

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: September 28, 1977

Appearances:

Paul M. Niebell, Attorney for Plaintiffs.

James M. Mascelli, with whom was Acting Assistant Attorney General James W. Moorman, Attorneys for Defendant.

OPINION ON PLAINTIFF'S MOTION FOR REHEARING

Yarborough, Commissioner, delivered the opinion of the Commission.

This case is before the Commission on plaintiff's motion for a rehearing of the issues contained in the findings of fact and opinion entered herein on June 15, 1977, 40 Ind. Cl. Comm. 175. Plaintiff has enumerated five errors of fact or law as grounds for its motion for rehearing. Briefly, these alleged errors are as follows:

1. That the Commission erred in valuing non-agricultural lands separately from agricultural lands.
2. That the Commission erred in awarding less value to the non-agricultural lands than it gave to the agricultural lands.
3. That the Commission erred in applying to this case the facts and law of Tlingit and Haida Indians of Alaska v. United States, 182 Ct. Cl. 130 (1968).

4. That the Commission erred in awarding a nominal value of ten cents per acre to the non-agricultural lands as timber lands when the highest and best use for these lands was subsistence farming.
5. That the Commission erred in failing to support its valuation of the non-agricultural lands with findings of fact, and that it made inconsistent findings of fact regarding the lands of the subject area.

The defendant opposes each of plaintiff's alleged errors of fact and law.

In our opinion plaintiff is mistaken in each of its contentions. The plaintiff is merely rearguing issues decided by the Commission after careful consideration of all of the evidence. The findings are supported by a preponderance of the evidence and plaintiff has introduced no newly-discovered evidence. The motion is without merit and must be denied. However, certain matters raised by plaintiff require some clarification.

Plaintiff states that the Commission failed to make any basic findings of fact to support our decision to award \$.10 per acre nominal value as the contribution of the non-agricultural lands to the value of the tract as a whole. We feel that this conclusion is amply supported in the findings. Finding 33(c) described the non-farm land as

rough lands; hills, ridges, mountainous areas, stormy, coarse and excessively drained sand, rock escarpments, swamps, rivers, streams and undrained acreage. Many farms would include such areage as part of their land and its use would be limited to pasture, wood lots and hunting game.

We found the highest and best use of the subject tract to be for farming, both on a subsistence and a plantation level. The Commission attempted to reconcile two conflicting trends in the 1832 market as a potential purchaser would. At the same time that an active private sales market for selected lands existed, nearly 14 million acres of land in the state remained unsold at \$1.25 per acre. While the 1832 hypothetical purchaser would reason that he could resell the agricultural land reasonably promptly, he would not evaluate the non-agricultural lands in the same manner. These lands would possibly be "thrown in" to enhance the value of abutting lands, or he could hold these lands hoping a market would develop for them at a later date. In either case their value would be only nominal to the 1832 purchaser. The value of any 160 acre tract would be inversely proportional to the amount of such non-farm land the tract contained.

Plaintiff also alleges that Finding 29 and Finding 33 are in conflict, inasmuch as Finding 29 states that there are 5,128,515 acres of farm lands and Finding 33 states that only 3,962,400 acres are farm lands. Finding 29 was concerned with the soil groups in the subject tract, not the suitability of the land for farming. Topography, rivers and drainage, climate, timber cover, minerals, population, transportation and land settlement patterns were subjects of other findings. Each of these factors affected land classification and use in Royce Area 172, the subject of Finding 33. The apparent discrepancy in total acreage was thoroughly discussed in our opinion. Id. at 178.

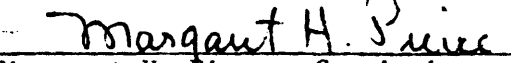
Plaintiff's motion for rehearing will be denied.


Richard W. Yarborough, Commissioner

We concur:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

Chairman Kuykendall, concurring in the result.

If one accepts the Commission's ultimate conclusion on value and the essential findings of fact herein as supported by the preponderance of the evidence, then plaintiff's motion for rehearing should be denied, since it fails to point to any substantial errors of law or fact.

Therefore, I concur.