

BEFORE THE INDIAN CLAIMS COMMISSION

LAWRENCE ZANE, et al., on behalf	)	
of THE WYANDOTTE TRIBE AND	)	
NATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket Nos. 212 and 213
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 5, 1976

Appearances:

Rodney J. Edwards,  
Attorney for Plaintiffs.

James M. Upton, with whom was  
Assistant Attorney General  
Wallace H. Johnson, Attorneys  
for Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

The Wyandotte Tribe of Indians, plaintiffs herein, claim additional compensation for reservations ceded to the United States in four separate treaties between 1818 and 1842. The plaintiffs, who are the same in both Dockets 212 and 213, have the right and capacity under Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050) to bring and maintain these actions before the Indian Claims Commission in a representative capacity on behalf of the Wyandotte Tribe of Indians.

The plaintiffs had title to six tracts of reservation land situated in northwestern Ohio and southeastern Michigan and a leasehold interest in two tracts of land also located in southeastern Michigan. The lands involved have been designated as Areas 171, 211, 212, 213 and 259 by Charles C. Royce on his Ohio Map No. 1, and as Areas 95, 96 and 260 on his Michigan Map No. 1, in the 18th Annual Report of the Bureau of American Ethnology, Part II, Indian Land Cessions, and they will be referred to hereafter by their Royce Area designations.

Since the parties are in agreement that plaintiffs had reservation title to the subject lands, no hearing on title was necessary. The valuation issue was tried before this Commission on July 23 and 24, 1974, and proposed findings and briefs were filed by the parties. In our orders of February 28, 1973, and January 2, 1974, setting the case for trial, we ordered that only the issue of value be tried in this proceeding. Defendant accordingly did not brief the issue of consideration paid.

Plaintiffs and defendant were each assisted by expert witnesses in developing their respective cases. Plaintiffs presented the testimony of appraiser Bruce Pickering of Columbus, Ohio, on valuation of the Ohio reservation lands; Helen Tanner, an historian of Ann Arbor, Michigan, on historic and economic data with respect to the Ohio reservation lands; Robert Warner, a history professor, of Ann Arbor, Michigan, on historic and economic data concerning the Michigan reservation lands; and John B. Carpenter of Ann Arbor, Michigan, an appraiser, on valuation of the Michigan reservation lands. The defendant's expert appraiser was Richard B. Hall of Washington, D. C.

### I. Background

As a result of the Treaty of Greenville, August 3, 1795 (7 Stat. 49), between the United States and the Wyandots and other Indian tribes, approximately two-thirds of the present State of Ohio was ceded by the Indians to the United States and opened for white settlement. By subsequent treaties with the Indians of July 4, 1805 (7 Stat. 87), November 1, 1807 (7 Stat. 105), September 29, 1817 (7 Stat. 160), and October 6, 1818 (7 Stat. 189), the remainder of the state was ceded and opened for white settlement, except for specific enclaves in the northwestern part of the state which had been set apart as reservations for the Indians. The Ohio lands involved in these proceedings, which were reserved for the Wyandots, were Royce Areas 171, 211, 212, 213 and 259.

In Michigan, Royce Area 95 (Brown's Town) and Royce Area 96 (Maguagua) were established as Wyandot reservations by Act of Congress dated February 28, 1809 (2 Stat. 527). The 1809 act provided that the reservations should be set aside for the Wyandot Tribe for a lease term of 50 years.

The Wyandots in Michigan subsequently ceded their two ancient villages to the United States on September 20, 1818 (7 Stat. 180), in a treaty arranged by Lewis Cass, the Supervisor of Indian Affairs at Detroit. At the time of the cession of these leasehold reservations, there were approximately 41 years remaining on the unexpired lease term. The treaty was proclaimed on January 7, 1819. In return for this cession the Wyandots were awarded approximately 5,000 acres, now known as Royce Area 260. In a treaty signed

March 17, 1842 (7 Stat. 607), and proclaimed October 5, 1842, this reservation land was ceded by the Wyandots to the United States.

Following the aforementioned exchange of plaintiffs' two Michigan leaseholds in 1818, plaintiffs' reservations were ceded by a succession of three treaties signed in 1832, 1836 and 1842. The 1832 treaty (7 Stat. 362), by which Royce Area 171 was ceded, provided that it was to become effective when ratified. The three other treaties had no such proviso, and were effective when signed. Therefore, the proper valuation dates for the land cessions involved in these proceedings are:

Ohio Tracts

<u>Royce Area</u>	<u>Valuation Date</u>	<u>Reference</u>
Royce Area 171	April 6, 1832	7 Stat. 364
Royce Area 211	April 23, 1836	7 Stat. 503
Royce Area 212	April 23, 1836	7 Stat. 503
Royce Area 213	April 23, 1836	7 Stat. 503
Royce Area 259	October 5, 1842	7 Stat. 607

Michigan Tracts

<u>Royce Area</u>	<u>Valuation Date</u>	<u>Reference</u>
Royce Area 95	September 20, 1818	7 Stat. 49
Royce Area 96	September 20, 1818	7 Stat. 49
Royce Area 260	September 20, 1818, and October 5, 1842	7 Stat. 49 7 Stat. 607

## II. Ohio Lands

### a. Highest and Best Use

Royce Areas 171, 211, 212, 213 and 259 are all located in northwestern Ohio. Royce Area 171 is a nearly square tract containing 16,000 acres, known as the "Big Spring Reservation." Royce Area 211 is an almost exactly rectangular area twelve miles deep and five miles across from east to west, known as the "Five Mile Strip." Royce Areas 212 and 213 were located in Crawford County eight miles east of the northeast corner of the "Five Mile Strip," a little more than 20 miles in a straight line from Upper Sandusky and about nine miles northeast of Bucyrus. Royce Area 212 (Section 35) was one square mile containing 640 acres, and Royce Area 213 was a contiguous quarter section containing 160 acres. Royce Area 259 contains 109,144 acres, and is the largest tract to be valued in this proceeding. The tract is located about 60 miles south of the Lake Erie shore and occupies most of present Wyandot County. The town of Upper Sandusky is in the center of this reservation.

The subject lands, with the exception of Royce Areas 212 and 213, contained fertile lands with soils and terrain conducive to agriculture. The growing season lasts about five months, and the precipitation pattern in the area is favorable to agriculture. Royce Areas 212 and 213 were marshland, suitable for cranberry growing.

Ohio was admitted to the Union in 1803, and was the first state to be formed from the Northwest Territory. Its development was rapid in all respects. Population increased rapidly, and by 1830 was almost one million persons, while by 1840 it had grown to about 1,500,000. Transportation in the form of roads, and waterways, including the Great Lakes and a system of rivers and canals, were developed. Numerous railway charters were granted

between 1832 and 1842, and construction had started by the latter date. Manufacturing and commercial activity flourished, especially in southwest Ohio, and agriculture developed rapidly throughout the state.

The economy was marked by boom periods followed by depressions and deflationary periods in cyclical patterns. The overall trend of the economy was unmistakably upwards, however, and an optimistic long-range outlook was justifiable.

The parties are in agreement, except as to the town of Upper Sandusky in Royce Area 259, that the highest and best use of the subject lands was for agriculture.

As to the town of Upper Sandusky, the evidence supports the contention of plaintiffs that the town, which enjoyed a strategic location at the intersection of two major transportation routes, and which had been developed as a town by the Indians, had a highest and best use at the valuation date for town lots.

We have therefore concluded, on the basis of the evidence, that the highest and best use of the subject Ohio lands was for agricultural purposes, except for the 600 acres in Upper Sandusky, which had a highest and best use for town lots to be developed for residential and commercial purposes.

b. Valuation

The three Ohio reservations were enclaves in Wyandot and Crawford counties when they were ceded. Records of land sales from these counties were used by plaintiffs' appraisal expert to obtain data of comparable sales.

The sales considered were of tracts ranging in size from 25 to 640 acres, but for the most part were in the 80 to 160 acre range. Sales data

for the period 1829 through 1842 shows a trend of rising prices, although from year to year the prices had ups and downs. For example, the average per acre price in 1829 was \$3.05, while by 1842 the average price per acre was \$6.18. In eight of the intervening years the average price advanced over that of the previous year, while in five years it declined.

In 1832, the year of the first cession of plaintiffs' Ohio lands, the average price of comparable sales was \$3.86 per acre. In the year of the 1836 cession the average was \$3.76 per acre. In the year of the 1842 cession the average price of comparable sales was \$6.18 per acre.

Comparable sales are the preferred yardstick for determining value. The rate at which the ceded lands were disposed of is a factor indicative of demand which may also be considered in determining fair market value.

Of 16,000 acres ceded by plaintiffs in 1832, a two-day sale in that year disposed of 2,368 acres, and an additional 11,185 1/2 acres were disposed of by private entry through 1836. Over 500 acres were set aside as school lands. Those figures leave approximately 3,000 acres undisposed of at the end of 1836, which approximates the 3,840 acres in the tract which plaintiffs' expert describes as bog and swamp.

The 38,400 acres of Royce Area 211 lands, which were ceded in 1836, were quickly purchased after they had been put on the market by the Government. In five days of sales in 1836, 18,732 1/2 acres were sold. The sales were stopped then because the Indians were disappointed with the average price of \$3.385 per acre which they were receiving. The sales were resumed in 1838, and all the remaining land was sold in under two weeks time.

Royce Areas 212 and 213, also ceded in 1836, contained 800 acres. The two tracts were sold in 1839 at \$1.25 per acre.

The 109,144 acres of the Wyandot Reservation, which were ceded in 1842, also were disposed of readily once they were put on the market by the Government. All the lands were purchased at public sales or through private entry within three years of being placed on the market.

We now address ourselves to the parties' valuations, as tested by the criteria of such leading cases as Miami Tribe v. United States, 146 Ct. Cl. 421, 175 F. Supp. 926 (1959), aff'g in part, rev'g in part, Dockets 67, et al., 4 Ind. Cl. Comm. 346 (1956), and Nez Perce Tribe v. United States, 176 Ct. Cl. 815 (1966), cert. den. 386 U.S. 984 (1967), aff'g in part, rev'g in part, Docket 175-B, 13 Ind. Cl. Comm. 184 (1964).

Plaintiffs' appraisal expert for the Ohio lands, Mr. Pickering, relied on data of sales of comparable lands in arriving at his conclusions as to the fair market value of the ceded Ohio lands. After analysis of 1800 sales, plaintiffs' expert submitted evidence of 311 sales of comparable lands made during the 1829 to 1842 period.

Mr. Pickering started his calculation with the average price per acre for comparable sales of surrounding agricultural lands for the year of each valuation date. He made two discounts from that price.

The first was for improvements. To determine the percentage of acreage which might have had improvements, the expert used data which showed the ratio of improved to unimproved land sales from 1854, the first year such information was available. The ratio obtained would more than compensate for the improvement factor of earlier years.

The second discount was for soil drainage and the percentage of wooded land. 1854 sales data were again used to help determine the relative effect of these factors on land values, since sales data showed that they did affect prices.

Using this method, Mr. Pickering started with average prices from comparable sales of \$3.86 per acre in 1832, \$3.76 per acre in 1836, and \$6.18 per acre in 1842. Applying his discounting formula to the various ceded tracts, he discounted these comparable sales figures by approximately 21% for the 1832 treaty lands, 29% for the 1836 treaty lands, and 20% for the 1842 treaty lands.

Mr. Pickering decided that the rise in land values was such that it would offset any further discounts, such as for the large size of the reservations (as compared with the comparable sales tracts), as well as for sale expenses.

Mr. Pickering valued 600 acres in the town of Upper Sandusky in Royce Area 259 for sale as town lots. He based his analysis on the prices received for every third lot of Upper Sandusky when they were placed on the market by Government auction in 1845. Mr. Pickering stated that he used the auction sales because he considered them the equivalent of arm's length transactions. Mr. Pickering discounted the 1845 prices by 10% per year to arrive at a figure for 1842. He used the prices which were received for sales of town lots in the comparable, nearby town of Oceola in 1841 and 1842, to confirm his conclusions. Mr. Pickering also made a final 4% discount to allow for sales fees, expenses and contingencies and arrived at a fair market value for the town lots of \$30,430.

Mr. Pickering's conclusions as to value were therefore as follows:

(1) Treaty of 1832, 16,000 acres . . . . .	\$ 44,960
(2) Treaty of 1836, 39,200 acres . . . . .	104,640
(3) Treaty of 1842, 108,544 acres . . . . .	<u>564,974</u>
Total, Ohio	\$714,574

However, plaintiff's counsel, in his brief, took issue with Mr. Pickering insofar as he discounted the comparable sales in arriving at his valuations. Counsel argued that evidence shows that the Wyandot Indians were industrious and exemplary farmers, and the improvements on their lands were at least equal to the improvements on non-Indian lands. Therefore, counsel argued, discounts were inappropriate. While this argument would appear applicable to Mr. Pickering's discount for improvements, counsel did not specify why Mr. Pickering's second discount, for soil and percentage of wooded land, would also be discarded. In any case, counsel arrived at a total value for the Ohio lands as follows:

(1) Treaty of 1832 . . . . .	\$ 61,760
(2) Treaty of 1836 . . . . .	147,392
(3) Treaty of 1842 . . . . .	<u>701,202</u>
Total	\$910,354

Defendant's appraisal expert, Mr. Hall, based his analysis of market value on the prices received by the Government when they sold the lands to the public following the various treaties.

To estimate fair market value on the basis of the foregoing prices, Mr. Hall used a system of discounts to allow for carrying charges, sales

promotion and selling expense, and profit. To determine what discount to apply, Mr. Hall examined a variety of relevant factors as to each tract of land. These factors included investment risk, improvements on the land, the extent of settlement in surrounding areas, the availability of cash or credit, and willing buyers.

Pursuant to this method he determined that the 1832 lands sold for an average price of \$1.30 per acre, and that an adjusted discount of 35% should be applied thereto. Using this formula he arrived at a fair market value for the 1832 tract of \$13,520.

Using the same method for the 1836 treaty lands, Mr. Hall calculated that the average retail price per acre was \$3.38 1/4, and that this figure should be discounted by 25%. Applying this formula he arrived at a fair market value for the 1836 tract of \$99,442.

Mr. Hall varied his approach slightly with respect to the 1842 treaty Ohio tract in order to distinguish between prices received for improved lands and that for unimproved lands. He estimated that about 23,000 acres of improved lands sold for an average of \$3.1165 per acre, and that the remaining lands, which were unimproved, sold at \$2.70 per acre.

He allowed only a 25% discount for the improved acreage, but he discounted the unimproved land by 50%. Working out the consequent calculations, he arrived at a fair market value for the 1842 Ohio lands of \$170,006.

Mr. Hall's conclusions as to value of the Ohio lands thus were as follows:

(1) Treaty of 1832, 16,000 acres . . . . .	\$ 13,520
(2) Treaty of 1836, 39,200 acres . . . . .	99,442
(3) Treaty of 1842, 109,144 acres . . . . .	<u>177,006</u>
Total, Ohio Lands	\$289,968

We believe that the approach to valuation taken by plaintiffs' expert for Ohio, Mr. Pickering, is acceptable. That approach was based on use of comparable sales, made in the year of valuation, of lands from the immediate vicinity of the subject tracts. Discounts were made from the overall average comparable sales per acre price in order to adjust for factors or qualities which distinguished the subject tracts from the comparable sales tracts. We are not in precise agreement with all the details of Mr. Pickering's calculations, however, as we will explain in our determinations below.

We reject plaintiffs' counsel's approach of using the average price of comparable sales without any discounts. Although the details of Mr. Pickering's discounts may be questioned, the principle used by him, that some adjustments must be made to reflect distinctions between the subject tracts and comparable sales tracts, is correct.

We reject the approach taken by defendant's expert, Mr. Hall, based on the prices received by the Government when plaintiffs' lands were resold to the public. Mr. Hall did not distinguish between the prices obtained at auction sales, and those received from sale at the fixed \$1.25 per acre rate through private entry. As to the auction sales, the evidence fails to show that these were given the promotion or publicity that a

private seller would have expected. Moreover, these sales were all cash, whereas a private seller could have been expected to offer favorable credit terms.

Finally, Mr. Hall's discounts, which he applied to his conclusion as to the retail value of the tracts, tended to be inadequately supported, and excessive. However, although government sales, being based on an artificially established price, are not arm's length transactions, and are not to be considered comparable sales, they are of some evidentiary value insofar as the rate at which lands were disposed of may be indicative of demand for the subject tracts.

Before making our valuation, we will make some initial relevant general observations on the overall situation revealed by the evidence. Ohio was a prosperous state, and was developing rapidly. Transportation and access to markets was good, and population was growing. The area immediately surrounding the plaintiffs' tracts had been developed, and most important, the good agricultural lands had largely been disposed of, so these enclaves in settled areas were attractive. A buyer would have found these tracts desirable, and a seller would have felt himself to be in a good negotiating position. Evidence of comparable sales was available to parties contemplating land transactions.

We will now look at each Ohio tract, commencing with Royce Area 171, valued as of 1832. Plaintiffs' expert valued that tract at \$44,960, while defendant's expert considered it to have a value of \$13,500.

We start with the comparable sales figures used by Mr. Pickering. We think that the discounts he made for improvements and for soil drainage and woodland are reasonable. On the other hand, we think that defendant's argument is valid that some discount should be made to adjust for the size of plaintiffs' tract as compared with the comparable sales tracts. The Court of Claims in Nez Perce, supra, suggested that a discount in the range of 20-25 percent might be applicable to a tract of over a half-million acres. However, in the case of a tract as small and marketable as the 16,000 acres of Royce Area 171, such a discount may be small, no more than 5%.

Finally, we think that Mr. Pickering's estimate of \$1.50 per acre for the bog and swamp lands, which were apparently difficult to sell even at the government price of \$1.25 per acre, was too high.

We conclude, on the basis of the foregoing, that the fair market value of Royce Area 171 on the valuation date in 1832 was \$41,000.

We will now consider Royce Areas 211, 212 and 213, valued as of 1836. We start by observing that the parties' experts were in virtual agreement on their valuation of these tracts. Mr. Pickering assigned the 1836 treaty lands a value of \$104,640, while Mr. Hall's valuation was \$99,442.

As we noted above, we are not in agreement with the method employed by Mr. Hall, while we accept that of Mr. Pickering, with some small reservations concerning detail. In this instance, we feel that Mr. Pickering's conclusion as to value is acceptable, and is supported by the evidence, and we adopt it as our own. We conclude that the fair market

value of Royce Areas 211, 212 and 213 on the 1836 valuation date was \$104,640.

The final Ohio tract to be considered is the 109,144 acres of Royce Area 259, with an 1842 valuation date. The parties' experts are far apart as to the value of this tract. Mr. Pickering's valuation for agricultural lands is \$534,544, Mr. Hall's is \$170,000. In addition, Mr. Pickering valued 600 acres as town lots, with a value of \$30,430.

Mr. Pickering's valuation of agricultural lands includes a premium for improved lands, which adequately takes account of clearing work done by the Indians on their farms, and his valuation of town lots reflects their townsite improvements as well. We find his valuation acceptable, as far as it goes. However, we feel that with a tract of over 100,000 acres, an additional discount for size is called for. Accordingly, we reduce plaintiffs' valuation approximately 10%, a modest discount reflecting the desirable location of the tract in the midst of a settled area, with the consequent likelihood of rapid resale. Thus, we arrive at a value of \$480,000 for the agricultural lands in the tract.

Mr. Pickering's valuation method for the townlots is at variance with his method of valuing agricultural lands. He relied on government auction sales prices of every third townlot in 1845, discounted back to 1842, and used sales of townlots in the comparable, nearby town of Oceola as a check.

We think the valuation process should have been reversed, that the contemporaneous comparable sales of Oceola lots should have been the basis for the determination of value, with the auction sales three years later as a check. But we think the valuation of \$30,430 is supported by

the evidence, and is valid, calculated either way, and we adopt it as our own.

We conclude, therefore, that the fair market value of Royce Area 259 on the valuation date in 1842 was \$510,430.

### III. Michigan Lands

#### a. Highest and Best Use.

Royce Areas 95 and 96 were two 2,500 acre tracts, a few miles apart from one another on the banks of the Detroit River. They were approximately 15 miles south of present day downtown Detroit.

Royce Area 260 contained 4,996 acres, bisected by the Huron River, about five miles west of Royce Area 95.

The soil, terrain and climate of the subject tracts were all favorable to agriculture.

Michigan in 1818 was sparsely settled frontier territory. The population in 1830 was approximately 9,000, and land was abundantly available. However, Royce Areas 95 and 96 were on the road to Detroit. In 1818 Detroit received the first steamship on the Great Lakes.

Development in Michigan during the 1818-42 period was focused on the southeast portion of the state, and in particular on the Detroit area in which the subject tracts were located. Michigan was admitted to the Union in 1837. By 1840, Wayne County, in which Detroit is situated, had a population of 24,173, and was an economically prosperous agricultural area with good access to transportation. In 1842 Royce Area 260 was an enclave in a settled region. The overall economy of the area was developing rapidly, while enduring the cyclical booms and busts common to that epoch.

The parties are in agreement, and we have concluded on the basis of the evidence, that the highest and best use of the subject Michigan lands on the respective valuations dates was for agricultural purposes.

b. Valuation.

The 1818 cession of plaintiffs' leasehold interest in two small tracts in Michigan, Royce Areas 95 and 96, occurred prior to the existence of any substantial market for land in Michigan. Development in the state was just commencing, as evidenced by the first surveys of public lands, which were undertaken in 1816 and 1817. The first public auction in Michigan occurred at Detroit in July 1818, at which about 8,000 acres were sold at an average price of \$2.50 per acre. The only evidence of private sales involved two transactions on Grosse Isle, of 1280 acres at \$3.26 per acre, and 120 acres at \$6 per acre, respectively.

However, by 1842, when Royce Area 260 was ceded in Michigan, there was a market, and there were sales of comparable agricultural lands in the vicinity. Abstracts of 18 sales during the years 1840 through 1842 were introduced into evidence. The inner quartile (i.e., second and third quartiles) of prices during the period was in the range of \$8.33 to \$3.10 per acre. The average price per acre for the 1842 sales was \$4.20.

The parties did not consider governmental resale of the 1818 tracts in their valuations. The Royce Area 260 tract ceded in 1842 had approximately 5,000 acres. When the tract was placed on auction in 1845, over 650 acres of the best lands were sold, at an average price of \$2.05 per acre. Another approximately 1,700 acres were sold by private entry at the Government's \$2 per acre price between 1845 and 1847.

Plaintiff's appraisal expert for the Michigan lands, Mr. Carpenter, relied on comparable sales of agricultural lands in arriving at his conclusions as to the fair market value of the ceded tracts.

The 1818 treaty resulted in the exchange of plaintiffs' 40 year leasehold interest in two tracts totalling 5,000 acres for fee title to similar acreage a few miles in the hinterlands. However, there were exceedingly few sales which could be called comparable at that early period in the settlement of Michigan, and there were no comparable leaseholds.

Plaintiffs' expert based his conclusions on the relatively meager evidence of seven transactions, all but two of which occurred after 1818, and determined that the Royce Areas 95 and 96 lands had a market value of \$5 per acre. On the basis of a complex formula, he estimated the leasehold interest as being 85.8% of that value, thus determining that the total value of the lands on the valuation date was \$21,500.

Mr. Carpenter's estimate of the corresponding value of Royce Areas 260 in 1818 had an even more tenuous basis. He argued that the land had no market value on the valuation date, but referred to nine unspecified sales as indicating that land with river frontage would sell for approximately \$4.50 per acre. He assigned a nominal value of 50¢ per acre to the remaining land, and estimated that the tract was about evenly split between riverfront land and the remainder. Thus he arrived at an estimated market value in 1818 of \$12,000. On the exchange, therefore, he decided that the Indians suffered a \$9,500 loss.

In arriving at his conclusion concerning the 1842 value of Royce Area 260, Mr. Carpenter made passing reference to sales from the 1830's, but based his analysis solely on seven sales made in 1842. He concluded that the tract had a value of \$10 per acre on the basis of those seven sales, even though only one comparable sales tract, of 40 acres, sold for that much. Mr. Carpenter did not explain how the seven cited sales, with a median sales price of under \$6 per acre, could justify his conclusion.

Defendant's appraisal expert, Mr. Hall, in valuing the Michigan tracts exchanged pursuant to the 1818 treaty, decided after examination of all relevant data available, that there was no market for land in Michigan as of the valuation date. He concluded that the exchange of a 40-year leasehold for fee title to a tract of the same size, with both lands equally suitable for agricultural use, gave the Indians full compensation.

In valuing Royce Area 260 as of its 1842 valuation date, Mr. Hall used the same system of analysis that he relied on for his valuation of plaintiffs' Ohio tracts. He used the prices received by the Government when it sold the lands to the public, less various discounts.

Using this method he found that the retail price of the lands was \$2.00 per acre in 1842. However, he decided that a 75% discount was applicable to this tract. He thereby arrived at a fair market value for the 1842 Michigan lands of \$2,500.

In valuing the Michigan tracts, we first consider the 1818 exchange in which the Indians surrendered a 40-year leasehold in two tracts totalling 5,000 acres for fee title to another tract of equal size. It is our view

that the land surrendered by the Indians, athwart the only route from Ohio to Detroit, and close to the latter town, was relatively desirable compared with the similar land a few miles inland in the forest. However, sales data is so scanty that any valuation for 1818 would be extremely speculative. Moreover, it is reasonable to assume that the market for a leasehold would have been negligible with so much virgin land available at that time. We therefore reject the valuation of plaintiffs' expert, based on the theoretical market value of a leasehold.

We are in agreement with Mr. Hall, defendant's expert, that the 1818 exchange by the Government of fee title for a 40-year leasehold was fair, and gave the Indians full compensation for their leasehold interest in Royce Areas 95 and 96.

We turn now to the value of Royce Area 260, ceded in 1842. The parties are far apart in their valuations of this tract. Plaintiffs' expert's valuation is \$50,000, while defendant's expert arrived at a value figure of \$2,500. Defendant's expert's valuation is based on government resale of the land, which method we have rejected for the reasons specified above in our discussion of the Ohio lands valuation.

Plaintiffs' expert's valuation was derived from his conclusion that comparable sales data supported a determination that the land had a \$10 per acre value. However, only one sale of those cited was for as much as \$10 per acre, and the average per acre price for 1842 comparable sales was \$4.20 per acre. We therefore reject plaintiffs' \$50,000 figure as unsupported by the evidence.

In arriving at our conclusion as to valuation of Royce Area 260, we start with the observation that the inner quartile of 1840-42 comparable sales prices was \$3.74 to \$8.33 per acre, and the 1842 average comparable sales price was \$4.20 per acre. We conclude that \$4.20 per acre is a reasonable retail price for acreage such as that which plaintiffs ceded. We think any discounts that might be applicable for a small 5,000 acre tract of this size would be offset by the work done by the Indians clearing the land for agricultural purposes.

We conclude therefore that the fair market value of Royce Area 260 on the valuation date in 1842 was \$21,000.

#### IV. Conclusion

Based on the foregoing conclusions, and the accompanying findings of fact concerning the value proceedings before us, we have reached the following determinations, of the fair market value of plaintiffs' lands on their respective valuation dates:

Treaty of 1818	Royce Areas 95 & 96 leasehold (value no more than Royce Area 260)	\$ -0-
Treaty of 1832	Royce Area 171	41,000
Treaty of 1836	Royce Areas 211, 212 & 213	104,640
Treaty of 1842	Royce Area 259	510,430
	Royce Area 260	<u>21,000</u>
	Total	\$677,070

The consideration paid by the United States was not at issue in this proceeding. The case will now proceed to a determination of the consideration paid for the aforementioned cessions (except that of 1818), and the amount of gratuitous offsets allowable, if any.

Brantley Blue  
Brantley Blue, Commissioner

We concur:

Jerome K. Kuykendall  
Jerome K. Kuykendall, Chairman

John T. Vance  
John T. Vance, Commissioner

Richard W. Yarborough  
Richard W. Yarborough, Commissioner

Margaret H. Pierce  
Margaret H. Pierce, Commissioner