

## BEFORE THE INDIAN CLAIMS COMMISSION

THE POTAWATOMIE NATION OF INDIANS,	)	Docket No. 15-P
THE PRAIRIE BAND, et al.,	)	
	)	
Plaintiff,	)	
	)	
THE HANNAHVILLE INDIAN COMMUNITY,	)	Docket No. 29-N
et al.,	)	
	)	
Plaintiffs,	)	
	)	
CITIZEN BAND OF POTAWATOMI INDIANS	)	Docket No. 306
OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
POTAWATOMI INDIANS OF INDIANA AND	)	Docket Nos. 15-P
MICHIGAN, INCORPORATED,	)	29-N, and 306
	)	
	)	
Intervenors,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 8, 1978

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings numbered 1 through 37 entered herein on April 4, 1973 (30 Ind. Cl. Comm. 42, 87):

## I.

General Observations and Background38. Location, Acreage, and Valuation Date.

(a) The lands to be valued in these proceedings are located in the northeastern corner of the state of Illinois, south of Chicago

and directly west of the Illinois-Indiana state boundary. These lands are identified as Royce Area 177 (R. A. 177, hereinafter) and were ceded by the Potawatomi of the Prairie and Kankakee under the treaty of October 20, 1832, 7 Stat. 378. The treaty description of the lands (Art. I) is as follows:

Beginning at a point on Lake Michigan ten miles southward of the Chicago river; thence, in a direct line, to a point on the Kankakee river, ten miles above its mouth; thence with said river and the Illinois river to the mouth of the Fox river, being the boundary of a cession made by [said Indians] in 1816; thence, with the southern boundary of the Indian Territory to the State line between Illinois and Indiana; thence, north with said line to Lake Michigan; thence with the shore of Lake Michigan to the place of beginning.

(b) In present-day references, R. A. 177, roughly triangular shaped, is located approximately as follows: The northern border begins at the Illinois-Indiana border on Lake Michigan at South Chicago, then runs in a straight line southwesterly to the Kankakee River near the town of Brentwood, Illinois, then northwesterly along the Kankakee to the Illinois River, and west along the Illinois to the city of Ottawa. The western border runs southeasterly from Ottawa to the headwaters of the Vermillion River near the present-day town of Melvin, and then continues down the Vermillion to a point about 10 miles upstream from the city of Danville, Illinois. From this point, the line runs northeast for about 10 miles to the Illinois-Indiana border. The eastern boundary of the subject tract is a straight line along the state border north to the point of beginning.

(c) The U.S. Bureau of Land Management, whose calculations the parties have accepted, has determined that the whole of R. A. 177

contained a total of 2,232,229 acres. In the Commission's decision of April 4, 1973, supra, R. A. 177 was divided into three subtracts: "D," "E," and "F." The Commission found that the Potawatomi had a half interest in each of subtracts "D" and "E," and the entire interest in subtract "F." The total Potawatomi interest in R. A. 177 is as follows:

<u>Subtract</u>	<u>1/ Total Acreage</u>	<u>Potawatomi Interest</u>
D	890,014	50%
E	844,794	50%
F	497,421	100%

(d) The date of valuation is October 20, 1832, the effective date of cession of the Potawatomi interests under the Treaty of October 20, 1832 (7 Stat. 378), viz., the date on which the treaty was signed and concluded by the parties.

39. Brief Historical Background.

(a) French Period to 1763. From approximately 1671 to 1673, the period of the Louis Jolliet-Pere Marquette explorations, until 1763, the region surrounding R. A. 177, and the Mississippi Valley to the west of the tract, was French territory. French domination of the area ended in 1763 when the first Treaty of Paris gave Canada and much of the Northwest Territories to England. In the some 90 years that intervened, French explorers, fur trappers, traders, and military posts dominated the territory.

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1/ The boundaries of Subtracts D, E, and F are set out in Map, Appendix I, at page 443, supra. A detailed insert map of the subject area is also included as Map Appendix II, page 444, supra.

Marquette's explorations of the Mississippi River region in 1673 appear to be the first recorded visit of white men to any part of north-eastern Illinois. On the return voyage north from St. Louis, Marquette's party traveled up the Illinois River and crossed the portage from the Des Plaines River to reach Lake Michigan. The portage was located a few miles northwest of the northern tip of R. A. 177, in the vicinity of present-day Chicago.

Two additional recorded explorations made in or near the subject tract were those of the Cavalier de La Salle in 1679 and Father Charleroux in 1721. La Salle's voyages began with explorations of the western shores of Lake Michigan from Green Bay to the mouth of the St. Joseph River, and up that stream to a point near where South Bend, Indiana, now stands. From there, La Salle traveled through the Kankakee River valley into R. A. 177. In January 1680, he was encamped at the point where the Kankakee empties into the Illinois River within the subject tract. La Salle's return to St. Joseph was made overland through what is now Will County in the northeastern corner of the tract. In September 1721, Father Charleroux also made the descent of the Kankakee River.

The observations written by these explorers were generally favorable and contained glowing references to the fertility of the lands, the abundance of wildlife, and the beauty of the rivers, streams, and lakes. While no major influx of settlers resulted from these early explorations, they did serve to establish an important string of military posts and trading depots extending from the upper Great Lakes region south along the Illinois River and into the Mississippi Valley. Similar posts were

also established by the French east of the subject tract in western Indiana along the Kankakee and Wabash valleys. Northern Illinois, however, remained largely unexplored and devoid of white settlers for most of the 18th Century, during the French-English occupation. The fact that the Northwest Territory stayed in almost constant turmoil as a result of the numerous Indian wars and the French-English conflicts of the 1750's, was a further retardant to permanent settlement of the region in this period.

(b) English Period to 1783. Following the departure of the French from Canada and the old Northwest Territory in 1763, the northern fur trade passed to the English, as did the French military and trading posts. The significant development in the short period of British dominion (1763 to 1783) was the English determination to create a friendly and peaceful alliance with the Indians by forbidding any additional white settlement from the Colonies of lands west of the Appalachians (British Proclamation of 1763). The Colonial-American movement westward was not, however, totally deterred by the 1763 Proclamation. Large numbers of Virginians crossed over into Kentucky and southwestern Pennsylvania in the 1770's. Further west, in what is now Illinois, new settlers were still few in number. The older French settlements on the Mississippi and in the Ohio valley in southern Illinois survived the French and Indian War but lost much of their importance as trading centers.

(c) American Period to 1818. By the 1790's, following the American Revolution, lands west of the Appalachians, including the

**Northwest Territories**, had become the property of the Federal Government. England finally agreed to abandon her military posts in the Northwest in accordance with Article II of the Treaty of November 19, 1794 (8 Stat. 116, 117). This agreement coupled with the American victory over the Indians at the Battle of Fallen Timbers in 1794, led the Indians to sign the Treaty of Greeneville of August 3, 1795 (7 Stat. 49), ceding the southwestern two-thirds of present-day Ohio to the United States.

Prior to these events the United States had already provided the Northwest Territory with a government under the Act of August 7, 1789 (1 Stat. 50). With conditions relatively peaceful, large numbers of settlers moved into the area, with the greatest concentrations establishing first in Ohio, then in Indiana. By the Act of May 7, 1800 (2 Stat. 58), the territory of Indiana (eastern half of the Northwest Territory) was formed, and on March 1, 1803, Ohio was admitted to the Union. By 1812, an estimated 250,000 people had settled in Ohio. The rapid settlement of Ohio had already caused many newcomers to move into the Indiana territory, which, by 1805, had already called or convened a legislature. Further west, new settlements were rapidly developing along the Mississippi in southern Illinois. By 1809, Illinois had become a separate territory (Act of February 3, 1809, 2 Stat. 514), and, by 1812, had elected a legislature. Indiana was admitted to the Union on December 11, 1816, and Illinois, pursuant to an enabling Act of April 18, 1818, 3 Stat. 428, was admitted on December 3, 1818.

The outbreak of the War of 1812 temporarily ended the peaceful conditions on the western frontier, and brought a temporary halt to the western movement of settlers. Settlers in the region west of the Appalachians supported the war in the belief that their economic problems and other troubles originated in Canada. Specifically, they believed that the British there encouraged and aided Indian uprisings led by Tecumseh in order to secure safe grounds for Canadian trappers operating south of the Canadian border. While the war pre-dates the valuation date in this case by nearly 20 years, the final outcome was significant to frontier ambitions. With the signing of the Treaty of Ghent in 1814, the British signified their intention of abandoning the Indians to land-hungry frontiersmen. Britain also gave up all claims to trade south of the Canadian border, thus clearing the way to further westward expansion that would eventually carry the frontier to the Mississippi. Thereafter, the Americans pursued a steady policy of land purchases from the Indians.

(d) American Period to 1832. The immediate post-war period in the western area was marked by consolidation of territories through Indian cessions, and pacification of Indians through a vigorous fort-building program. By 1821, nearly all of Indiana, Illinois, and Michigan were in American hands. This period also marks the beginning of the "great migration" which amounted to an enormous western movement into Ohio, Indiana, and southern Illinois. Other significant events in this period (after 1820 approximately) affecting the subject area such as population, settlement, road and canal building, and economic factors are discussed in subsequent findings.

40. Topography, Soils, Vegetation, Climate, Drainage.

(a) Topography-Soils. R. A. 177 is made up largely of flat plains as prairie which accounts for approximately 80 percent of the tract. The gentle slopes and level surfaces are interrupted only by a few steeper slopes along drainage courses. Areas in the north, west and south fringes of the tract contain smoother plains. The immediate surface is entirely the product of the Wisconsin glacial deposition or drift. Drainage is afforded by the Kankakee River in the central portion of the tract on the boundary between R. A. 177, subtract "E" and R. A. 177, subtract "F". The northeastern part of the tract drains to Lake Michigan. Most of the southern part is drained by the Iroquois River.

Geologically, the formation of the soils in the general study area came during the Wisconsin glacial period when northeastern Illinois was last glaciated. The principal soil materials deposited in that period were Peorian Loess, outwash and glacial till. The Peorian Loess, basically a wind-born deposit, is the main parent material of the loess soils in the tract as well as in most of Illinois. Peorian Loess, when deposited, was well supplied with nutrients, friable, medium-textured silt loam, and had high available water-storage capacity. The outwash materials were soil particles deposited by the Wisconsin glacial meltwaters. Soils developed from average outwash of medium texture compare favorably with the better loess and till soils. The Wisconsin tills in northeastern Illinois were extremely variable in texture, ranging from loamy gravel to clay. Till soils were well supplied with



plant nutrients but had a lower available moisture storage capacity. Some alluvium which includes geologically recent sediment deposits near streams, is also found in the subject tract as deposits over bedrock materials. Sandy areas of low fertility and drainage were located in the north end of the tract near Lake Michigan and along stretches of the Kankakee River. On the whole, the subject tract was, during the period of settlement, an area of mainly smooth prairie, level countryside, and rich light loam soil of good fertility.

(d) Vegetation. At the time of settlement (beginning of the 18th Century), the subject area had a covering of prairie grass--vast fields of tall grasses with Big Bluestem dominant. These fields were interlaced with forest lots or "groves" of the oak-hickory forest association. These stands or groves of native timber more often than not followed most of the river courses in northeast Illinois. The vegetation of the tract as a whole was approximately 90 percent prairie grass and 10 percent forest during the period of settlement. On the one hand, the dense grass coverage of the prairie contributed to the richness of the soils, the fertility of which is accounted for in large part by the organic material returned to the soil by the grass and rotted roots. In other respects, the thick grass and heavy root structure made initial cultivation, plowing, and breaking difficult for the first settler.

(c) Climate. The area in north and northeastern Illinois experiences a humid continental climate. General characteristics include hot summers, cold winters, and short transitional seasons in between. Annual temperature ranges are rather large. July average readings of

75.4° F. and January averages of 25.3° F. were taken at Kankakee, Illinois, located in the center of R. A. 177. Precipitation averages 33.09 inches, also at Kankakee. Some weather modification does occur near Lake Michigan, and is usually moderating in effect, i.e., cooler summers, milder winters. The average number of frost-free days is about 160 to 170 in the northern section of Illinois.

(d) Drainage. During the period of settlement extending into the 1830's, portions of the prairie lands in the subject tract were ill-drained either as a result of natural land depressions on the plains or because of the quality of the soil. However, the dominant presence of upland prairie with superior drainage conditions offered a sufficient mix so that the two conditions of drainage could be found side by side on any given tract. Poor drainage in these lower depressions occurred generally as an aggravated condition during wet seasons. Much of the more serious wet areas, which were described as swamplands in early literature by travelers, were located east of the subject tract in the Kankakee Marshes of northern Indiana.<sup>2/</sup>

The settlers entering on lands containing areas of poor drainage had the technology or understood drainage by open ditching. The ditching method involved simple hard labor for short distances. Even if a portion

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2/ The wet-lands reputation applied mainly to the "swamps and bogs of Indiana." This impression, only partially true, was fostered by travelers and writers who had journeyed westward through the morass of the Black Swamp in Ohio and along the sluggish streams north of the Wabash. Equally swampy regions in parts of Illinois were not mentioned by eastern newspapers and guide books. Thus, Indiana, suffering under the handicap of a bad reputation, fared less well than Illinois in attracting settlers during the 1830-50 migrations. See, Def. Ex. F3, 11, p. 305.

of a tract needed drainage, the land was not entirely useless. In the dry seasons, these lands were used as pasturage for livestock and wild game.

41. Transportation and Access.

(a) Roads and Trails. A number of crude roads and primitive trails, which eventually became significant settlement routes into northeast Illinois, skirted or traversed R. A. 177 from about 1815 to 1830. Several of these routes such as the Chicago portage combined overland travel with water travel. The Chicago portage, for example, linked the headwaters of the Chicago and Illinois Rivers, thereby joining the Great Lakes and Mississippi waterway systems. The main native trails related to the subject tract included the Great Sauk Trail, the Chicago-Detroit Trail, the Calumet Beach Trail, and the Sauk-Kickapoo Trail. The first three named trails formed the major east-west routes prior to 1830.

The Great Sauk Trail extended across northern Illinois from Rock Island eastward, entering R. A. 177 near present-day Chicago Heights. The Chicago-Detroit Trail and the Calumet Beach Trail followed the southern shore of Lake Michigan to Detroit from Indian territory west of the subject tract. The Sauk-Kickapoo Trail linked the Danville area with Kickapoo villages in Livingston County (part of which is in R. A. 177). An important trade route or trail, which operated for a number of years prior to 1832 when it was abandoned, was Hubbard's Trail. This road led from Danville near the southern tip of the subject tract to Chicago in a straight line north, along and within the eastern border of R. A. 177. One

of the earliest trading posts within the subject area was established on this trail at Momence in present-day Kankakee County. Another significant trail led from central Illinois at Bloomington to Chicago. This wagon road was known as the Chicago Trail. It was started in 1831 to connect small settlements and farms north of Bloomington. By the mid-1830's, the Chicago trail entered R. A. 177 at Pontiac on the Vermillion River and continued northeasterly until it crossed the Kankakee River near present-day Wilmington, Illinois. It then followed the Des Plaines River to Chicago.

The best known roads planned, surveyed, or constructed in the late 1820's and early 1830's were located just east and north of the subject tract. These roads were designed to connect eastern areas with Detroit and Chicago, the main focal points for trade and commerce in the Northwest Territory in the early part of the century. A federal military road was surveyed and begun in 1825. From Chicago, this road followed the Chicago-Detroit trail (supra) along Lake Michigan, branching off at St. Joseph, Michigan, and continuing east to Detroit. In 1832 a stage line was using this road to Niles, Michigan, and by 1833, it continued to Chicago. Another road affording access to northeast Illinois via Lake Michigan was the Michigan Road started in 1828. This road began at Trail Creek on the eastern shore of Lake Michigan and ran easterly-southeasterly crossing the Wabash, through Indianapolis, then southeast to Greenberg, Indiana, and finally to Madison on the Ohio. Like the earlier and important National Road linking south Ohio, Indiana, and

Illinois as far as Vandalia with the Middle Atlantic states, the Michigan Road was intended as a main thoroughfare for immigration into the upper Wabash Valley and the territories beyond.

By the date of cession of R. A. 177, overland transportation was beginning to improve and expand on the borders of the tract. The minor roads and trails that traversed the northern Illinois prairies were, however, largely impassable during the spring wet season. The main focal points of the improved roads in the early 1830's were still Chicago, Detroit, and settlements on the Mississippi in southwestern Illinois. In about 1832, a stage line operated between Chicago and Ottawa, a small settlement on the westerly-most point of R. A. 177. Coach lines in the vicinity of Chicago increased during 1833 and 1834. A permanent mail route between Chicago and St. Louis was in operation by 1834. Principal access to the subject area from the larger settlements in southern Illinois, however, was mainly by water up the Illinois River.

(b) Water and Canal Transportation. Until the coming of the railroads, the bulk of the trade and travel to and from the Northwest was by way of the several river systems as later augmented by canals. These systems formed natural highways of access to the Mississippi Valley. Of great importance in this link was the Erie Canal connecting Albany on the Hudson River and Buffalo on Lake Erie. Construction of the 363 mile channel was completed in 1825. Prior to that time, river transportation to the west was directed in a southerly course and largely confined to the Ohio River system, with Pittsburgh one of its main embarkation points. With the opening of the Erie Canal, immigration and trade to areas north

of the Ohio and in the Great Lakes region reached flood proportions by the 1830's. In 1833 alone, over 450 vessels arrived in Chicago loaded with immigrants from northeastern states.

The Wabash-Maumee River system formed another important water route to the eastern borders of the subject tract. In use since the French-British occupation of the 1700's, this system connected Lake Erie through a chain of trading centers from Detroit, Fort Wayne, Lafayette, and Vincennes to the Mississippi River. Traffic was generally heavy on the Wabash. In the spring of 1831, 54 steamboats arrived and departed from Vincennes alone, and over 100 flatboats entered the Ohio from the Wabash in the same year. Danville, on the southern tip of R. A. 177, was a transshipment point to the Wabash, near Perrysville, Indiana, for traffic sent down the Vermillion River on the western border of R. A. 177.

Also near R. A. 177 was the St. Joseph River of Lake Michigan and the Elkhart River system which served northwestern Indiana to ports on Lake Michigan. By 1831, regular keelboat service for general freight was initiated on the St. Joseph. With the exception of the Wabash, this system bore the heaviest travel of all northern Indiana streams to and from Lake Michigan in the early 1830's.

Other connecting systems in use by 1830 included the Kankakee-Illinois system. The Kankakee, which flows through R. A. 177 northwesterly to the Illinois River, begins about 3 miles from the St. Joseph River. This short portage was the only interruption to a continuous water system from the Great Lakes, the St. Joseph, Kankakee, Illinois, and

Mississippi Rivers. From the period of early exploration cited in finding 39, supra, the Kankakee was a convenient route for early traders and settlers into northeast Illinois.

The principal water route from the southwestern shore of Lake Michigan and the Chicago area to the Mississippi was by way of the old Chicago portage discovered by French explorers. This route followed the Chicago, Des Plaines, and Kankakee Rivers to the Illinois River, which empties into the Mississippi. Another route to the Illinois River from the north followed the Fox River to where it empties into the Illinois at Ottawa. Efforts to connect the waters of Lake Michigan with the Illinois River were proposed as early as 1812. In 1825, the Illinois-Michigan Canal Association was formed to promote the water course, and public interest continued into the 1830's. The Illinois-Michigan Canal was eventually begun in 1836 and completed in 1848.

42. Population. In 1830 the Old Northwest (indicated in the census as the East Northcentral District) was given a population of 1,470,018 by the census. This area covered Ohio, Indiana, Illinois, Michigan, and Wisconsin. Of these, Ohio was assigned 937,903 people; Indiana 343,031; Illinois 157,445; and Michigan 31,639. No population was reported for Wisconsin. The population of the United States as a whole was 12,860,702 in 1830 and had been increasing at a compound annual growth rate of 3 percent. The simple percentage increase for the nation in each ten-year period (1810-1840) was about 30 percent. The three principal areas of settlement west of the Appalachians which tended to exert demographic pressure on the subject area -- Ohio, and southern Indiana and Illinois --

demonstrated amazing growth in population to 1840. Overall, Illinois grew at a slower rate than its neighbor Indiana but began to catch up by the mid 1830's, partially as a result of Indian cessions (including the subject tract), the shift of migration patterns from the Ohio river system to the Great Lakes, and the cessation of Indian hostilities after the end of Black Hawk's War in 1832. Indicative of the rapidity with which populations entered into and settled upon Illinois lands generally is the fact of statehood. By the time R. A. 177 was ceded, Illinois (as well as neighboring Indiana) had been a state for 14 years.

43. Settlement.

(a) General Patterns. After the War of 1812 and prior to 1830, the greatest increase in settlements occurred along the Ohio and Mississippi Rivers, in the southern extremities of Ohio, Indiana, and Illinois. As shown by population figures cited in finding 42, supra, large numbers of settlers first took up lands in Ohio through these river systems. The first settlers in the Illinois territory settled into the lowlands of the American Bottom, a strip of land some 40 miles north of Kaskaskia on the Mississippi.

The earliest movement north of this area began in about 1820 after most of the better Mississippi bottom lands were settled. Settlements were established along the lower reaches of the Illinois River and along the Wabash in Indiana. Another small wave of settlement developed in northwestern Illinois as the result of mining activity along the Fever River. By 1830, some 10,000 settlers had staked out claims and had established the town of Galena as an important lead ore shipping point. Small settlements were also developing in the late 1820's in the Chicago



area and along the southern shores of Lake Michigan to the mouth of the St. Joseph River.

By and large, however, the southerly pattern of settlement into the Northwest continued until the mid 1820's when two related factors changed this. The first was the opening of the Erie Canal in 1825, and the second was the change in the agricultural methods of the northeastern states. With the opening of the canal and the physical ease of transportation it provided, the northern ports of Ohio, Indiana, and Illinois became settled almost overnight. Many settlements along the Great Lakes, like Detroit and Chicago, became boom towns by the early 1830's. The change in agriculture came about as a result of the development by the mid 1830's of the factory system in New England. The small self-sufficient farms there either shifted gradually to sheep raising to provide wool for the textile mills, or sold out to larger, more efficient grazers. Sheep raising required less labor than crop raising. As a result thousands of displaced and surplus farm laborers either became factory workers or moved westward to apply their farm skills. The canal was the cheapest and the favored route of these new settlers. As stated in defendant's Exhibit 8, p. 22, in reference to settlements in Illinois in 1832, "entire villages moved out from New England as a community." Before the opening of the canal, in the period 1820 to 1825, the population of Illinois increased by 17,655 persons. From 1825 to 1830, the increase totalled some 84,620, and from 1830 to 1840 it increased by 318,738.

(b) Town Settlements. With the exception of some hardy

squatters, operators of trading posts (such as the one at Momence, Kankakee County), remnants of French fur trading families (i.e., Bourbonnais Village), and a small settlement at Milford, there were no established towns within the borders of R. A. 177 prior to its cession in 1832. The major settlements prior to 1832 were still concentrated in southwestern Illinois and along the major navigable rivers. By the beginning of the decade, however, small settlements were encroaching upon the borders of the subject area, and by 1833 were large enough to be denoted villages or towns. The most important of these included Chicago, Joliet, Ottawa, Pontiac, and Danville.

Because of its proximity to R. A. 177, and its favorable location on Lake Michigan, Chicago held a position of some importance in the future settlement of the subject area as well as in northeastern Illinois generally. Chicago, after Detroit, formed the last link in the Erie Canal-Great Lakes transportation system. On the valuation date, the core area of Chicago was located several miles north of R. A. 177. The first official plat of the town was recorded on August 4, 1830. Modern Chicago had its beginnings, however, with the building of Fort Dearborn in 1803, which then consisted of a handful of families, outside of the military personnel.

Contemporary views of Chicago were not uniformly favorable. Major Lang, reporting on his expedition of 1823, found "nothing to justify" the great praises of earlier travelers to Chicago. Lang, however, did see the possibility of Chicago becoming a direct link of communication between the northern lakes and the Mississippi at some future date.

Thomas Say, writing in 1838, did believe that Chicago would develop into an important commercial center but not an important city. As noted in finding 41, supra, several good roads, lake access, and the Chicago portage route, linked the town with settlements in all directions in terms of trade and immigration. In 1833 over 450 vessels came to Chicago unloading immigrants from the East Coast. By 1834, Chicago had begun its expansion from village status, and by 1835 had reported a population of over 1,200, with numerous shops and lodging places. The general feeling among this population was that the town would continue to grow at the then estimated rate of 10 to 50 people per day.

The several other villages noted above bordering the subject tract, began to grow at about the same time as Chicago. The town of Ottawa, located at the head of navigation of the Illinois River, was platted in 1830, and by 1832 contained some 20 to 30 families and three or four stores. There was a small settlement located at Pontiac in Livingston County which was abandoned for a while and resettled in 1836. The largest town near the southern border of R. A. 177 was Danville. In the 1820's, Danville was a large trading post and until 1832 was the southern terminal of the important Hubbard's Trail to Chicago. Danville also served as a trans-shipment post for goods coming down the Vermillion River destined for the Wabash. Since 1824, the Danville area also attracted large numbers of settlers from miles around as a result of the salt mines located some 10 miles west of the town.

There were also settlements developing further outside the boundaries of R. A. 177 on or near the valuation date, and, because of their proximity

to the subject area, they exerted some economic influence in the overall development of the area. Within the State of Illinois, the larger of these settlements included Naperville, about 20 miles west of Chicago; Princeton and Peru on the Illinois River, 25 miles west of Ottawa; Peoria; and the towns of Bloomington, Decatur, Clinton, and Paris, located south and southwest of the subject area. Peoria, planned in 1826, was described by Ellen Bigelow, a traveler in 1835, as having been built "entirely within the last 18 months." She wrote that 10 or 12 steamboats traveled regularly between Peoria and St. Louis, and that three stages passed every other day. By 1839, Peoria contained some 1,200 inhabitants, 25 stores, and a printing shop. J. Gould, traveling in 1837, described Bloomington as a thriving town containing several good buildings, three steam mills and a number of stores. The steady increase in population in the area just south of the subject tract and on the east side of the Illinois River led to the organization of Tazewell County in 1827, Macon County in 1829, and McLean County in 1830.

At about the valuation date, small settlements were also developing across the eastern border of R. A. 177 in northwestern Indiana. The areas most directly related to the subject tract included the northern tier of Indiana counties (Porter, La Pointe, St. Joseph, and Elkhart). Access roads and trails (such as the Michigan Road) through these areas to and from northeastern Illinois have already been described in finding 41, supra. In the Lake County area, several families had settled near the present town of Hobart in 1833. In 1834, Solon Robinson, an active promoter of the prairie lands in northwestern Indiana, settled

at the site of Crown Point (Lake County) in 1834, and by 1835, had attracted a large number of settlers to the area through his writings and published correspondence. By 1834, most of the Lake County area had been surveyed. Other settlements during this period in northwest Indiana included Michigan City (1831); South Bend (1831); Mishikawa (1835); and Valparaiso (1834).

With the exception of these relatively small towns, large-scale settlement of the area immediately adjacent to the northern section of the subject tract was very slow. The largely impassable Kankakee Marshes to the south of Lake and Porter Counties in Indiana, the generally unfavorable sand dunes, ridges, and marshes along Lake Michigan, and the late cession date of the northwest corner of Indiana retarded the rapid settlement of the area. This area was, by and large, avoided by settlers taking the Michigan Road, and overflowing from counties further to the east of Lake Michigan, in favor of Illinois. The 1840 census shows, by comparison, that the adjacent Indiana counties of Lake and Porter were less populated than La Pointe and St. Joseph Counties further to the east. The combined total 1840 population of Lake and Porter was 3,630, whereas that of La Pointe and St. Joseph was 14,609. With the exceptions of Vermillion and Fountain Counties immediately south of the subject tract, the Indiana counties bordering the subject tract south of Lake County were largely unsettled areas at the date of valuation. Of these, Fountain County was the closest settled area to the subject tract, and, according to the 1830 Census, had a population of 7,619.

44. County Development. By the valuation date, all of the State of Illinois, with the exception of two areas, had been organized and divided

into counties. The excepted areas were the extreme north-central portion of the state and the subject area. The number of counties organized by 1830 totalled 48 and had a combined population in excess of 157,000. By 1832, an additional 7 counties had been organized. In 1831, over 80 percent of the organized counties were located in the southern half of the state. The present day counties wholly or partially within R. A. 177 include Will, Grundy, Kankakee, Iroquois, Livingston, and Vermillion.

(a) Will County. Will County, organized in January 1836, is partially in R. A. 177 (subtract F). Most of the county had been carved out of Cook County (organized in January 1831). The county originally was largely high, rolling prairie interspersed with a number of timber groves. Drainage in the county, generally good, is provided by the Du Page and Des Plaines Rivers, the Kankakee River, and small streams into Lake Michigan. The county seat is Joliet. Settlement in the county dates from at least 1829 and consisted mainly of small groups or families. After 1833, larger colonies from the East settled in the county, occupying the wooded groves on the edge of prairie lands. The census of 1840 indicated that Will County had a population of about 10,000 people.

(b) Grundy County. Grundy County, lying west of Will, occupies most of subtract "D" of R. A. 177. The Illinois River crosses the county near its northern border. The other significant stream is Mazon Creek. The land here was typically rolling Illinois prairie with belts of timber skirting the banks of streams. Prior to February 1841, Grundy was part of La Salle County whose county seat

was at the town of Ottawa. The earliest settlers in the territory of Grundy date from about 1828. Groups of families or small colonies did not begin to settle in the area, however, until 1833 and thereafter. Several townships near the eastern borders of the county contained coal deposits but the development of this resource in this area did not occur until about 1858. By and large, Grundy County remained sparsely populated with about 1,500 inhabitants until after 1840, at about the time that the Illinois-Michigan Canal was completed. This canal was proposed as early as 1812, and a grant of public lands for the canal was made in 1827. Lands along the proposed route of the canal were sought by speculators and settlers, but not until after the valuation date.

(c) Kankakee County. This county, organized in 1851, is entirely within R. A. 177 and is crossed by the Kankakee River. The county is well drained and the marshy or swamp areas, for which parts of the Kankakee valley were once famous, were located on the eastern edge of the county running into bordering Indiana. The Iroquois River also flows into the county and joins the Kankakee near the center of the county. The Kankakee area was known historically since the French exploration period. Trading posts established prior to 1830 were located on Hubbard's Trail which ran through the county. Settlements in the county prior to the valuation date had been established by French fur trappers and traders and their families. The first important settlement thereafter occurred at Bourbonnais in 1832. With the exception of sand lands in the southeastern part of the county and some limestone formation near the rivers, the soil of the county is dark prairie soil

and highly productive. In presettlement times, the major resource of the county was its timber, growing in large measure along the county's major stream.

(d) Iroquois County. This county, situated within R. A. 177, (subtract "E,") was organized in February 1833. As previously found herein, Hubbard's Trail crossed the county from north to south. Hubbard maintained a large trading post at Bunkum (present-day Montgomery, Iroquois County) which remained open after 1832, the year Hubbard discontinued all other posts on the trail. Another permanent settlement was begun at Milford in 1830, at about the same time Bunkum was established. By 1835, the county had a population of 1,160 people.

The county terrain has little natural diversification and is largely rolling prairie and well elevated. Originally, in the presettlement period, Iroquois County was well-wooded and valuable timber grew on the borders of the streams. The soil is black prairie soil and nearly uniform throughout the county. The county has a good system of natural drainage by means of its watercourses including the Iroquois River and the Sugar, Mud, Fountain, Spring and Beaver Creeks.

(e) Livingston and Vermillion Counties. These two counties extend only partially into R. A. 177 and are located in the south and southwestern extremities of the subject area. Livingston, organized in 1837, is one of the largest counties in Illinois and is mostly prairie, with stands of timber along the Vermillion River (larger amounts in the settlement period). With the exception of a small settlement at Pontiac, Livingston County was not well populated in the early 1830's.



Vermillion County, organized in 1826, has only a very small portion of its northern border extending into R. A. 177. Its major significance in relation to the subject area was the proximity of Danville to the area. Danville, the county seat in 1827, was an important trade center for early settlers in the southern part of the subject area. By 1835, the population of the county was in excess of 8,000 people. The Indian salines near Danville were occupied by Americans in 1819. Salt was in great demand, and to meet this demand small settlements grew around these salines near the junction of the Middle and Salt Forks of the Vermillion River.

45. General Economic Conditions.

(a) 1819-1823. As a result of the Panic of 1819, the general economic condition of the United States as a whole during this period was one of almost total paralysis. The 1819 catastrophe, and the grim depression years that followed brought the greatest hardships to the western states. Some of the post-war (1812) inflationary excesses which led to the conditions in this period included the proliferation of state banks, the issuance of large quantities of bank notes by these banks without adequate gold backing, land speculation, and easy credit. The West,<sup>3/</sup> where land speculation and borrowing was most rampant, was particularly vulnerable to the depression. Local state-chartered banks, especially numerous in Ohio, founded on insufficient capital, were under pressure by more conservative eastern banks to repay their banknotes in specie and restrict credit. Under this kind of pressure many of these banks called in their loans, suspended specie payment, or, if all else

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<sup>3/</sup> Hereinafter, the "West" or "western states" refers to the area presently covered by the states of Ohio, Indiana, Illinois, and Michigan.

failed, closed their doors. Monetary circulation, both specie and banknotes, in the United States dropped from an average \$11.68 per capita in 1817-1818 to an average \$6.00 per capita in 1823, or about 50 percent (the population had increased by only about 12 percent in the same period). Land speculators and merchants, unable to repay their loans, went bankrupt. The merchants' inability to purchase farm products caused prices to decline rapidly. Cotton, which sold at 32 cents a pound in 1818, fell to 17 cents in 1820. Western grain, much of which was ear-marked for the southern markets, also declined in price. In 1821, corn was selling at 10 cents a bushel in Cincinnati, an all-time low. Frontiersmen, from Ohio to Illinois, were thus hit hard in this period. Nearly half of them had purchased their lands on credit. With no market for their surplus products, many were no longer able to pay the installments due on the land. A series of congressional relief acts prevented total catastrophe from befalling the western settler. The general failure of western banking in 1819-1820 and the depression of that period was followed by relative economic quiet. By 1823 economic conditions were beginning to return to normal. The most rapid advance toward recovery took place in the western states.

(b) 1823-1833. Various graphs and statistics in the record show a steady but fairly slow recovery for the nation as a whole in the first part of this ten-year period. Most sectors of the economy, however, demonstrated strong signs of growth after 1826. Money in circulation, including specie and bank notes in the United States, was about \$66 million in 1824. By the beginning of 1834, this figure had gradually increased to about \$155 million. (The circulation of the banks in the West was estimated at \$295,000 in 1830.

By 1833 it had increased to \$2.9 million.) Increased coinage of new money added to the general circulation noted above. Between 1824 and 1833, gold coinage increased ten-fold and silver coinage doubled. Land sales, which by 1820, had dropped to their lowest point in the previous 10 years, also began to increase rapidly. From 1823 to 1828, the annual amount of land disposed by the Government grew steadily from about 650,000 acres to 965,000 acres. From 1829 to 1833, the average annual sales had jumped to slightly over 2 million acres. The total sales in 1833 alone were in excess of 3.5 million acres.

The evidence regarding commerce, while meager for the period, further demonstrates the general growth of prosperity after 1823, especially in the West. An indication of this point is the rapid increase of commercial traffic on western rivers after 1825. Keelboats, flatboats, and steamboats were common sights on these rivers. Of the three crafts, the steamboat was most significant in contributing to the economic growth of the area. By the end of 1833, some 230 steamboats were listed as operating in western rivers and the freight tonnage on the Ohio and Mississippi exceeded that of the Atlantic Seaboard. In addition to its effect on traffic, the proliferation of steamboats for western commerce created employment, business, and a demand for materials. Boat building became a leading business in such cities as Pittsburgh, Cleveland, and Detroit. In a report cited by the defendant, it was estimated that from 1817 to 1829, \$5,600,000 had been spent in steamboat building and \$2,800,000 in repair; including operations, the

total was \$14,000,000. In 1834, annual operating expenses were estimated at \$4,600,000, of which 36 percent went to wages and 48 percent for wood and provisions.

The significant Erie Canal and Great Lakes traffic also boomed in this period. The traffic of less than 100,000 tons passing West Troy, New York, in 1824 grew to about 500,000 tons by the end of 1833. On the Great Lakes, eleven steamboats were being operated by Great Lakes owners. In 1833, these eleven boats represented an investment of \$360,000, and carried 61,485 passengers, 42,956 of them out of Buffalo.

With respect to agriculture, by the valuation date western farmers were far better off than they had ever been. While there was very little progress in scientific farming, such as new tools, crop rotation, or fertilization, by the date of valuation the output of western agriculture in the new and virgin lands responded successfully to the high prices induced by the growing demands of the East and the South, the latter area having almost totally converted its lands to the production of cotton.

In summary, the economy and financial position of the nation was, by 1830, unusually good. In 1833, the country was on the verge of another boom. By that date, the United States had practically eliminated the national debt. In the West, the economy was showing even greater advances, spurred by the easy credit and money policies of banks and the demand for land and farm products. Following the phenomenal success of the Erie Canal, the internal improvements fever was beginning to sweep the area. Indiana, Illinois, and Ohio, in the early 1830's, pledged large sums to finance canal and turnpike construction. While

many of the projects were not completed or even started by the valuation date, the area did benefit in terms of expenditures in planning, materials, supplies, and the attraction of labor to the western states. (It should be noted that by the late 1830's, such projects left many of the states badly in debt, especially Indiana and Illinois.) The proliferation of steamboats on western rivers also resulted in substantial expenditures in construction and repair along the major ports such as Cleveland and Detroit. From about 1829, public land sales in the nation as a whole were increasing rapidly, averaging 2 million acres annually. A substantial part of the increase in sales was occurring in Indiana and, to a lesser extent, in Illinois.<sup>4/</sup>

46. Banking and Interest.

(a) The rapid expansion of banks in the West (Ohio, Indiana, Illinois, and Michigan) after the War of 1812, reversed after the Panic of 1819. In Ohio, for example, where the largest number of state banks was concentrated, 25 chartered banks were doing business in 1819. By 1830, only 11 remained, plus a number of small unauthorized banking-mercantile institutions. The situation in Illinois and Indiana was the same after 1819. All the state banks of Illinois collapsed in the 1820's and all but the Farmers Mechanics Bank of Madison failed in Indiana. By 1832, banks were once again expanding in areas adjoining R. A. 177. Banking services for new settlers and residents of northeastern Illinois

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<sup>4/</sup> See, table, finding 47(b), *infra*, for total acreage sold in these states for the years 1828 through 1834.

would have been available in Detroit and Cincinnati. Banking facilities were also available at the Cincinnati and Louisville branches of the Second Bank of the United States. The expansion of state banks was steady but fairly slow until about the middle of 1833 when the withdrawal of federal deposits from the Second Bank of the United States and their transferral to state banks began. This fact, coupled with the certainty that the charter of the Second Bank would not be renewed, led to a rapid expansion of state banks by 1834.

Illinois remained somewhat conservative and wary with regard to issuing new charters for its state banks until 1835 and 1836. Its recovery by the early 1830's from the depression (caused mainly by the failure of its banks in the 1820's) was therefore, slower, more cautious, and less speculative and inflationary. The easy money policies of newly-chartered state banks elsewhere, now bulging with federal deposits, had not yet invaded Illinois.

(b) Interest rates prior to 1819 were running approximately 6 percent on bank loans. After about 1823, interest rates were 5 percent. The Second Bank of the United States, which exerted strong influence toward stabilizing the currency, and created some stability and restraint on state bank excesses until 1833, was authorized to make loans at not over 6 percent. However, interest rates in the western states fluctuated depending on the risks involved and distance from financial institutions. Rates to new settlers were especially high since many had little security to offer for borrowing purchase money for their

lands. It was not unusual to find interest rates as high as 40 percent in such cases.

47. Land Policies and Reported Sales.

(a) U.S. Land Policy. From 1800 to 1820 the public lands of the United States were disposed of under the Harrison Land Act of 1800, (Act of May 10, 1800 (2 Stat. 73)). This act provided that a purchaser could acquire 320 acres of land at not less than \$2.00 per acre under liberal credit terms in four installments after a down payment of one-twentieth of the purchase price. Interest at 6 percent per annum from the date of sale was charged on the last three payments. The Act of March 26, 1804 (2 Stat. 277), authorized the survey and sale of public lands in quarter sections of 160 acres. After a slow start, the Harrison Act had its greatest effect at about the time of the mass migrations to the West in 1814, at which time sales increased substantially to over one million acres in 1815 and about five million acres in 1819. The credit system under this act proved to be a failure and created a large class of land holders hopelessly in debt. From about 1808 and after the Panic of 1819, Congress was required to pass a number of relief acts to assist these burdened land owners. Speculation was also rampant in this period, with large purchasers taking advantage of the liberal credit offered under the act as well as the easy credit offered by the banks in this period.

The Act of April 24, 1820 (3 Stat. 566), abolished the credit system and reduced the minimum price to \$1.25 per acre. Another important feature of this law was the opportunity it offered purchasers to buy

lands in tracts of 80 acres instead of the larger minimum under earlier acts. The new settler with limited resources found the smaller tract attractive, more manageable, and easier to acquire. However, it was not until after 1828 that sales in excess of one million acres per year occurred. The trend in sales after 1830 was clearly upward, with the peak reached in 1836 when over 20 million acres were sold.

(b) Public Land Sales In Area. Totals for public land sales in the period 1828 to 1834 in those western areas which had the greatest migration-settlement impact on the subject area are listed below. The areas include Ohio, Indiana, and Illinois.

<u>Year</u>	<u>Total U.S. Acreage Sold</u>	<u>Ohio</u>	<u>Indiana</u>	<u>Illinois</u>
1828	940,050	165,110	245,072	92,402
1829	1,236,444	174,504	339,744	209,892
1830	1,880,019	154,287	465,576	314,407
1831	2,804,744	338,813	537,237	334,577
1832	2,411,952	417,006	531,858	225,338
1833	3,824,655	568,329	534,484	359,537
1834	4,561,521	520,763	650,665	347,823

(c) Status of Public Lands -- 1828. The government inventory of unsold lands subject to private entry is reported below as of June 1828. The following figures, for related areas, are taken from reports of the General Land Office submitted to Congress in December 1828.

Illinois:	13,195,000 acres
Indiana:	10,242,625 acres
Ohio:	7,196,256 acres



As noted in (b) supra, 1828 was a low year in public land sales and marked a turning point. Within 2 years, sales nationally had doubled. From 1828 to 1829, sales in Illinois alone had increased approximately 2-1/2 times.

48. Contemporary Views -- Official Sources. Official and unofficial views respecting the quality and value of lands in the general area of the subject tract were, as expected, highly divergent. The official views in the record consist mainly of the annual reports of land offices, and congressional debates. Unofficial reports are garnered mainly from the journals, diaries, and letters of travelers and settlers.

(a) Official Views -- Land Offices. The report cited in finding 47 (c) supra, communicated to the Senate in 1828 was made in compliance with a Senate resolution requiring the General Land Office to estimate the quantity, quality, and value of all unsold public lands in the United States. The pertinent portions of the report digested here cover the states of Ohio, Indiana, and Illinois.

As of June, 1828, Ohio had 7.1 million acres of unsold lands. Practically the whole quantity of first-class lands in Ohio had already been sold. Of the total lesser quality unsold lands, 660,000 acres were considered unfit for cultivation. Over one-half of this figure (400,000 acres) was located in the Delaware District which contained the notorious Black Swamp. The district reports respecting value varied, but not widely. The two districts containing the largest quantity of unsold lands were Piqua (2.2 million acres) and Delaware (1.6 million). The Piqua district expressed no opinion on value. Delaware recommended

that no reduction be made in the \$1.25 per acre minimum price in order to discourage speculation. The Zanesville district also supported the \$1.25 price, suggesting further that the public improvements then in progress would keep prices up. Other districts estimated the average value of unsold lands from \$.50 to \$1.00 per acre. The overall view of the Ohio land offices was optimistic and in favor of maintaining \$1.25 minimum price.

The Indiana land offices, with an aggregate of 10.2 million unsold acres, reported about 2.4 million acres unfit for cultivation. Crawfordsville, the nearest district to the subject tract, offered no opinion on the value of low grade lands but estimated the value of the whole at no less than \$1.25 per acre. The Indianapolis and Vincennes districts also offered no opinion on the value of poor lands but Indianapolis did report an average value of \$.70 per acre for all its lands. Jeffersonville was the least favorable at \$.44 per acre average. The Ft. Wayne District, the most distant from subject tract, reported a small portion "if any" unfit for cultivation. Most districts concluded that the most desirable lands had already been sold.

Illinois had six land offices operating in 1828, all of which were located in the southern half of the state. These six districts reported a total of 13.2 million unsold acres of which nearly one half were considered unfit for cultivation. The results of five districts are digested here (Kaskaskia District in southwestern Illinois did not report). The Shawneetown District reported one-ninth or about 299,000 acres as a "large" estimate of lands unfit for cultivation. The report pointed out that this classification was based on the fact of "lowness" of the land

rather than lack of fertility. The Shawneetown lands were located in the far southeastern portion of the state. The average value of all lands in this district was rated at \$1.00 per acre.

The Vandalia district was located nearly in the center of the state and included parts of Tazewell, Shelby, and Vermillion counties immediately south of the southern boundaries of the subject tract. The district started operations in 1821 and much of it was new and not yet surveyed. As of 1828, the district reported 2.8 million acres unsold of which about 1.8 million acres were then thought unfit for cultivation. The report concedes that the estimate of the amount of unsuitable land was entirely arbitrary as there "is no evidence on file" from which the necessary information could be gathered. Most of the land was described as prairie with timbered sections backing upon the streams in the area. The report noted that the greater part of the first class lands were located in Shelby and Tazewell counties. The Registrar's general opinion of the prairie was qualified in that he considered this "rich and admirably" adapted to tillage, but too remote from timber and water to be fit for occupation until some time in the distant future. The estimate of value was 30 cents per acre average with the best lands worth \$1.00 per acre.

The report of the Palestine district, south of Danville in the southeastern section of Illinois, was brief and estimated about 1 million acres unfit for cultivation or two-fifths of the whole. This district estimated the value of the lands in its jurisdiction at about 30 cents per acre on the average.

The Springfield district included lands east of the Illinois River and northwest of the Vandalia district. On the basis of limited

information, the report stated about 1.9 million acres unsold of which 1.7 million was "represented as prairie, and low wet lands unfit for cultivation." The report, however, also qualified its statement as to unsuitability for cultivation in the following terms:

. . . Although this land is represented as unfit for cultivation, it is so from the circumstances of there being no timber. The quality of much of this land, indeed the larger proportion, is excellent and equal to any in the district; but its remoteness from timber and water will prevent any immediate sale. We feel much at a loss to say what is the average value of the whole per acre. . . [Def. Ex. F 5.1, Dockets 15-N, et al.,].

The 1830 annual report of the Commissioner of the General Land Office gives an indication, some two years before the valuation date herein, of the official view regarding the demand for western lands and future projections in that regard. The pertinent part of that report is as follows:

It is believed that the annual demand for the public lands by actual settlers, commencing with the year 1831, may be estimated at one and one half millions of acres; and that this demand will increase, with the population of the valley of the Mississippi, to fifty per cent at the close of the next ten years. The experience of the last seven years has proved that the demand for such purpose has increased with the permanent population of that extensive region; and the forests have been opened, and the settlements advanced, with a rapidity equal to the facilities afforded by the Government, and with the progressive improvements and enterprise of the age. . . [Pl. Ex. V-10, p. 4].

The annual report of the same Commissioner, dated December 3, 1832, shortly after the valuation date herein, was less favorable. The report stated that public land sales had not been equal to those of the preceding annual period. The reasons given for this fall-off in sales included the slowness of the surveying, Indian wars on the northern frontier of

Illinois and western Michigan, and Asiatic cholera in some districts not named.

(b) Official Views -- Congressional

In the spring and summer of 1832, shortly before the valuation date in this case, the United States Congress was investigating and debating the expediency of reducing the price of public lands and of transferring surplus lands to the states. The record contains reported debates on the subject reflecting the views of certain committees and legislators.

The following findings are based on these reports.

(1) April 16, 1832, Report of Senate Committee on Manufacturers. The Committee possessed no means of determining the exact value of public lands then on the market. It was presumed that a considerable amount offered for sale would not command the minimum price (\$1.25); on the other hand, a large part was deemed worth more than the minimum. A material reduction in price would excite and stimulate speculation "now dormant." The current demand was considered regular and keeping pace with the progress of emigration. In opposing a price reduction, the Committee cited growth of population in those states with the largest amount of public lands. Illinois was especially singled out, where population increased by 185 percent between 1820 and 1830, or about 19 percent per annum. The Committee concluded this part of its report by stating that the progress of population in the western states was gratifying and that the day was near when these states would become powerful members of the confederacy without further stimulus to emigration.

(2) On May 11, 1832, the Senate Committee on Public Lands issued a counter-report to the one cited above. This Committee favored reducing the minimum price of public lands and did so on policy reasons related mainly to "States rights" and the need to speedily extinguish Federal title in the new states. Another reason emphasized the argument that nearly 100 million acres still on the market were "refuse" lands of little value, only fit to be donated or abandoned to the states. On June 20, 1832, Senator Henry Clay, opposed that report. The main thrust of his argument was to deny the accuracy of the Committee's conclusion regarding "refuse" lands.

Clay did not believe it credible that out of nearly 160 million acres in the vast national valley "celebrated for its fertility" only 25 million acres (the amount sold) was good land. Clay cited the example of Illinois as the state containing the greatest portion of rich fertile lands--"more than Ohio, more than Indiana." The fact that only 2 million acres had been sold did not make the balance "refuse." If the lands are so bad, why, Clay asks, are the states avidly seeking title to them? Clay also cited some newspaper articles in Ohio suggesting that the efforts of some people to represent unsold public lands as mere "refuse" was nothing more than a "speculating project" which will result in higher prices to settlers in a few years. Finally, Clay cited the astounding population growth of Illinois as additional reason to believe that the land had more worth than that represented by the Committee.

(3) The report of the House Committee on Public Lands, May 2, 1834, pursued the debate on reducing the minimum price of public lands and the question of "refuse" lands. (Pl. Ex. Y-20). The report recognized the fact that the large quantities of land remained unsold principally because the supply far exceeded the wants of the population and that the Government was constantly bringing more and more land into the market. The Committee also recognized the fact that there were large bodies of poor land that probably would never sell at any price. However, the Committee saw no harm in not offering the poor lands at reduced prices since no one would buy them in any event, nor did it believe it proper to reduce the price of all lands because of the existence of large amounts of worthless lands. In this connection, the Committee, also citing the example of Illinois, made the following comparison:

. . . In the State of Illinois, more than nineteen-twentieths of the whole territory are believed to be arable land; and it will undoubtedly sell, without any reduction in price, in reasonable time, according to the demands of the growing population. Would it be right to reduce the price of this good farming land, because there happens to be in Alabama or Mississippi large tracts of pine barren which will possibly never sell at any price. . . .?

49. Contemporary Views -- Unofficial Sources. The concern of most of the writers of journals, diaries, and newspaper articles admitted in evidence centers largely on living conditions in the West of the 1820's, and the general life style of the frontier settler, and the quality of his hospitality. More astute observers wrote about health conditions,

quality of the land, travel facilities to the West, and the scenic character of the terrain. Some writers offered opinions of the value of the land and generally cited the single example of a particular farmer, neighbor, or friend who, having cleared his lands, sold them within a year or two at several times the entry price of \$1.25 per acre. These isolated examples, however, were in no way indicative of the state of the general land market in the region as a whole. A considerable amount of the accounts in evidence contained second-hand information, rumor, and simple hearsay.

(a) Health Conditions. In the 1820's the West generally had a reputation for unhealthiness. This opinion was as often confirmed as it was denied by the writers of the period. Some large newspapers of the general subject area (Illinois Advocate, Indianapolis Gazette, Vincennes Western Sun, for example) reported openly of epidemics that crippled some towns, while others were on the whole reluctant to report sickness in their localities. The Illinois Intelligencer published an outright denial, stating that reports of sickness in Illinois were entirely unfounded. Leading citizens such as Judge James Hall of Illinois argued in 1826, that the western country was no better or worse than other areas and that the area was not unhealthy but it was rather the careless habits of the inhabitants that caused illness. Other writers like Gershom Flagg reported in the late 1820's from Edwardsville, Illinois, that he was in better health there than he had ever been in Vermont. Over all, the reputation for unhealthiness of western lands



was pervasive, but there is no evidence that this reputation retarded the progressively increasing flow of migration and settlement of the 1830's.

(b) General Observations. The Emigrant's Guide to western states, published in Cincinnati in 1818, stated that the prairies along the Illinois River were very fertile and easy to cultivate, and that the area's reputation was rising "rapidly in the public estimation." The difficulties associated with the lack of timber, the Guide stated, would be diminished by the quantities of coal located within reasonable distances.

Solon Robinson, writing about 1835, described the northwest corner of Indiana, adjacent to the subject tract. His descriptions of the prairie were favorable in the extreme. Robinson found the prairie to contain 10,000 acres of high, dry land for every acre of swamp. He considered the land easy to plough and break and estimated the cost of that work at about \$3.00 per acre, which would be paid for in full with the first harvest. Through his glowing writings, Robinson, an active land promoter, succeeded in attracting large numbers of settlers to the area around Crown Point, Indiana, just east of the northeast boundary of the subject tract. The Reverend Alfred Brunson also reported on the area of the Grand Prairie in 1835 near Robinson's tract. Brunson found the land sparsely settled but observed that the tide of emigration that passed that area was great. Brunson also traveled near the western boundary of the subject tract. He is one of the writers who reported on a fellow Methodist in that area who, in 1832, had sold his farm at a large profit within two years of entry.

While several of the writers described the considerable hardships of farming on the prairie and the relatively high cost of initial breaking, ploughing, and fencing, the prospects for the future were generally stated in optimistic terms. As to costs, the consensus was that these were recoverable within two years. William Faux's account of English settlements in Indiana, in 1823, published details of the costs of preparing and harvesting one acre of land at the end of the second year at \$20.75. The value of that acre in terms of crop production was quoted at \$36.75, leaving a profit of \$15.50. In addition to the net profit, Faux stated that the increased value of the improved land must also be considered.

In summary, the views and preferences of the observers of western lands generally and of the Indiana-Illinois area in particular were not weighted in any one direction. According to a document submitted by the defendant, the opponents of prairie utilization are reported less frequently in the surviving literature of the period than proponents. The view that the prairies of Illinois and Indiana were unattractive to settlers clearly prevailed during the first waves of migration prior to the 1820's, when most settlers came from the forested regions of Kentucky and Tennessee. From the end of the 1820's to the beginning of the next decade (1830), when the east-west pattern of migration was established, the prairies were discovered to be good farm land and were rapidly settled in that decade. Even as late as the valuation date in 1832, however, lack of timber on the prairies appeared to be the most common objection to settlement.

### Highest and Best Use

50. The highest and best use of the subject lands on the valuation date was for subsistence farming, with a reasonable expectation of a growing market for surplus farm products and livestock, and a general expansion into the cultivation of cash crops. With the exception of a few reports of coal deposits, the mineral resource potential of the subject tract was not fully known at the time of valuation, nor did the area contain any appreciable amounts of timber of commercial value. A small but negligible timber business was conducted along the Illinois River boundary of the subject tract for the use of steamboat operators. On the date of valuation, there was no prospect of a large town site development within the subject tract. The growing town of Chicago, outside the northern boundary of the tract, was the nearest area of town-lot sale activity.

## II.

### Plaintiff's Appraisals and Valuation

51. (a) Appraisers. The plaintiffs in Dockets 15-P and 306 offered the appraisal 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 is well qualified to analyze the data in the record. He has testified on several previous occasions before the Commission, and his testimony has been accepted into evidence.

The plaintiffs in Docket 29-N introduced the testimony of Galen D. Todd, technical director of George Banzhaf and Company, who prepared an expert report, and of George Banzhaf, president of George Banzhaf and Company, who actively participated in decisions with respect to the report and has assumed responsibility for it. George Banzhaf and his associate, Mr. Todd, are essentially forest and timber experts. Mr. Banzhaf has, however, appraised lands other than timberlands, and has submitted appraisals in other cases before the Commission.

(b) Appraisal -- Dr. Roger K. Chisholm. The appraisal report submitted by Dr. Chisholm (Dockets 15-P and 306) is a well-documented valuation study of the subject tract and the general area surrounding it. The report includes an analysis of sales data (discussed below) utilized in his valuation of the tract. It also contains historic, economic, and demographic data, and other factors affecting economic conditions and land prices within the study area (Illinois, Michigan, and Indiana), and the United States generally. These factors include, among others, population, income, banking, money supply, and government expenditures. An appendix to his report contains supportive historic data relating to population and settlement in the study area. From an analysis of all this data, including original source materials and other supporting documentation, Dr. Chisholm made conclusory observations, among the most important of which are described below.

The period from about 1818 through 1833 was a time of expansion, and settlers in the old northwest were urging the Government to open additional lands for settlement. A number of memorials and petitions, federal and territorial legislation, the opening of land offices in Illinois, and new treaties with the Indians, are evidence of a persistent pattern of demand for land throughout the period of study and beyond. According to Dr. Chisholm, the economic and demographic variables were also favorable for further expansion. Population was increasing throughout the period, indicating the growth of demand for land. Population data for areas most like the subject tract, such as Illinois, Indiana, and Michigan, plus Ohio and Kentucky to the east and south, indicated that the entire region was growing rapidly. Indiana, for example, was growing at a rate more than double that of the entire U.S. through 1840. Dr. Chisholm concluded from this data that rapidly increasing population created immediate demand for land and that this demand served to increase land prices. The subject tract was right in the path of the oncoming settlers and would expect to be a direct beneficiary of population growth and settlement patterns directed east to west.

The economic factors considered by Dr. Chisholm included production (GNP), income, banking and currency, government expenditures, and labor. The gross national product from 1825 to 1833 rose steadily from \$894 million in 1825 to \$1,298 million in 1833. Data collected in connection with the GNP included the value of the farm product. The farm gross product also demonstrated a steady growth, nearly doubling in the

decade 1830 to 1840 from \$490 million to \$770 million. Dr. Chisholm's observation in this regard was that increased agricultural production required land and much of the growth in agricultural output came from bringing more land into use.

Other economic factors cited above were discussed by Dr. Chisholm from an historic point of view, tracing the general development of state banks and the Second Bank of the United States, the steady increase in the circulation of money, coinage statistics, and government expenditures. From his analysis of banks and currency, Dr. Chisholm concluded that on the valuation date the sources of money in the study area were plentiful and that by 1834, the United States was enjoying a period of marked prosperity. At the national level, the Second Bank of the United States provided monetary stability and confidence from its inception in 1817, to at least the beginning of the 1830's when opposition to that institution began. Specifically the Bank had coordinated the various regions of the country into one financial system, facilitating the movement of funds and providing a currency that circulated everywhere at, or near, a parity with specie. Between 1829 and 1836 the number of banks in the nation doubled and the total quantity of notes in circulation increased by 150 percent.

In concluding the economic section of his report, Dr. Chisholm stated that the several data series examined indicated that the national economy was prosperous, stable in relation to growth, and the "expectations that these conditions would continue" were reasonable. The national

economy would be such as to favor land sales at favorable prices to the seller. Finally, Dr. Chisholm quotes at length from numerous sources such as diaries, and other personal accounts of the period that give a fairly accurate view of the study area and the thinking of the people of the period.

(c) Market Data -- Dr. Chisholm. Dr. Chisholm's analysis and conclusions respecting land values in the subject tract are based on 2,150 recorded sales between private parties in the three contiguous states of Illinois, Indiana, and Michigan.<sup>5/</sup> The sales in Illinois were taken from the counties of Gallatin, Johnson, Madison, Monroe, Randolph, St. Clair, and Vermillion. With the exception of Vermillion County, a small section of which extends into the southernmost tip of the subject tract (sub-tract E), all of these Illinois counties are located in the extreme southern part of the state. The Indiana transactions were taken from the counties of Allen, Cass, Clark, DeKalb, Elkhart, Fountain, Grant, Hamilton, Huntington, Jay, LaGrange, Montgomery, Noble, Steuben, Vermillion,

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<sup>5/</sup> This finding and the data cited are based on amended computer print-outs submitted by plaintiffs on December 23, 1977, as amended exhibits Y-3, Y-4, and Y-6. An analysis of the original evidence submitted by plaintiffs disclosed that a number of sales entries in the raw data compiled in P. Ex. Y-6 had been erroneously transferred to the computer data. The errors were most prevalent in the transactions reported for Vermillion County, Illinois, and Vermillion County, Indiana. Upon request of the Commission, the plaintiff resubmitted (motion dated December 23, 1977) the corrected print-outs as well as amended pages to Dr. Chisholm's report (Ex. Y-2) and amended findings of fact dealing with conclusions drawn from the computerized sales data. The Commission's order of January 11, 1978, permitted the filing of these amendments.

Wabash, and Whitely. The Indiana counties of Vermillion, Fountain, and Montgomery are situated nearest the subject tract's eastern border. The remaining Indiana counties, with the exception of Clark, are located in the northeastern half of the state. Clark County is in the extreme southeast on the Ohio River. The Michigan sales were taken from the counties of Berrien, Allegan, Cass, and Ottawa, in the southwestern part of the state near Lake Michigan.

The 2,150 transactions collected by Dr. Chisholm covered the period 1800 to 1836, and involved 282,617 acres which sold for \$701,029.00. The largest number of transactions took place between 1825 and 1836. Approximately 73.5 percent of the data covered this period. The tracts sold ranged in size from 0.01 acres up to 10,800 acres and included a number of town lots, most of which were in or near county seats. The average size tract sold was 131.45 acres. The median size tract sold was 80 acres with 603 sales in this size, or 28.0 percent of the transactions. There were 220 sales of 160 acres or 10.2 percent of the whole. The consideration per acre of the data ranged from \$.06 to \$10,000. The most frequently observed price was \$2.50, which was the price on 198 transactions, or 9.2 percent of the total. The simple average of the consideration per acre was \$69.43 and the weighted average was \$2.48. According to Dr. Chisholm, the simple average was biased upwards by the presence of a few very highly priced tracts. Thus, the weighted average and the median values were closer to being representative. The median value was \$2.50 per acre. Dr. Chisholm's systematic retrieval of the



foregoing data eliminated transactions which did not appear to constitute free market or arms-length dealings such as sheriffs' and estate sales, sales between parties of the same name, and sales with small or nominal considerations.

(d) Appraisal Data -- Messrs. Todd and Banzhaf. The Docket 29-N plaintiffs have submitted the appraisal report prepared by George Banzhaf & Company (P. Ex. MH-130). This 25-page document is an evaluation of lands covered by seven Royce areas, only one of which (R. A. 177) concerns this case. The bulk of the report consists of a severely abbreviated historical review of settlement and transportation in Illinois, Indiana, and Michigan from the French period in the 1670's to about 1835. A brief discussion of the Wabash-Erie Canal and of government land policies is also included in the report.

The Banzhaf land appraisal consists of an examination and analysis of 93 actual free market transactions between private parties taken from 12 Indiana counties between the years 1827 and 1859. Of these 93 sales, 21 occurred prior to 1833; a total of 30 sales occurred in 1836, and 13 occurred between 1840 and 1859. The counties nearest R. A. 177 from which sales data was reported were La Porte and Pulaski. The sales in La Porte County occurred in 1836, and those in Pulaski County after 1840. These 93 transactions involved 21,882.99 acres which sold for \$51,413.43, or a simple per acre average of \$2.35. The median value was \$3.06. The average transaction amounted to 235 acres.

According to the Banzhaf report, the approach selected in the valuation of the entire study area, including the subject tract, consisted of a simple arithmetic mean and standard deviation of the 93 sales, discounted or appreciated to the year of valuation at a rate of 3 percent per annum. For the year 1832, the date of valuation for the subject tract, the appraisers (Mr. Banzhaf and Mr. Todd) arrived at an average value per acre of \$2.51.

52. Plaintiff's Value Conclusions.

(a) Plaintiffs in Dockets 306 and 15-P have concluded that the analysis of Dr. Chisholm of the market data in the record constitutes the most valid evaluation of R. A. 177 as of the 1832 date of cession. The data from the 2,150 transactions in three contiguous states showed a median value of \$2.50. Dr. Chisholm relies upon this median value as the base starting figure for his ultimate value conclusions, giving the following reasons for the use of the median value:

I chose the median because I felt that it was the most representative figure, most representative value that we could come up with, because of this sample of 2,000, the half sold for more, half sold for less. The weighted average in this case was thrown -- was biased downwards by accidents of data size, particular observations that we looked at. The simple average was biased upwards by observations of a few very high values, and the median corrects for all of these [Tr. NW, Vol. I, p. 139] 6/

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6/ The reference NW is to the transcript of hearings conducted on June 21, 1976, in the "North of the Wabash" cases involving Docket 128, et al. Because of the similarity of issues apparent in this case and in the "Wabash" cases, the Commission, at the request of the parties, ruled that the transcripts in the "Wabash" cases may also be cited in this case in order to avoid duplication, particularly with respect to the cross examination of the party's witnesses.

Dr. Chisholm then considered the effect of improvements on the market data. From the evidence of record, he calculated that the total value of improvements (clearing and cabin) was \$100 for the average 80-acre tract sold, or \$1.25 per acre. The market data as analyzed by Dr. Chisholm in his testimony (Tr. NW, Vol. I, pp. 158 to 164) indicated to him that a small part of the data involved improved lands, citing as some reasons the rapid turnover of land by persons with similar names and the probability that a settler would not sell the improved portion of his land after devoting much hard work to the effort. His conclusion in this regard is that a generous 20 percent of the transactions involved improved lands. Thus, the value of the improvements in the data series is \$.25 per acre. After allowing for improvements, the median value would be \$2.25 per acre. Except as noted hereinafter, this discount for improvements is the only adjustment made to the median per acre price as applied to the subject tract. No discount for the size of the tract was taken, on the grounds, according to Dr. Chisholm, that the hypothetical purchases of the subject tract would have been individual small tract purchasers buying in 80-acre tracts, the most common size transaction noted in the actual market data. (Tr. Vol. I, p. 14.)<sup>7/</sup>

On the basis of the foregoing, the plaintiffs valued the three subtracts in R. A. 177 as follows:

- (1) 177-D, western section of the tract on the Illinois and Kankakee

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<sup>7/</sup> The single reference "Tr." refers to the testimony and transcript taken on June 24, 1976, in the instant dockets.

Rivers, with some important travel routes through the area is valued at \$2.25 per acre. Plaintiffs value the Potawatomi interest in this sub-tract at \$1,001,265.75.

(2) 177-E, southeastern section of the tract, bordered by the Kankakee River, but more distant from Chicago, is valued at \$2.20 per acre. The value of the Potawatomi interest is \$929,273.40. The \$.05 reduction from the median appears to have been applied because of remoteness and accessibility.

(3) 177-F, northeastern section of the tract, near the Kankakee and Des Plaines Rivers, with borders on Lake Michigan and nearer to Chicago, is valued at \$2.30 per acre, or \$1,144,068.30 for the Potawatomi interest. The \$.05 per acre increase over the median value appears to have been applied because of ease of access to the tract.

(4) The total fair market value of the Potawatomi interest in R. A. 177 in 1832 is \$3,074,607.45.

(b) The plaintiffs in Docket 29-N appear to have accepted the valuation conclusions submitted by their appraisal experts, George Banzhaf and Galen Todd, although their proposed findings of fact and brief make no direct reference to their experts' conclusions. However, Table III of the experts' report containing the total value calculations is included as Appendix D of the party's brief. For R. A. 177, with an 1832 valuation date, the Docket 29-N plaintiffs use the 1832 fair market value of \$2.51 per acre as calculated by Messrs. Banzhaf and Todd. Thus, the Potawatomi interest in R. A. 177, Tract D, at \$2.51

per acre is \$1,116,967.57. The Potawatomi interest in R. A. 177, Tract E, is \$1,060,216.47. For R. A. 177, Tract F, the fair market value is \$1,248,526.71. Thus, the total fair market value of the Potawatomi interest in R. A. 177 in 1832 is \$3,425,710.75.

#### Defendant's Appraisal and Valuation

53. (a) Appraiser. The defendant offered the appraisal report and testimony of Harry R. Fenton, an expert real estate analyst and appraiser, who has testified in other cases before the Commission. Mr. Fenton was assisted by Everett W. Fenton, who was responsible for the historical research in this case. E. W. Fenton's report was admitted in evidence over objections attacking his expertise as an historian.

Mr. Harry Fenton is the defendant's principal expert appraiser in this claim. His appraisal report covers only R. A. 177, but incorporates by reference data compiled for related cases (Docket 15-Q, et al., under lead Docket 128, designated "North of the Wabash" cases). In addition to physical description, climate, vegetation, soils, transportation, and similar basic data, Mr. Fenton's report briefly covers population in the study area, economic conditions, settlers' land preferences, and public land sales. Mr. Fenton's conclusory observations regarding the study area are set out below.

With regard to the physical description of R. A. 177, Mr. Fenton found that flat plains make up approximately 80 percent of the region. and that areas of sluggish drainage are interspersed throughout. Writing

generally of the vast Prairie Peninsula which extended into the whole of R. A. 177 (The Grand Prairie), he concluded that the whole region was about 90 percent prairie and 10 percent forest. Mr. Fenton found the area generally covered by rich soils whose fertility was accounted for in large part by organic material returned to the soils from the dense grass coverage. Parts of the northern section of the subject area contained areas of poorly drained soils. Mr. Fenton pinpoints these soils in the region of the sluggish Kankakee River Valley, most of which is in Indiana. In relation to the subject tract, these soils would be located in the east-central section of R. A. 177, subtract F. According to Mr. Fenton, the soils in R. A. 177 are 80 percent prairie and 20 percent wet prairie.

According to Mr. Fenton, much of the subject area was located far from any navigable streams. For the farmer on the prairie, this meant long-distance hauling to reach a river and a market. After the opening of the Erie Canal in 1825, large numbers of New Englanders moved westward to settle. Much of the Grand Prairie region in central Indiana and Illinois remained neglected, however, because of the belief that the lands were too wet for cultivation. Mr. Fenton states that this idea began to be dispelled in about 1832. Another reason proffered by Mr. Fenton for the delay in settling the Grand Prairie was the expense of preparing a farm. He estimated about \$2.00 per acre to break the sod and about a total of \$1,000 to put a farm into production. He states, nevertheless, that the population was "plainly coming" and quotes population growth statistics in the area to support this conclusion.

As to the economy, Mr. Fenton felt that the period (presumably to about 1832) was a period of good times. Even though farming methods were improving, in the "early years" there was considerable suspicion of the suitability of farming prairie lands containing no trees. The average migrant coming into Illinois in 1832 was in better financial condition than his predecessors. Transportation was cheap and permitted the settler to bring his tools and equipment. These settlers were generally better able to cope with the problems of the prairie such as lack of water and timber. In this regard, Mr. Fenton, stated:

The advantages of prairie farming, however, were becoming better known. The soils were marvelously rich; and for the most part, the settlers could arrange for timber from the groves if they were unable to own a grove themselves. Nevertheless, as has been said, the open prairies were the last lands to be taken up. [Def. Ex. 8, p. 22.]

The balance of Mr. Fenton's report is devoted to the valuation of the subject tract, discussed below, and the several factors a potential purchaser would be expected to consider before contracting for the purchase of the subject tract. These factors include the income that the potential (hypothetical) buyer could expect from subdividing his lands into farms, his expense in so doing, the profit that he would want, and the compensation he would require for the risk he was taking.

He would first want to determine what land on the market was really comparable. With this in mind, the potential purchaser would look at actual conditions of the market and the economy. He would be required to pay cash for the purchase. Cash was short in the 1830's. Mr. Fenton

testified, however, that cash was available to the hypothetical large tract buyer and that there was a market for all the lands in 1832. (Tr. Vol. I. p. 18.) The purchaser would also be aware of the availability of public lands and would therefore need to provide the migrant with a tailored product, already surveyed and near roads. Other factors that had to be considered were the length of time required to sell a large tract (at least a decade), cost of surveying, deferred profits, recording, quieting title (presence of squatters), policing and defending the property, and the sales expenses of the usual developer of large tracts.

Finally, Mr. Fenton believed that the wholesale land purchaser had to be able to resell the land at three to five times his land cost if he was to profit from the purchase. Coupled with all these factors, was the reputation of the wet prairie regions for sickness, especially malaria, that the well-informed developer would have been aware of.

(b) Mr. Fenton's Appraisal and Valuation. Mr. Fenton's appraisal of the subject tract appears to be based entirely on sales data taken from the three western Illinois counties of Knox, Fulton, and Henry located in the Illinois Military Tract.<sup>8/</sup> All the data reported by Mr. Fenton are from the years 1817 to 1833. The total sales reported for each county are 775 for Fulton; 831 for Knox, and 206 for Henry. For the valuation of R. A. 177, Mr. Fenton selected private sales in these counties for the

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<sup>8/</sup> See, finding 55 (a) infra.



years 1831 and 1832. For Fulton County, the number of sales went from 77 in 1831 to 87 in 1832, but the average price per acre went down from \$1.24 to \$1.00 per acre. In Knox County, the number of sales went from 24 in 1831 to 27 in 1832, and the price rose from \$.31 an acre to \$.43 an acre. In Henry County, the number of sales rose from 13 to 20 between 1831 and 1832, and the price went from \$.26 an acre to \$.33 an acre. According to Mr. Fenton, sales in his data series prior to 1832 did not average above \$1.00 per acre, except in Fulton County where in 1830 the average was an even \$1.00, in 1831 it was \$1.24, and in 1832 it was \$1.08. In Henry and Knox, the average prices were about half as much as Fulton. Overall, Mr. Fenton believed that the lands in the subject tract were about as desirable as those in the Illinois Military Tract.

Considering the sales data for these three military tract counties, Mr. Fenton concluded that they indicated a market value for small farm-sized tracts in the subject area of about \$1.00 per acre. At this point in his evaluation, Mr. Fenton considered the cost factors, along with risk and anticipated profit, discussed above, which a potential purchaser of the subject tract would study in order to arrive at a wholesale price for the entire tract. As stated by Mr. Fenton, the potential purchaser would view the problem as follows:

He would see that a flood of migrants was coming his way, still he would probably figure that he had better figure on ten years to sell off the land. He would have the expense of surveying and subdividing it, he would have the expense of marketing it, and he would have to be able to look forward to doubling his money to cover his risk and come out with a profit. His interest burden over 10 years at 6% or 7% on the declining investment would run about 50% of the original cost of the land if a 10 year schedule proved out to move along evenly. He would be optimistic, he would not only expect that people would be moving into his area but also that prices would advance as time went by. [Def. Ex. 8, p. 32.]

Mr. Fenton believed, nevertheless, that the potential purchaser would still have wanted to see at least three times his initial investment before being tempted to make the large purchase. Accordingly, it was his opinion that the purchaser would have been willing to pay about \$.33 per acre for the subject tract as raw land all in one piece. Based on this estimate, Mr. Fenton concluded that fair market value for the whole tract (Royce Area 177) was \$.33 per acre applied to each subtract as follows:

Tract D	445,007 acres	\$146,852
Tract E	422,397 acres	\$139,391
Tract F	<u>497,421 acres</u>	<u>\$164,149</u>
Totals	1,364,825 acres	\$450,392

54. Defendant's Valuation. The defendant has completely adopted Mr. Fenton's analysis, evaluation, and conclusions regarding the fair market value of R. A. 177, without reservation. Accordingly, it is the defendant's view that the subject tract had a fair market value of \$.33 per acre, or a total value of \$450,392.00 for the Potawatomie interest in R. A. 177.

## III.

Commission's Valuation

55. Market Data Evaluation. The Commission finds that the sales data furnished by Dr. Chisholm, plaintiff's appraiser, provides, with some significant modifications, a sound basis for the Commission's conclusory findings respecting the fair market value of the subject property. The market data, the reason for its application to this case, and the conclusion drawn therefrom are discussed in finding 56, infra.

The Commission further finds that the sales data derived from the Illinois Military Tract upon which defendant's appraiser, Mr. Fenton, based his value conclusion are not comparable principally because of the manner in which military bounty lands were sold. In addition, the three counties (Fulton, Knox, and Henry) from which the sales data were selected were the most remote and least attractive areas within the Illinois Military Tract. Fulton County, although having frontage on the Illinois River, was slow in developing and did not report any substantial population until after 1830. In 1830, the entire military tract had a population of about 13,000, over two-thirds of which were located in the southernmost counties along the Mississippi River, especially in Pike County where the population by 1831 had reached over 12,000.

As to the land market, the record indicates a high rate of speculation. Large eastern speculators bought bounty land patents and tax titles at ridiculously low prices. Copies of the deeds submitted in evidence by the defendant indicates the scale of the speculation. One transaction,

executed in Baltimore, involved 8,320 acres. These lands were sold for \$.69 per acre by Romulus Riggs, an active speculator, within a matter of months after purchasing the patents from soldiers. Presumably, in that short period, Mr. Riggs sold at a substantial profit. In this regard, the evidence indicates that bounty warrants could be purchased for less than \$.50 per acre from soldiers who had never set foot on their lands. Tax sales were also lucrative, with agents of speculators, bankers, and lawyers, headquartered at various county seats in the Military Tract, ready to purchase delinquent tax lands at few cents an acre. One of the largest transactions reported by Mr. Fenton was for 45,920 acres in Henry County purchased in 1832 for \$.07 per acre. The average size sale for this county in 1832 was for 17,000 acres. The very low prices for these lands suggests tax sales.

Finally, the Commission finds that the market data submitted by George Banzhaf, principal appraiser for plaintiffs in Docket 29-N, are of no assistance to the Commission in the valuation of the subject lands. The limited selection of 93 sales, 72 of which occurred after 1835, did not provide an adequate and comparable basis for the valuation of the subject tract. These sales were selected from 12 northern (principally northeastern) Indiana counties, nine of which are not comparable to the subject tract by virtue of their pattern and period of settlement, remoteness from the Illinois study area, and unique land formations as influenced by the Wabash River valley. The remaining three counties, closest to the subject tract and containing large areas of prairie lands

are Porter, Pulaski, and La Porte. All but one of the sales in Porter County occurred in 1836. The sales in Pulaski County occurred after 1839 (between 1839 and 1859), and only three of the sales in La Porte took place on or about the valuation date.

56. Commission's Market Analysis.

(a) From the 2,150 sales submitted by Dr. Chisholm, the Commission has selected 411 sales. The Commission finds this selection to be the most comparable of all the market data in evidence in terms of proximity to the subject tract, soil and land formations, and accessibility. The 411 sales are taken from Vermillion County, Illinois, and the counties of Vermillion, Fountain, Montgomery, Hamilton, and Grant in Indiana. Vermillion County, Illinois, is directly south of the subject tract and a small part of the county extends into the tract. The northern portion of Vermillion County, Indiana, is adjacent to R. A. 177, substract E. All the counties in the Indiana side of the study group form part of the Tipton Till Plain and are basically prairie lands substantially similar to the subject tract in elevation and soil divisions. Fountain and Vermillion counties in Indiana are accessible through the Wabash River, and, in terms of general accessibility, all the counties in the study area compare favorably if not equally with the subject tract.

(b) The 411 sales occurred between 1827 and 1833. They involved transactions totalling 38,846 acres for a total consideration of \$103,655.09, or an average of \$2.66 per acre. All sales of town lots and sales under 40 acres were excluded from the selection. Of these

transactions, 247, or about 60 percent of the total, were in 80 acre parcels. (The average sale amounted to 94.5 acres.) There were no extremes in acreage or consideration in this grouping. A yearly analysis of the 411 transactions gave the following results:

<u>Year</u>	<u>No. Sales</u>	<u>Median</u>	<u>Mean</u>	<u>Average Per Acre</u>
1827	80	\$1.97	\$2.39	\$2.80
1828	123	2.25	2.58	2.50
1829	100	2.14	2.49	2.57
1830	51	1.94	2.41	2.46
1831	15	2.75	2.81	2.84
1832	28	2.17	2.94	3.75
1833	14	2.34	2.32	2.34

The mean for all 411 sales amounted to \$2.52. A similar analysis was made for the 247 transactions in 80-acre parcels. The total consideration for the 19,760 acres in this group was \$48,450, or about \$2.45 per acre average. The mean for all the 80-acre sales amounted to \$2.43.

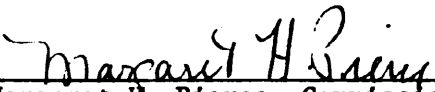
57. Value of the Subject Tract. Based on all the pertinent evidence of record and the preceding findings of fact, the Commission finds that the fair market value of plaintiffs' interest in R. A. 177 on October 20, 1832, was as follows:

<u>Subtract</u>	<u>Acreage</u>	<u>Fair Market Value</u>	<u>Potawatomi Interest</u>
D	890,014	\$1,417,300.00	\$ 708,750.00
E	844,794	1,208,000.00	604,000.00
F	<u>497,421</u>	<u>840,645.00</u>	<u>840,645.00</u>
	2,232,229	\$3,465,945.00	\$2,153,295.00

58. Treaty Consideration. The Commission finds that the following amounts were paid by the United States to the plaintiffs pursuant to the agreements made by the parties under the Treaty of October 20, 1832, and that these amounts are to be deducted as payments on the claim under section 2 of the Indian Claims Commission Act:

\$297,232.60	.....	Tribal Annuities.
16,363.83	.....	Annuities for Caldwell, Robinson, and LeClerc.
28,746.00	.....	Claims against plaintiffs.
<u>1,400.00</u>	.....	Article IV horses.
\$343,742.43		

59. Conclusion. Considering the defendant's payment of less than \$345,000 for plaintiffs' land interest which had a fair market value of \$2,153,295.00 on the valuation date, October 20, 1832, we find the amount thus paid to be so grossly inadequate as to constitute unconscionable consideration. Accordingly, the Commission concludes that plaintiffs are entitled to an award in the amount of \$1,809,552.57 (being the fair market value less payments on the claim), under the provisions of the Indian Claims Commission Act, less any gratuitous offsets which may subsequently be allowed.

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner