BEFORE THE INDIAN CLAIMS COMMISSION

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, et al.,	)	Docket No. 59
HANNAHVILLE INDIAN COMMUNITY, et al.,	)	Docket No. 29-E
THE OTTAWA TRIBE and GUY JENNISON, et al., as representatives of THE OTTAWA TRIBE,	)	Docket No. 133-B
Plaintiffs,	)	
POTAWATOMI INDIANS OF INDIANA AND MICHIGAN, INC.,	)	Docket No. 29-E
PRAIRIE BAND OF POTTAWATOMIE INDIANS, et al. [Plaintiffs in dismissed Docket Nos. 15-F and 15-G],	)	Docket No. 29-E
CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, et al. [Plaintiffs in dismissed Docket No. 307 (as amended)],	)	Docket No. 29-E
Intervenors,	)	
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: May 11, 1978

ADDITIONAL FINDINGS OF FACT

On June 13, 1973, the Commission entered findings of fact numbered 1 through 7, an opinion and an interlocutory order, in which it was determined that the plaintiffs herein were owners by recognized title of

the lands described as Royce Area 66 in Michigan and Ohio, and that the United States acquired from plaintiffs the subject lands by the 1807 Treaty of Detroit, 7 Stat. 105.

Pursuant to the Commission's interlocutory order, trial was held on April 7, 1977, on the subject of the acreage and fair market value of the ceded lands, and the consideration given for the cession. After considering the evidence, the briefs and proposed findings of fact submitted by the parties, the Commission makes the following findings of fact which are in addition to those previously made herein.

8. Lands Involved, Acreage and Valuation Date. The Commission has previously determined that plaintiffs ceded their interest in the subject lands, Royce Area 66, to the United States as of January 27, 1808. The parties are in agreement that the tract contains 5,611,532 acres, located in the southeastern part of the present state of Michigan and the northwestern part of the present state of Ohio. The area is described with particularity in our previously entered finding 2, 30 Ind. Cl. Comm. 388, 408.

The boundary of Royce Area 66 extends northward from the mouth of the Maumee River on Lake Erie, along Lake Erie and connecting waters to Lake Huron, and to a point on the shore of Lake Huron below Saginaw Bay known as White Rock. From thence it proceeds along a line drawn southwesterly to the 85th meridian, thence southward along the meridian to the Maumee River in Ohio, and thence northeast following the course of the Maumee River to its mouth at Lake Erie, the point of beginning.

The Commission divided Royce Area 66 horizontally into three tracts. The southern tract, to which the Commission has determined the Ottawa plaintiffs held recognized title, contains 469,116 acres. The central tract, to which the Commission has determined the Potawatomi plaintiffs held recognized title, contains 1,843,779 acres. The northern tract, to which the Commission has determined that the Chippewa plaintiffs held recognized title, contains 3,298,637 acres.

Certain enclaves within Royce Area 66, including Detroit, are not to be valued as part of this cession.

9. Colonial History. The original inhabitants of Royce Area 66 were Indians who came to the area after the glacial period. French explorers from Canada were the first Europeans to enter the area, starting in the latter part of the 17th Century. The French were predominantly fur traders, and Detroit was a center for the fur trade in the 18th Century. The British entry into the area came west from New England via the Ohio Valley, and was directed toward colonization and settlement. Conflict between the British and French in the mid-18th Century led to hostilities, which were finally resolved by the Treaty of 1763, whereby the British won control of the area. Following the American Revolution, Britain surrendered control of the area to the United States, by the Treaty of Paris, in 1783.

10. American History. The American presence in the area was for the purpose of settlement. The area was in an unsettled state,

despite the presence of frontiersmen and speculators, until 1794. The Indian resistance had been put down at the Battle of Fallen Timbers, and the British had agreed to withdraw from their posts at Detroit and Michilimackinac by June 1, 1796. Treaty of Nov. 19, 1794, 8 Stat. 117.

The Northwest Ordinance of 1787 covered the region north of the Ohio River, and was designed to encourage the orderly settlement of the Old Northwest, which included Royce Area 66. It provided for the creation of governmental machinery, first in the form of a territory, and ultimately in the form of statehood.

Cessions by the Indians of their lands by treaties began in 1784, with the Treaty of Fort Stanwix, whereby the Iroquois surrendered their claims in Ohio. In 1795, by the Treaty of Greenville, Indian tribes ceded to the United States most of the lands in the present state of Ohio, excepting the north-central and northwest portions of the state. The north-central areas were ceded in 1805.

Ohio entered the Union in 1803, and in the same year Michigan became part of the Indiana Territory. In 1805 Michigan achieved territorial status in its own right.

11. Population. In 1790 the population of the United States was 3,929,000. By 1810 the population of the nation had grown to 7,224,000. Between 1800 and 1810 the rate of growth of population of the United States was 36.4 percent. The compound annual growth rate for the period was 3.25 percent.

The growth of population in New York and Pennsylvania are also relevant, since westward immigration into the Northwest came predominantly from and through these two states. Pennsylvania almost doubled in population between 1790 and 1810, growing from 434,313 to 810,091 inhabitants. New York almost tripled during the same period, increasing from 340,120 to 959,049 in population.

Between 1783 and 1800, several early communities and towns were established in Ohio, including Marietta, Cincinnati, Cleveland, Chillicothe, Dayton, Youngstown, and others. In 1800 the population of Ohio was 45,365, and by 1810 the population had increased to 230,760. (By 1820 the population was 581,434, and by 1830 it was just under one million inhabitants.)

Detroit was the earliest settlement in Michigan. In 1810 the recorded population of Michigan was reported as 4,762. (The population figures for 1820 and 1830 were 8,896 and 31,639, respectively.) Most of that population was centered in Detroit.

Population growth from 1800 to 1830 tended to move west of Ohio, with Indiana, Illinois and Missouri growing relatively rapidly starting in the first decade of the century, followed by Michigan, where significant growth began in the 1820's.

12. Public Land Policy. Following the formation of the Union, the original thirteen states surrendered their claims to the lands to the west of their present boundaries with the understanding that when these lands were settled they would be divided into states and admitted into the Union.

Under the Trade and Intercourse Act of 1790, 1 Stat. 137, the United States provided that Indian tribes could sell their lands only by treaty, and only to the Federal Government, or subject to its approval.

Pursuant to the Land Ordinance of 1785, Congress provided that settlement would be allowed only in surveyed parcels of land. The surveys were to be in the form of square townships, six miles on each side, with 36 sections, each one square mile. Each section had 640 acres.

The proceeds of sales were a source of federal revenue. Initially, Congress relied on speculators in land to assume the middleman responsibilities for promotion, subdivision and settlement. The results were unsatisfactory, and this system was abandoned. In 1796 provision was made for the purchase of small tracts, of 640 acres, with a $2 per acre floor price.

In 1800 the size of the tracts offered was reduced to 320 acres, with the price remaining $2 per acre on credit terms allowing payment in installments over four years, or with an 8 percent discount for cash. In 1804, the size of the tracts offered was reduced to 160 acres, and the cash price was set at $1.60 per acre. Subsequently, well after the valuation date, both the minimum acreage and price were again reduced.

Pursuant to these policies, land could be purchased at public auctions, where sales were made to the highest bidder. However, these

auctions lasted a relatively short time of from one to three weeks, after which the lands were available at $2 per acre. There was little competition at the auctions, and the $2 per acre price tended to prevail.

The primary purpose of the Government in adopting these policies was to make lands available for quick settlement at an attractive price to homesteaders. The Government rejected the alternative approach of trying to obtain as much revenue as possible by maintaining a high price for sale of public lands.

Approximately 2,670,000 acres of land in Ohio and Indiana had been sold by September 30, 1807, through the five Government land offices located there. Millions of acres of additional lands in the public domain were still available.

13. Economic and Financial Considerations. The United States at the beginning of the 19th Century had a predominantly agrarian economy, in which land was a basic factor.

Scholarly reconstruction of the economy during the early days of the Republic reveals a clear general pattern. The economy was subject to cyclical patterns over the short term, but was expansionary over the long term. It proceeded roughly in a "two steps forward, one step backward" fashion.

Evidence submitted by plaintiffs shows a rising gross national product from 1789 through 1796, then a decline through 1798, then a rise through 1806, followed by another two year decline, then another rise

starting in 1809. Overall, the gross national product almost quadrupled in the 21 years from 1789 to 1810. (Pl. ex. V-3.)

Agricultural production increased from $264 million to $306 million between 1799 and 1809, and overall private production rose from $668 million to $901 million during the same period. (Pl. ex. V-5.)

The banking system in the nation during this period had demonstrated its capacity to meet demands for credit satisfactorily. While facilities in the area at the valuation date were limited, there was no reason not to anticipate continued growth of such facilities adequate to meet expanding demand.

14. Transportation. Access to Royce Area 66 was possible either via the Great Lakes waterways, or overland by trails or primitive roads. At the valuation date, transportation into the area was not well developed. The steamboat had not been invented, nor the Erie Canal proposed. While overland travel was difficult, development of improved roads would properly have been expected to be concomitant with the growth of Ohio.

15. Climate. The entire tract is located within the temperate zone. Because the tract is located near large bodies of water within the Great Lakes region, summer and winter temperature extremes are moderated. The mean maximum temperature in July ranges from 80° in the north to 86° in the south. The mean minimum winter temperatures range from 16° in the north to 22° in the south.

The average annual percipitation in the tract ranges from 30 to 35 inches per year, with a large portion falling during the growing season. The average frost-free growing season ranges from 130 to 170 days.

16. Topography. The lands in the subject tract are divided between glaciated Lake and Till Plains. Most of the tract is relatively level and is well watered by streams. The highest portion is 1,000 feet above sea level. In 1808 significant areas of swampland existed, but they have since been drained and made into productive farming land.

17. Timber and Minerals. The lands in the subject tract were densely forested, predominantly with hardwoods, although there were stands of white pine in some of the northern sections. Timber was not of itself considered as adding commercial value to the land in 1808.

In 1808 there was little or no commercial value attached to minerals in the subject tract.

18. Soils. The parties were in significant disagreement concerning the soils in the subject tract. Plaintiffs maintain that virtually all of the soils in the tract were superior for agricultural purposes. Defendant classifies the soils in three groups, the first composed of Class I and II soils, the second with Class III soils, and the third with Class IV soils. The first group is considered superior, the second good, and the third is described as "unfit for farming as of the appraisal date." (Def. ex. 70, p. 172.)

The controversy between the parties is significant as to the allegation by defendant that there were substantial percentages of soil unfit for farming. Specifically, defendant classified 52 percent of the acreage in the Ottawa tract, 15 percent of the Chippewa tract, and 19 percent of the Potawatomi tract as having Class IV soils. In overall terms, 1,110,276 acres, or 20 percent of the total of 5,611,532 acres being valued, were considered by defendant as unfit for agriculture on the valuation date.

Plaintiffs argued that defendant's expert's opinion was not supported by the facts.

We have reviewed the record as to soils. Plaintiffs relied on Soils of the North Central Region of the United States (U. of Wisconsin, 1960) (Pl. ex. W-11). Defendant relied on the section in the U. S. Department of Agriculture Yearbook for 1938 entitled "Soils of the United States" (Def. ex. 20).

Defendant's expert's soil classification scheme is his own, and is not found in his exhibits. Moreover, in the absence of a survey as of the valuation date, there is no reliable way of establishing what land was unfit for farming as of the appraisal date. However, the evidence does make it apparent that there must have been significant areas which would require drainage before they were fit for farming. With drainage, however, these areas would have been productive.

It is not readily apparent, from the evidence, precisely how extensive in size this area may have been, or how accurate defendant's estimate is that fully 20 percent of the subject tract would have required drainage to become productive. Nonetheless, even allowing for a certain amount of error in defendant's estimate, it is reasonable to conclude from the evidence that parties to a transaction in 1808 would have appreciated that drainage would be required in some areas in order for the soil to be useful for agriculture. However, early observers of such lands did not consider land requiring drainage to be unfit for agriculture.

19. Survey. In 1808 there was very little information about the subject tracts, except for lands in the vicinity of frontier settlements. There was no attempt to survey the subject lands until 1815, when the Government commenced that job. However, for purposes of a valuation based on a sale between a hypothetical willing buyer and seller, we will assume that the parties would have undertaken, before sale, at least a cursory survey. In this manner, basic information concerning the subject tracts which otherwise would have to be considered hindsight data may be assumed to have been in the possession of the parties to the hypothetical transaction.

20. Highest and Best Use. The parties are in agreement that the highest and best use for the subject tracts on the 1808 valuation date was for subsistence farming by settlers using homestead tracts. The Commission adopts this conclusion.

21. Comparable Sales. Each party introduced evidence of allegedly comparable sales. Plaintiffs' evidence is contained in a report compiled by Dr. Roger K. Chisholm, whose qualifications as an expert witness are described in finding 23. He testified concerning sales of small tracts of land purchased in 1807, for the most part by settlers. Defendant's evidence was of sales to speculators of vast tracts of land in the last decade of the 19th Century. Each party argued that the evidence of the other party was not relevant.

A. Small tracts. Plaintiffs' expert appraiser stated that he commenced his analysis by collecting data from 2,967 sales, ranging in time from 1786 to 1820. The sales were of tracts in southeast Michigan within the subject tract, and outside the subject area in northeast Ohio, to the east and southeast of present-day Cleveland. From this sample, plaintiffs' expert selected 118 sales which took place in 1807. The sales came from Wayne County, Michigan (which was at that time larger than at present), and Cuyahoga, Geauga, Portage and Trumbull counties in Ohio.

Dr. Chisholm submitted a computer printout listing each of these 118 transactions, showing the date and location of each sale, the names of the parties, the acreage and total price. (No data was submitted concerning the larger sample of 2,967 sales.) In preparing the printout, Dr. Chisholm had excluded any sale where the data indicated that the transaction might not have been arms-length. Dr. Chisholm

assumed that the bulk of the land sold was not improved or that the improvements which existed on the property were insignificant.

Defendant questioned the validity of the latter assumption. While the evidence is not clear on the matter, the existence of limited improvements does seem likely as to sales in these areas. Since we have determined for other reasons (see opinion) that these sales are not comparable, we have not concerned ourselves with the exact extent to which the improvements may have been a factor in the prices obtained in these sales.

Over 90 percent of the sales were in the three Ohio counties near the Pennsylvania border. The eight private sales from Michigan were in Wayne County. Five were located in or near Detroit, and were apparently town lots.

The prices received ranged from $.81 per acre to $21,739.21 per acre. Eight sales were of lots of under an acre in size, including five sales in Wayne County, each of which had prices in excess of $1,000 per acre. The largest tract was 6,484 acres, and six sales were of tracts in excess of a section, i.e., 640 acres. The average tract size was 240 acres, and the median tract was 100 acres. The median price for all sales was $2.50 per acre.[1/]

If the sales are listed by price received per acre, and the top and bottom 25 percent of sales are eliminated,[2/] the remaining 50 percent

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1/ Plaintiffs' expert did not calculate the average price per acre for these 118 sales.

2/ Although 16 sales were made at $2 per acre, only three fell within the inner quartile. For computation purposes, the average acreage per sale of the transactions at $2 was calculated, and multiplied by three.

do not include sales of townlots, or other sales which appear to be extraordinary. This remaining 50 percent of sales may be referred to as the "inner quartile."

The average price of the inner quartile sales was $2.57 per acre. The average size of the inner quartile sales tracts was 215.53 acres. The sales prices for the inner quartile ranged from $2 to $3.81 per acre.

B. Large tracts. Defendant's expert appraiser, Dr. Ernest G. Booth (see finding 24) listed 12 large-scale land transactions in his report. Five of these were considered by Dr. Booth as comparable sales for purposes of valuation. The Holland Land Company was the purchaser in four of these transactions all made in 1792. Three of the Holland purchases were in New York, and one was in Pennsylvania. The acreages ranged from 700,000 to 1,500,000. The remaining purchase which defendant's expert considered comparable was made by the Connecticut Land Company in 1795. This was of 2,841,471 acres in Ohio. In describing the large-scale transactions, defendant's expert stated in his report that the prices paid were wholesale prices and were indicative of the prices speculators were willing to pay for raw, undeveloped lands, in most instances.

The sales were made during a period (from 1787 to 1795) when large-scale speculation had been stimulated by several factors in American life at that time.

The Holland Land Company had been formed by Dutch bankers for the purpose of acquiring land in America. The Company then made the

aforementioned purchases at prices ranging from $.26 per acre for a million acres in New York, to $.40 per acre for 700,000 acres in Pennsylvania. The largest tract, 1.5 million acres in New York, sold for $.34 an acre, and the remaining tract had a price of $.30 per acre.

The purchase by the Connecticut Land Company was of the Western Reserve, in the northeast corner of Ohio. Although Dr. Booth calculated the $1.2 million price paid for the tract to be $.422 per acre, he noted that a slightly higher valid offer, of $.44 per acre, had been withdrawn by Mr. John Livingston, a New Yorker, in favor of the Connecticut Land Company in exchange for an interest in other lands.

The evidence shows that retail sales of land in the Western Reserve started at $1 per acre. The Holland Land Company sales of lands in the Cazenovia settlement, 50,000 acres in New York, also started at $1 per acre, but the price moved up rapidly in response to demand. During the first three years sales were rapid, and the average price was somewhat less than $2.50 per acre. Then prices were raised considerably further, more western lands came on the market at relatively low prices, and Cazenovia sales declined. Several years later, when Cazenovia prices were reduced somewhat, sales again moved briskly.

The evidence shows that the Holland Land Company also started prices for their lands east of the Allegheny River in Pennsylvania

at $1 per acre. Prices here too rose into the $2 per acre range. However, land in large blocks was difficult to sell even at substantial discounts below $1 per acre.

Although the Holland Land Company had hopes that it could liquidate its holdings within 20 years, in fact the holdings were not liquidated until 40 years after their purchase. The Connecticut Land Company was dissolved within 20 years of its creation without having disposed of all of the Western Reserve lands it had acquired.

The record shows that large-scale land speculation was a phenomenon of the decade from approximately 1786 to 1795, reflecting the evolving federal land policy of that period. Following the law of May 18, 1796, which provided for sales of tracts of 640 acres at $2 per acre as a minimum, large scale speculation ceased.

22. Greenville Sales. Plaintiffs' expert failed to put in evidence the sales data which he had collected for the years preceding 1808. Defendant did not attempt to collect such data, relying instead wholly on large-scale transactions occurring over 10 years prior to the valuation date.

This lack of information concerning transactions during the first decade of the century is a significant omission. Parties negotiating a transaction for the sale of a vast tract of frontier acreage in 1808 would have been aware of the settlement patterns of similar lands which had been recently opened to settlement such as the Greenville lands

of the Cincinnati Land District. The Greenville lands of the District were those lands lying south and east of the Greenville treaty[3] line and contained 3,150,229 acres. (Royce Area, Ohio and Indiana, No. 11) (See 146 Ct. Cl. 421, 429). The highest and best use for these lands was for development by settlers as homesteads.

The Commission made findings of fact concerning sales in the Greenville area in an earlier case. The findings were based on a thoroughly developed record that was, as to the findings concerning such sales, approved on appeal. Miami Tribe of Oklahoma v. United States, 4 Ind. Cl. Comm. 346 (1956), affirmed in part, and remanded for add'l findings[4], 146 Ct. Cl. 421 (1959). These lands were sold by the Government under the same laws that were in effect in 1808.

The record in Miami showed that during the first 10 years, from 1800 to 1810, 33.4 percent of the Greenville cession was sold at $2 per acre. This can be calculated as a rate of approximately 3.3 percent of the land sold per year. During the next eight years 40 percent of the remaining land was sold, which is at a rate of 5 percent per year. This type of pattern could have been anticipated. As early settlers moved in and began to develop the district, it would become increasingly attractive to later settlers, and the rate of settlement would increase. Our record in the instant case shows that this was the pattern that

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3/ Treaty of August 3, 1795, 7 Stat. 49.

4/ Both parties discussed these decisions, as to the Government's survey costs, in their briefs, and thus are presumably aware of the findings therein.

had occurred in the frontier settlement of western New York and Pennsylvania, and eastern Ohio, and that this was the expectation of the land speculators cited by defendant.

In addition, the record in Miami showed that the Government received for certain parcels of lands in the Greenville district, prices considerably in excess of the $2 per acre minimum. By statute the central sections of each township were reserved for future disposal by Congress. Between 1805 and 1808, pursuant to Congressional authorization, 2,972 acres of such lands were sold at a minimum of $8 per acre. The central sections were arbitrarily chosen without reference to quality, and therefore had the same general attributes as the unreserved sections. In 1808 Congress reduced the minimum price of the reserved sections to $4 per acre, with a resultant increase in the number of such sales.

23. Plaintiffs' Valuation. Plaintiffs offered the report and testimony of Dr. Roger K. Chisholm, associate professor of economics at Memphis State University. Dr. Chisholm is trained in economic and agricultural history, and formerly taught managerial economics at Northwestern University. He listed the names of six persons who assisted in preparation of his report.

The report of the plaintiffs' expert's summarized relevant background, historic, economic and demographic factors affecting the subject

tract. The report also included a summary of soil studies. Finally, the report included a breakdown of market data on comparable sales in 1807 in five counties, as described above in finding 21(A).

Dr. Chisholm referred to the foregoing factors in describing how he arrived at his valuation. He concluded that indicators showed economic, labor and monetary conditions favorable as of the valuation date, and that the soil was fertile, although some drainage would be required in certain areas for the full potential of the land to be realized.

Dr. Chisholm stated that he relied fully on his analysis of comparable sales in arriving at his valuation figures. He first valued the Potawatomi tract, containing 1,843,779 acres. The tract was the central tract, and was adjacent to Detroit. Dr. Chisholm noted that some of the best farmland was in the eastern portion of the tract, and that the tract could be taken as typical of the whole of Royce Area 66. He stated that settlement was spreading from Detroit into the tract. He concluded that it should be valued at the median price of the comparable sales, i.e., at $2.50 per acre. He concluded that the entire tract therefore had a value on the valuation date of $4,609,447.50.

Dr. Chisholm next valued the Ottawa tract, containing 469,116 acres. This was the southernmost tract, fronting on Lake Erie and lying between the Rivers Raisin and Maumee. Dr. Chisholm stated that settlement had begun, that there were travel routes crossing the tract, and that

the value of the tract was thereby enhanced. He concluded that it should be valued at $2.65 per acre, or $1,243,157.40 for the tract as a whole on the valuation date.

Dr. Chisholm concluded with his valuation of the Chippewa tract, containing 3,298,637 acres. He noted this was the northernmost tract, the most distant from established settlement, with frontage on Lake Huron. He stated that the area had valuable water, timber and fur resources, but had some areas of soils which would not be used for agriculture, although they could be used for forestry or recreation. He concluded that the Chippewa tract was slightly less valuable than Royce Area 66 as a whole. He determined that the Chippewa tract should be valued at $2.35 per acre, or a total of $7,751,796.95 on the valuation date.

24. Defendant's Methods of Valuation. Defendant's valuation expert, Dr. Ernest G. Booth, submitted a report and testified concerning the market value of Royce Area 66. Dr. Booth is a professional real estate appraiser with the firm of Gordon Elmquist Associates, of St. Paul, Minnesota. Defendant's report was signed by Dr. Booth and two other persons who assisted with it. In addition, defendant used Dr. Charles D. Palit, an associate professor at the University of Wisconsin, to analyze Dr. Chisholm's statistical approach to his valuation.

Defendant's expert's report described at length historic, economic and geographical factors affecting valuation of the subject property.

A major section of Dr. Booth's report described the activities of land speculators during the period from 1787 to 1795, and provided market data concerning the transactions in which they were involved, as described above in finding 21(B).

In addition to comparable sales data, Dr. Booth considered in his valuation the location and size of, and access to, the tracts, the direction of settlement patterns in the Old Northwest, economic conditions, the quality of the soils, including drainage problems, and the estimated length of time required to sell the tracts to settlers. Dr. Booth stressed that at the time of cession these tracts were not in the path of westward development, which was to the south and west of Michigan. Difficulties of travel and access to the subject lands, the existence of wet lands and poor soils in the subject lands, and the availability of large tracts of public lands to the west and south, were given as the chief reasons why settlement tended to be elsewhere for so long.

Dr. Booth applied three appraisal methods to each of the three tracts in Royce Area 66. These approaches he denominated as comparable sales, development, and government sales. Dr. Booth used data from the sales records of the Connecticut Land Company and the Holland Land Company in his calculations pursuant to each approach.

A. Comparable Sales Approach. On the basis of the prices paid by the Connecticut Land Company and the Holland Land Company, defendant's expert selected the $.40 per acre paid in 1795 as indicative of the market value during the period of those companies' operations. Dr.

Booth allowed an annual increase of 5 percent, or $.02 in wholesale values for the 13 years following 1795 until 1808. Thus he added $.26 to the 1795 wholesale price, and arrived at $.66 per acre as an adjusted wholesale price for the valuation date. He then made downward adjustments for each tract to reflect negative considerations, such as unusable soils or difficulties of access, to arrive at a final valuation figure pursuant to this method.

B. Development Approach. The development approach used by Dr. Booth was based on the hypothetical viewpoint of a real estate developer. Using the experience of the Holland Land Company in western New York during 1801-11, Dr. Booth estimated a maximum retail sales price potential of $2.30 per acre.

Dr. Booth argued that valuation tables show that with quick resale and low development costs, a real estate developer will pay one-half the anticipated retail price when buying land. He maintained that as the time required for resale lengthened, or development costs increased, the ratio would become lower. Dr. Booth then estimated the time that would be required for resale for each parcel. He divided the estimated liquidation period by five, and used the resulting figure as the basis for arriving at the ratio of retail price to market value. For example, a 30 year estimated liquidation period would lead to a 6:1 ratio. Dr. Booth did not explain the basis for establishing this formula. Finally, he applied this ratio to the $2.30 per acre retail price he had arrived at to determine his valuation pursuant to the development approach.

C. Government Sales Approach. Dr. Booth's final approach to valuation was based on analysis of "net returns" from retail sales by the Government, with the sales price set at $2 per acre. In this approach, Dr. Booth figured the cost to the Government of acquiring the land. He then estimated the amount of the land that would be written off as having marginal value. This estimate was based on his soil analyses. He reasoned that costs would have to be calculated, and deducted from the sales price. He used the figure of 14.2 cents per acre as the estimated cost of surveying, managing and selling the land.

Dr. Booth calculated the ratio of the sales price to cost to the Government and considered whether that ratio was valid in light of the ratios computed in the Holland Land Company sales. In arriving at a market value, he concluded that a more appropriate ratio was one based on the Holland Land Company sales.

25. Defendant's Valuation Conclusions. Defendant's expert first valued the Ottawa tract. This was the southernmost tract. He stated that in his opinion a prospective buyer would make use of his knowledge of the experience of the Holland Land Company and the Connecticut Land Company before bidding on the subject tract.

Applying the comparable sales approach, Dr. Booth started with the adjusted wholesale price of $.66 per acre. However, he reasoned that 99 percent of the land was "poor", with 52 percent non-saleable, and that the area suffered from a complete lack of access roads. He

therefore made a downward adjustment of $.30 an acre, to arrive at a $.36 an acre market value.

Using the development approach, Dr. Booth started with the $2.30 per acre retail price of the Holland Land Company. Because of the aforementioned drawbacks to the tract, Dr. Booth estimated that a period of not less than 35 years would be required to liquidate. He concluded that the ratio of retail price to purchase price would be 7:1, and that the market value of the tract would be 32.8 cents per acre.

Using the Government sales approach, Dr. Booth assumed a cost to the Government of $.36 an acre to acquire the land. Because of poor soils and donations, he assumed only 45 percent of the lands, and those largely marginal, would be available for sale to settlers.

Dr. Booth found that the cost to sale price ratio was 1:5.55 ($2 divided by $.36 = 5.55). He concluded that this ratio was too low in light of the Holland Land Company sales, and determined that a ratio no lower than 6:1 was justified. Using that ratio he arrived at a market value for the tract of 33.33 cents per acre.

Thus, using the three approaches he favored, Dr. Booth arrived at values of $.36, 32.8 cents and 33.33 cents per acre. He noted that the closeness in values would be expected because of the overlapping assumptions used in the respective methods of valuation. He decided that $.33 per acre represented the market value, and concluded the 469,116 acres in the Ottawa tract had a value of $154,808 on the valuation date.

Dr. Booth next applied this three-approach process to the Chippewa property, the northernmost tract. He considered that the chief negative factors of the Chippewa tract in 1808 would have been its remoteness and inaccessibility. He found 22 percent of the land to be poor. He concluded that it would take 30 years to liquidate sales. He therefore used a 6:1 ratio in applying his development approach, and a 5:1 ratio in the Government sales approach.

The resulting values were $.40, 38.33 cents and $.40 per acre. Dr. Booth concluded that $.40 per acre represented the market value for the tract. By Dr. Booth's analysis the 3,298,637 acres in the tract had a value on the valuation date of $1,319,455.

In valuing the Potawatomi tract by the three approaches he favored, Dr. Booth estimated that 36 percent of the land was marginal, that accessibility would present problems, and that a 20-year period would be necessary to liquidate sales. He arrived at values of $.55, 57.5 cents and $.55 per acre. He opined that $.55 per acre represented the market value of the tract. Therefore, he concluded that the 1,843,779 acres in the tract had a market value on the valuation date of $1,014,078.

26. Consideration and Payment on the Claim. Article II of the Treaty of Detroit provided that as consideration for the cessions of the lands ceded by the Indian nations, there should be paid to them $10,000 "in money, goods, implements of husbandry, or domestic animals,

(at the option of the nations, seasonably signified, through the superintendent of Indians affairs, residing with the said nations, to the Department of War), as soon as practicable, after the ratification of the treaty." This article also provided that of this sum $3,333.33 each should be paid to the Chippewas and Ottawas, and $1,666.66 each to the Potawatomis and Wyandots. In addition, the article provided for a permanent annuity of $2,400 to be paid annually at Detroit in the following shares: $800 each to the Ottawas and Chippewas and $400 each to the Potawatomis and Wyandots. Since the Commission has determined that the Wyandots did not have recognized title to any part of Royce Area 66, we will not further deal with the Wyandot share of the consideration.

In Article IV the United States promised to provide the Indians with two blacksmiths, one to reside with the Chippewas and one with the Ottawas.

The parties agreed that plaintiffs received their portions of the $10,000 consideration but the evidence does not indicate how much, if any, of this sum was paid in cash and how much in "goods, implements of husbandry, or domestic animals" and would thus fall within the "food, rations or provisions" phrase of Public Law 93-494, 88 Stat. 1499 (1974) which provides that expenditures for such items shall not be "deemed payments on the claim." Accordingly, the $3,333.33

each promised to the Ottawas and Chippewas and the $1,666.66 promised to the Potawatomis, may not be deducted from the final award.

The parties are in agreement that in calculating the value of the Article II permanent annuity received by plaintiffs, defendant should be credited with the payment of the sum of $40,000, which amount, if invested at 5 percent, would have earned the stipulated annuity of $2,400 per annum.

The parties do not agree as to the amount plaintiffs Ottawas and Chippewas received in blacksmiths' services under Article IV of the treaty. On the basis of the record it appears the plaintiffs received the amount of $4,692 each, for blacksmith services

27. Under the Treaty of Detroit the allowable payments on the claim for the individual tribes are as follows:

A. Chippewa Indians

$16,000.00 (for the $800.00 permanent annuity)
4,692.00 (for Blacksmith services for 10 years)
Total $20,692.00

B. Ottawa Indians

$16,000.00 (for the $800.00 permanent annuity)
4,692.00 (for Blacksmith services for 10 years)
Total $20,692.00

C. Potawatomi Indians

$8,000.00 (for the $400.00 permanent annuity)

Total $8,000.00

28. The total consideration paid plaintiffs pursuant to the 1807 Treaty of Detroit in exchange for Royce Area 66 was $57,717.32.

Conclusions of Law

Upon the foregoing findings of fact and the record as a whole and for the reasons set forth in the accompanying opinion, the Commission concludes:

1. On January 28, 1808, the Ottawa plaintiffs' tract had a market value of $600,000, or approximately $1.28 per acre; the Potawatomi plaintiffs' tract had a fair market value of $2,300,000, or approximately $1.23 per acre; and the Chippewa plaintiffs' tract had a fair market value of $3,500,000 or approximately $1.06 per acre.

2. The consideration of $57,717.32 for lands having a fair market value of $6,400,000 was so grossly inadequate as to render the consideration unconscionable within the meaning of Clause 3 of Section 2 of the Indian Claims Commission Act.

3. Because defendant has not shown what portion, if any, of the Article II consideration of $10,000 was paid in cash and what portion in "goods, implements of husbandry, or domestic animals", the portion of that amount which was paid to the plaintiffs in this case ($8,333.35) may not be deducted as a payment on the claim.

4. The following amounts are allowed as payments on the claim:

Ottawa Indians - $20,692

Potawatomi Indians - $8,000

Chippewa Indians - $20,692

5. Plaintiffs are entitled to recover from defendant the following net sums, less gratuitous offsets, if any, which defendant may be entitled to under the provisions of the Indian Claims Commission Act: to the Ottawa plaintiffs, $579,308.00; to the Potawatomi plaintiffs, $2,292,000.00, and to the Chippewa plaintiffs, $3,479,308.00.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner