

BEFORE THE INDIAN CLAIMS COMMISSION

LAWRENCE ZANE, et al., on behalf)
of THE WYANDOTTE TRIBE AND)
NATION,)
))
PLAINTIFFS,)
))
v.)
))
THE UNITED STATES OF AMERICA,)
))
Defendant.)

Docket Nos. 212 and 213

Decided: August 5, 1976

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Parties. 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.

2. Statement of Claim. On August 7, 1951, plaintiffs filed a petition in Docket 212 alleging that the consideration paid to them by defendant for the recognized title lands ceded by plaintiffs in treaties negotiated in 1818 and 1842 was unconscionably low. A petition filed on the same date in Docket 213 made similar allegations with respect to recognized title lands ceded to defendant by treaties negotiated in 1832 and 1836. Defendant has denied plaintiffs' allegations.

Plaintiffs' claims concern six tracts of land to which plaintiffs had reservation title, located in northwestern Ohio and southeastern Michigan, and two tracts of land in which plaintiffs had a leasehold interest, located in southeastern Michigan.

3. The Subject Tracts.

(a) Ohio. Under the Treaty of Greenville, August 3, 1795, 7 Stat. 49, representatives of several Indian tribes, including plaintiffs, ceded approximately two-thirds of the land now in the State of Ohio to the United States. See James Strong v. United States, Docket 13-E, et al., 30 Ind. Cl. Comm. 8 (1973). The Ohio areas that are the subject of this claim were subsequently established as reservations for plaintiffs by treaties in 1817 and 1818. These reservations were ceded to the United States in three treaties, made in 1832, 1836 and 1842. Using the numbering system established by Charles C. Royce, these areas in Ohio are identified as follows:

(i) Royce Area 171 was ceded in a treaty signed at McCutcheonsville January 19, 1832, 7 Stat. 364. This reservation had been established by the treaty of September 18, 1818.

(ii) Royce Areas 211, 212 and 213 were ceded by the treaty of April 23, 1836, 7 Stat. 503. The treaty of September 29, 1817, 7 Stat. 160, as modified by the treaty of September 17, 1818, 7 Stat. 178, established the main Wyandotte Reservation (composed of Royce Areas 211 and 259), as well as Royce Areas 212 and 213.

(iii) Royce Area 259 was ceded in the treaty of March 17, 1842, 7 Stat. 607. It was the final Indian land cession in the State of Ohio. It had been established by the treaty of September 17, 1818, supra.

(b) Michigan Tracts. The Michigan lands are designated as the following Royce areas:

(i) Royce Areas 95 and 96 were set aside in the Act of February 28, 1809 for the Wyandottes in the form of a lease for a term of fifty years. The leasehold interest provided by the above statute was terminated by the treaty of September 20, 1818, when the lease still had an unexpired term of approximately forty and one-half years.

(ii) Royce Area 260 was reserved for the Wyandottes by the treaty of September 20, 1818, in consideration of the cession to the United States of the two tracts designated as Royce Areas 95 and 96 above. Pursuant to the treaty of March 17, 1842, supra, Royce Area 260 was ceded to the United States.

4. Dates of Valuation and Acreages. The correct valuation dates and acreages for each of the areas are as follows:

Ohio Tracts

| <u>Royce Area</u> | <u>Acreage</u> | <u>Valuation Date</u> |
|-------------------|----------------|-----------------------|
| Royce Area 171 | 16,000 acres | April 6, 1832 |
| Royce Area 211 | 38,400 acres | April 23, 1836 |
| Royce Area 212 | 640 acres | April 23, 1836 |
| Royce Area 213 | 160 acres | April 23, 1836 |
| Royce Area 259 | 109,144 acres | October 5, 1842 |

Michigan Tracts

| <u>Royce Area</u> | <u>Acreage</u> | <u>Valuation Date</u> |
|-------------------|----------------|---------------------------------------|
| Royce Area 95 | 2,500 acres | September 20, 1818 |
| Royce Area 96 | 2,500 acres | September 20, 1818 |
| Royce Area 260 | 4,996 acres | September 20, 1818 October 5, 1842 |

I. The Ohio Claims5. Location.

Royce Area 171 (Big Spring Reservation) was located about 40 miles south of Sandusky, 45 miles southwest of Lake Erie, and approximately 70 miles northwest of Columbus. Royce Area 171 contained 16,000 acres, and was about five and one-quarter miles square. Half of its area lay in the southwest corner of Seneca County, a third to a fourth in Wyandot (originally Crawford) County and the remainder in Hancock County. The larger Wyandotte tract (Royce Area 259) was about five miles to the southeast, and the Indian village at the Big Spring Reservation was between 15 and 20 miles from Upper Sandusky, the Wyandotte town in Royce Area 259.

Royce Area 211 (Five Mile Strip) was an almost exactly rectangular area about twelve miles deep and five miles across from east to west, containing 38,400 acres. It was situated in present western Crawford County and eastern Wyandot County (at the valuation date it was in central Crawford County) about fifty miles north of Columbus and ten miles north of Marion. Upper Sandusky was eight miles to the west and Bucyrus was within three or four miles of the center of the east boundary.

Royce Areas 212 and 213 were located eight miles east of the northeast corner of the Five Mile Strip, a little more than twenty miles in a straight line from Upper Sandusky and about nine miles northeast of Bucyrus. Royce Area 212 was one square mile containing 640 acres, and Royce Area 213 was a contiguous northeast quarter section containing 160 acres.

Royce Area 259, the largest tract, containing 109,144 acres, was located about 55 miles north of Columbus and about 60 miles south of the Lake Erie shore and occupied most of present Wyandot County. In the center of this reservation was the town of Upper Sandusky.

Royce Area 259 was a rectangular area 14 miles wide and 12 miles deep, plus a "panhandle" extension about a mile and a half by a mile and three-quarters extending from the approximate midpoint of the north line.

6. Geography.

Royce Areas 171, 211, 212, 213 and 259 are all located in northwestern Ohio and experience the same windy, humid, unpredictable weather conditions typical of that area bordering the Great Lakes. Because of their northern locations, all five tracts have a growing season lasting about five months. The precipitation pattern in the area is favorable to agriculture. A portion of the northwest corner of Ohio, known as the "Black Swamp", was an obstacle to settlement and construction of roads.

Royce Area 171 is a nearly square tract containing 16,000 acres. Known as the "Big Spring Reservation," the tract has gently rolling terrain with the northeast corner draining toward Lake Erie 45 miles away. The highly organic soils found in Royce Area 171 are capable of being very productive.

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." It is situated in present western Crawford County and eastern Wyandot County. The tract contains 38,400 acres, is generally level, and is well-drained by many streams. The inherently fertile soils were developed under a deciduous forest cover and along the banks of the streams.

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. The gently rolling to level terrain of the two areas tended to broaden into marshes and a cranberry bog. Some timber was found on the section lines. Although the areas are rimmed in nearly all directions by low ridges and drained by numerous feeder branches, the "Cranberry Bog" area remained wet and, except for a cranberry crop, generally unproductive. The soils were a mixture of sandstone and shale and contained little limestone material.

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 nearly rectangular area, plus a "panhandle" extension on the north section line, is smooth, fairly level terrain on the western side, but rolling

and rougher on the eastern side. The Sandusky River flows nearly midway through the tract, exiting near the "panhandle" section. Numerous creeks and streams flow into the Sandusky and provide excellent drainage. The naturally fertile soils, developed under a massive forest cover, are found predominately along the river valley and the east and west borders of the reservation. The forest cover was practically unbroken at the valuation date and stretched across nearly half the total area. The balance of the tract, that is, across the south end and in the lower western portion between the Sandusky River and Tymochtee Creek, lies in the region known as the "Sandusky Plains." The plains or prairie was an expanse of sparsely wooded, generally flat, somewhat marshy grassland.

7. Historic Background.

Following the American Revolution and the peace treaty of 1783 with England, Congress began to address itself to proposals to initiate settlement beyond the Ohio River. In 1787, the Northwest Ordinance was enacted which provided for the organization and government of the Northwest Territory, an area eventually to become the States of Ohio, Michigan, Indiana, Illinois, Wisconsin, and part of Minnesota.

Up until 1794 the new communities around Marietta and Cincinnati (as well as other border settlements all along the Ohio valley) had been a source of conflict with Indians. As a result of General Anthony Wayne's decisive defeat of the united Indian tribes at the Battle of Fallen Timbers in 1794, this conflict ended. Under the Treaty of Greenville, on August 3, 1795 (7 Stat. 49), the Indians ceded approximately two-thirds

of the land area now in the State of Ohio, together with certain strategically situated small tracts to the west selected as military outposts for the defense of the frontier.

Boundaries established by the treaty enabled pioneers to found two new towns in 1796: Cleveland, the first settlement in northern Ohio, and Chillicothe, fifty miles upstream of the Ohio on the Scioto river, later to become the first state capital. The Greeneville treaty line running across the Ohio Territory advanced the limits of legal white occupation to within eighteen miles of the subsequently-established Wyandot Reservation (Royce Area 259). By 1803, Ohio was admitted to the Union.

The balance of the Indian-held land in the state was acquired by the Treaty of September 29, 1817. Within the area of this final land cession, fourteen counties were created and opened for settlement in 1819 and 1820. The Wyandot reservations were located principally in Crawford County, Ohio. The reservation area had the advantage of being on the main north-south thoroughfare in central Ohio, less than twenty miles north of the territory opened for settlement following the Greeneville Treaty of 1795. In Crawford County, two towns emerged in the 1830's, one from an 1824 military post (Bucyrus) and the other from an Indian village established on the Wyandot reservation in the 1820's (Upper Sandusky).

8. Economic Conditions.

With the opening of the Erie Canal in 1825, and the first Ohio canals in 1827, the entire transportation network in the state was facilitated.

Construction of the canals not only created a demand for labor, but it also brought the farmer into contact with big new markets for his produce and increased market prices. The completion of the Erie Canal revolutionized the trade and marketing system of northern Ohio. Sandusky Bay, where a lighthouse was constructed in 1826, was an important port-of-call for passengers and freight, and shipbuilding and commercial activity developed around Toledo and Detroit.

By 1832, transportation in Ohio was quite diversified. Roads were open for freight wagon and stagecoach. Many types of vessels were used in navigation: flatboats, keel boats, barges and steamboats.

The first railroad on Ohio soil, chartered in 1832, was built especially to serve the localities where roads were poorest and canals too far away and inaccessible to provide much benefit. Proposals to build railroads proliferated in Ohio. By 1840, a total of 56 lines were chartered, although only one was actually built. Out of 25 new charters granted between 1840 and 1850, four lines totaling about 300 miles of tract were constructed. Aside from some timbered and swampy areas, the topography of the subject Ohio tracts lent themselves to the construction of railroads and highways.

The population of Ohio was growing rapidly at the valuation dates. From 937,903 persons in 1830, the state had grown in population to over a million and a half by 1840. Since much of this growth was in a time following the depression of 1818-1819 and the lengthy deflationary period which ensued, as well as the panic of 1837, a well-informed buyer would have anticipated a continued rapid growth rate, and probably a post-depression

and post-panic boom. Population figures indicate that Crawford and surrounding counties were increasing at a rapid pace. Crawford County grew from 4,778 in 1830 to a population of 13,150 in 1840.

With such a large permanent settlement, the State of Ohio required increased goods and services. Local manufacturing was encouraged and flourished. Commercial and business activity was centered in the southwestern part of the state, especially in Cincinnati, which by 1840 was the leading commercial and manufacturing center of Ohio. At that time it claimed half of the state's total capital investment of about \$17 million dollars. Meat packing was the principal business, but industry was considerable and varied.

Agricultural production was diversified in Ohio as reflected in the 1840 census figures. Cows, hogs, horses, wheat, corn, maple sugar, and other crop varieties were produced. With nearly four million sheep, Ohio was becoming the wool producing center of the country. Ohio was the fourth ranked state in corn production.

9. Public Land Sales Between 1815 and 1842.

The Federal Government initially established a credit system for the purchase of public lands. Only one-quarter of the purchase price had to be paid down; the remaining three installments became due at the end of the second, third and fourth years, respectively, and a fifth year of grace was provided to meet all payments.

The \$2.00 per acre minimum price which remained in effect from 1796 to 1820 was nominal, because, as an inducement to pay installments on time,

an 8 percent discount was offered. If a buyer could anticipate each payment, he could obtain discounts whereby he could purchase the land for cash at \$1.64 per acre. Under the Act of March 26, 1804, the minimum tract to be sold was a quarter section (160 acres).

Until 1820 the credit system was sustained from year to year by a continuous series of relief measures enacted by Congress to permit purchasers to retain as much land as their payments would cover, and relinquish the remainder. The credit system was abolished in 1820, the minimum tract reduced to 80 acres, and the minimum cash price set at \$1.25 per acre.

In Ohio, the area of oldest settlements and earliest land office offerings, land speculation was comparatively limited. The volume of original sales before 1820 reached a maximum of 817,714 acres in 1814, at an average price of about \$2.10, and declined continuously thereafter, though prices bid rose to a peak average of about \$2.53 in 1817. By 1835 most of the available, desirable public land in Ohio had been sold.

10. Upper Sandusky.

In valuing Royce Area 259 as of October 5, 1842, plaintiffs' appraiser has included a separate valuation for the 600 acres contained in the town of Upper Sandusky, located in about the center of the reservation. Plaintiffs' determination that this land should be valued as town lots for residential and commercial purposes was based on the conclusion of plaintiffs' expert's appraisal report that Upper Sandusky was platted well before 1842 and was an established Indian town. In support of this

determination, plaintiffs introduced into evidence an 1830 plat of the town, taken from a map in the Wyandot County Recorder's office.

Defendant questions the authenticity of the alleged 1830 plat, and claims that the first plat of Upper Sandusky was done in 1843.

Upper Sandusky was at a crossroads of major north-south and east-west land routes, located on the Sandusky River with access to Lake Erie. The Wyandotte Indians were industrious, resourceful and imaginative farmers. Their homes were hewed log cabins, orderly, sturdy and functional; their fences were durable to keep livestock in; and their lives sensible, religious and peaceful. They even set up a charge account system in their well-stocked reservation store. A missionary, who came to Upper Sandusky at the request of the Indians, expressed amazement at the quality of life he encountered on the reservation. His record of the experience, along with that of an Indian agent who inspected the reservation in the summer of 1823, provide us with an extensive account of flourishing mission life in the 1820's on the site of the Upper Sandusky townsite.

On the basis of all the evidence before us, we conclude that, irrespective of the date of the first plat, Upper Sandusky was at the valuation date suitable for town lots.

11. Highest and Best Use.

The parties are in agreement concerning the highest and best use of all plaintiffs' Ohio lands except the aforementioned town lots in Upper Sandusky in Royce Area 259. The evidence supports the conclusion that the highest and best use for Royce Area 171 on its 1832 valuation date,

and for Royce Areas 211, 212 and 213 on their 1836 valuation date, was as agricultural land to raise crops for the subsistence of the inhabitants of the area.

The highest and best use for Royce Area 259, on its 1842 valuation date, excluding the platted area of the town of Upper Sandusky, was as agricultural land to raise crops for the subsistence of the inhabitants of the area. The highest and best use of the 600 platted acres of the town of Upper Sandusky, was for residential and commercial usage.

12. Comparable Sales.

(a) Agricultural Lands

Land records data from Wyandot and Crawford Counties were used by plaintiffs' expert to obtain data of 311 comparable sales of agricultural lands from 1829 through 1842. The three Ohio tracts are located in these two counties. The majority of the sales considered were of tracts in the 80 to 160 acre range. A few comparable sales were of over 200 acres, but none were over 640, and a few were under 60, but none were less than 25 acres.

Comparable sales data for 1829 through 1842 may be tabulated as follows:

| | | | | | | | |
|---------|--------|--------|--------|--------|--------|--------|--------|
| Year | 1829 | 1830 | 1831 | 1832 | 1833 | 1834 | 1835 |
| Sales | 6 | 20 | 24 | 26 | 12 | 17 | 24 |
| \$/acre | \$3.05 | \$2.97 | \$3.13 | \$3.86 | \$2.97 | \$3.94 | \$4.15 |
| Year | 1836 | 1837 | 1838 | 1839 | 1840 | 1841 | 1842 |
| Sales | 38 | 23 | 22 | 23 | 24 | 17 | 35 |
| \$/acre | \$3.76 | \$4.72 | \$6.36 | \$6.34 | \$7.74 | \$6.05 | \$6.18 |

The long term trend of land prices is clearly upward, as would be

expected in a rapidly developing state with a burgeoning population and diminishing acreage of government lands available for market.

The range of prices shown by the comparable sales was reasonable. In 1832 the range was from \$1.25 to \$8.75 per acre; in 1836 it was from \$1.34 to \$9.23 per acre; and, in 1842 it was from \$1.25 to \$13.94 per acre. The median price for the three treaty years was \$3.23, \$3.75 and \$5.63 per acre, respectively.

These comparable sales are not adjusted for improvements, or for soil drainage or percent of woodland.

(b) Town Lots

In 1845 the Government sold at auction every third lot of Upper Sandusky (see finding 20, below). Of the "downtown" lots offered, 90.5% were sold, for an average price of \$82.58 per lot. Of the remaining lots offered, 70.8% sold, for an average price of \$56.76 per lot.

Comparable sales of town lots in nearby Oceola averaged \$61 per lot in 1841, and \$68 per lot in 1842. Oceola in 1842 was roughly comparable to Upper Sandusky at that date.

13. Government Resale.

Government resale of plaintiff's lands was done by a combination of public sale by auction, and private entry. The minimum price was \$1.25 per acre, and payment was all cash. There was no evidence of any attempt by the government to maximize the price received for these lands by use of promotion, publicity or favorable credit terms.

(a) 1832 Treaty

The Royce Area 171 lands which were acquired by the 1832 treaty

totalled 16,000 acres. A two-day public auction sale of the lands in 1832 disposed of 2,368 acres. A total of 1,968 acres sold at the \$1.25 minimum price. An additional 11,185.58 acres were disposed of through private entry through 1836. Some 500 plus acres were set aside for school lands, leaving just over 3,000 acres undisposed of within four years of the treaty. Virtually all the land was sold at the government price of \$1.25 per acre; the average price for the land which was sold was \$1.30 per acre.

(b) 1836 Treaty

A special sales office was set up at Marion, Ohio, to sell the 38,400 acres of Royce Area 211 lands which had been ceded by the 1836 treaty. (The regular land office for the area was at Bucyrus.) Sales commenced on April 10, and ceased after April 14, when they were stopped at the request of the Indians, who were disappointed at the prices. At this offering 18,732.59 acres were recorded as having been sold at an average price of about \$3.38 1/4 per acre.

The sale was resumed August 6, 1838, and all the remaining land was sold by August 16. The average price per acre for all remaining sales was \$2.915. Overall, the average price received was \$3.1438 per acre.

Royce Areas 212-213, the "Cranberry Marsh", with a total of 800 acres, were sold on June 3, 1839, at \$1.25 per acre. One family purchased one tract, another purchased the other.

(c) 1842 Treaty

The Royce Area 259 lands, which were acquired by the 1842 treaty, contained a total of 109,400 acres. The Government did not put

these lands up for sale until 1845. Abstracts of sales show that all the reservation lands were sold in four public sales and through private entry within about three years. The 55,000 plus acres sold at the public sales brought an average of \$3.85 per acre. The 49,000 plus acres sold through private entry brought \$2.50 per acre. The fixed minimum price for private entry sales was \$2.50 per acre.

The lands sold at public sales included improved lands. The appraised value of the improvements totalled \$41,813. If the value of the improvements is deducted from the overall total of payments of lands sold at public sales, the per acre price of such lands comes out to be \$3.12 per acre. If the combined totals are figured, the overall per acre price comes to approximately \$2.80 per acre.

Many purchasers were residents of the area who bought several offerings, usually contiguous tracts, and moved onto their purchases.

Correspondence before the sales indicates that both the Indians and the government representative dealing with the Wyandots anticipated that the market was such that the reservation would bring from \$4 to \$5 per acre.

14. Plaintiffs' Appraisal.

Mr. Bruce E. Pickering is plaintiffs' expert appraiser for the Ohio tracts. Mr. Pickering was born and raised on an Ohio farm and has lived his entire life in Ohio. He received a degree in agricultural economics from Ohio State University and has been a full-time real estate appraiser for the last seven years. Previously he was an instructor in real estate appraisal at Ohio State University and a review appraiser for the Ohio Department of Transportation.

For this appraisal, Mr. Pickering and his staff assembled market data of arm's length transactions of lands of quality comparable to the reservation lands in the adjacent region. The resultant appraisal report states that it is based on an analysis of approximately 1800 sales, with primary emphasis on sales in the three treaty years of 1832, 1836 and 1842. Mr. Pickering analyzed such factors as soil types and drainage, vegetation, topography, size, location, percentage of woodland, and improvements. He also considered population trends, land available in the region, and the availability of credit.

Primary consideration was given to sales of agricultural land. The appraisal report gives data on 311 sales from 1829 through 1842. In addition, sales in 1854 were analyzed in order to determine a deduction for improvements. The use of 1854 sales was owing to a lack of records prior to that time which would indicate which farms were improved.

To obtain his valuations, Mr. Pickering used comparable sales in the specific treaty years. First the average price per acre was tabulated for all comparable sales during the treaty period. Mr. Pickering made a downward adjustment for improvements on the basis of the ratio calculated by analysis of the aforementioned 1854 sales, and then made a final downward adjustment for soil drainage and percentage of wooded land. In doing this, he considered the breakdown of acres of land in each tract that could be classified as bog, swampy, wet or dry.

Mr. Pickering maintained that the rate of increase of land values reflected by his comparable sales data was such that no discount for size or carrying costs would be appropriate.

Mr. Pickering's valuation conclusions were as follows:

(a) 1832 Treaty

To arrive at his valuation figure for the 16,000 acre Royce Area 171, Mr. Pickering used comparable sales data for 1832, showing an average price of \$3.86 per acre. Applying this price to Royce Area 171 gave a value of \$61,760.

Mr. Pickering proceeded to make two downward adjustments in that figure. Mr. Pickering's first adjustment was a 17% discount for improvements. Then he made a downward adjustment for soil drainage and percent wooded factors. Using this method, he arrived at the following value conclusion for Royce Area 171.

| | | | |
|--------|---------------------------|---|---------------|
| Bog: | 1,920 acres @ \$1.50/acre | = | \$ 2,880 |
| Swamp: | 1,920 acres @ \$1.50/acre | = | 2,880 |
| Wet: | 6,400 acres @ \$2.75/acre | = | 17,600 |
| Dry: | 5,760 acres @ \$3.75/acre | = | <u>21,600</u> |
| | | | \$44,960 |

(b) 1836 Treaty

Plaintiffs' expert used the aforementioned reasoning with respect to the 39,200 acres which were ceded pursuant to the 1836 treaty. Mr. Pickering used the average per acre sales price for 1836 comparable sales of \$3.76. Mr. Pickering's method of discounts led him to the following value conclusion for the 1836 treaty lands:

| | | | |
|--------|----------------------------|---|---------------|
| Bog: | 800 acres @ \$3.00/acre | = | \$ 2,400 |
| Swamp: | nominal | = | |
| Wet: | 32,160 acres @ \$2.50/acre | = | 80,400 |
| Dry: | 6,240 acres @ \$3.50/acre | = | <u>21,840</u> |
| | | | \$104,640 |

(c) 1842 Treaty

Royce Area 259 contains 109,144 acres. Plaintiffs' expert used the aforementioned reasoning with respect to this tract, too, except for

the 600 acres which he considered to have a highest and best use for town-lots.

Mr. Pickering used the average per acre price of \$6.18 derived from comparable sales. He used his method of discounts to arrive at the following value conclusion for the 1842 treaty Ohio agricultural lands:

Wooded and unimproved:

| | | | |
|--------|----------------------------|---|-----------|
| Bog: | none in this treaty area | = | |
| Swamp: | 17,920 acres @ \$3.00/acre | = | \$ 53,760 |
| Wet: | 40,304 acres @ \$4.75/acre | = | 191,444 |
| Dry: | 27,320 acres @ \$5.75/acre | = | 151,090 |

Cleared and unimproved

| | | | |
|------|----------------------------|---|----------------|
| Wet: | 23,000 acres @ \$5.75/acre | = | <u>132,250</u> |
| | | | \$534,544 |

To arrive at a fair market value for the lots in Upper Sandusky with a highest and best use as town lots, Mr. Pickering relied on the prices received at the 1845 public auction of every third lot. Mr. Pickering discounted the 1845 average prices 10% per year to adjust these sales to 1842 values. He thereby arrived at values of \$60 per lot for "in-lots" and \$41 per lot for "out-lots".

Mr. Pickering validated these values by checking them against comparable sales in Oceola, which averaged \$61 per lot in 1841 and \$68 per lot in 1842. He also used later sales of Upper Sandusky lots, and 1838 through 1846 sales of lots in Bucyrus and Benton, two other nearby towns, to verify his conclusions.

Based on his validated values, Mr. Pickering concluded that the gross value of the Upper Sandusky lots could be calculated as follows:

| | | |
|-------------------------|---|--------------|
| 380 In-lots @ \$60/lot | = | \$22,800 |
| 217 Out-lots @ \$41/lot | = | <u>8,897</u> |

Gross Value \$31,697

To allow for sales fees, expenses and contingencies, Mr. Pickering made a 4% deduction to arrive at a fair market value for the Upper Sandusky lots of \$30,430.

The fair market value of Royce Area #59, the sum of the values of the agricultural and town site lands, was therefore \$564,974 according to plaintiffs' expert.

15. Defendant's Appraisal.

Defendant's appraisal expert is Richard B. Hall, of Washington, D.C., an experienced professional real estate appraiser. He had been in some phase of the real estate business for about 40 years at the time of his appraisal report. In doing his research, Mr. Hall visited the field and accumulated extensive material from a variety of sources.

Mr. Hall relied on the average retail price per acre for which the lands contained within the subject tracts were sold by the Government, and made certain adjustments thereto to arrive at his conclusion of fair market value for each tract.

To estimate what a willing buyer would pay, Mr. Hall used variations of a formula whereby one-third of the anticipated cost would be allocated to the raw land, one-third would be for carrying charges, sales promotion and selling expense, and one-third would constitute profit.

In determining how much the discount fractions of the formula should be, Mr. Hall considered, as to each tract being valued, factors such as the investment risk involved, improvements on the land, the extent of settlement or available land in surrounding areas, and the availability of able and willing buyers. He also included, as indicated above, carrying costs and promotion and sales expenses.

Mr. Hall's valuation conclusions were as follows:

(a) 1832 Treaty lands.

Mr. Hall based his calculations of fair market value on the \$1.30 per acre average resale price which the Government received for the land in Royce Area 171. Based on the extensive development of the surrounding areas, with the consequent availability of buyers with means to purchase, Mr. Hall determined that the \$1.30 per acre price should be reduced by a relatively low factor of 35% for carrying charges, selling expenses and developer's profit. This gave Mr. Hall a figure of 84.5 cents per acre for the 16,000 acres in the tract, or a net fair market value of \$13,520.

(b) 1836 Treaty lands.

Mr. Hall calculated that the average price per acre received by the Government for the 1836 treaty lands was \$3.3825. In light of the strong economy and the beginning of a real estate boom, and other factors similar to those applicable to Royce Area 171, Mr. Hall determined that the reduction factor would be only 25% as applied to the 1836 treaty lands. This gave Mr. Hall a figure of \$2.5368 per acre for the 39,200 acres in the tract, or a net fair market value of \$99,442.

(c) 1842 Treaty lands.

Mr. Hall's analysis of data of government sales of the 1842 treaty lands showed that nearly 23,000 acres of improved lands sold at an average price of \$3.1165 per acre. The remaining, unimproved lands sold at an average price of \$2.70 per acre.

Mr. Hall felt that the improved land would sell relatively readily, and thus allowed for a 25% discount for carrying charges, developer's expenses and profit. But he felt that the unimproved land would move slowly, particularly considering the fact that 1842 was a slump year. He therefore allocated 50% of the retail price to costs and profit.

This gave Mr. Hall a figure of \$2.3375 per acre for the 23,000 acres of improved lands, and \$1.35 per acre for the remaining, unimproved lands, Mr. Hall valued the entire tract for agricultural purposes, and thus did not calculate for the value of possible town lots.

On the basis of the foregoing figures, Mr. Hall calculated the fair market value of the 1842 treaty Ohio tract as follows:

| | |
|-----------------------------------|----------------|
| Improved portion (22,950 acres) | \$ 53,645 |
| Unimproved portion (86,194 acres) | <u>116,361</u> |
| Total Land Value | \$170,006 |

16. Conclusory Finding of Value, Ohio Lands.

Based on the foregoing findings of fact, and for the reasons which are expressed in the accompanying opinion, we find that the fair market value of plaintiffs' Ohio lands on their respective valuation dates is as follows:

| | |
|--|----------------|
| Treaty of 1832, Royce Area 171 | \$ 41,000 |
| Treaty of 1836, Royce Areas 211, 212 & 213 | 104,640 |
| Treaty of 1842, Royce Area 259 | <u>510,430</u> |
| Total | \$656,070 |

II. The Michigan Claims

17. Location.

Royce Area 95 (Brownstown) was a 2,500 acre tract located within the area of what is now Metropolitan Detroit, approximately 15 to 20 miles south of downtown Detroit on the west part of the Detroit River, across from the island of Grosse Isle in Lake Erie. The present town of Gibraltar occupies part of the original Brownstown lands. The village of Brownstown itself was situated about two miles up the Brownstown Creek at the point where it crossed the main road from Ohio to Detroit.

Royce Area 96 (Maguagua or Monguagon Village) was also a 2,500 acre tract, located at the present site of Gibraltar, Michigan, on the banks of the Detroit River. It was a few miles above Brownstown at a point within the boundaries of the present town of Trenton. The village itself was near a ravine that intersected the Ohio-Detroit road.

Royce Area 260 contained 4,996 acres and was located along both sides of the Huron River about six miles above its confluence with Lake Erie, five miles west of Brownstown village and immediately west of the present town of Flat Rock. Its south boundary was the present Wayne-Monroe County Line. The approximately eight square miles of Royce Area 260 formed a nearly square block.

18. Geography.

Because of the proximity of the Great Lakes, the climate of Royce Areas 95, 96 and 260 is moist, humid and windy with rapid weather changes and somewhat extreme temperatures. About half of the annual precipitation, averaging 30 to 35 inches, falls during the warm four or five-month growing season.

Royce Area 95 was low and nearly flat terrain containing a mixture of forest land, low wet land, timberless swamp, and elevated prairie sprinkled with wimber. Royce Area 96 was generally elevated prairie land with low wet land in the far northeast corner. Although the timbered areas contained highly fertile soil, a few places in Royce Area 95 tended to be somewhat swampy and contained less productive soil. The two tracts together contain 5,000 acres of land.

Royce Area 260 is drained by the Huron River which flows through the tract generally south to Lake Erie. Except for the banks along the Huron River and other small streams crossing the reservation, the terrain tends to be either generally flat or gently undulating. Heavy timber and rich soil covered most of the area.

19. Historic Background.

The first settlement in the present State of Michigan was established by the French at Detroit in 1701, and was the basis for a profitable fur trade business with the Indians. The British subsequently wrested ownership

and control of the Old Northwest from the French, and continued to occupy Detroit and other western posts on American territory after American independence because of American failure to fulfill certain obligations of the 1783 Treaty of Paris. After General Wayne's victorious campaign in 1794, the British agreed to surrender these outposts by June 1, 1796. In 1796, Detroit was a small frontier trading post which was an important center of the Northwest fur trade.

In 1805 Michigan gained territorial status, with Detroit as the capital, and in 1807 the southeastern part of the present state was ceded to the United States by Indians.

The War of 1812 brought an improvement in transportation routes for military use and the presence of a large military force from Ohio and Kentucky, many of whom remained after the war to settle. After the War of 1812 there was a period of prosperity. Public land was surveyed and opened to settlement. A portion of it was offered for sale in 1818 by the Federal Government. Between 1817 and 1818 work began on the Erie Canal, steam navigation opened on the Great Lakes, and the first newspaper of the territory, The Detroit Gazette, began regular publication. With immigration and settlement on the increase, the population of Michigan doubled by 1820, reaching 9,048. By the time Michigan was admitted as a state in January 1837, the once remote wilderness area containing Royce 260 was being settled. By the time Royce Area 260 was ceded in 1842, the

area had become a thriving rural farm region crossed by roads and a railroad.

20. Economic Conditions.

The first steamship on the Great Lakes arrived at the port of Detroit in the summer of 1818. Steam tonnage increased to about 15,000 tons by 1838. Of the early Indian trails traversing Michigan, one shoreline trail, the Detroit to Miami Military Highway, crossed both Royce Areas 95 and 96 prior to the cession in 1818. Royce Area 260, on the other hand, was relatively remote in 1818. However, by the time of the second cession in 1842, it had become a prosperous rural farm area with good access to transportation.

The Michigan population of 9,048 in 1820 jumped to 212,267 by 1840. The population of Wayne County grew from 16,638 inhabitants in 1834 to 24,173 in 1840.

With the development of the steamboat in the late 1820's and the 1830's, boat building and repairing became a major industry at Detroit. Accompanying the population boom in the 1830's, farming, business and industry all prospered. By 1842, the recently created state had newly opened roads and a railroad, added to the already expanding water transportation routes to make distant markets accessible.

21. Public Land Sales.

Public land sales in Michigan, while the credit system and \$2.00 minimum price were in effect (see finding 9, above), were negligible, totaling less than three townships. The peak average price of about

\$3.11 per acre, bid for 37,864 acres in 1818, while high, was not unusual for such a small quantity of presumably choice sites. Total sales in Michigan up to June 30, 1820, amounted to 67,362 acres for \$178,400, or an average of about \$2.65 per acre. Michigan land sales in 1836, a year of widespread land speculation in the state, rose to a peak of 4,189,823 acres. Sales declined after the 1836 panic. As of September 30, 1842, over 8 million acres of public lands were subject to private entry in Michigan. There is no evidence that public land in any quantity was available then in the vicinity of Royce Area 260.

22. Highest and Best Use.

The parties are in agreement, and the evidence supports the conclusion, that the highest and best use of plaintiffs' Michigan tracts on their respective valuation dates was for agricultural purposes.

23. Comparable Sales (Michigan).

(a) 1818

No substantial evidence of comparable sales prior to the 1818 valuation date was presented. The first surveys of public land in Michigan were made in the two years prior to 1818, and the first public auction took place in July of 1818. When the government sale was completed after two months, 8,210 acres had been sold, under the credit system then in effect, at prices averaging a little over \$2.50 per acre. The only evidence of private sales concerned two transactions of tracts on Grosse Isle. The first involved 1280 acres sold at \$3.26 per acre, the second was of 120 acres at \$6 per acre.

(b) 1842

Abstracts of sales of lots in the vicinity of the subject tract show ten transactions during 1840 and 1841, and eight sales during 1842. The smallest tract abstracted for the 1840 through 1842 period was 40 acres, and the largest was 471 acres. Two transactions involved the same 119 1/4 acre tract of land, which was sold in 1840 at \$13.42 per acre, and in 1841 at \$25.16 per acre. Two other pairs of transactions involve the identical tract of land sold and resold within the 1840 through 1842 period, but without change in price. One pair of transactions involved 40 acres sold at \$11.25 per acre, the other involved 322 1/4 acres sold at \$3.10 per acre.

The inner quartile (i.e., the second and third quartiles combined) of 1840 through 1842 prices was in the range of \$8.33 to \$3.74. The average price per acre for the 1842 sales was \$4.20.

24. Government Resale of the Michigan Tracts.

The parties did not consider governmental resale of the Royce Areas 95 and 96 in their valuations.

The Royce Area 260 lands were offered for sale at public auction during October 6 through 18, 1845, at a \$2 per acre minimum price. At the sale, 661.55 acres were disposed of for \$1,355.62, plus \$359 for improvements. These lots were all either directly on the river or in blocked out purchases with river frontage. The average per acre price for the land alone was \$2.05. The evidence does not indicate the extent the sale was publicized, or the existence of credit terms.

During the next two years, through 1847, 1,691.25 acres were disposed of by private entry at the Government's \$2 per acre price. Thus, just about half the tract was sold during the 1845 through 1847 period.

25. Plaintiffs' Appraisal.

Plaintiffs' expert appraiser for the Michigan lands, John B. Carpenter, was the staff appraiser for the Wayne County Road Commission from 1959 to 1965. The three subject Michigan tracts are all located in Wayne County, and Mr. Carpenter was born there. He has been a real estate appraiser and lecturer at the University of Michigan for the past nine years. Assisting Mr. Carpenter in his research and preparation were Mr. Robert K. Clerk of Lansing, Michigan (on land classification and surveys), and two Michigan title companies.

Mr. Carpenter found no evidence of comparable leases for valuation of plaintiffs' leasehold interest in the Royce Areas 95 and 96 tracts. Consequently, he used a procedure based on the value of a fee interest to establish the fair market value of a leasehold interest. He used data of comparable sales of lands in the vicinity of the three Michigan areas to arrive at the fair market value of fee title for the three subject tracts. He used two Michigan title companies to obtain data concerning "arm's length" sales in the area. Nearly 300 sales were copied for analysis. About 160 sales were discarded due to poor descriptions or lack of adequate information concerning consideration. The remaining sales were described very briefly as to conditions, and located on a map of the area. One hundred thirty-four sales were summarized in the appraisal report. Of

these, 108 were sales during the period of 1818 through 1842, four were pre-1818, and 22 were post 1842. Mr. Carpenter assumed that improvements to the land in the analyzed sales were comparable to those on plaintiffs' tracts.

In determining the fair market value of Royce Areas 95 and 96, Mr. Carpenter placed primary reliance on 14 transactions, nine of which occurred after 1818. With the exception of a sale of two tracts of 2.34 acres each, the sales range from 50 to 1280 acres, with most in the 100 to 250 acre range. He concluded on the basis of this sales data that the fee interest on land in Royce Areas 95 and 96 had a value of \$5 an acre.

In order to value plaintiffs' 40-year leasehold interest in these areas, Mr. Carpenter relied on a determination of the value of the Government's reversionary interest in the two tracts. To do so he used an "Income Approach to Value." His method of valuation was based on the fee simple value "discounted for the period of the lease." Using a rather complicated procedure involving a "Present Worth of One" table which "provides as a percentage what One Dollar due in the future is worth today," and an historical interest rate of 5%, he concluded that the reversionary interest to the Government, as owner, was 14.2% of the 1818 fair market value of the tracts. The value of plaintiff's leasehold therefore was 85.8% of the 1818 market value of the tracts. His calculations led him to the conclusion that plaintiffs' interests in the two tracts had a value of \$21,500.

Inasmuch as plaintiffs' exchanged their leasehold interest in these two tracts for fee title to Royce Area 260, Mr. Carpenter valued the later tract too as of the 1818 valuation date. He stated in his valuation that lack of evidence of sales in the vicinity of Royce Area 260 in 1818 meant that there was no market for that land on the valuation date. Nonetheless, he referred to nine sales of land along the Huron River, which he did not specify, and concluded that riverfront acreage would have a value of \$4.39 per acre. The remaining land in the tract he concluded would have a nominal value of 50¢ per acre. On the basis of his estimate that about half the tract consisted of riverfront acreage, he arrived at a valuation of \$12,000 for the tract. Consequently, he decided, plaintiffs had suffered a loss of \$9,500 by the 1818 exchange.

Mr. Carpenter listed seven sales as those which he paid particular attention to in arriving at his conclusion as to the market value of Royce Area 260 in 1842. The sales all occurred in 1842, and were in the vicinity of the subject tract. The top per acre price received from these sales was \$11.25 for a conveyance of 40 acres. The next highest price was \$8.33, and the remaining prices were from \$6.06 downwards. Without explaining how he arrived at the figure, Mr. Carpenter concluded that \$10.00 per acre was the proper valuation for the reservation lands in 1842. Therefore, he concluded that the estimated value of the reservation on the valuation date was \$50,000.

26. Defendant's Appraisal.

Mr. Hall's qualifications as defendant's appraiser are described above in finding 15. In estimating the value of the Michigan tracts exchanged

pursuant to the 1818 treaty, Mr. Hall concluded, in consideration of all relevant historic, economic and sales data, that there was no market for land in Michigan as of the valuation date. He therefore simply estimated the relative value of the leasehold to Royce Areas 95 and 96 against the value of the fee title to Royce Area 260. Mr. Hall arrived at the conclusion that the Indians received full value under the exchange.

As to the fair market value of Royce Area 260 in 1842, Mr. Hall calculated that the average price received by the Government at public sales of these lands was at a maximum \$2 per acre. He reasoned that because in 1842 the economy was in a slump, and because government lands were available at \$1.25 per acre, a developer would pay no more than 25% of the \$2 retail price, or 50¢ per acre. He concluded, therefore, that the tract had a fair market value on the valuation date of \$2,500.

27. Conclusory Finding of Value, Michigan Lands.

Based on the foregoing findings of fact, and for the reasons which are expressed in the accompanying opinion, we find that the fair market value of plaintiffs' Michigan lands on their respective valuation dates is as follows:

| | |
|---|---------------|
| Treaty of 1818, Royce Areas 95 & 96 leasehold | \$ -0- |
| (value no more than Royce Area 260) | |
| Treaty of 1842, Royce Area 260 | <u>21,000</u> |
| Total | \$21,000 |


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner