

BEFORE THE INDIAN CLAIMS COMMISSION

JAMES STRONG, et al., as the)	
representatives and on behalf)	
of all members by blood of the)	
CHIPPEWA TRIBE OF INDIANS,)	Docket No. 13-E
)	
THE DELAWARE TRIBE OF INDIANS,)	Docket No. 27-E
)	
HANNAHVILLE INDIAN COMMUNITY, et al.,)	Docket No. 29-D
)	
THE OTTAWA TRIBE, and GUY JENNISON,)	Docket Nos. 133-A
et al., as representatives of)	and 302
THE OTTAWA TRIBE,)	
)	
LAWRENCE ZANE, et al., ex rel.,)	Docket No. 139
WYANDOT TRIBE, et al.,)	
)	
ABSENTEE DELAWARE TRIBE OF OKLAHOMA,)	Docket No. 202
DELAWARE NATION, ex rel., W. E.)	
EXENDINE and MYRTLE HOLDER,)	
)	
Plaintiffs,)	
)	
CITIZEN BAND OF POTAWATOMI INDIANS)	
OF OKLAHOMA,)	
)	
PRAIRIE BAND OF POTTAWATOMIE)	
INDIANS, et al.,)	
)	
POTAWATOMI INDIANS OF INDIANA and)	
MICHIGAN, INC.,)	
)	
Intervenors in Docket No. 29-D,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 10, 1978

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact, which are supplemental to those findings of fact numbered 1 through 8 previously

entered in the above-captioned consolidated dockets on April 4, 1973, 30 Ind. Cl. Comm. 8, 24-36 (1973).

9. History of Claim. In its title decision of April 4, 1973, supra, which was affirmed by the United States Court of Claims at 207 Ct. Cl. 958 (1975), cert. denied, 425 U. S. 903 (1976), the Commission determined that, as of July 4, 1805, the effective date of the Treaty of Fort Industry (7 Stat. 87) under which title to Royce Areas 53 and 54 in Ohio was ceded to the United States, five tribes, as then constituted, each held recognized title to an undivided one-fifth interest in the lands constituting Royce Areas 53 and 54. These tribes and their present-day successors in interest are: (1) the Delaware Tribe, represented by the plaintiffs in Dockets 27-E and 202; (2) the Wyandot Tribe, represented by the plaintiffs in Docket 139; (3) certain bands of Ottawa Indians, represented by the plaintiffs in Dockets 133-A and 302; (4) the Chippewas of the Saginaw, represented by the plaintiffs in Docket 13-E; and (5) the Potawatomi Tribe, represented by the plaintiffs and intervenors in Docket 29-D.^{1/}

Trial of value and consideration issues was held in this consolidated proceeding from April 4, 1977 to April 6, 1977.

^{1/} The Potawatomi Indians of Indiana and Michigan, Inc., were permitted to intervene in Docket 29-D by Commission order of March 28, 1972, 27 Ind. Cl. Comm. 187, at 326. The Citizen Band of Potawatomi Indians of Oklahoma and The Prairie Band of Pottawatomie Indians were permitted to intervene in Docket 29-D by Commission order of July 15, 1976, 38 Ind. Cl. Comm. 456.

10. Area to be Valued. The area to be valued is a roughly rectangular tract of land located in the north-central portion of the State of Ohio. The area is bounded on the north by Lake Erie, on the east by the Cuyahoga and Tuscarawas Rivers and the portage between them; on the south by the Greeneville Treaty line; and on the west, by a line 120 miles west of the Pennsylvania border. This territory is designated on Royce's Map of Ohio as two contiguous tracts, Area 53 (the northern portion) and Area 54 (the southern portion). Royce Areas 53 and 54 are divided by the line of 41° north latitude. Royce Area 53 contains 1,309,643 acres and Royce Area 54 contains 1,280,164 acres, for a total combined acreage of 2,589,807 acres. Excluded from these acreage figures is a six-mile square tract located at the northwestern corner of Royce Area 53 which tract had previously been ceded to the United States at the Treaty of Greeneville, August 3, 1795, 7 Stat. 49.

11. Valuation Date. The date of valuation is July 4, 1805, the effective date of the Treaty of Fort Industry, 7 Stat. 87.

12. History of the Subject Tract. During the half-century preceding the Fort Industry Treaty, several Indian tribes and groups jointly used and occupied various portions of the tract. Clusters of settlements existed along the Huron and Cuyahoga Rivers in Royce Area 53 and at various widely scattered points within Royce Area 54.

The tract was included within the lands designated as the Old Northwest Territory, the government of which was organized under the

Northwest Ordinance of 1787.^{2/} The Ordinance provided for the creation, first, of territorial governments and then of additional states of the Union.

Several Indian tribes and groups, with the cooperation of the British, effectively controlled most of Ohio, including Royce Areas 53 and 54, until General Anthony Wayne broke the Indian resistance in 1794 at the Battle of Fallen Timbers. The next year the Indian tribes ceded southern and eastern Ohio to the United States at the Treaty of Greenville, supra.

Ohio was admitted as a state of the Union on March 1, 1803. Royce Areas 53 and 54 remained Indian lands until 2 years later.

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

Most of the westward immigration during this period originated in New York and Pennsylvania and in these states there was a dramatic increase in population. In Pennsylvania, the population grew from 434,313 in 1790 to 810,091 in 1810. The population of New York grew from 340,120 in 1790 to 959,049 in 1810.

^{2/} After the Constitution became effective, Congress, in the Act of August 7, 1789, 1 Stat. 50, re-enacted the original ordinance.

In Ohio, the population rose from 45,365 in 1800 to 230,760 in 1810. Most of this population growth occurred, however, in the southern portion of the state, along the Ohio River. In northern Ohio the population remained sparse. In 1805, northern Ohio had a white population of fewer than two persons per square mile.

The trend of population growth westward in the early 19th Century tended to bypass northern Ohio, the primary path west then being the Ohio River. Settlers tended towards the southern portion of Ohio which had been ceded at the 1795 Greenville Treaty and to adjoining Kentucky.

14. Public Land Policy. Even before the end of the American Revolution, the states were debating and disputing among themselves the future of the Old Northwest. The difficulty centered around the fact that certain of the states claimed sovereignty, by virtue of their colonial charters, to lands west of the Ohio River. The disputes were resolved, and the Articles of Confederation adopted, after the Continental Congress passed resolutions recommending that all lands northwest of the Ohio River claimed by various states be ceded for the common benefit of the United States and be organized into separate states. Those states with claims did subsequently cede their claims to the United States.

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

Under the Trade and Intercourse Act of 1790, 1 Stat. 137, and by virtue of the 1795 Treaty of Greeneville, the Indian Tribes of the Northwest Territory were permitted to sell their lands only by treaty either to the United States or to third parties upon the approval of the United States.

The proceeds of land sales were a source of federal revenue. Initially, Congress relied upon land speculators to purchase large tracts and subdivide and resell to settlers. Because of mismanagement, poor choice of land, and improper financing within the speculating land companies, this system collapsed in 1795 and the public turned against speculators. In 1796, Congress provided for direct sale of small tracts of 640 acres at \$2 per acre minimum price.

Pursuant to these policies, land would be purchased at public auctions, where sales were made to the highest bidder. The auctions went on for from one to three weeks, after which the lands were available at \$2 per acre. There was little competition at the auctions, and the \$2 per acre price tended to prevail.

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

Over 2,500,000 acres of land in Ohio and Indiana were sold to settlers in the early years of the 19th Century. At the same time, however, many more millions of acres in the public domain remained available for sale.

15. General Economic and Financial Factors. In the early 19th Century, the general long-term trend of the economy was expansionary with short, cyclical downturns. The gross national product rose consistently from 1789 to 1796, then fell for 2 years, then resumed its expansion for 3 years, fell again for 2 years, then rose again through the valuation date of July 4, 1805. The gross national product in 1805 was almost four times that of 1789. The overall income from private production rose during the decade 1799 to 1809, by over 25 percent from \$668 million to \$901 million.

The basis of the economy during this period was agriculture. Agricultural production accounted for 40 percent of private production income in 1799 and over one-third in 1809. During this period agricultural income rose from \$264 million to \$306 million. As a consequence of the agrarian economy, the nation's basic resource was land.

The nation's banking system was stable in 1805. Money and credit were available. In Ohio in 1805 there was, as yet, only one bank and that was in Cincinnati. The frontier status of Ohio, in general, and northern Ohio, in particular, naturally created a situation where specie was frequently in short supply and a barter system existed.

In general, however, people had no reason to doubt the ability of the banking system to provide sufficient credit and money as settlement in Ohio progressed.

16. Topography, Soils and Climate of the Subject Tract. The tract is formed of three glacial plains. The first is a narrow strip of Lake Plains along the shoreline of Lake Erie. The northwestern portion of the tract consists of a larger Till Plains area. The southeastern half of the tract is glaciated plateau.

The terrain is basically undulating and cut by broad valleys through which flow numerous rivers and streams. Elevation varies from approximately 500 feet along Lake Erie to 1,000 feet inland. In 1805 the tract was forest covered. The larger rivers were navigable. There was, however, no system of roads within the subject tract. Overall, transportation through the tract was difficult.

The glaciated soils of the subject tract range from highly to moderately productive. At the valuation date, significant portions of the subject tract would have required drainage before becoming agriculturally productive. Poor drainage would not, however, have caused contemporary observers to conclude that such lands were unfit for agriculture since drainage was feasible at the time. There were also relatively small portions of the tract with inferior soils or where topographical conditions would preclude agricultural use.

The climate is moderate. Annual precipitation ranges from 32 to 40 inches. The average frost-free growing season for the tract is 157 days, with a range of from 135 days inland to 201 days along Lake Erie.

17. Highest and Best Use. The parties agree that the highest and best use for the subject tract as of July 4, 1805, was for subsistence farming by settlers using homestead tracts. The Commission adopts this conclusion.

18. Plaintiffs' Valuation. Plaintiffs' expert witness was Dr. Roger K. Chisholm, associate professor of economics at Memphis State University. Dr. Chisholm is trained in economic and agricultural history.

Dr. Chisholm's analysis and valuation consisted of a discussion of various historic and economic factors affecting the value of land in general and the value of land within the subject tract in particular as of the valuation date. He also described various contemporary observations of the subject tract and modern-day analysis of the soils within the subject tract.

Dr. Chisholm's valuation analysis is based upon records of sales in the year 1805 of what he considered to be comparable lands. He analyzed 182 sales which occurred during that year and submitted computer printouts listing each of these 182 transactions, showing the date and location of each sale, the names of the parties, the acreage and the total price. He also submitted separate computer printouts breaking down these 182 sales by price per acre and by the number of acres per transaction.

Dr. Chisholm stated that these 182 sales did not include any where the record of the sale indicated that the transaction may not have been at arms-length. Dr. Chisholm indicated that it was most unlikely that the sales involved improved lands.

The sales utilized were of lands located in what are now Geauga County, Ohio (15 sales), Portage County, Ohio (1 sale), Trumbull County, Ohio (163 sales) and Wayne County, Michigan (3 sales). The Ohio sales, which constitute all but three of the 182 sales, were of lands east of the subject tract in the Western Reserve. These sales were generally within approximately 50 miles of the eastern boundary of the subject tract. The sales were of lands having the same physical characteristics as the lands of the subject tract.

The prices of these sales ranged from a low of \$0.11 per acre to a high of \$20,000 per acre, while the acreage involved ranged from two-hundredths of an acre to 3,000 acres. The average tract size was 209 acres and the median tract was 100 acres. The median price of all sales was \$2.44 per acre. The average price was \$2.09 per acre.

Relying upon his analysis of these sales, Dr. Chisholm valued the lands at \$2.40 per acre, the deduction of \$.04 per acre from the median price of \$2.44 per acre representing the "possibility, however slight" of improvements.

19. Defendant's Valuation. Defendant's valuation expert Dr. Ernest G. Booth, submitted a report and testified concerning the market

value of Royce Areas 53 and 54. Dr. Booth is a professional real estate appraiser with the firm of Gordon Elmquist Associates, of St. Paul, Minnesota. Defendant's report was signed by Dr. Booth and two other persons who assisted with it. In addition, defendant used Dr. Charles D. Palit, an associate professor at the University of Wisconsin, to analyze Dr. Chisholm's statistical approach to his valuation.

Dr. Booth's report described at length the historic, economic and geographical factors affecting valuation of the subject property. Dr. Booth considered five large-scale land transactions which took place in the last decade of the 18th Century to be comparable sales. The Holland Land Company purchased four tracts in 1792, ranging in size from 700,000 to 1,500,000 acres. Three tracts were in New York, the fourth in Pennsylvania. The fifth sale was a tract of 2,841,471 acres in eastern Ohio. This transaction took place in 1795, the purchaser being the Connecticut Land Company.

The Holland Land Company purchases ranged in price from \$0.26 per acre for a one million acre tract in New York to \$0.40 per acre for 700,000 acres in Pennsylvania. The largest tract, 1.5 million acres in New York, sold for \$0.34 per acre.

The Connecticut Land Company purchase consisted of the Western Reserve lands located directly east of Royce Areas 53 and 54.^{3/} A valid

^{3/} Royce Areas 53 and 54 were also within the Western Reserve. The Ohio sales utilized by Dr. Chisholm (see finding of fact No. 18) were located within the boundaries of the Connecticut Land Company purchase.

offer was made for these lands at \$0.44 per acre, but the lands were actually sold for \$0.422 per acre.

Retail sales of the Western Reserve lands and of Holland Land Company lands in New York rose to as high as \$2.50 per acre but sales declined with the opening of western lands. In the first years of the 19th Century the prevailing price for small tracts of Holland Land Company lands in New York and Pennsylvania was about \$2.00, but larger tracts were difficult to sell at even less than \$1.00 per acre. It took 40 years to liquidate the Holland Land Company purchases.

In the case of the Connecticut Land Company's Western Reserve Lands, while prices advanced in some areas where settlements were forming,^{4/} sales by the company were much slower than had been anticipated. The company soon encountered difficulties in meeting its obligations and was plagued with mismanagement. The Connecticut Land Company was finally dissolved in 1809 without having disposed of all its lands in eastern Ohio. There is no evidence in the record to indicate that prices the Company received for lands it sold in the early years of the 19th Century ever rose appreciably above the \$1.00 per acre price of the initial offerings.

^{4/} In 1805, small tracts within the Western Reserve, were being resold at an average of \$2.09 per acre, with a median sales price of \$2.44 per acre. See finding of fact No. 18, infra.

Dr. Booth then applied three appraisal methods to Royce Areas 53 and 54. These approaches he denominated as comparable sales, development and government sales.

A. Comparable Sales Approach. On the basis of the prices paid by the Connecticut Land Company and the Holland Land Company, defendant's expert selected the \$0.40 per acre paid in 1795 as indicative of the market value during the period of those companies' operations. Dr. Booth allowed an annual increase of 5 percent, or \$.02 in wholesale value for each year between 1795 and the 1805 valuation date. Under this method he concluded that \$0.60 per acre was the fair market value of the tract in 1805.

B. Development Approach. This approach was based upon the hypothetical viewpoint of a real estate developer. Using the experience of the Holland Land Company in western New York during the period 1801 to 1811, Dr. Booth estimated a maximum retail sales price potential of \$2.30 per acre.

Dr. Booth estimated that a developer would anticipate a liquidation period of at least 20 years for the lands of the subject tract. On this basis the developer could afford to pay up to 25 percent of potential retail price. Therefore, under this method, Dr. Booth concluded that \$0.575 per acre, was the fair market value of the tract in 1805.

C. Government Sales Approach. Dr. Booth's final approach to valuation was an analysis of "net returns" from retail sales by the

Government, based upon the then prevailing price of \$2.00 per acre for public domain lands. From this \$2.00 figure, Dr. Booth deducted \$0.60 representing the Government's cost to acquire the land, and \$0.666 per acre as a write-off for marginal value lands. From the resulting \$0.734, he deducted \$0.142 as representing cost of surveying, selling expense, government debt interest, and other overhead expense. Under this method therefore, fair market value is \$0.592 per acre.

Based upon his entire analysis, Dr. Booth gave as his opinion that the fair market value of the lands of the subject tract in 1805 was \$0.60 per acre.

20. Greeneville Sales. Parties negotiating the sale of a vast tract of frontier acreage in 1805 would have been aware of the settlement patterns of similar lands which had recently been opened for settlement, such as the Greeneville lands of the Cincinnati Land District. The Greeneville lands were those lands lying south and east of the Greeneville treaty line. In 1800, 3,150,229 acres of the Greeneville lands were opened for settlement. These lands formed a part of Royce Area 11, Ohio and Indiana. The highest and best use for these lands was for development by settlers as homesteads.

The Commission made findings of fact concerning sales in the Greeneville area in an earlier case. The findings were based on a thoroughly developed record that was, as to the findings concerning such sales, approved on appeal. Miami Tribe v. United States, Dockets

67, et al., 4 Ind. Cl. Comm. 346 (1956), aff'd in part, and remanded for add'l findings, 146 Ct. Cl. 421 (1959).^{5/} These lands were sold by the Government under the same laws that were in effect in 1805.

The record in Miami showed that during the first 10 years, from 1800 to 1810, 33.4 percent of the Greeneville lands were sold at \$2 per acre. This can be calculated as a rate of approximately 3.3 percent of the land sold per year. During the next 8 years, 40 percent of the remaining land was sold, which is at a rate of 5 percent per year. This type of pattern could have been anticipated. As early settlers moved in and began to develop the district, it would become increasingly attractive to later settlers, and the rate of settlement would increase.

21. Treaty Consideration and Payment on Claim. Article IV of the Fort Industry Treaty, provided that the Wyandots and Delawares^{6/} would receive a perpetual annuity of \$1,000. The value of such an annuity is its commuted value. Since the treaty adopted an interest rate of 6 percent, the value is \$16,666.66. Thus, the value of consideration promised under Article V is \$8,333.33 to the Wyandots and \$8,333.33 to the Delawares.

^{5/} Both parties discussed these decisions, as to the Government's survey costs, in their briefs, and thus are presumably aware of the findings therein.

^{6/} Those Munsees, Shawnees and Senecas mentioned in Article IV, were affiliated with either the Wyandots or the Delawares. For purposes of allocating consideration, the Wyandots and Delawares may be considered the sole recipients.

Article V of the treaty provided that the Ottawas, Chippewas and Potawatomes would receive a total of \$12,000 from the United States. The evidence establishes that this money was divided as follows: \$4,800 each to the Chippewas and Ottawas and \$2,400 to the Potawatomes. The same article states that a further sum of \$4,000 had been paid, presumably in equal portions, to the Chippewas, Ottawas and Potawatomes.

The total consideration paid plaintiffs pursuant to the treaty was \$32,666.65. The allowable payments on the claim for the individual tribes are as follows:

Wyandots	\$8,333.33
Delawares	8,333.33
Chippewas	6,133.33
Ottawas	6,133.33
Potawatomes	3,733.33

CONCLUSIONS OF LAW

1. The fair market value on July 4, 1805, of Royce Areas 53 and 54, Ohio, was \$2,848,787.70, or \$1.10 per acre.

2. Consideration in the total amount of \$32,666.65 under the Treaty of Fort Industry, July 4, 1805, 7 Stat. 87, was paid to the respective signatory tribes as follows: to the Wyandots: \$8,333.33; to the Delawares: \$8,333.33; to the Chippewas: \$6,133.33; to the Ottawas: \$6,133.33; to the Potawatomes: \$3,733.33.


3. The total consideration of \$32,666.65 for lands having a fair market value of \$2,848,787.70 was so grossly inadequate as to render it unconscionable within the meaning of section 2(3) of the Indian Claims Commission Act.

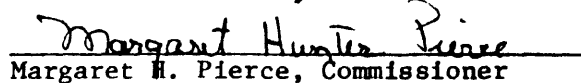
4. Defendant is entitled to credit for the entire consideration paid as payments on the claim, said payments on the claim to be charged against the respective plaintiffs and intervenors as follows: the Wyandot plaintiffs, \$8,333.33; the Delaware plaintiffs, \$8,333.33; the Chippewa plaintiffs, \$6,133.33; the Ottawa plaintiffs, \$6,133.33; the Potawatomi plaintiffs and intervenors, \$3,733.33.


5. Plaintiffs and intervenors are entitled to recover the following net sums, less any gratuitous offsets to which defendant may be entitled under the provisions of the Indian Claims Commission Act: to the Wyandot plaintiffs, \$561,424.21; to the Delaware plaintiffs, \$561,424.21; to the Chippewa plaintiffs, \$563,624.21; to the Ottawa plaintiffs, \$563,624.21; to the Potawatomi plaintiffs and intervenors, \$566,024.21.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner