

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 272
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 15, 1977

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact, which are supplemental to the findings numbered 1 - 24 previously entered herein, 26 Ind. Cl. Comm. 410, 456 (1971).

25. Area to be Valued. The area to be valued is an elongated triangular tract of land of approximately 5,200,000 acres located in east-central Alabama. It is bordered on the east by the state of Georgia; on the north by the Cherokee Cession of December 29, 1835, 7 Stat. 478; and on the south by an irregular, roughly southeasterly line running from a point near the present city of Wetumpka, Alabama, to the Georgia border. The southeast point of the subject tract is approximately 42 miles north of the Florida boundary, and the northeast point is roughly 75 miles south of the Tennessee boundary. This tract has been designated as Area 172 by Mr. Charles C. Royce, in Part 2 of the Eighteenth Annual Report of the Bureau of American Ethnology.

26. Date of Valuation. The date of valuation is April 4, 1832, the date of the ratification and proclamation of the Creek Treaty of March 24, 1832, 7 Stat. 366.

27. Topography. The southern half of the subject tract lies wholly within the Coastal Plain formation, a wide belt of level land, mostly below the 500 foot elevation line, which extends across the southern half of Alabama.

The northern half of the tract is divided between the Southern Piedmont area, and semi-mountainous extensions of the Appalachian and Blue Ridge Mountains running for the most part north and south. The Southern Piedmont area has elevations slightly above and below the 1,000-foot level, except for the river valleys, which are slightly above and below the 500-foot level. The semi-mountainous area has elevations in excess of the 1,000-foot level and consists of worn down hills and valleys. The highest elevation in Alabama is 2,407 feet at Cheaha Mountain in Cleburne County. There is one small narrow belt-like area in the western part of the tract which is classified as Backland Prairie. This area had elevations slightly above and below the 500-foot level.

28. Rivers and Drainage. The subject area is drained by three major rivers and their tributaries; the Coosa River on the west, the Tallapoosa River in the center and the Chattahoochee River on the east. The Pea and Conecuh Rivers have their headwaters in the southern portion of the subject area. The pattern of drainage is generally southerly, flowing into the Gulf of Mexico via the Alabama or Appalachian River systems.

29. Soils. There are five major soil groups within the valuation tract. The soil groups, in descending order of size are: (1) Southern Piedmont (2,810,980 acres); (2) Southern Coastal Plains (1,151,255 acres); (3) Southern Appalachian Ridges and Valleys (921,600 acres); (4) Backland Prairies (181,280 acres); and, (5) Carolina and Georgia Sandhill (63,400 acres).

The Southern Piedmont area soil is classified as Cecil-Applying. Soil within this category may range from coarse sandy loams to red clays, is medium to strongly acidic, is low in organic materials, and tends to have large quantities of potash in the sub-soils. If topography and other factors permit, this soil is productive of a variety of crops ranging from tobacco and cotton to grapes and peanuts.

The Southern Coastal Plains area includes Susquehanna-Savannah-Ruston and Norfolk soil types. Soils within these categories may range from coarse sands to fine sandy loams, and from silt loams to heavy clays. They are medium to strongly acidic, and are low in organic materials. These soils, other conditions permitting, are productive of crops such as cotton, tobacco, peanuts, peaches and pecans, and of secondary crops ranging from corn to sugar cane.

The Southern Appalachian Ridges and Valleys area is made up of soil classified as Hartsell-Muskingum. Soil within this category may range from fine sandy loams to silt loams, is medium to strongly acidic, and is low in organic materials and mineral plant nutrients. This soil is best suited for small farm operations on the smooth areas, and

is productive of subsistence farming of crops such as corn, sweet potatoes, garden vegetables and cotton.

The Backland Prairies area consists of soil classified as Sumpter-Varden. Generally, soil within this category consists of a clay surface with an extremely heavy clay subsurface. This soil, when other conditions are met, is best suited for cotton and corn, but also is productive of sugar cane, okra, peanuts, and sweet potatoes.

The Carolina and Georgia Sandhill area has soils classified as Norfolk Sands. Generally, soil within this category consists of medium to coarse grain sands with small areas of sandy loams. These soils are productive of principal crops such as peaches, dewberries, grapes, cotton and tobacco, and of secondary crops ranging from corn and sweet potatoes to rye and watermelon.

30. Climate. The climate of the subject area is temperate, characterized by long, moderately hot, humid summers and mild winters. Winter temperatures frequently fall below freezing at night, but seldom stay below freezing more than a few days in succession.

The tract receives substantial rainfall and little snowfall throughout the year, the average annual precipitation ranging from 48 to 52 inches.

The growing season is lengthy, averaging from 200 days in the northern regions to 240 days in the southern regions.

31. Timber. In 1832 approximately three-quarters of the subject area was fifty percent or more forested with loblolly, or shortleaf,

pine, associated with other southern pines, oak, hickory and gum.

In the remaining quarter, scattered across the northern half of the area, fifty percent or more of the forest coverage was hardwood, usually upland oak, and the remainder, southern pine associated with some gum and hickory.

In 1832, the timber on the subject tract was too far removed from potential markets to be of any commercial value. Shipping lumber to outside markets did not become economically feasible until years later. There were no large cities in Alabama in 1832, and the developing towns within the state, such as Mobile, Montgomery, and Huntsville, had close-by supplies of timber available to them. Nevertheless, standing timber, especially the pine, was valuable to the settler for personal needs such as building cabins, farm structures, furniture, fences, and firewood. On this basis, a prospective purchaser in 1832 would take into consideration the availability of standing timber.

32. Minerals. The development within the subject tract of such mineral resources as iron ore, gold, silver, copper, pyrites, arsenic and tin did not occur until substantially after 1832. Reports of gold discoveries in the subject area as early as 1830 are somewhat conjectural. It was not until 1835 that the existence of gold in the subject tract was confirmed in quantities sufficient to promote active mining of the metal. With the possible exception of gold, land within the subject tract had no actual or speculative mineral value as of 1832.

33. Land Classification - Use As taken from the original surveyor's notes, the county soil reports and maps, and other evidence of record, the lands in Alabama in terms of desirability and demand as of 1832, can be classified as follows:

(a) First Class Farm Lands

These were the choicest and most desirable lands that were in great demand. They consisted of the more level to gently rolling and flat lands upon which cotton could be intensively grown in plantation type operations along with a more limited acreage in corn and other crops. It is estimated that 12.9% of the land within the subject tract, approximately 670,800 acres, contained first class farm land. This would include the Backland Prairies, the valley and better bottom lands, together with other more level acreage wherever located. The predominant soils in this category are the loamy soils including sandy loam and clay loams.

(b) Second Class Farm Lands

These lands include the undulating and gently rolling to hilly lands cut by streams and frequently divided by broken, rough lands of lower rating. Soils tend to be sandy to sandy loam with clay loams and clay. Second class farm lands provide a greater acreage capable of subsistence farming operations where smaller stands of cotton could be grown for an immediate cash crop, or where smaller acreages are available to grow corn for local consumption or feed grain for livestock. An estimated 63.3% of the total land area within the subject tract, approximately 3,291,600 acres, was available for subsistence farming operations.

(c) Non-Farm Land

In this category are reflected the rough lands; hills, ridges, mountainous areas, stony, coarse and excessively drained sand, rock escarpments, swamps, rivers, streams, and undrained acreage. Many farms would include such acreage as part of their land and its use would be limited to pasture, wood lots, and hunting game. It is estimated that 23.8% of the land within the subject tract, approximately 1,237,600 acres, consists of non-farm land.

34. History and Settlement of Alabama. The history of what is now the State of Alabama began in 1540, when DeSoto and his men traveled through the area and recorded the aboriginal Indian tribes living there. The Creeks lived in the central and southeastern portions of the area; the Cherokees in the northern portion; the Chickasaws in the northwestern portion; and the Choctaws in the southwestern portion. Of the four tribes the Creek was the largest and most warlike.

The first permanent white settlement in Alabama was established in 1702, when the French under two brothers, Iberville and Bienville "planted a colony of about two hundred persons at Twenty-Seven Mile Bluff on the Mobile River," in what is now southwestern Alabama. This colony moved to the present site of Mobile in 1711. The Mobile area was governed at different times by the French, British, Spanish, and finally the United States. The southern boundary of Alabama was established at the 31st parallel of latitude in 1795.

In 1797, Spain evacuated the area north of the 31st Parallel and in 1798 the United States created the Mississippi Territory, which was extended northward to the Tennessee line by 1804 to create an area embracing the present states of Alabama and Mississippi.

In 1803, the United States completed the Louisiana Purchase, which made the port of New Orleans available as a market outlet for the Mississippi Territory as well as for the regions farther north. By 1813, Mobile was occupied by Americans but nearby Pensacola, Florida, remained in Spanish lands. The purchase of Florida from Spain in 1819 finally settled ownership of the Gulf shoreline and opened its bays and rivers as market outlets by water.

Settlement of selected areas along rivers and upon the better farm lands either preceded land cessions from the resident Indians or followed rapidly once the lands were surveyed and offered for sale by the Government. Early settlements preceding the War of 1812 appeared in southwestern Alabama along the Tombigbee, Black Warrior, and Alabama Rivers. The northern settlement of Alabama developed in the Tennessee Valley and its tributaries. The city of Florence was part of a land sale promotion and was founded in 1819. From the northern area there was water connections to the port of New Orleans via the Tennessee, Ohio and Mississippi Rivers.

The development of new communities and trading centers was proceeding apace when the Alabama Territory was created in 1817, and statehood

achieved in 1819. Tuscaloosa had become a town in 1816, and Montgomery and Cahaba were founded in 1819. Typically, these early communities sprung up along the water transportation routes primarily in the north central, southern and southwestern parts of the state.

35. Transportation Routes - Accessibility. Settlers were able to reach Alabama territory by land and water even from earliest days. Indian trails and waterways were usable because of the land and soil formations which made river crossings, water transportation and land travel possible, although somewhat difficult. The transportation facilities of the times included flat bottom boats, rafts, ferries of rather simple construction, wagons and even carriages.

Early road approaches to the state included trails or "traces" from Pittsburgh, Philadelphia and Staunton, approaching Alabama from the north and northeast via Lexington, Knoxville and Nashville, to reach Huntsville and St. Stephens via roads leading to Natchez and New Orleans. There was also a road from the Carolinas and Georgia leading into east central Alabama from Columbia, Greenville, Athens, Augusta and Milledgeville, heading southwest direct to St. Stephens.

Military movements were responsible in part for the opening up of a further network of roads before the 1820's. Bridges, ferries and even cleared rights-of-way were lacking until after settlement in most areas. The so-called roads were in fact traces or trails from point to point. The settler was left to his own resources to ford streams and rivers and overcome the obstacles of high and low areas of brush, swamp

and forest. Once he departed from the trail or trace to locate land he had to do his own road clearing.

One of the early roads after 1797 was a trail from the Okmulgee River in Georgia to Mim's Ferry on the Alabama River, thence up to St. Stephens. In 1805 a treaty with the Creeks provided a horsepath "forever" through their country. The Indians agreed to provide ferries and roadhouse accommodations. In 1807 this road was extended westward to Natchez with ferries across the Alabama and Tombigbee Rivers. It was further expanded for a wagon road by 1812 and many wagons and carriages from Savannah were in evidence at Stoddard.

By 1832 there was a substantial network of roads leading into and across the state and connecting all the larger cities and ports. They served to bring in by wagon necessary supplies for pioneer subsistence and provided a means of intercommunication between local areas and out-of-state destinations. For such purposes there were organized mail routes, pony express and stagecoach routes.

Within the state the effort to develop county roads had progressed to the stage that limited quantities of farm products could be transported by wagon to river ports and supplies returned to the farms. Since the greatest production of cotton was developed along the river bottoms, the marketing of that crop could be accomplished more readily by water transportation.

The subject area was intersected by many Indian trails that, by 1830, had developed into wagon roads. Two branches of the Alabama Road passed

through the northern portion of the subject area. One branch led to Fort Strother where, upon crossing to Coosa River at that point, it connected farther westward with the Alabama Road leading west to Tuscaloosa. At that point there were connections to roads leading north to the Natchez Trace and south to New Orleans. The other branch connected on the east, in Georgia, with the McIntosh Road that led eastward to eastern and southern Georgia and westward to Tuscaloosa. The old "Federal Road" from Augusta, Georgia, to Columbus, Georgia, and points westward, passed through the southern portion of the subject tract.

Until the development of the steamboat, water transportation was a laborious process. Flat bottom boats, keel boats with shallow draft and rafts were used for a one-way trip downriver. From northern Alabama it had to be by the Tennessee River downstream to New Orleans and, from the southern half of the state, down one of the several rivers to Mobile. In very few instances could these conveyances be returned upstream with needed supplies by manpower. Much of this problem with transportation was corrected after the period 1818 to 1824, by which time there was a well developed steamboat service up and down the rivers.

By 1832 steamboat navigation had developed on the Alabama River as far as Montgomery; on the Coosa River as far as Wetumpka, located at the western boundary of the subject tract; and on the Chattahoochee River along the eastern boundary of the subject tract as far as Columbus, Georgia.

Although the State of Alabama was a pioneer in railroad development, only two miles of railroad existed in the state in 1832. In fact, there

were only ninety-five miles of operating railroads in the whole United States at the time of the 1832 cession of the subject tract. The development of railroads in Alabama as successful commercial ventures was still in the future and such anticipated railroad development would have had little, if any, impact on the value of the subject tract in 1832.

Considering all factors bearing upon the means and avenues of transportation available in Alabama in 1832, the average settler or traveler contemplating entering the subject area would find it reasonably accessible.

36. Population. The United States Census Reports for Alabama started with the year 1800, when 1,250 persons were reported living in the Alabama territory. By 1810, the population had increased to 9,046.

Long before 1832, the areas of principal interest to new settlers and land purchasers had been the Tennessee Valley to the north, and the regions around the port city of Mobile to the south. Mobile, ideally located as a port community, preceded the agricultural migration to Alabama. The town of Montgomery, just outside the subject tract, and the St. Stephens and Tombigbee areas, began to expand as soon as access to the Gulf of Mexico was assured.

The development of the cotton-growing areas in the Tennessee Valley to the north was aided by the early opening of several townsites. As the cotton-growing areas increased so did the resident slave population needed to work the large plantations.

According to the Alabama census report of 1820, only 83,286 of the 129,227 people reported were whites. The remaining 43,714 inhabitants, or approximately 34 percent of the population, were black slaves.

The Alabama census of 1830 reported a white population of 190,405. The remaining 117,547 inhabitants, or approximately 38 percent of the population, were slaves. The population continued to be concentrated in the cotton-growing areas of the state such as the Tennessee Valley. Four of the six counties contiguous to the subject area, namely St. Clair, Pike, Henry and Shelby were lightly populated in 1830. The remaining counties, Autauga and Montgomery, were more densely populated because of their good cotton lands and access to the Alabama River and the city port of Montgomery.

37. Public Land Policy of the United States. When ceded to the United States the Indian lands became a part of the public domain and were subject to disposal under the general land laws of the United States.

The Act of May 18, 1796, 1 Stat. 464, provided that the public lands should be surveyed into townships six miles square, and subdivided into sections of 640 acres each; and, when offered for sale, said lands could be purchased in tracts of 640 acres at public auction, at not less than \$2.00 an acre. One-half of the purchase price was required to be paid in cash within thirty days from the date of sale, one-twentieth of which was required to be deposited at the time of purchase. The balance was to be paid one year after the date of sale.

The Act of May 10, 1800, 2 Stat. 73, provided that a purchaser could acquire 320 acres of public land at not less than \$2.00 an acre. One-twentieth of the purchase price was to be deposited at the time of purchase. One-fourth of the balance was to be paid within forty days of the date of sale; one-fourth within two years from the date of sale; one-fourth within three years, and the remainder within four years from the date of sale. Interest at 6% per annum from the date of sale, was charged on the last three payments, and a discount of 8% a year was allowed on any of the last three payments if paid before the due date.

The Act of March 26, 1804, 2 Stat. 277, authorized the survey and sale of public land in quarter sections of 160 acres, with no change in the manner of payment provided in the Act of 1800.

The credit system continued until the passage of the Act of April 24, 1820, 3 Stat. 566, which provided for the survey and sale of eighty acre tracts of public land for cash at not less than \$1.25 per acre.

Even under the liberal credit terms that prevailed prior to the 1820 Act, many purchasers of public lands found it difficult to meet their deferred payments and thus clear their titles. Accordingly, the Congress, after 1806, enacted a continuous series of relief acts designed to alleviate the situation.

38. Public Land Sales in Alabama.

(a) Credit Sales - (1803-1820)

In 1802, Georgia yielded to the United States its

ownership claims to the Mississippi Territory, the latter thereupon becoming part of the public domain.

Soon after the United States had acquired the Choctaw lands (Royce Area 46) under the Treaty of October 17, 1802, 7 Stat. 73, Congress, under the Act of March 3, 1803, established a land office at St. Stephens, in what was then Washington County. All land between the Tombigbee and Pearl rivers was included in the St. Stephens' land office. The 1803 Act provided for the confirmation of existing British and Spanish land grants, including preemption rights. The act also awarded preemption rights to actual settlers who were heads of families or over 21 years of age and who had been evacuated by Spanish troops in 1797. Sales to eligible purchasers were to be made at the minimum price of \$2.00 per acre in accordance with the Act of May 10, 1800, 2 Stat. 73. By the Act of May 3, 1807, the then resident squatters were accorded preemption privileges and all future trespasses on public lands were prohibited.

The first public sales at St. Stephens occurred in 1807 and up until the end of August, 1811, all sales were preemption sales at no more than the minimum \$2.00 per acre. Although initial sales were rather slow, they picked up between 1816-1820, when "Yazoo Scrip" or "Mississippi Stock" became an acceptable medium of payment for these Alabama lands. "Yazoo Scrip" was frequently discounted and sold as low as \$40 per \$100 value.

Relinquishments within the St. Stephens' land district were heavy. By 1820, some 385,828 acres had been relinquished at total purchase bid of

\$963,852. When resold at public auction, these lands rarely brought more than the prevailing \$1.25 per acre cash price.

The Cherokee land cession of 1806 included a triangular piece of land north of the Tennessee River in what was to become Madison County, Alabama. When that tract was offered for public sale in 1809, it was rapidly taken up by cotton planters from Georgia. In Madison County the town of Huntsville was established in 1810, and it soon became the commercial center of the northern part of the state.

The Huntsville land office, which covered the rich valley lands of the Tennessee River, opened in 1810. Speculators paid between \$50 and \$70 per acre in a few instances for lands in the Tennessee River country. In 1818 ordinary cotton land was bid from \$20 to \$30 an acre, and over 973,000 acres of public land was sold at an average of \$7.45 per acre. Over \$1,000,000 of "Yazoo scrip" was applied in payment for the land, however. Except for 1818, and the year 1819, when over 220,000 acres of public land brought slightly more than \$3.00 per acre, public land sales in the Huntsville land district up to 1820 sold at, or slightly above, the \$2.00 statutory minimum.

The Milledgeville land office in Georgia with jurisdiction over central Alabama was opened in 1817, and moved to Cahaba, Alabama in 1819. The first sales of public lands from the 1814 Creek land cession took place in August, 1817, and were made from a tract along the headwaters of the Alabama River near the present city of Montgomery. Sales in 1817 amounted to

nearly \$800,000, and sales of new tracts in the same region, offered in 1818, brought in nearly \$1,000,000. The most coveted lands that were sold lay within the wide bend of the Alabama River, and upon a bluff which formed the opposite bank. The soil in the bend was of the best quality, and the bluff offered an excellent site upon which the newly founded town of Montgomery was to be built. The principal purchasers of these rich bottom lands were groups of land speculators. Few actual settlers were numbered among the initial buyers and much "Yazoo scrip" changed hands in consummating these original sales.

In 1819, large segments of public land along the Alabama River below Montgomery were added to the market. In all, some 1.5 million acres of Alabama public lands were sold in the Milledgeville-Cahaba Land District between 1817 and 1820 at an average price of \$3.56 per acre. Over \$600,000 in "Yazoo scrip" was used to purchase these lands and almost 650,000 acres of this land, representing a total purchase bid of \$2.7 million, was ultimately relinquished.

(b) Cash Sales (1820-1832)

The abolition of the credit system of public land sales in 1820, helped quiet the speculative fever that had generated abnormally high prices for quality land. With the advent of the \$1.25 per acre cash sales, there still remained an accumulated public land debt in Alabama of roughly \$11 million. In 1821, Congress took legislative steps to alleviate the problems of the distressed purchaser who had fallen

into serious debt. These relief measures permitted the indebted purchaser to relinquish a portion of his holdings upon which a balance was still owing. Payments actually made were then applied to satisfy the balance due on those lands that were retained. The balance due on retained land was reduced 37% to accommodate the new \$1.25 cash sale price, and certain credit was made available. Relinquishments still remained a major problem in Alabama. Between 1821 and 1828, over \$7.8 million of public land indebtedness was retired by the simple expediency of returning over 1.5 million acres to the market place.

New offerings of public land at the \$1.25 per acre cash price were made in the Sparta Land District. The principal tracts involved were the former Creek lands ceded under the August 9, 1814, treaty of cession. Surveys of these southern Alabama lands were not completed until 1824 and the lands were not on the market until 1827. Although a few choice tracts brought \$30 to \$50 per acre, the bulk of the sales held almost uniformly to the \$1.25 statutory minimum.

From 1829 through 1834, slightly more than 2.4 million acres of public land were sold at an average cash sale price of \$1.30 per acre.

(c) Unsold Public Lands

On June 30, 1827, the General Land Office filed a report that showed the amount of unsold acreage in Alabama and the number of years the lands had been on the market waiting for a buyer. A tabulation from each of the five principal land districts shows the following:

<u>Date of 1st Sale</u>	<u>Land Office</u>	<u>Date of Last Sale</u>	<u>Acreage Offered</u>	<u>Sold to 6/30/27</u>	<u>Still Offered</u>	<u>Yrs. Offered on Market</u>
1809	Huntsville	1820	4,386,534	1,068,850	3,317,684	6-1/2 to 18
1811	St. Stephens	1823	2,606,524	380,741	2,225,783	3-1/2 to 15-3/4
1817	Cahaba	1820	3,096,474	1,172,172	1,924,302	6-1/2 to 9-3/4
1821	Tuscaloosa	1826	3,611,128	466,867	3,144,261	1-1/2 to 6
1823	Sparta	1827	<u>2,740,353</u>	<u>71,046</u>	<u>2,669,307</u>	1 mo. to 3 1/2
			16,441,013	3,159,676	13,281,337	

As of December 31, 1832, it was reported to Congress that 4,335,471 acres of public land had been sold in Alabama. A further report showed that 17,992,339 acres of surveyed land had been offered for public entry. Of such acreage 11,101,697 acres had been offered since the \$1.25 per acre cash sales started on July 1, 1820, and 6,171,803 acres preceding that date.

39. Interest Rates and Banking. In the early days, immigrants to Alabama had to depend upon any acceptable medium of exchange that was available. The foreign exchange of the Spanish, French, and British money was common, especially silver and gold specie. The development of the United States Bank and American silver currency helped stabilize the flow of paper money that was redeemable in specie as a common medium of exchange. Banks were established at Huntsville in 1816, St. Stephens and Mobile in 1818, Cahaba in 1824 and Tuscaloosa in 1826. By 1832 branches of the Bank of the State of Alabama had been opened in Decatur, Montgomery and Mobile. Although these banks were sometimes shaky, they brought reasonable stability to the currency and provided needed capital for expansion.

With the exception of one year in 1818-1819, the interest rate in Alabama was generally stabilized at six percent through state law and bank charters. Federal issues were also rather generally stabilized at six percent.

40. Economic Considerations. As of 1832, Alabama was economically an agriculturally oriented state with cotton being the money producing crop. After the war of 1812-14 had ended, English mills bought heavily of American cotton and as a result prices jumped sharply upward to as much as 30 cents per pound in 1816 and 34 cents per pound in 1818. The conditions of the cotton market either stimulated or suppressed the demand for good cotton lands, the consequences being that in Alabama recurrent periods of boom and depression occurred concurrently with speculative land buying. Following the war of 1812-14, Alabama experienced a brief boom period that ended in 1819 when a depression set in that lasted until 1828. During this period cotton prices fell to 10 cents per pound. During the next four years, the economy began to recover, and the next boom period in Alabama history was recorded in 1834.

Industrial development in Alabama, as of 1832, was of minor consideration in its economy. Other than agricultural employment the supportive commercial services of agriculture were the only other major sources of activity and employment.

41. Plaintiff's Appraiser - Mark J. Williamson. The plaintiff's expert appraisal witness was Mr. Mark J. Williamson, a real estate appraiser from Birmingham, Alabama. Mr. Williamson submitted an appraisal report and also testified in support of his appraisal.

Mr. Williamson was of the opinion, that, in 1832, the highest and best use of the subject tract by a prospective buyer and buyers was for investment, development, and resale. According to Mr. Williamson portions of the area would be used for townsites, business, residential and institutional development; other areas might be used for recreational purposes, while those areas outside of the townsites would be profitable for commercial enterprises. Larger sections of land would be best suited for timber growing and general agricultural use. A prospective purchaser of the subject tract in 1832, according to Mr. Williamson, would have given prime consideration to the future potential of the area.

Mr. Williamson utilized the market data or comparable sales approach in estimating the 1832 fair market value of the subject tract. From the deed records in nine counties near and adjoining the western boundary of the subject tract Mr. Williamson abstracted private sales data for the five year period, 1830-1834 inclusive. According to Mr. Williamson he edited this sales data, involving some 2,000 transactions, by eliminating therefrom all deeds showing family connections, and those showing improvements.

From the following simple averaging of the total acreage and sales prices in the nine counties Mr. Williamson arrived at an average sales price of \$4.35 per acre:

<u>County</u>	<u>Acreage</u>	<u>Total Sales Price</u>	<u>Average Price Per Acre</u>	<u>P1. Ex. No.</u>
Autauga	49,305.5	\$ 234,160.00	\$ 4.75	25-V
Tuscaloosa	47,673	187,043.74	3.92	26-V
Pike	4,131	11,256.00	2.72	27-V
St. Clair	14,089.35	47,225.00	3.35	28-V
Jefferson	30,089.35	112,485.55	3.65	29-V
Shelby	17,326.5	60,432.47	3.49	30-V
Henry	5,343	20,792.51	3.89	31-V
Dallas	68,401.16	270,842.81	3.96	32-V
Montgomery	<u>50,602.56</u>	<u>317,376.24</u>	<u>6.27</u>	33-V
	287,728.55	\$1,251,614.38	\$ 4.35	

He then discounted said average price for survey costs, for the size of the subject tract, and for possible improvements not shown by the deed records, such as clearing land, even though the timber from the cleared lands was used to build houses, for fencing and for other purposes. His overall discount, which was 38.4% or \$1.67, was based on Mr. Williamson's professional judgment. The balance, or \$2.68 an acre, represented Mr. Williamson's per acre fair market value estimate of the 5,200,000 acres in the subject tract as of April 4, 1832, or a total value estimate of \$13,936,000.00

Mr. Williamson also testified that a prospective purchaser of the subject lands could have paid \$2.68 cents an acre for these lands, and doubled his money by disposing of them within a period of five years, considering the great demand for these lands. He testified further that the considerable supply of public lands available at \$1.25 per acre had no effect whatsoever on the selling price of private lands, that his evaluation was on the conservative side, and that he had duly considered all of the attributes of the subject tract, such as increase of population, demand, temperature, elevation, crops, transportation facilities, nearness to outside markets, etc., in determining the fair market value of the award area.

In addition to the above private sales data, Mr. Williamson testified to 98 private sale transactions in Talladega County, one of the counties formed from the subject tract, for the years 1832, 1833, and 1834. The 98 transactions, ranging in price from \$0.10 per acre to \$6.25 per acre, conveyed a total of 33,000 acres for a overall consideration of \$48,302.00, or an average of \$1.46 per acre. Because approximately 81% of these sales were made by resident Creek Indians, Mr. Williamson speculated that fraud may have tainted these sales. These particular transactions did not figure in Mr. Williamson's evaluation of the subject area.

42. Defendant's Appraiser - Ernest G. Booth. The defendant's expert appraiser was Mr. Ernest G. Booth, a staff appraiser with Gordon Elmquist & Associates, St. Paul, Minnesota. Mr. Booth submitted a written appraisal report and also testified in support of his appraisal of the subject tract.

According to Mr. Booth he adopted four approaches in developing an 1832 fair market value estimate for the subject tract. The initial two are interrelated and involve first, the selling of a proportionate share of the subject tract at the prevailing \$1.25 per acre government price for public lands, and the balance at \$0.40 per acre, and secondly, an estimate based on the amount of unsaleable land within the subject tract using the same \$1.25 per acre price for government lands as the basic ingredient. The third approach involved estimating the market value of the several classes of land within the subject tract with improvements included. The fourth

approach is based upon the history of the sale of first and second class public lands in Alabama. Although Mr. Booth at one stage adopted a method of appraisal which he captioned "The Private Enterprise Approach," at no time did he utilize comparable private sales of nearby land, or the traditional "market data" approach, in his value estimates for the subject tract.

Mr. Booth's 1832 fair market value estimate for the subject tract (5,128,425 acres) was \$3,743,750 or \$0.73 per acre.

43. Analysis of Private Sales Data. The plaintiff's expert witness, Mr. Williamson, assembled abstracts of over 2000 private sales of realty in nine counties proximate to the subject area from 1830-1834. Plaintiff contends that these lands were generally comparable in soils, climate and topography to the subject area. Plaintiff also claims to have carefully edited these sales to eliminate sales between members of the same family and sales which show improvements. The Commission examined the sales data. We found included therein many sales between persons of the same surname, obvious town lot sales, sales to settle debts, sheriff sales, estate sales and numerous resales of the same property. All of these conditions tend to distort the validity of the sales data. Notwithstanding these shortcomings the Commission is of the opinion that private sales, in the absence of evidence to the contrary, are the best evidence of the price a willing buyer will pay to a willing seller.

To minimize the effect of extreme prices at either end of the spectrum, the Commission ranked the private sales in each county in order of the price paid per acre and divided them into quarters. The Commission then

discarded the highest and lowest quarters and computed the average price per acre on the basis of the remaining inner quartiles. This procedure was then repeated for each of the years in question. The effect of this analysis is as follows:

STATISTICAL ANALYSIS BY COUNTY

<u>County</u>	<u>All Sales</u>	<u>Inner Quartile Data</u>		
	<u>Price Per Acre</u>	<u>Price Per Acre</u>	<u>No. Sales</u>	<u>Acres Per Sale</u>
Pike	2.72	2.60	24	113.4
Shelby	3.49	3.08	71	114.5
Montgomery	6.27	4.56	135	198.6
Autauga	4.75	3.48	148	147.5
Henry	3.89	2.35	27	136.8
St. Clair	3.35	2.88	63	114.6
Jefferson	3.65	3.03	143	111.9
Tuscaloosa	3.92	2.82	191	116.8
Dallas	<u>3.96</u>	<u>3.15</u>	215	152.1
Totals	4.35	3.26		

STATISTICAL ANALYSIS BY YEAR

<u>Year</u>	<u>All Sales</u>	<u>Inner Quartile Data</u>		
	<u>Price Per Acre</u>	<u>Price Per Acre</u>	<u>No. Sales</u>	<u>Acres Per Sale</u>
1830	4.15	3.25	210	135
1831	3.79	2.83	159	141
1832	3.79	2.95	218	131
1833	4.58	3.35	242	144
1834	<u>5.12</u>	<u>3.40</u>	194	129
Totals	4.35	3.17		

44. Sales in the Subject Area. After the 1832 cession four significant sales of ceded territory occurred. 23,040 acres were sold by Eli Shorter at an average price of \$4.12 per acre between 1834 and 1836. 9,600 acres were purchased from Creek chiefs in 1835 for \$3.65 per acre and resold by 1838

at an average price of \$7.81 per acre. In 1836 there was a report that two land speculators had sold 36,160 acres at an average price of \$9.38 per acre. In 1836 and 1837 public auction sales were held to dispose of lands held for the benefit of Creek orphan children, pursuant to Article II of the 1832 Treaty. 12,800 acres were sold at an average price of \$8.29 per acre. These sales indicate that high prices were paid for select portions of the subject area, however, they comprise less than 1 1/2 percent of the total tract. No attempt has been made to identify the lands sold and there is no reason to believe that the lands of the subject area were of any greater value than those of the neighboring counties.

45. Highest and Best Use - As of April 4, 1832, the subject tract could best be utilized for farming activities. The choicest lands would best be utilized for large scale plantation type farming while the balance, exclusive of non-agricultural areas, would be readily adaptable for subsistence homestead farming.

46. Fair Market Value. Based upon the foregoing findings of fact and all the evidence of record, and, for the reasons stated in the accompanying opinion, the Commission finds and concludes that, as of April 4, 1832, the subject tract had a fair market value of \$8,365,552.

Conclusion

47. Liability having been established herein in accordance with the Commission's previous finding that the defendant's failure to carry out the individual reserve provisions under the 1832 treaty of cession


constituted unconscionable consideration (finding of fact No. 24, 26 Ind Cl. Comm. 410), the plaintiff is entitled to recover from the defendant the sum of \$8,365,552, less any payments on the claim or other offsets, which matters shall be the subject of further proceedings.



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner