwest in the winter months (October-April). Summers bring winds with a southeasterly component, pushing warm, moist Gulf air into the region. Because of low average humidity, there are approximately 130 clear days in the southeast and 160 clear days in the northwest per year.

Since the first fall freeze usually occurs in late September and the last spring freeze usually in the middle of May, the growing season is somewhat limited.

18. Precipitation and Water Supply. Average annual precipitation ranges from over 25 inches in the southeast to 17 inches in the northwest portion of the Royce 410 lands, and approximately 75 percent of the precipitation falls as rain. Annual snowfall accumulation patterns indicate that 35 to 50 inches of snow in the winter are a common occurrence. The seasonal summer maximums of precipitation occur in June and August, so that moisture peaks coincide with the temperature highs of the growing season.

Three major rivers drain the subject lands, the Missouri, the James, and the Big Sioux. The smaller Vermillion River flows through the southeastern portion of the subject lands, flowing into the Missouri near the town of Vermillion. Runoff in the subject area is low due to high evaporation and the permeable nature of the surface materials. In arid years both the James River and the Big Sioux River have been known to dry up completely. Apart from the rivers there are a number of inland lakes and ponds found in the Royce 410 area. Early settlers were primarily interested in the lands which had surface streams or springs, while lands that provided well water were secondarily desirable.

19. Soils. The predominant soil parent material in the Royce 410 area is "glacial till", material which was transported into the area

by succeeding glacial advances and retreats. Under a vegetation cover of tall and mid grasses, and a rainfall that falls predominately during the height of the growing season, the parent material of glacial debris produced a black rich earth -- a chernozem soil. Thus, the Royce 410 lands lie within the Dakota Division of the Great Plains Black Belt, an area dominated by these black, prairie, chernozem soils.

The soil is "zonal", i.e., well-developed, and has a very dark A-horizon which often reaches two feet in depth. The dominant soil in the Royce 410 area is the Barnes, with an A-horizon up to 15 inches thick, and a loam or fine sandy loam consistency. The Barnes is a fine agricultural soil, high in nutrients.

An alluvial parent material produced the Wabash or Laurel soil, especially along the Big Sioux and James Rivers, while Pierre Shale along the Missouri River produced the more rocky Pierre soil. Loessial deposits from the Missouri River produced the Moody soil, whose A-horizon is lighter and thinner than the predominant Barnes. This soil is found along the Big Sioux River in the extreme eastern edge of the claim area, and is a highly productive soil.

The Sioux soil is found in small areas throughout the Royce 410 lands and has developed on crystalline bedrock in small outcrops. It is thinner than the Barnes and has a rocky component. Finally, in the extreme northwestern section of the subject area is found the Williams soil, which is related to the Barnes, although its A-horizon is thinner than the Barnes.

About one-third of the soils in the eastern portion of the Royce 410 lands can be classified as rich, fertile, and excellent, with the best and most productive being the bottom lands in the southeast corner of the subject tract a few miles off the Missouri River from Sioux City, Iowa. Moving northwesterly from this point across the balance of the Royce 410 lands we find a gradual transition from the most productive to the least productive land in the northwest corner of the ceded tract. This uniform gradation in soil quality is the result of the earlier noted glacial activity that leveled a vast area east of the Missouri River. The lands in eastern South Dakota compare favorably with those found in northeastern Nebraska, central and western Iowa, and the southwestern part of Minnesota.

20. Natural Vegetation.

a. Grass. While the prospective settlers of these lands in 1859 would not have been aware of the names and depths of the soils or how they came to be formed, they would have known from the luxuriant, tall grass vegetation cover that these prairie soils would prove agriculturally productive. The tall grass of the southeastern portion of the Royce 410 lands was largely Big Bluestem. The appearance was that of a luxuriant meadow, similar to the Iowa lands to the east. As one advanced west and precipitation lessened gradually, the tall grass area gave way to mid and tall grasses, such as Needlegrass and Needle and Thread. Farther west, the size of the grass again decreased in

an area of medium and short grasses, dominated by Western Wheatgrass and Prairie Junegrass. Finally, in the upper northwest section there was a short grass region dominated by Buffalograss, Bluegama and Little Bluestem.

b. Timber. South Dakota, being prairie land, was destitute of timber upon its plains and in its valleys but there was timbered land along the riverbeds. In the early days of settlement in the Big Sioux River Valley, sawmills were constructed near the falls to exploit the available timber and water power. The construction of the sawmills stimulated the commercial development of the county. Similarly, Clay County, through which the Vermillion runs, contained similar tracts of timber, along the Vermillion and the Missouri, the county's southern border, and as early as 1862, a sawmill did a flourishing business there.

## 21. Transportation - Accessibility.

a. River Transportation. The Missouri River which borders the southern part of the Royce 410 lands, offered the earliest and most important travel route through the Yankton Sioux country. It was the only navigable river; the other rivers, such as the James, the Big Sioux and the Platte were non-navigable, even for the early flat bottomed mackinaw boats used by the fur traders.

By 1829 steamboats were moving up and down the Missouri River between St. Louis and Leavenworth, Kansas. In 1831, the Yellowstone was the first steamboat to penetrate the Yankton Sioux tract. It went

up the Missouri in Dakota as far as the site of Pierre. In 1832, the Yellowstone traveled to Ft. Union which was at the mouth of the Yellowstone River just across the Montana line in North Dakota.

The steamboat route up the Missouri became an important commercial transportation system for the fur trader, the Army and the mining camps and, by 1860, steamboats had advanced as far north as Fort Benton.

This steamboat traffic soon made the town of Yankton in the southeastern corner of the subject tract the only commercial port for the Dakotas. It possessed an excellent steamboat landing, extending nearly the whole length of the town's riverfront, the only such landing between Sioux City and Fort Randall. In 1860, one year after the valuation date, 19 steamboats passed Yankton on their way up the river. By 1869, when the railroad had reached Sioux City, Iowa, Yankton was the loading and unloading point for river boats. The completion of the Northern Pacific Railroad to Bismark in 1873, ended Missouri River traffic.

At all times the Missouri River provided access to adjacent lands bordering both sides of the river and seemingly should have been of particular benefit to the early settlements situated in the extreme southeastern portion of the subject tract and on the Missouri bottom lands. However, because there were few landing sites on the Missouri River, few stops were made and on balance it can be said that steamboat traffic on the Missouri River had little influence on the development of southeastern Dakota in general.



b. Overland Transportation. As of 1859, there were no existing roads leading northward from the Missouri River into the central and northern regions of the Royce 410 lands. This lack of roads in the interior of the subject tract would prove a serious handicap to potential settlers and their ox-driven wagons. The meandering of the non-navigable streams provided some access, but were more adaptable to the movements of the resident Indians than potential white settlers.

During this same period the main overland routes from the Missouri River across the Great Plains ran south of the subject lands in Nebraska. These overland routes coursed through the Platte Valley and were essentially "throughways" that carried the tide of new settlers from the eastern states to destinations further west.

c. Railroads. In 1859, there were no railroads anywhere near the Royce 410 lands. In 1857, a railroad from the east had reached St. Louis, Missouri. In 1864, the closest railroad to the Yankton Sioux lands had reached Marshalltown, Iowa, some 200 miles east of the southeast tip of the Royce 410 lands.

Rumors of the location of a transcontinental railroad had been bandied about since the 1850's. Several possible routes had been surveyed and were under consideration. As a result of recommendations made by the Secretary of War, Jefferson Davis, in 1856, a route was selected that would commence either at Council Bluffs, Iowa on the Missouri River or at Leavenworth, Kansas. In 1862, Congress created the Union Pacific Railroad and in 1863, construction began with Omaha, Nebraska, selected

as the eastern terminus of the railroad. The Union Pacific was finally completed in 1869. It followed the South Platte River across Nebraska well below the Royce 410 lands while bordering the "Sioux-Fort Laramie lands" south of the North Platte River for a distance of 40 miles.

It was not until 1868, that the Sioux City and Pacific Railroad reach Sioux City, Iowa, at the southeast corner of the Royce 410 lands. The first penetration into the Royce 410 lands by railroad was in 1873, when the Dakota Southern reached the town of Yankton. At this time the new settlement in the southeast corner of the subject tract did not extend much beyond Yankton and the railroad attracted but little traffic.

22. General Economic Conditions. The year 1857 witnessed a sharp downward spiral in the nation's economy. The "boom" period of the early 1850's had been carried along by the stimulus of California gold, the expanding thread of westward migration, the expansion of banking operations and new credit, the speculation in western lands, and heavy investment in new railroad construction. It was the failure of new railroads to attract sufficient business that contributed greatly to a turn about in the nation's economy. Railroad investors, among them banking institutions, lost heavily as many railroads failed to meet operating costs. The subsequent contraction of bank loans drove up interest rates. With the curtailment of railroad construction there followed a collapse in western land speculation.

By 1858, the worst was over but the economic recovery was not rapid during the next few years. By 1859, prudent investors could expect to pay a minimum interest rate of 8 percent per annum on borrowed money.

23. Settlement, Population and Speculation on the Western Frontier.

In the 10 years from 1850 to 1860 new settlements expanded rapidly up the Mississippi River, along the Missouri River in Iowa and Nebraska, and along the Platte River in Nebraska.

Royce Area 289, directly east of Royce Area 410, located partly in southeastern South Dakota and western Iowa, was ceded in 1851 by the Sisseton and Wahpeton Bands of Sioux. Royce Area 315, directly south of Royce Area 410, in Nebraska was ceded by the Omaha in 1854. Royce Area 408 in Nebraska, immediately west of Area 315 and south of Area 410, was ceded by the Pawnee in 1857. Grand Island, Nebraska (Royce Area 270), lying in the Platte River, was ceded by the Pawnee in 1848. The Platte formed the southern boundary of both areas 315 and 408 and the Missouri River was the eastern boundary of Nebraska. South of the Platte River, Royce Area 314 was ceded in 1854 by the Otoe and just to the south, Royce Area 186 had been ceded by the same tribe in 1833. Royce Area 191, south of the Platte and extending deep into Kansas, was ceded by the Pawnee in 1833. Royce Area 151 in Iowa just east of the Missouri River had been ceded by the Sac and Fox and a number of other tribes in 1830.

The extinguishment of Indian title in the above lands in Iowa and Nebraska in and prior to the 1850's gave rise to what Commissioner of Indian Affairs Manypenny called "the rage for speculation and the wonderful desire to obtain choice lands . . . ." For example, from 1852 to 1858 two speculators, Easley and Willingham, purchased in excess of 325,000 acres of Iowa land. In Nebraska some 98 persons secured title

to 800,000 acres of what was described as the richest part of Nebraska's public domain with the result that fewer than 100 people controlled enough land to support 5,000. As early as 1851 the Commissioner of the General Land Office reported that settlement and speculation on the Iowa side of the Missouri River, near what would become Omaha, was far ahead of the Government's survey and organization efforts. The Nebraska Territory was opened in 1854 although the areas open to settlement were limited to the eastern section of Nebraska up to the western bank of the Missouri River. Speculation increased even more with promoters from western Iowa preempting townsites and laying out towns, the most important of which was Omaha City. The first legislature of Nebraska Territory incorporated 17 towns, and a new emigrant road from the Platte River along the Missouri to the mouth of the Niobrara River accelerated the pace of settlement. As a result of these developments, land prices in the Nebraska Territory just across the Missouri River from the Area 410 lands, soared and in 1857 individual town lots on the river were valued at \$10,000. By July 1, 1859, 802,159 acres, one-fifth of Nebraska Territory's 4,000,000 available acres, were either purchased for cash or entered by land warrants.

The Surveyor General for Kansas-Nebraska was unable to keep up with demand for public surveys in eastern Nebraska. The same was true in Iowa where the settlers were demanding completion of the surveys of Iowa's northwest boundary along the Big Sioux River in the immediate vicinity of Royce Area 410. The development and settlement of Sioux City, Iowa,

on the border of southeastern Area 410 began in 1852 and progressed rapidly until by 1857 it was nearly impossible to buy land in the city at reasonable prices. Easley and Willingham, land speculators mentioned above, were active in this area also. The land companies and individuals developing that part of Iowa were very interested in having the Federal Government acquire Royce Area 410 from the Indians and advised Commissioner Manypenny that they believed the Sioux were ready to sell on reasonable terms. Dr. John H. Cook and Senator George W. Jones of Iowa, two of the six founding partners of the Sioux City Company, were interested in the Sioux lands in South Dakota, and the Upper Missouri Land Company, of which Dr. Cook was one of the founders, played an active role in the negotiation of the 1858 Sioux Treaty. One of their main objectives was to secure the townsite of Yankton in the soon to be opened Royce Area 410.

Minnesota speculators were also interested in the Royce Area 410 lands expecting that one of the Minnesota railroads authorized by the legislature might extend through the Big Sioux River Valley in Area 410. In 1856-1857 the Dakota Land Company was formed to acquire early title to and to colonize the desirable agricultural tracts and townsites in the Dakota territory which the Company knew the Government was about to acquire from the Sioux. They secured a congressional appropriation for the building of an emigrant road named after Superintendent William H. Nobles (Nobles' Road) to go from Fort Ridgely to the Missouri River at the mouth of Crow Creek, crossing the northern part of Royce 410. It was expected that this wagon road would

ultimately be the route of a railroad and in 1857, before the cession in suit, members of the Dakota Land Company were trying to secure townsites near the Big Sioux Falls. In the spring of 1857 they laid out the town of Sioux Falls which they intended to be the capital of the new territory. This enterprise attracted a favorable press which wrote glowingly about the virtues of the Big Sioux River Valley.

In 1858 the Sioux City Eagle reported that there would be a rush of settlers across the Big Sioux River when it was announced that the lands would be opened. A large number of speculators, squatters and townsite colonizers did invade Royce Area 410 lands despite the risk of resistance from the Sioux and ejection by the Army. Shortly after the execution of the Treaty on May 1, 1858, soldiers from Fort Randall were ordered to expel all white men not licensed as traders who were in Area 410. The post commander reported that white intruders had already entered the corn fields of the Yanktons.

The Army continued to have problems with squatters in Royce 410. Town colonizers, who were there illegally, were equally troublesome. Most active were the Dakota Land Company, the Western Town Company and the Upper Missouri Land Company. The latter erected its company's site at Yankton and some six potential townsites selected by the company between Sioux City and Fort Randall plus two more near old Fort Pierre. Ostensibly establishing "trading posts" the company used its license to trade to stake out several of the prime town site locations. Among the trading posts was one at, or very near, the site of the town of Vermillion. Despite the threat of

Indian attacks, the Dakota Land Company claimed the towns of Flandreau and Medary in Area 410 and hoped to locate the capital of the new territory at Sioux Falls rather than at Yankton which was the site of the Upper Missouri Land Company's townsite.

These land companies, seeking to establish towns, erected substantial buildings for business and buildings to house printing presses for newspapers. Despite the fact that such activities were at worst those of trespassers and at best those of squatters, in April of 1859 members of the land companies petitioned the Surveyor General of Iowa on behalf of the "settlers" of Sioux Falls in the "Territory of Dakotah" to survey their lands, as soon as possible, asserting that 300 people were living in the township of Sioux Falls and the "settlers" expected their numbers to double that season.

By 1859 twelve townsite companies were competing for prime selections in Area 410 and Yankton and Sioux Falls were no longer "potential" but were actual townsites.

By 1860, following the 1859 opening of Royce Area 410 lands, many settlers had located legally upon the bottom lands along the Missouri-slope in the southeastern portion of the tract. Yankton, Sioux Falls, Vermillion, Bon Homme and Elk Point were the leading settlements. The fertile bottom lands between the Vermillion and James River attracted a number of Norwegian settlers. In the extreme southeast corner of the subject land (present Union County) two large settlements were developed, one extending from the Big Sioux River crossing at Sioux City, Iowa, to Elk Point, and the other located along Brule Creek further up the Sioux Valley.

When in 1862 Yankton was designated the territorial capital, it grew faster and outdistanced the other towns. By 1864 most of the choice lands in what is now Yankton County and in the James Valley had been taken up.

Events leading up to the Civil War and the Sioux outbreak in the early 1860's slowed settlement temporarily. Federal census figures for 1860 show a population of 4,837 for the Dakota Territory, which is scarcely surprising since most of it was still in Indian hands with the large cessions not beginning until 1868 and continuing until 1882. What population there was in Dakota Territory was concentrated in Area 410. To the south, in the eastern half of Nebraska, where Indian title had been extinguished earlier, the population increased from 28,841 in 1860 to 122,993 in 1870. By 1870 the non-Indian population in South Dakota was 11,776 and in North Dakota 2,405, whereas the Indian population in those states was still very large and the greatest Indian land cessions were still to come. Accordingly it was not until the 1880's that South Dakota showed a significant population growth outside of Royce Area 410.

The Indian uprising and the advent of the Civil War could not have been foreseen in 1859 when the land in suit is to be valued. In fact, the reality of the Civil War did not seem to reach the land companies and the settlers bent on developing Area 410, who were then confident that the war would be of short duration.

24. Organization of the Dakotas. In 1846, Iowa became the 29th state in the Union. In 1849, the remainder of the Iowa Territory became the Minnesota Territory. At that time the Royce 410 lands were included in the Minnesota Territory while the "Sioux-Fort Laramie lands" remained unorganized territory. In 1854, the Nebraska Territory was organized.



It encompassed an enormous area including all the "Sioux-Fort Laramie lands." In 1858, Minnesota obtained statehood and the remainder of the Minnesota Territory, including the Royce 410 lands, reverted to an unorganized status. In 1861, the Dakota Territory was organized and included therein both North and South Dakota, all of Montana, as far as the Continental Divide in Wyoming, and a part of southeast Idaho. Yankton became the territorial capital in 1862. Nebraska reached statehood in 1867, but the Dakotas remained in territorial status until 1889.

25. Public Land Market in 1859. In 1859, the only government surveying done in the Royce 410 lands was an extension of the north boundary of the state of Iowa, - 43° 30 north latitude - from the Big Sioux River to the Vermillion River. In the following year some township surveys were completed including the location for the town of Yankton. By 1865, 70 townships had been surveyed in the eastern part of what is now South Dakota. Final surveys of townships within the Royce 410 lands were not completed until the 1880's.

As of 1859, surveyed public lands could be acquired under the Act of April 24, 1820, 3 Stat. 566, as amended, for cash at the minimum \$1.25 per acre price. With the passage of the Preemption Act of 1841, 5 Stat. 453, a settler could enter and obtain priority rights before public sale at \$1.25 per acre of up to 160 acres of unsurveyed public land. The Graduation Act of 1854, 10 Stat. 574, established a declining price scale for those public lands that had been on the market 10 years or more. While not directly applicable to the subject tract in 1859, this Act did give some competitive advantage to public lands in nearby Iowa.

The first public land sales in Nebraska occurred in 1854. Some 3 3/4 million acres of land were made available in northeast Nebraska principally within the former Omaha Indian tract. The Nebraska land records show that, as of July 1, 1859, some 802,159 acres of Nebraska public land had been entered and that approximately 12.6 percent of this land had been sold for cash with the balance being paid for with military land warrants. With military land warrants becoming freely assignable as of 1852, an active market soon developed in the purchase and sale of such warrants. Prices quoted in 1859 indicate a going rate of between \$.80 and \$.90 per acre for land warrants.

Iowa had become a territory in 1838. The demand for land did not reach western Iowa until 1853. In that year the first public sales were held in the Council Bluffs land office. Within 4 years some 1 3/4 million acres of public lands were sold for cash or military scrip. Of some 8 1/2 million acres of public lands offered for sale in central Iowa in 1845, all had been sold by 1860.

The first recorded public land sales in the Royce 410 lands occurred in 1862. For the period 1862-1873, cash entries accounted for 106,809.67 acres. Homestead entries pursuant to Homestead Act of May 20, 1862, 12 Stat. 413, accounted for 512,329.35 acres of land for the period 1863-1871. Under the 1862 Homestead Act, a qualified citizen could enter upon 160 acres or less of available public lands, live there for 5 years and, upon proof of compliance with the applicable law, he could

receive a patent for the land by paying a nominal filing fee and nothing for the land. A homestead settler could accelerate his ownership of the land by paying the minimum cash price, or the graduated price for the land prior to the expiration of the 5 year period, provided he had likewise complied with the existing law governing the right of preemption.

26. Private Sales. The private land sales data of record is of limited probative value. The majority of transactions involve post 1859 treaty sales either within the subject tract or in neighboring Iowa and Nebraska. Of the 812 private land sales in evidence, almost 65 percent cover the post 1859 period, some as late as 1907.

Time and location wise, the most comparable private land sales are found in Knox, Dixon, Dakota, and Cedar Counties, Nebraska. These four counties are situated just south of the Missouri River, opposite and below the areas initially settled in Royce 410 lands. Seventy-one sales are listed for Dakota County covering the period 1852-1860. In all, 9,838 acres were purchased at private sale for \$19,294 for average price of \$1.96 per acre. Dixon County shows 16 transactions from 1859 through 1869 in which 1,586 acres were sold for \$4,387 or average price of \$2.77 per acre with the average year of the sale being 1867. For Knox County there are 30 transactions listed in which 3,612 acres were sold for \$10,183 or at an average price of \$2.82 per acre. The average date of sale for Knox County was 1865. In Cedar County, only 13 sales are listed for the period 1856 through 1868. Some 1,550 acres were sold for \$4,354 of an average price of \$2.81 per acre.

In Iowa, some 250 private sales transactions are noted in the record with more than half, 180 deeds taken from Woodbury County, the remainder from Lyon, Sioux, and Plymouth counties. All four counties are contiguous and are located in the northwest part of Iowa bordering the Big Sioux and Missouri Rivers. The Woodbury County transactions cover the period 1856 through 1860, and indicate that a total of 38,733.87 acres were sold for \$49,280 or an average sales price of \$3.85 per acre. Sioux City, Iowa, a permanent town in 1859, and situated at the confluence of the Big Sioux and Missouri rivers, is located in Woodbury County. There are 26 transactions listed from Plymouth County which adjoins Woodbury County to the north. These sales cover the period 1856-1860, in which 3,949 acres were sold for \$12,918, or an average sales price of \$3.27 per acre. From Sioux County further north, the record lists 31 deeds for the years 1857-1866 in which 9,081 acres were sold for \$29,336 or an average sales price of \$3.23 per acre. From Lyon County, the northern most of the four counties noted, only 13 deeds are listed. The period covered is 1868-1870, and 2,093 acres were sold for \$4,067, or an average sales price of \$1.96 per acre.

In most instances the private sales represent only a sample, perhaps 5 percent to 10 percent, of transactions actually recorded in the particular county for the period of time covered. Some of the sales are at such high prices as to indicate unique value. In addition, it is not possible to determine the extent and value of improvements, if any, nor whether resales of the same property were included.

27. Plaintiff's Appraisal for Agricultural Land. The plaintiff's principal expert witness on the value of the Royce 410 lands was Mr. Neil A. Thomas, a qualified land appraiser from Denver, Colorado. Mr. Thomas filed a detailed appraisal report and thereafter testified before this Commission in support of his report and value conclusions.

Basically Mr. Thomas utilized a modified comparable sales approach in order to arrive at an estimated 1859 fair market value of the Royce 410 lands. The principal factor in Mr. Thomas' calculation was a \$4.60 per acre sales index of value that represents the estimated average retail per acre sales price of all the Royce 410 lands for the period 1859 through 1870. The basic ingredients which Mr. Thomas blended into his \$4.50 sales index figure consisted of a combination of the average per acre price for the private land sales in Cedar, Dakota, Dixon and Knox counties (adjusted upward because of a pre-determined comparability deficiency with the Royce 410 lands) the average per acre price for private land sales in Woodbury County, Iowa, and the average per acre price of private sales of land within the subject tract. At one end of the scale were the Iowa, Nebraska lands with an average sale price rounded off to \$3.60 per acre and an average sales date of 1858. At the other end is the Dakota Royce 410 lands with an average per acre sales price rounded off to \$5.00 per acre and an average sales date of 1867. Applying a cumulative discount of 57 percent to the \$4.60 per acre average sales index figure to cover such items as term sales, improvements, size of the subject tract, survey and administrative costs and a 25 percent profit margin, Mr. Thomas arrived at a \$1.98 figure as the indicated 1859 fair market value of the best or "Class A" lands in the subject tract.

As pre-determined by Dr. Thomas A. Griffiths, the plaintiff's geographer and also an expert witness for the plaintiff tribe, the Royce 410 lands, based upon modern usage should be classified as follows: (1) the most desirable lands of "Class A" lands represent 60 percent of the total area of subject tract, namely 6,693,534 acres, "Class B" lands account for 28 percent of the total area of 3,123,639 acres. And finally, the least desirable, or "Class C" lands account for 12 percent of the total area, or 1,338,707 acres.

Having determined the estimated 1859 fair market value of "Class A" lands and knowing the percentage of "Class B" and "Class C" lands within the subject tract, Mr. Thomas then arrived at an overall estimate 1859 per acre value of \$1.80 for the Royce 410 lands, or total of \$20,075,000.

While much of the information and data found in Mr. Thomas' agricultural appraisal was helpful to Commission in its own appraisal of the Royce 410 lands, we reject his value conclusions, for reasons stated more fully in the opinion, as speculative, improbable and not supported by the evidence.

28. Plaintiff's Appraisal for Townsites. To the figure arrived at in its valuation of agricultural areas, plaintiff added an additional \$640,000 valuation for townsite values. Mr. Thomas assigned an 1859 townsite value to the subject tract on the basis that, as of 1859, a prospective purchaser of the subject tract could anticipate eight townsite locations therein as being developed within a reasonable length of time, and that these townsites, all of which are located along the principal rivers or streams, would account for 2,640 acres. The townsites and their

acreages are: Yankton - 640 acres; Sioux Falls - 400 acres; Vermillion - 400 acres; three sites on the James River totalling 800 acres; on the Missouri River "upstream from the Levee" - 200 acres; and, on the Big Sioux River between Sioux Falls and Sioux City - 200 acres.

Mr. Thomas then estimated that at least 50 percent of the townsite areas would be needed for public purposes, and thus would be unsaleable. Another 10 percent of the area was discounted to account for lots that would not sell. Of the remaining acreage, it was determined, based on a study of Sioux City, Iowa, lots, that standard lots were 75 feet by 150 feet, or 5.8 lots per acre. The number of saleable lots in the townsites were as follows: Yankton - 1,670; Sioux Falls - 1,044; Vermillion - 1,044; James River - 783,783, and 522, respectively; Missouri Levee - 522; and Big Sioux - 522.

The prices of these town lots were based on a survey of Sioux City, Iowa, prices. Mr. Thomas estimated the Yankton, Sioux Falls, and Vermillion lots were worth \$225, and the remaining lots were worth \$125. To the figure obtained by multiplying the number of lots times value per lot Mr. Thomas added 15 percent, which is said to be the amount the "premium lots" in a site would enhance the value of the remaining lots. From this figure (\$1,422,000) discounts are subtracted for disposal time (28 % discount for an 8 year disposal period), expenses (5%), and profits (33%). After deducting discounts of 55 percent, the fair market value of the 8 townsite is estimated at \$640,000.

For reasons set out in the accompanying opinion, we cannot accept, in toto, Mr. Thomas' townsite valuation. We do accept, with the exception of the 'enhancement' value, Mr. Thomas' valuation of the three principal towns -- Yankton, Sioux Falls, and Vermillion.

29. Defendant's Appraisal. Mr. Vern Englehorn, an accredited rural appraiser from Phoenix, Arizona, prepared an appraisal report for the defendant with respect to Royce 410 lands and the Sioux-Fort Laramie lands. Mr. Englehorn also testified before the Commission in support of his appraisal report on value conclusions.

In his appraisal report, Mr. Englehorn presented a wealth of historical and statistical data concerning both the Royce 410 lands and the Sioux-Fort Laramie lands, such material covering a considerable span of years before and after the 1859 valuation date.

In valuing the Royce 410 lands, Mr. Englehorn assumed that an 1859 prospective purchaser would have viewed the eastern portion of the tract as potential farmland and the western portion as essentially grazing land. He compared the eastern portion of the tract with the lands in north central Iowa that were purchased by discounted land warrants at roughly \$.60 per acre in the late 1850's. He applied a further 20 percent discount to the Iowa lands for better location and rainfall. He then



compared the western half of the subject tract with lands in southeast Nebraska 1864 that were purchased at \$0.42 per acre through agricultural college scrip.

In his final analysis Mr. Englehorn divided the subject tract into four parts which he valued separately as follows: (a) 2,000,000 at \$.50 per acre for the land in southeast South Dakota near the rivers, all level farmland, (b) 3,400,000 acres at \$0.42 per acre for land suitable for farming in small grains and corn, (c) 5,400,000 acres at \$0.32 per acre for land suitable for combination dry farming and grazing, (d) 368,731 acres at \$0.052 per acre for non-productive lands. In sum, Mr. Englehorn's 1859 valuation of the 11,168,731 acres in the subject tract was \$4,170,000, or \$0.37 per acre. Mr. Englehorn gave no separate evaluation for potential townsites in the subject tract.

For reasons more fully stated in our opinion the Commission rejects Mr. Englehorn's 1859 value conclusion with respect to the Royce 410 lands, as too restrictive and not supported by the record.

30. Highest and Best Use. As of the 1859 evaluation date, the highest and best use for the Royce 410 lands was a mixture of subsistence homestead farming for the bottom land areas along the principal rivers and streams with the more accessible interior areas being better utilized for grazing cattle.

31. Fair Market Value. Based upon the preceding findings of fact and all the evidence of record, and for reasons stated more fully

in our opinion, the Commission finds and concludes that as of February 26, 1859, the date of valuation herein, the 11,168,731 acres of the "Royce 410 lands" that were ceded to the United States under 1858 Yankton Sioux Treaty had a fair market value of \$13,557,477.

#### Sioux Fort Laramie Lands

32. Description - Topography. As indicated earlier the Sioux-Fort Laramie lands involve an enormous area of over 60 million acres situated west of the Missouri River in North Dakota, South Dakota, Montana, Nebraska, and Wyoming.

The Missouri River forms the eastern boundary of the this huge tract from the mouth of the Heart River south to the mouth of White Earth River 15 miles below Chamberlain, South Dakota. The eastern boundary then follows a straight line southwesterly to the junction of the North and South Platte rivers near the city of North Platte, Nebraska. The North Platte River forms the southern boundary of the tract, running through western Nebraska into Wyoming then up the Sweetwater River in Wyoming to approximately the 108° of west longitude. From this point the western boundary proceeds northeast along the Rattlesnake Mountains, then north along the Powder River to the mouth of the Little Powder River in Montana. The northern boundary then follows the Little Powder River back into Wyoming then north along the west side of the Black Hills, thence northeast into North Dakota where it crosses the Little Missouri

River, thence further north to the Heart River where it follows the Heart River to its junction with the Missouri River at Mandan, North Dakota, the point of beginning.

The unglaciated Missouri Plateau lands stretch west of the Missouri River across most of the tract. This is rolling, undulating land with streams flowing between very high valley walls. The elevation in this area is from 1,800 feet to 3,000 feet above sea level in the eastern half, and at the edge of the Rocky Mountains in the west from 3,000 feet to 6,000 feet above sea level. The Central High Plains are south of the unglaciated Missouri Plateau and extend south of the Platte River to eastern Colorado.

In the west central portion of the tract are the Black Hills, a series mountains ranging from 4,000 feet to 7,000 feet high.

The Black Hills extend about 125 miles in a northwest-southeasterly direction and are about 60 miles wide. The Belle Fourche River drains the mountains from the west and north and the Cheyenne River drains the southeast. East of the Black Hills the Cheyenne and White Rivers border an area known as the "Badlands."

33. Climate - Precipitation. The extremes in temperature are more dramatic in the Sioux-Fort Laramie lands than in the Royce 410 lands. In the western and north western sections of the subject lands there are 100 days to 115 days of frost free weather, between 120 days to 130 days in North Dakota and 130 days to 150 days in South Dakota and Nebraska. Because of the temperature extremes it is not

unusual to find the moisture evaporation rate to exceed the rate of precipitation.

Precipitation averages 14 inches to 18 inches in the Dakotas. In Nebraska it amounts to 16 inches to 22 inches per year. In Montana and Wyoming precipitation averages 12 inches to 16 inches per year where winter snowfalls can bring large accumulations and frequent blizzard conditions.

34. Soils - Vegetation. The major portion of the subject area is covered with chestnut soils formed on the tertiary shales and siltstones which blanket the region. Brown soils are important in the west where natural vegetation has provided more humus to the parent material. Alluvial soils are found on the floodplains of the larger trunk streams such as the Platte, but are less important along minor streams. In the Sand Hills stabilized dunes, which make up about one-third of the area, show little evidence of normal soil formation except for a slight darkening of the upper two or three inches by humus from the stabilizing grasses. The remainder of the area shows a greater thickening and darkening of the surface to produce a regosol. Throughout the area soils are a product of climate, parent material, and natural vegetation.

This area is dominated by short grass vegetation. In the lower and more easterly locations there are small areas of mid-grasses and very occasionally tall grasses where moisture is favorable. The

dominant grasses on the Central High Plains and on the unglaciated Missouri Plateau are grama and buffalo.

Trees are found along streams and at higher elevations. The cottonwood is the dominant tree along streams at lower elevations. In the Black Hills ponderosa pine and Douglas fir occupy the higher slopes, pine on south and west slopes while fir is found on east and north slopes. On the lower slopes at the south edge of the Black Hills are found some forests of pinion pine. In a few locations in the west and south parts of the Black Hills are found open woodland with grass cover on the park lands.

35. Accessibility. As of 1859, the most significant transport route into the Sioux-Fort Laramie lands was the Missouri River which ran north and south along the eastern boundary of the tract. The Platte River Valley area in the southern portion of the tract was the most important overland route that linked the eastern section of the country with the Rocky Mountain region and the Pacific Coast lands. The Platte Valley routes west were the Mormon Trail, Oregon Trail, and California Trail. Migration to Oregon and California had begun in 1841, but with the advent of the California gold rush in 1849, the heaviest overland emigration occurred along the Platte River. The Oregon Trail began at Independence, Missouri, and took a northwest course to Fort Kearney at the southern bend of the Platte River, first touching the Yankton Sioux lands near the town of North Platte at the confluence of the North

and South Platte Rivers. The route then followed the North Platte and Sweetwater Rivers along the southern boundary of the subject tract to the westernmost point where the Sioux-Fort Laramie boundary line turned north. The long, tedious Platte Valley-South Pass Trail was the most heavily used of various overland routes to California. During the 1850-59 period these major overland routes operated as throughways for the flow of emigration heading to California. At a later date they afforded the opportunity for finding new routes into the Yankton Sioux lands.

36. Highest and Best Use. Prior to white settlement the northern Great Plains from the Missouri River west to the Rocky Mountains supported one of the world's largest concentration of herbivores, specifically, the buffalo which provided the plains Indians with nearly all of their material needs. While some small scale dry farming could have been accomplished on select locations within the Sioux-Fort Laramie lands, the highest and best use for this 60 million tract in 1859, would have been for grazing land, -- this, despite the fact that the then known water supply would not have been sufficient to service the entire tract. While most of the Yankton Sioux lands are underlain by a series of deep artesian aquifers, this water resource was not available until after 1859. Accordingly, until further water development only a limited portion of the subject tract could be successfully grazed for cattle.

37. Plaintiff's Appraisal. Mr. Neil A. Thomas, plaintiff's principal expert witness, also estimated the 1859 fair market value of the Sioux-Fort Laramie lands. Because of the absence of an actual market for the subject tract in 1859, Mr. Thomas utilized six relatively large land transactions that occurred after the valuation date in arriving at an 1859 surface evaluation of the subject tract. These sales were the 1,490,128 acres of Atlantic and Pacific Railroad sales between 1884 and 1887 at an average price of \$0.60 per acre; the 409,600 acre Hat Creek Ranch sales in 1883 at \$1.38 per acre; the sale of 555,890 acres of Union Pacific Railroad lands in 1884 at \$0.83 per acre, the 1,679,764 acre Maxwell Land Grant sale of 1870 at \$0.80 per acre, the 500,000 acre Sangre-de-Christo Trinchera Estate sale of 1869 for \$2.00 per acre, and the Costilla Estate sale of 500,000 acres in 1871 for \$1.00 per acre. From these sales Mr. Thomas concluded that an 1859 surface evaluation of the subject tract fell within the range of \$0.60 to \$0.75 per acre. He finally settled for \$0.60 per acre or a total surface valuation of \$36,184,800.

To the above surface evaluation Mr. Thomas added an 1859 mineral value of \$11,736,945 for the gold in the Black Hills section of the subject tract. The actual mineral appraisal of the Black Hills in this case was performed by Mr. Donald G. Bryant, a qualified geologist. In adopting Mr. Bryant's mineral appraisal, Mr. Thomas conceded that there were no comparable sales data available in 1859, nor was there any

significant production of gold until 1876, 19 years after the appraisal date. Plaintiff's mineral evaluation is rested solely on the premise that, based on the pre-1859 rumors of the presence of gold in the Black Hills, a well informed prospective 1859 purchaser of the Sioux-Fort Laramie land would have engaged the services of the finest geologists and supporting personnel, who, in turn, would have examined the Black Hills area and in rapid order would have easily discovered the principal gold placiers, lode deposits, cement ores, and ultimately the prized "Mineral Band". Upon these premise Mr. Bryant constructed a hypothetical full scale gold mining operation of peak efficiency, an operation so proficient that the estimated value of the gold produced would in some instance exceed actual production figures that were recorded many years later. After applying all the required formulae, discounts and similar calculations over the estimated life of the Black Hills gold fields, plaintiff's expert reached an overall estimated 1859 mineral value for the subject tract of \$11,736,950.

The combination of surface and mineral values for the subject tract added up to an 1859 fair market value for the Sioux-Fort Laramie lands of \$47,921,745 which Mr. Thomas rounded off to \$48,000,000 or approximately \$0.759 per acre.

The Commission has rejected Mr. Thomas' 1859 surface valuation of the Sioux-Fort Laramie lands as not supported by substantial evidence. The sales index of value adopted by Mr. Thomas is constructed exclusively



upon post 1859 sales data, which information could not have been available to a well informed purchaser of the subject tract in 1859. The Commission also rejected any 1859 mineral evaluation of the Black Hills region on the basis that, apart from the rumors of the presence of gold in the Black Hills, there were no significant discoveries of gold in paying quantities until many years after the 1859 valuation date. Mr. Thomas' and Mr. Bryant's 1859 mineral evaluation of the subject tract is premised exclusively on the future discovery of gold bearing ore in paying quantities and not on such gold deposits discovered as of the 1859 valuation date.

38. Defendant's Appraisal. Mr. Vern Englehorn, defendant's expert appraisal witness, also appraised the Sioux-Fort Laramie lands as of 1859. He also recognized that in 1859 no actual market existed for the 60 million acres of potential grazing land in the subject tract. In the absence of comparable sales, Mr. Englehorn chose to make some general comparisons of the subject tract with the ranch land acquired by Charles Goodnight in the 1870's in Texas where he paid anywhere from \$0.22 to \$0.42 per acre for his acquisitions. Applying discounts for size and location Mr. Englehorn was of the opinion that, as potential grazing land the 60,308,000 acres in the Sioux-Fort Laramie tract had an 1859 fair market value of \$12,000,000, or approximately \$0.20 per acre. Mr. Englehorn ascribed no mineral value to the Sioux-Fort Laramie lands as of 1859.

The Commission has rejected Mr. Englehorn's 1859 evaluation of the Sioux-Fort Laramie lands as not supported by the evidence. His reliance solely on the post 1859 Goodnight land purchasers in Texas as the basis for his evaluation is too restrictive and of little value since knowledge of the Goodnight purchases would not have been available to a prospective purchaser of the subject tract in 1859.

39. Fair Market Value of the Sioux-Fort Laramie Lands. Based upon the preceding findings of fact and all the evidence of record and for the reasons stated in our opinion, the Commission finds that as of February 26, 1859, the 60,308,000 acres of Sioux-Fort Laramie lands, had a fair market value of \$32,415,550, or slightly more than \$0.53 per acre. The Yankton Sioux interest in Sioux-Fort Laramie lands has been fixed at 7 percent of the total value of said lands or \$2,269,008.50.

40. Promised Treaty Consideration. As consideration for the cession of the Royce 410 lands and the Sioux-Fort Laramie lands, the Treaty of April 19, 1859, 11 Stat. 743, between the Yankton Sioux Tribe and the United States provided as follows

(a) Under Article IV of the treaty the United States agreed to pay the plaintiff tribe \$65,000 annually for 10 years commencing with the year the Indians removed to their new reservation; \$40,000 annually for and during the next 10 years thereafter; \$25,000 annually for and during the next 10 years thereafter, and \$15,000 annually for and during the next 20 years thereafter.

". . . making one million and six hundred thousand dollars [\$1,600,000] in annuities in the period of fifty years, of which sums the President of the United States shall, from time to time, determine what proportion shall be paid to said Indians, in cash, and what proportion shall be expended for their benefit, and, also, in what manner and for what objects such expenditures shall be made, due regard being had in making such determination to the best interest of said Indians."

In addition to the \$1,600,000 in annuities over 50 years the United States agreed to pay or expend for the benefit of the Indians an additional \$50,000 as follows; \$25,000 to cover removal expenses to their new reservation, to maintain and subsist the Indians during the first year after their removal, and in the breaking up and fencing of land and the erection of houses, storehouse, and other buildings and necessary improvements; \$10,000 to build and maintain for the Indians a schoolhouse or schoolhouses; and, \$15,000 to provide a suitable grist and saw mill, one or more mechanics shops with necessary tools, and dwelling houses for an interpreter, miller, engineer, farmer, and mechanics.

(b) Under Article 8 and Article 16 of the treaty, the United States agreed to pay the treaty making expenses and the costs of surveying the red pipestone quarry and the Yankton Sioux Reservation. The parties are in agreement that the United States appropriated \$12,500 to carry out these purposes. In all, the consideration promised under the 1858 treaty called for expenditures of \$1,662,500.

41. Liability. Based upon the foregoing findings of fact and all the evidence of record, the Commission finds and concludes that as

of February 26, 1859, the effective date of the Treaty of April 19, 1858, the fair market value of the Royce 410 lands and Yankton Sioux interest in the Sioux-Fort Laramie lands was \$15,826,485.50; that compared with the fair market value of the subject lands payment of a treaty consideration of \$1,662,500 in exchange for said lands is the payment of an unconscionable consideration within the meaning of Section 2(3) of the Indian Claims Commission Act, 60 Stat. 1050. Accordingly, the plaintiff tribe is entitled to recover of the defendant the sum of \$15,826,485.50, less the actual consideration paid, less any other payments on the claim, and less any allowable gratuitous offsets hereafter determined.

#### 1858 Treaty Consideration

42. Payments on the Claim - Generally. As amended by Public Law 93-494, October 27, 1974, that portion of Section 2 of the Indian Claims Commission Act governing payments on the claim reads in part as follows:

"In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim,

"Provided, That expenditures for food, rations, or provisions shall not be deemed payments on the claim.

As detailed in defendant's Exhibit O-1, a three volume General Services Administration accounting report, the United States has requested the Commission to offset as payments on the claim against any award herein the sum of \$1,518,734.42. According to the defendant, the United States actually expended \$1,900,538.87 under the provisions of

the 1858 Treaty. From these total payments the defendant has deducted \$381,804.15 as being expenditures for "food, rations, and provisions," and therefore not qualified payments on the claim by virtue of the 1974 amendment to Section 2 of our Act.

43. Allowable Payments of the Claim. Having reviewed all the schedules and other data in the G.S.A. accounting report, as well as all the supporting evidence of the record, the Commission finds and concludes that the following items qualify as appropriate payments on the claim arising out of the 1858 Treaty:

(a) Article 4

-Agricultural implements	\$ 22,313.74
-Agricultural implements	18,373.20
-Ambulance and equipment	505.60
-Artesian wells	7,430.86
-Cash payment to Indians	364.17
-Construction of roads and bridges	5,001.87
-Education	8,852.90
-Erection of mill, etc.	14,999.13
-Furniture and household equipment	10,874.01
-Hardware, Glass, Oils & Paints	51,384.97
-Indian dwellings	11,537.02
-Per capita cash payments	259,395.31
-Saddlery	3,656.74
-Wagons and wagon fixtures	12,886.94

(b) Article 6

-Cash payment to half breeds	\$ 85,572.17
-Payments of debts and obligations	<u>43,432.04</u>

Total \$556,560.67

44. Disallowed Items. The following expenditures under the 1858 Treaty as detailed in the G.S.A. Report are disallowed as payments on the claim asserted herein:

(a) Barred by Public Law 93-494, supra

-Blankets	\$ 90,328.70
-Care of sick and insane Indians	813.17
-Clothing	255,082.92
-Feed for livestock	17,363.54
-Livestock	83,891.79
-Medical equipment and supplies	6,401.24
-Provisions	261,614.22
-Support and education of orphan half breeds	9,959.11
-Maintenance and subsistence etc., during first year	24,999.43
-Seeds for planting	30,461.90

(b) Not required or unauthorized expenditures charged to 1858 Treaty  
including agency expenses.

-Advertising for supplies	\$ 720.78
-Attorneys fees	167.60
-Construction and repairs to agency buildings	67,595.44
-Expenses of agreement and surveying	11,343.24
-Expenses of recovering goods from ship wreck	150.00
-Fuel	9,379.35
-Gristmill, sawmill, etc.	3,235.18
-Hire of team	81.00
-Incidental expenses of agency	1,104.34
-Insurance, transportation of supplies	3,970.05
-Pay of Indian agents	1,648.00
-Pay of agency employees	232,956.79
-Payment for horses stolen	450.00
-Subsistence of agency employees	3,330.60
-Traveling expenses of agency employees	611.56
-Payment for goods destroyed pursuant to Act of March 3, 1865, 13 Stat. 541,559	9,972.00
-Rebuilding grist and saw mills	9,998.90
-Insurance, transportation of supplies	7,348.56
-Expenditures made pursuant to the Act of March 3, 1863. "To Reimburse Yankton Sioux for loss of Steamer J. G. Morrow," 12 Stat. 792	4,320.38

-Expenditure for provisions under the Act of February 25, 1869, 15 Stat. 275	\$ 10,000.00
-Expenditures made pursuant to the Act of March 3, 1865, 13 Stat. 550-51, "Replacing Goods Burned on Steamer Welcome, in 1864"	19,086.00
-Expenditures made under the category "Subsistence and Civilization," P. 101, G.S.A. Report - see Act of May 27, 1878, 20 Stat. 81, Act of February 17, 1879, 20 Stat. 310, and subsequent related acts	115,561.29
-Expenditures from 1861-1870 "Insurance, transportation, etc. of annuity goods and provisions for Pawnee, Ponce, and Yankton Sioux"	32,283.11

(c) Lack of documentation as to proof of item or tribal benefit.

-Building material	\$ 7,088.52
-Expenses of Indian delegations	891.30
-Payment of deprecation claim	5,795.75
-Schoolhouse, etc.	1,877.89
-Transportation, etc. of supplies	<u>2,094.55</u>
Total	\$1,343,978.20

Gratuitous Offsets

45. Course of Dealings. Section 2 of the Indian Claims Commission Act gives the Commission the discretionary authority, with certain exceptions, to set off against any award herein all or any part of monies or other property given or expended gratuitously for the benefit of a claimant tribe by the United States if the Commission finds ". . . that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action."

The Commission has carefully reviewed the record and has concluded that the record as a whole reflects a longstanding course of conduct

on the part of government officials and other employees at the agency level that is indicative of mismanagement, maladministration, and fraud in the handling of gratuitous expenditures intended for the benefit of the Yankton Sioux tribe.

Between 1859 and 1901, 17 individuals served as the Yankton Sioux Indian agent. None served with any particular distinction and most were dismissed or resigned their positions under questionable circumstances. Since the Indian agent was primarily responsible for the administration of large amounts of Indian funds, goods, and services, he was continuously exposed to the grave temptation to deal dishonestly. The furnishing of supplies and services to Indian reservations was an important economic activity of a newly created territory, and the agent's purchasing authority and his ability to influence the appointment of the agency trader gave him a measure of political power. Thus, if so inclined, the Indian agent was in a position to practice widespread fraud.

The record herein is replete with examples of such fraud, corruption, and other questionable practices that transpired during the 42 year life span of the Yankton Indian agency. The following are a few of the more notorious episodes attributable to actions of certain agents:

- (1) Continuously diverting goods intended for the Indians to his own purposes.
- (2) Deliberately selling items to the Indians which they were entitled to receive under the provisions of the 1858 treaty.



(3) Purchasing large quantities of building materials which subsequently cannot be found.

(4) Employing fictitious agency personnel and pocketing the pay.

(5) Utilizing Indian funds to pay for services rendered to the agent or other agency employees.

(6) Falsifying vouchers or using blank vouchers that were subsequently filled in to reflect inflated prices.

(7) Ordering exorbitant quantities of goods and supplies beyond the apparent needs of the tribe without any showing of a resulting tribal benefit.

(8) Purchasing goods and supplies on the open market in absence of competitive bidding as required by regulations.

(9) Kickbacks from inflated salaries of agency employees.

(10) Trafficking in Indian allotments and deprecation claims.

(11) Awarding favorable Indian leases to cronies and relatives at ridiculous prices.

(12) Destroying agency records and account ledgers in an apparent attempt to thwart official investigations.

(13) Deliberately neglecting the best interest of the Indians.


The Government did little to prevent the fraudulent activities of the Indian agent. Prior to 1873, the Indian Service failed to provide for regular, systematic investigations of the administration of the agencies. The few investigations which did occur were made on an ad hoc


basis after the damage had been done. By the Act of February 14, 1873, 17 Stat. 463, Congress provided for full-scale investigations of Indian agencyships twice each year. While these investigations frequently revealed dishonest conduct, they generally resulted only in the removal of the agent and did not restore to the tribes the money and goods which they had lost.

Having considered the nature of this claim herein, the matters outlined above, and the entire course of dealings and accounts between the United States and the plaintiff tribe, the Commission has concluded that the defendant is not entitled to any credit for gratuitous expenditures.

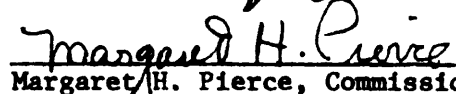
Conclusion

46. Final Award. The Commission, having determined that the defendant is liable to the plaintiff tribe in the amount of \$15,826,485.50, less payments on the claim of \$556,560.67, the plaintiff is entitled to a final award against the defendant herein in the amount of \$15,269,924.83.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner