

BEFORE THE INDIAN CLAIMS COMMISSION

THE PILLAGER BANDS OF CHIPPEWA INDIANS)	
IN THE STATE OF MINNESOTA,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 144
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 25, 1973

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings number 1 through 12, previously entered herein, Pillager Bands of Chippewa Indians in the State of Minnesota v. United States, 19 Ind. Cl. Comm. 500 (1968), and those numbered 13 through 17, at 21 Ind. Cl. Comm. 1 (1969).

18. Description. The land to be valued is identified as Royce 269. The date of valuation is April 7, 1848, the date of proclamation of the treaty of cession of August 21, 1847, 9 Stat. 908. The tract is located in what is now west central Minnesota and is bounded on three sides by rivers. The Leaf and the Crow Wing Rivers form the northern boundary, while the Long Prairie River runs along the southern boundary. The Long Prairie River also flows north along the eastern boundary, joining the Crow Wing River in the northeast sector of the tract. The western boundary is a straight line, beginning at the south end of Otter Tail Lake in the northwest sector and running directly south to a point west of a series of lakes which are the source of the Long Prairie River. Elevation above

sea level is approximately 1,000 feet in the eastern portion, and it rises to points between 1,200 and 1,500 feet in the northern and western sections of the tract. The land area includes parts of four present-day Minnesota counties: Otter Tail, Wadena, Todd, and Douglas.

19. Classification of Royce 269. Royce 269 can be classified as follows:

<u>Classification</u>	<u>Acreage</u>
White and Norway pineland	58,384
Mixed pineland	15,740
Total pineland	74,124
Prairie land	30,000
Northern Hardwood	423,876
Oak and Oak openings	<u>270,000</u>
Total land acreage	798,000
Water	<u>16,500</u>
Total Royce 269	814,500

20. Soils. The basic soil materials in the tract were deposited by glaciers in the Ice Age, with vegetation or top soil forming thereafter. Approximately one-half of the land in the tract was composed of good soil, with medium texture, and well drained. There was extensive vegetation and trees, including oak and other hardwoods. Substantial portions of this land, especially that in oak openings or river valleys, were considered by the settlers to have desirable soil for agricultural purposes. Additionally, the presence of hardwood trees was regarded by the settlers as evidence of good agricultural soil. While utilization of forest land for agricultural pursuits necessitated clearing of the land, the trees supplied the timber needs of the settler for fuel and construction.

There were approximately 100,000 acres of water, marsh and swamp. There were also approximately 300,000 acres which consisted of a dark soil, excessively drained, with gravel within 18 inches of the surface at times. However, this land was suitable for common crops, hay or pasture. The remaining land included the medium to fine textured prairie land which was high quality agricultural land.

21. Climate. A four season climate prevails in Royce 269, making it suitable for habitation, for timber operations, and for agriculture. The tract has a yearly average temperature of 41°, with an average temperature of 59° from April to September and an average of 23° from October to March.

The growing season generally extends from the second or third week in May to the second or third week in September. Precipitation is adequate in the crop growing season, being lightest in winter and heaviest in June, July and August. The average annual precipitation in the state is approximately 23.5 inches, with about 17.5 inches falling in the warmer season of April to September.

22. Population. In 1849 Minnesota was established as a territory covering a vast area stretching from east of the Mississippi River, west to the Missouri River, and including most of present day North and South Dakota. The entire territorial population in 1849 was 4,680, which by 1850 had increased to 6,077. The population of other nearby states far exceeded that of Minnesota. In 1850 Michigan had a population of 397,564; Iowa had 192,214; Missouri had 682,044; and Illinois had 851,470.

Most of the population in Minnesota (aside from that in the Red River Valley to the northwest) was located in the southeast portion of the state.

23. Transportation - Water and Trails. In 1848 there was steamboat travel on the Mississippi River but only as far north as the Falls of St. Anthony (Minneapolis). It was not until 1850 that the smaller steamers went north of that point. Water transportation was available for smaller craft along the Leaf, Long Prairie, and Crow Wing Rivers. This river system joined the Mississippi River east of Royce 269.

Roads were little more than trails in 1848. The ox cart was a popular means of conveyance, but the costs of transportation by cart were high. A widely used trail, established first by the fur traders, ran between St. Paul on the south and Pembina on the Red River, near the international boundary. Other primary trails included one running north from St. Paul along the Mississippi River to the Crow Wing River; one starting at St. Cloud, reaching the Sauk River and then running north, passing west of Otter Tail Lake; and one starting at the Crow Wing River but traversing west to Otter Tail Lake, running north of the tract.

Roads could not be opened in Indian land until Indian title was extinguished, and, until Minnesota became a state, public land grants for roads were not available. During the territorial period, however, a network of roads was developed, although most of them were situated in southern Minnesota. The military constructed a number of roads in the territorial period, one from St. Paul to Superior, Wisconsin, with others extending into the Minnesota Valley and south to Iowa and Illinois.

24. Railroads. As early as 1847, plans were outlined for the construction of two primary railroads, one from Lake Superior and one from St. Paul, both to run west and meet at the Red River at a point near Fergus Falls. Thus, by 1848 it was known that railroads would ultimately operate in Minnesota. Proposals were submitted to Congress in 1849 for the approval of construction of a railroad from the head of navigation of the Red River by way of the mouth of the Crow Wing River, east to the head of Lake Superior, or from Breckenridge, by way of Brainerd to Duluth. By direction of Congress, an expedition was organized pushing westward from St. Paul in 1853 to survey a northern route for a railroad. This line was to run west from St. Paul across Minnesota to the Red River of the North and thence westward to the Pacific Ocean. The route later became the Great Northern Railroad, chartered by Minnesota in 1856 and by Congress in 1863. It is now a part of the Burlington Northern Lines.

The Minnesota territorial legislature had chartered 27 railroads between 1853 and 1857, although many of them later failed in the general financial panic of 1857. In 1858, the Minnesota legislature granted a \$5 million loan to aid railroad construction in Minnesota. Congress granted 4.5 million acres of land in 1857 to aid in the construction of railroads over routes in Minnesota. However, the first railroad did not begin operation in Minnesota until 1862 which was 14 years after the valuation date in this case. It started as a ten mile stretch between St. Paul and St. Anthony Falls.

25. Interest Rates. In 1848 the interest rate on short term money

in the important money markets, such as Boston and New York, was 12 to 15 percent per annum, declining to a range of 7 to 10.5 percent in 1849, and maintaining an average between 6.5 and 9 percent in 1850. In 1848, Minnesota was still dependant in part upon a system of barter or the allowance of credits to obtain basic commodities. A money economy was, however, utilized in part and terms were reached by the parties to the transaction. From 1849 to 1857, when Minnesota was a territory, the legal rate of interest was 5 percent a month or 60 percent a year, although the prevailing rate for commercial loans varied from 3 to 5 percent a month.

26. Area Ceded to Menominee Indians. Following the treaty at Leech Lake on August 21, 1847, 9 Stat. 908, when the plaintiffs ceded Royce 269 to the defendant, the United States made a treaty with the Menominee Indians on October 18, 1848, 9 Stat. 952, whereby the subject tract was ceded to the Menominee in exchange for the land of the Menominees in Wisconsin. However, the Menominees refused to leave Wisconsin or occupy Royce 269. Thereafter, by treaty of May 12, 1854, 10 Stat. 1064, the subject land was receded by the Menominees to the United States. Accordingly, the tract continued to be Indian land until 1854 when the United States reacquired it from the Menominees. However, it was not opened for white settlement until 1864.

27. Agricultural Development. Royce 269 was frontier country in 1848. The primary commodities included furs, game, fish, fowl, wild rice, cranberries and other natural products which were free and available

to trappers or the Indians. The nomadic trappers did not buy land but regularly moved from place to place.

Development of agricultural pursuits in the subject tract, indeed in the entire state, was at best in its infancy in 1848, and farming was conducted on a subsistence level. The Census of 1850 listed a total improved or unimproved farming area of 28,881 acres in the state, with only 5,035 acres under cultivation. The number of farms was set at 340, nearly all located in southeast Minnesota. Between 1854 and 1858 a few scattered farms existed in or near Royce 269, according to General Land Office survey notes. Those farms were near St. Cloud or Sauk Center, in Wadena and Long Prairie, and a few situated in the St. Croix Valley, east of the tract.

By 1855 the area under cultivation in Minnesota tripled to 15,000 acres. The principal exports at that time included furs, cranberries and lumber. Wheat, corn and other basic food commodities were imported primarily by river steamer from areas south of the state. These food commodities were utilized in large part by army personnel at Ft. Snelling, a post located at the confluence of the Mississippi and Minnesota Rivers, near present day Minneapolis and St. Paul. While Minneapolis is foremost as a flour milling center today, it was not until 1854 that the first commercial flour mill was established at the Falls of St. Anthony (Minneapolis); and it was not until 1858 that the first milled flour was exported from the state.

28. Development of Lumber Industry. In the valuation period white pine was the primary type of lumber used by the building industry. Substantial stands of white pine were found in the north-central and northeastern parts of Minnesota, including Royce 269, where the pineland was located in the northeastern section. The subject area was near important streams, and the entire area was drained by the Mississippi River. Thus, pine logs from Royce 269 could be sent to sawmills and lumber markets at or near locations on the Mississippi such as the Falls of St. Anthony (Minneapolis) and St. Paul.

In 1848 Minnesota was strategically located for supplying the lumber markets of comparatively treeless states west and south, such as the Dakotas, Iowa, Kansas and others. However, Michigan and Wisconsin supplied lumber for mid-western needs while Maine, New York and Pennsylvania supplied the bulk of commercial lumber for the eastern states. In 1849 Minnesota produced lumber worth \$57,800.00, while Maine produced lumber valued at \$5,872,573.00, New York \$143,126,759.00, Pennsylvania \$7,729,058.00, and neighboring Michigan had a lumber output valued at \$2,464,329.00. With increased demands for building construction, the value of the Minnesota lumber crop jumped to \$2,500,000.00 in 1853.

The first saw mill in Minnesota was constructed in 1820 by military personnel at Fort Snelling, near Minneapolis. Commercial lumbering in Minnesota began about 1839 at Marine on the St. Croix River, near the present-day Minnesota-Wisconsin boundary. Stillwater, also on the St. Croix River, was a primary lumber center in 1850. In 1851 a boom was constructed

up river between Taylor's Falls, Minnesota, and Osceola, Wisconsin, and in 1856 a boom was also constructed about five miles above Stillwater.

Following the 1848 cession, the Falls of St. Anthony (Minneapolis) became a lumber center, drawing log stocks from upriver Mississippi sources, including Royce 269. As early as 1837, the site of the Falls of St. Anthony was preempted as a desirable location for sawmills. In 1848 a commercial sawmill was operating above St. Anthony Falls, and two more mills were built in that vicinity in 1849. One of the St. Anthony mills produced 1.2 million board feet of lumber in 1850. In 1851 boom companies were organized to collect the logs coming down the Mississippi River from the upriver pineries. A dam was constructed which was capable of holding 10 million board feet of logs. In 1854 there were five mills in St. Paul. By 1856 eight mills in the St. Anthony Falls area were cutting 12 million board feet per year.

The St. Anthony mills initially acquired log stocks from the Rum River country, ceded by the treaty of July 29, 1837, 7 Stat. 536. Log stocks from Royce 269 were not legally available until after the title of the Menominee Indians was transferred to the United States in 1854.

With the increase of population to the south, demand for timber rose. Mills were constructed at river ports as far down the Mississippi River as St. Louis. Logs were floated down that river as early as the 1840's, and in the spring of 1856, 40 million board feet of logs were floated down the Mississippi from the upriver pineries and 120 million board feet of logs were taken out of the Rum River area. In 1857, St. Anthony exported 3 million board

feet of lumber and 31 million board feet of logs. By 1858 the mills at St. Anthony had a capacity of 60 million board feet of lumber per year. Thereafter, lumber production increased with the national increase in population and the settlement of areas in and close to Minnesota.

29. Sales. The first public sales of pinelands in the St. Croix Delta in Minnesota occurred in July of 1848. The sales were made through the Stillwater or Cambridge Land District, whose territory included land lying north and east of the Mississippi River. The demand for land through public cash sales was very light in the St. Croix area during 1848 and only 9,098 acres were sold for cash from July to September of that year. However, there were approximately 14,700 acres sold in 1849 through the use of military warrants.^{1/} It took some 10 years to sell about 1.3 million acres of pineland in the St. Croix Delta, of which 415,146.63 acres brought \$1.25 per acre cash and 692,542 acres were purchased for substantially less than \$1.25 by the warrant system.

In 1853, the St. Cloud Land District was created from the western part of the Cambridge District which was adjacent to but later included the subject land when the land district was extended west of the Mississippi River by the Act of 1854. Between 1853 and 1857 a total of 339,754 acres were sold, of which 101,154 acres were sold for cash at \$1.25 per acre and 238,600 acres were sold for warrants. About 70 percent of the

^{1/} Land warrants had been issued to war veterans for the purpose of allowing them to acquire public lands which had been opened to entry. Veterans not wishing to settle on public lands sold their warrants for substantial discounts. Military warrants sold at prices ranging from 40 cents to 90 cents per acre.

5,859,000 acres of public land sold in Minnesota from 1848 to 1858 was purchased with military warrants.

In addition to public land sales and warrant sales, early timber purchases were also made with scrip. Ezra Cornell made a number of purchases under the 1862 Land Grant College Act, 12 Stat. 503. The Land Grant Act granted to each of the non-public land states 30,000 acres of public land for each Senator and Representative. The revenue from sales of the land was to be invested and the income therefrom utilized for the support of a college or colleges. States with insufficient public land received scrip in lieu of land. The scrip was to be sold and the owner could use it at the rate of \$1.25 per acre to locate on public land then open to entry. Many states glutted the market by simultaneously offering their scrip and the price was depressed. State scrip often sold at a consideration of 50 to 60 cents an acre. In 1865 and 1866 Mr. Cornell bought, on behalf of Cornell University, scrip from New York State at prices averaging between 50 and 60 cents an acre. He used the scrip to acquire 499,126 acres of pineland in Wisconsin and 7,968 acres of pineland in Minnesota. In 1871 Mr. Cornell sold about half of his acreage, about 250,000 acres, for a consideration of \$1,100,000, or, an average of \$4.40 an acre. The purchasers had the right, however, to select the most choice tracts in small 80 acre lots and were also given the right to extend payment therefor over a 10 year period at 6 percent per annum interest.

30. Valuation of Plaintiffs. Mr. Harlan Dixon, Realtor and Mayor of

Clarissa, Minnesota, was an expert witness for the plaintiffs. He referred only to present day values of land in Royce 269 and not to the fair market value of such land in 1848. Mr. Dixon stated that he is familiar with the quality of the soil and has considered all current factors concerning evaluation, such as the type and use of the land, income therefrom, as well as demand and sales of farmland; and that he has concluded that land in Royce 269 is more valuable on present day markets than land in the adjacent Royce 268^{2/} and many other tracts in the state. Mr. Dixon furnished no computations, sales data or other evidence which would support his conclusions as to the valuation of land in Royce 269.

31. Valuation of Defendant. Mr. Bernard C. Meltzer, a real estate appraiser and counselor, was the expert witness for the defendant. He utilized three primary methods in valuing Royce 269. The first involved consideration of any comparable sales of like properties in a time interval related to the date of appraisal. Mr. Meltzer concluded that the comparable sales method could not be applied herein because there were no comparable market transactions in 1848 in the general area under consideration. However, sales of land in later years involving the public domain, railroad grants and state-owned land were considered by the witness and discounted back to 1848 values.

^{2/} Royce 268 is the land involved in the claim of the Chippewa Indians of the Mississippi River and Lake Superior, Docket 18-T. In that case the Commission determined that the 1,104,000 acres of Royce 268 had a fair market value, as of April 3, 1848, of \$600,000.00, 25 Ind. Cl. Comm. 146, 175 (1971).

Sales of public lands by the federal government through the St. Cloud and Cambridge land districts were, in the first instance, for choice land in the present area of St. Paul, Minneapolis and in the St. Croix Delta. Such sales, usually at \$1.25 per acre, involved white pine areas near waterways or were for farmland in southern Minnesota, including choice areas of prairie. The sales at \$1.25 per acre were sparse in the 1850's, more numerous in the 1860's and remained numerous through the early 1870's. The \$2.50 per acre sales, with a mid-point of concentration of sales in 1873, pertained primarily to land excepted from railroad grants. Railroads were granted odd numbered sections along their rights of way, and the even numbered sections were retained by the Federal Government and offered for sale at a minimum price of \$2.50 an acre.

Mr. Meltzer found that the sales of land at \$1.25 per acre had a concentration or average midpoint in the year 1865, or seventeen years after the 1848 appraisal date. Considering that the land values appreciated at an average rate of 10 percent per year, he applied a 10 percent discount to relate the 1865 prices to 1848. The discounted value for the \$1.25 per acre sales was \$0.2473. He likewise discounted the \$2.50 per acre sales from 1873 to 1848 at the same 10 percent rate to arrive at an 1848 value of \$0.2308.

Mr. Meltzer also found that the midpoints of concentration of sales of land by the railroads and Minnesota were 1878 and 1880, at \$4.00 and \$5.50 per acre, respectively. A 10 percent per annum discount of these figures resulted in 1848 values of \$0.2292 and \$0.2670 per acre. In conclusion,

Mr. Meltzer found that the overall average price per acre under the first method was \$.2425 per acre for the 814,500 acres, or a total value of \$203,625.00.

The second method was based upon prices paid for various types of land with two primary potential uses, either as timberland or farmland. The various sales were then discounted back, as in the first method, to 1848. The following conclusions were reached with respect to 1848 values for the various types of land:

<u>Type of Land</u>	<u>Acreage</u>	<u>Price per acre - 1848</u>	<u>Value</u>
Pineland	30,000	\$ 1.00	\$ 30,000.00
Prairie	30,000	.50	15,000.00
Northern Hardwoods	446,000	.15	66,900.00
Oak Openings	270,000	.25	67,500.00
Jackpine	22,000	.25	5,500.00
Water	<u>16,500</u>	Nominal	<u>-----</u>
Totals	814,500		\$184,900.00

In method No. 3 Mr. Meltzer also considered such factors as the distance of pineland from waterways, proximity of prairie or other land to trails or roads and the general proximity of all land to planned railroads. Using similar methods of analysis as in previous computations, including sales data and discounting back to 1848, the following evaluations were made:

Pineland within one mile of the Crow Wing, Long Prairie and Leaf Rivers

comprised an area of 13,000 acres, which Mr. Meltzer considered was worth \$1.25 per acre, or \$16,250.00. Pineland in a four mile strip from waterways totaled 17,000 acres, which he valued at \$.85 per acre, for a total value of \$14,450.00.

The most marketable prairie land near roads or transportation included 5,000 acres, which Mr. Meltzer valued at \$1.00 per acre, or \$5,000.00; and the remaining 25,000 acres of prairie land were valued at \$.40 per acre, for a total value of \$10,000.00.

Land in oak openings within one mile of transportation included 40,000 acres, while there were 40,000 acres within a "four-mile influence" area and 190,000 acres in less favorable areas. These categories were valued by Mr. Meltzer at figures of \$0.50, \$0.30, and \$0.20 per acre for a total of \$65,000.00. Of the 446,000 acres of northern hardwoods, there were 111,000 acres favorably situated with an estimated value of \$.20 an acre for a total of \$22,200.00, while 335,000 acres had less marketable locations and were valued at \$.15 per acre, for a total of \$50,250.00.

Jackpine covered 22,000 acres at \$.25 per acre, for a total of \$5,500.00; and the land under water, 16,500 acres, at a nominal amount of \$.05 per acre, had a total value of \$825.00. Thus, Mr. Meltzer reached a total valuation of \$189,475.00 under method No. 3.

32. Highest and Best Use. The Commission concludes that of the 798,000 acres of land in the subject tract, there were 74,124 acres that had a highest and best use for commercial lumbering; and that

the remaining area of 723,876 acres had a highest and best use for farming or other agricultural pursuits.

33. Fair Market Value. Upon the foregoing findings of fact and the record as a whole the Commission concludes that the subject tract, as a unit, had a fair market value of \$425,000.00, or approximately 52 cents an acre, as of April 7, 1848.

34. Consideration. Article 4 of the 1847 treaty, 9 Stat. 908, provided that in consideration for the ceded lands the United States would, for five years, furnish to the Pillager Band of Chippewas certain enumerated articles. In addition, the Pillagers were to receive beaver traps and northwest guns. In fulfillment of the obligations under Article 4, the United States expended the following:

Annuity goods	\$18,501.64
Traps and guns	911.92
Transportation costs	<u>293.38</u>
Total	\$19,706.94

35. Conclusion. The payment of consideration in the total amount of \$19,706.94 for lands having a fair market value of \$425,000.00 was so grossly inadequate as to render that consideration unconscionable within the meaning of clause 3, section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050.

36. Gratuitous Offsets. The gratuitous offset claims of the defendant against the Pillager Bands of Chippewa Indians were settled for the period from February 22, 1855, to March 15, 1965, in Minnesota Chippewa Tribe v. United States, Dockets 18-B and 18-N, 15 Ind. Cl. Comm.

466 (1965). Defendant now asserts that it is entitled to offset gratuities in the amount of \$1470.00 representing the following expenditures:

Hunting and fishing equipment	1853	\$ 100.00
Provisions for Indians	1849	300.00
	1850	310.00
	1853	<u>760.00</u>
Total		\$1470.00

These claimed amounts are listed in the General Accounting Office Report of September 26, 1963, at pages 90 and 91. There is no indication of the nature of the provisions supplied. Defendant has not submitted any representative vouchers or other supporting documents with respect to any of the claimed offsets. No evidence has been presented concerning the number of Indians who shared in or otherwise benefited from the claimed gratuities. The defendant has failed to prove that the gratuities were a tribal benefit, and the claimed gratuitous offsets of \$1470.00 are disallowed.

36. Award. The plaintiffs are entitled to recover the amount \$405,293.06, representing the fair market value of their land, \$425,000.00, less the consideration of \$19,706.94 paid therefor. Accordingly, a final award in this amount will be entered.

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Brantley Blue
Brantley Blue, Commissioner

Jerome K. Kuykendall
Jerome K. Kuykendall, Chairman

John J. Vance
John J. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner