

BEFORE THE INDIAN CLAIMS COMMISSION

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE)	Docket No. 15-D
BAND OF THE POTTAWATOMIE TRIBE OF INDIANS,)	
)	
Plaintiffs,)	
)	
HANNAHVILLE INDIAN COMMUNITY, FOREST COUNTY)	Docket No. 29-B
POTAWATOMI COMMUNITY,)	
)	
Plaintiffs,)	
)	
CITIZEN BAND OF POTAWATOMI INDIANS OF)	Docket No. 311
OKLAHOMA, and POTAWATOMI NATION,)	
)	
Plaintiffs,)	
)	
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA,)	Docket Nos. 313 and
on behalf of the KASKASKIA, WEA, and)	314-A
PEORIA NATIONS,)	
)	
Plaintiffs,)	
)	
THE KICKAPOO TRIBE OF KANSAS, THE KICKAPOO)	Docket No. 315
TRIBE OF OKLAHOMA,)	
)	
Plaintiffs,)	
)	
POTAWATOMI INDIANS OF INDIANA AND MICHIGAN,)	Docket Nos. 15-D and
INCORPORATED,)	29-B
)	
Intervenor,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 25, 1978

FINDINGS OF FACT ON VALUE AND CONSIDERATION

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 (1973).

39. Historical Background. From the last quarter of the 17th century until the close of the French and Indian War in 1763, all of the tracts involved in this proceeding were French territory. Explorers such as Joliet, Father Marquette, LaSalle and Hennepin, who traveled extensively through Illinois, reported on the beauty and navigability of the many rivers, the fertility of most of the soil, the great abundance of fruit bearing trees and bushes, the variety of wild game and fur bearing animals, and the excellent fish and wild fowl which inhabited the innumerable rivers, streams and lakes in the area. These explorers also remarked on the generally healthy and temperate climate and stated that these lands would prove to be a great asset to France. French fur trappers, traders, explorers, and military and trading posts built by the French dominated the territory. A chain of military and trading posts were established from the upper Great Lakes region extending southward along the Illinois River and into the Mississippi Valley. Other military and trading posts were established in western Indiana along the Kankakee and the Wabash river valleys.

When the French and Indian War ended with a British victory in 1763, the British attempted to create a strong and friendly alliance with their late Indian enemies in the old Northwest Territory. Pursuant to the Proclamation of 1763, settlement by members of the colonies in lands west of the Appalachian Mountains was forbidden. Despite this prohibition and the British attempts to enforce it, large numbers of Virginians crossed the mountains and settled in Kentucky and southwestern Pennsylvania, and a few reached Illinois. Some of the older French

38. Treaties, cessions, valuation dates, and acreages. The areas ceded by the plaintiffs, the treaties involved, and the valuation dates, were determined in our title decision, supra. The areas to be valued in this proceeding are Royce Area 48 in Illinois and Royce areas 98 and 100 located partly in Illinois and partly in Indiana. Because of overlaps between these and other cessions, the areas were subdivided into various tracts as an aid in identifying title interests. Tracts A, A', B, C, D, E, G, H and I involved in this phase of the case are described in our title decision (30 Ind. Cl. Comm. 42, 50 through 53) and are mapped in the same decision as appendices I and II. See map, Appendix A, infra.

The following table summarizes the Royce areas, the tracts, the owning tribe, the total tract acreage, the particular tribe's interest in the tract, and the valuation dates.

ROYCE AREA	TRACT	TRIBE	TOTAL ACREAGE	INTEREST IN TRACT	VALUATION DATE
48	A	Kaskaskia	6,279,118	all	12/12/1803
48/110	A'	Kaskaskia Kickapoo	3,824,842	one-half one-half	12/12/1803 1/13/1821
110	B	Kickapoo	5,117,115	all	1/13/1821
110	C	Kickapoo	2,193,176	all	1/13/1821
110	D	Kickapoo	890,014	one-half	1/13/1821
110	E	Kickapoo	844,794	one-half	1/13/1821
110/98	G	Kickapoo Potawatomi Wea	402,870	one-third one-third one-third	1/13/1821 10/2/1818 10/2/1818
110/180	H	Wea Kickapoo	51,384	one-third one-third	10/2/1818 12/13/1821
98	I	Wea Potawatomi	351,756	one-half one-half	10/2/1818 10/2/1818

settlements on the Mississippi River and in the Ohio Valley in southern Illinois survived the British takeover and retained their French flavor, but they lost some of their importance as trading centers. Pittman, a British engineer who surveyed portions of the area in suit between 1765 and 1768, praised the secure anchorage available for large bateaux at Kaskaskia in Tract A of Royce Area 48, noting that it was dangerous for boats to remain in the Mississippi River because of caving banks, vast numbers of logs and trees carried down stream by the force of the rapid current, and the heavy gales which occurred in the winter. He also praised the Kaskaskia River as a good site for the construction of mills and noted that a fine mill and a brewery were already located there. He reported that the old Jesuit plantation had been sold and that as part of one year's harvest, had supplied 86,000 pounds of flour to the King. The village of Kaskaskia then had some 65 families in addition to numerous merchants, casual visitors and an unknown number of slaves.

Gordon, another British officer who published his travel journal in 1776, described the lower Wabash and the Mississippi River area bordering Tract A in Royce Area 48. He commented on the strategic location of Fort Massac (Royce Area 27, not included in this suit but located nearby); on the large number of buffalo present; on the salt which could be easily obtained at the nearby saline; on the rich, luxuriant soil in the southern portion of Tract A between the Ohio and

Mississippi rivers. He reported that the Kaskaskia River was navigable for some 52 miles from its mouth and that Kaskaskia was a prosperous village of some 80 houses. He praised the rich soil of the area and the large number of cattle and hogs owned by the settlers.

Following the colonial victory in the Revolutionary War (1783), lands west of the Appalachian Mountains including the old Northwest Territory, became the property of the new Federal Government. In accordance with Article II of the Jay Treaty of November 19, 1794 (8 Stat. 116, 117), the British finally agreed to abandon their military posts along the border between the United States and Canada and to have their soldiers out of such posts by June 1, 1796. As a result of the loss of British military and other support, the Indians in the Northwest Territory, defeated at the Battle of Fallen Timbers in 1794, were persuaded to sign the Treaty of Greenville on August 3, 1795 (7 Stat. 49), and to cede to the United States approximately two-thirds of the present state of Ohio, a small part of southeastern Indiana, plus a number of enclaves located in their retained territory. In the same treaty the United States recognized the title of the Indian treaty parties to their lands north and west of the so-called Greenville Line. The small enclaves acquired by the United States in Ohio, Indiana and Illinois, were for the purpose of establishing a chain of military posts.

Even before the Treaty of Greenville, a large number of American settlers had moved into Ohio and later into Indiana. By the Act of August 7, 1789 (1 Stat. 50), Congress provided for a government for the

Northwest Territory. By the Act of May 7, 1800 (2 Stat. 58), the Territory of Indiana was formed and on March 1, 1803, Ohio was admitted to the Union. By 1812, approximately 250,000 people had settled in Ohio and many were moving into the Indiana Territory which by 1805 had convened a legislature. New settlements developed rapidly along the Mississippi River in southern Illinois and by 1809 Illinois was made a separate territory (Act of February 3, 1809, 2 Stat. 514). Indiana was admitted as a state on December 11, 1816, and Illinois on December 3, 1818.

In 1787, General Harmar described the Post of Vincennes on the Wabash (about 30 miles southeast of Tract C in Royce Area 110) as a thriving village of 400 houses and a population of 900 French and 400 Americans. He reported that in August of that year he marched with 31 men 160 miles from Vincennes to the village of Kaskaskia, crossing prairies where they suffered from heat and poor water supplies. He noted that the prairies were excellent for grazing and that they abounded with wild game such as deer, buffalo, bear, etc. He described Kaskaskia as a handsome French village containing 191 men and the chief of the Kaskaskia tribe. He observed that the elevation was low and the place subject to inundation. He visited the formerly French villages of Prairie du Rocher and St. Philip, and small stockaded settlements of American squatters at LaBelle Fountain and Grand Ruisseau, all in Tract A of Royce Area 48. He spoke of 30 more Americans settled on the rich, fertile Mississippi River bottomlands also in Tract A. He was received hospitably at the village of Cahokia. This village, about 50 miles north

of Kaskaskia, was founded by French Canadians in 1699 and was located in what became present day St. Clair County. There were then between two and three hundred persons living in Cahokia. Harmar observed that it was only 4 miles to St. Louis which he described as a more prosperous and "genteel" Spanish village on the west bank of the Mississippi River.

Collot, publishing in French and in English concerning his visit to Illinois in 1796, described Illinois as perhaps the only spot respecting which travellers had given no exaggerated accounts. He wrote of the beauty, fertility and good climate of the area; the majestic rivers which flowed through and around it and the many smaller navigable rivers and creeks which abounded in the area. He mentioned that access to Kaskaskia and to Cahokia was by two roads, one open the year around and the other passable only in summer. He wrote of the luxuriant vegetation and the splendid soil in the area.

The War of 1812 which broke out subsequent to the Kaskaskia cession of Royce Area 48 (1803) but prior to the other cessions in suit, brought a temporary halt to the western movement of settlers. Because the settlers in this area believed that the British had been encouraging the Indians in the uprisings led by Tecumseh, they supported the war which ended in 1814 with the Treaty of Ghent.

The British gave up their claims to trade south of the Canadian border and withdrew whatever support they had been giving to the Indians.

There was then no further impediment to the westward expansion of the American frontier to the Mississippi River and beyond, and the Federal Government continued its policy of land purchases from the Indians east of the Mississippi. By 1821 most of Indiana, Illinois, Michigan and Ohio had fallen into the hands of Americans and there was a large movement of settlers westward into those regions.

Contemporary accounts of the area in suit following the close of the War of 1812, included that of Schoolcraft, a geologist who recorded his observations of the western border of Tract A in Royce Area 48 in a journal published in 1819. He reported large beds of good coal and some native copper along the Big Muddy River. He wrote of the beauty of the landscape, the bleak rugged cliffs near the rivers, the verdant forests, limestone rocks, rich alluvial American Bottom and some poor lands which were strewn with flint. He described the American Bottom as being from 3 to 10 miles wide and 100 miles long. He stated that this land was the finest in the western country, producing all kinds of grain and fruits in perfection and abundance.

In 1819, Mr. Ernst, a wealthy German seeking a site for a colony, traveled through portions of Tracts A, A' and B. He described Edwardsville in Tract A (ceded in 1803) as an attractive town surrounded by a fertile region with fine farms, very productive soil, luxuriant peach trees, apple orchards, melons and pumpkins of unusual size and quality. He reported that the soil was too rich for potatoes which could not be planted

until July, but that corn, wheat and oats grew well. He was interested in purchasing land at Vandalia which was about to be laid out, and mentioned a good road from Edwardsville to Vandalia northward across the Great Prairie of Tracts A' and B which he traveled in order to inspect the lands along the Sangamon River in Tract B. He observed that the high degree of fruitfulness of the land had induced farmers to trespass upon Kickapoo land with the risk of being driven out or killed by the Indians. He noted that although the 1818 Kickapoo cession had eliminated danger from the Indians, the land had not yet been surveyed and that when it was surveyed and offered for sale several years hence, anyone would be at liberty to outbid the squatters. He concluded that all of these factors were proof of the desirability of the land and predicted that it would be quickly settled.

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

(a) Topography - Soils. The topography and soils of Illinois were largely determined by two glaciers which ground their ways southward during the Pleistocene Age. They left two differing soil areas, each of which influenced the settlement process and subsequent economic developments.

The first glacier, the Illinoian Drift, covered the state as far south as the Ohio River, leaving behind as it receded, rugged hills littered with glacial debris and compact clay soils marked by the absence of sulphur, potassium and nitrogen.

White pipe clay, potters clay, brick clay, fire clay, plasterers sand, sandstone, limestone, marble, galena, iron, copper, copperas, zinc and natural gas were present in varying quantities throughout the area, although the extent to which they were known at the valuation dates is not clear from the record. The clay material was known and used. Mineral springs and salines were present and were valued by the settlers.

The low swampy lands and the wet prairies in the tract were infested with mosquitos. Malaria and other fever illnesses were common. Even the American Bottom, the most fertile and valuable portion of the area in suit, was not a particularly healthy place in the 19th century. When possible, early settlers avoided the lowlands and the swampy areas. However, many settlers were willing to brave the risks and discomforts in order to take advantage of the rich and fertile bottomlands.

The second glacier, the Wisconsin Drift, pushed down from the north at a later date, grinding down hills into smooth prairies and leaving behind a level countryside and a light loam soil rich in the humus and chemicals needed for fertility. The Wisconsin drift did not benefit all parts of the area equally. The southernmost advance is marked by the Shelbyville Moraine consisting of a generally east-west ridge of earth carried by and pushed ahead of the glacier. Shelbyville lies in the southern portion of Tract A' which is the northern part of Royce Area 48 and the southern portion of the overlapping part of Royce Area 110. The moraine begins in the east of Tract C near Paris, Illinois,

and sweeps in a southwest curve through the town of Kansas, south of Charlestown, Mattoon and Windsor, and then north through Macon in Tract A'.

The Shelbyville Moraine is one of the most important natural boundaries in Illinois. Early settlers were quick to note the difference between lands lying to the south or north of this dividing line. North of the moraine the countryside was level, the soil deep and the swamps numerous. Once drained, the swamps formed humus-rich fields of immense productivity. South of the moraine the rugged hills and the glacier strewn waste discouraged settlement by frontiersmen.

(b) Vegetation. The prairie portions of the subject lands were covered with tall grasses with Big Bluestem dominant. These fields were frequently interlaced with forest areas or "groves" of the oak-hickory forest association which followed most of the river courses. The dense grass coverage of the prairies contributed to the richness of the soils, the fertility of which was caused primarily by the organic material returned to the soil by the grass and rotted roots. Parts of the subject land were heavily timbered, sometimes in commercially exploitable quantities and quality. There were many fine fruit trees and an abundance of fruit-bearing bushes. The particular types of trees and the ratio of timber land to prairie land will be described in findings dealing with individual tracts to be valued.

(c) Climate. The climate in the subject lands was generally of the humid continental type with hot summers, cold winters and short

transitional seasons. The average annual temperature ranges were from 50° in the northern portions, to 60° in the south. January was usually the coldest month with mean temperatures ranging from the mid-20's in the north to 36° F. in the south. Mean temperatures in July ranged from the mid 70's in the north to 80° F. in the south.

Average annual precipitation ranged from 32" in the northern portion of the area in suit, to 47" in the southern part. Although total precipitation was greatest in southern Illinois, that which fell during the growing season (April to September) was about the same throughout the state.

The average number of frost-free days ranged from 160 in the northern part to over 200 in the south. Although the growing season was shorter in northern Illinois, crop varieties and corn hybrids with shorter maturity periods were used and frost damage was not a serious problem.

On the whole, the climate in Illinois was temperate and healthy and this fact was well known to early settlers.

(d) Drainage. The area enjoyed generally good natural drainage and only a few areas required tile or ditch drainage. Excellent stands of timber were found along the many watercourses in the area in suit. Fruit trees, berry bushes, luxuriant grasses and grain crops were common. Even the marshes, swamps and wetlands were valuable because of the wild game and fur bearing animals which thrived in these areas. Many of the first non-Indians in the area were hunters and trappers and skins and furs were an important source of income to the early

settlers. The salines found in the area were greatly prized by the settlers.

41. Transportation and Access.

(a) Water Transportation. Transportation through and access to the subject lands were unusually good because of the network of waterways to the eastern and western states and from the Great Lakes to New Orleans. River and stream routes long used by the Indians were followed by the non-Indians beginning with the French in the 1600's. These water routes were an essential element of the fur trade and of colonization and settlement by the French, Spanish, British and Americans.

The major streams and rivers were the Illinois River, formed by the merger of its headwater tributaries, the Kankakee and the Des Plaines rivers, the Mississippi River, the Ohio River and the Wabash River. Also important were the Iroquois tributary of the Kankakee, the Vermillion, Mackinaw, Sangamon, Macoupin, all tributaries of the Illinois River; the Kaskaskia, Shoal, Big and Little Muddy and Cache, tributaries of the Mississippi; the Saline tributary of the Ohio; and the Embarrass, Vermillion and Tippecanoe, tributaries of the Wabash River.

An important route to the Illinois portions of the subject lands was by way of the Great Lakes to Chicago, up the Chicago River and by portage to the Des Plaines River, and down the Des Plaines to the Illinois River at Tract D. Upstream from this point, the Kankakee River and its tributary, the Iroquois River, gave access to Tracts D and E. Access from Lake Michigan was possible by ascending the St. Joseph River and

by portage to the Kankakee River. The Illinois River formed the northern border of Tract D and the northern and western borders of Tract B. Tracts A, A' and B all met at the confluence of the Illinois with the Mississippi. The Mississippi in turn constituted the western border of, and gave access to, the rich American Bottom lands of Tract A.

The Great Lakes route was not widely traveled until 1825 with the opening of the Erie Canal from the Hudson River at Albany, New York, to Buffalo on Lake Erie. Overnight the canal became the most important route to the west with thousands utilizing it to carry themselves and their household goods westward.

The most important water route to the subject lands until 1825 was down the Ohio River from Pittsburgh, Pennsylvania, along the borders of West Virginia, Ohio, Indiana and Kentucky. By ascending the Wabash tributary of the Ohio River, direct access was gained to the entire southern part of tracts G and I. The Vermillion tributary of the Wabash River formed the border between and gave access to tracts C and G. The Tippecanoe tributary of the Wabash formed the eastern boundary of Tract I and gave access thereto. The eastern border of Tract C paralleled the course of the Wabash River and was relatively close by. The lower reaches of the Ohio River formed the entire southeastern boundary of Tract A. To the south, the Mississippi River gave access to New Orleans where ocean transport was available to the east coast and abroad.

The descent down the Ohio, past Royce Area 48, to New Orleans was first made by a non-Indian in 1742. Fort Pitt was already in existence as the nucleus of the future traffic west and south from Pittsburgh.

The Mississippi River was navigable by large shallow draft vessels at all times. The other rivers were navigable by canoe and some by flatboat. The bark canoe in use in the subject areas ranged in size from a one man-vessel to vessels 30 feet in length and capable of carrying 3,000 pounds of cargo and a 12-man crew. The canoe was light in weight and easily repaired and portaged. The raft, pirogue, barge, bateau, (a keeless flat bottomed boat) and keelboat, followed the canoe. Propulsion was by current, oars, sweeps, poles, sail and tow ropes. Flatboats were most common. The keelboat was in use on the Mississippi by 1751. when a fleet ascended from the mouth of the Ohio about 75 miles to Ft. Chartres in Tract A. The journey took about three months. All of the above boats were in use on the Ohio and Mississippi rivers following the Revolutionary War. The journey from Pittsburgh to New Orleans took about three weeks. Keelboats and barges could manage the return trip with difficulty in from three to four months. Flatboats could not make the return trip. Immigrants to the subject tracts from points upstream could sometimes sell their vessels to persons going further downstream, or the vessels could be dismantled to supply the market for sawed timber.

The first steamboat on any western river left Pittsburgh in November, 1811, on a voyage down the Ohio River past Tract A and thence down the Mississippi to Naches and New Orleans. In 1812 the first steamboat went up the Mississippi from New Orleans. Other steamboats appeared in 1813, 1814 and 1815. In 1816 the Washington, a steamboat of advanced

design and the first two-decker, passed over the falls of the Ohio to New Orleans. The return voyage was made in 25 days, less than 1/4 the time required for barges and keelboats. Steamboats appeared on the Wabash in 1820 and traversed the entire length of Royce Area 98, Tracts G and I, and seven miles beyond to Delphi, Indiana.

(b) Roads and Tracts. Overland travel was necessary to reach most of the interior of the subject tracts. Shortly after 1700 the French made a trail from Kaskaskia in Tract A through Danville in Tract G, to Detroit. When George Rogers Clark passed through Tract A in 1778, a French trail existed from Kaskaskia to Prairie du Rocher. Two trails led from Kaskaskia to Cahokia, and a well defined trail led from Kaskaskia to Vincennes in Royce Area 63. The Territorial legislature enacted authority to lay out roads as early as 1792. The first road in St. Clair County, Tract A, was recorded in 1806. By 1811 there were 17 road districts in that county. Three routes from Kaskaskia to Belleville were established around 1816.

Other than the above mentioned roads, overland travel in the subject tracts was accomplished over Indian trails, game trails and a few blazed trails referred to as "traces". Annual migrations of vast herds of buffalo from the western plains to the salt licks of Kentucky and the Allegheny feeding grounds left well beaten trails that were used by Indians and non-Indians. The old St. Louis Trace, believed to be the first overland route used by Americans on their way to Illinois was such

a buffalo trail. Known also as the Vincennes Trail, it extended from the falls of the Ohio River at the present site of Louisville, Kentucky, to the Wabash River near Vincennes and westward across Tract A of Royce Area 48, to St. Louis. To the east it extended to the Wilderness Road and the Great Valley Road to Richmond, Virginia. Buffalo paths also extended northward and westward from the vicinity of Fort Massac in Tract A.

Indian trails radiated in various directions from several focal points: near the present site of Metropolis on the Ohio River in Tract A; near the mouth of the Kaskaskia River in Tract A; near the site of Danville in Tract C and Tract G; at the confluence of the Des Plaines and Kankakee rivers in Tract D; and to the north at Chicago.

Early settlers often made their own trails. In the forests, trees and stumps were removed; small streams were forded or bridged, and corduroy roads of logs were laid across swamps. On the prairies, roads sometimes followed ridges between sloughs and lakes. When necessary because of obstacles, wagons were unloaded, taken apart, and with their contents, carried over the obstacles. They were then reassembled and reloaded.

42. Royce Area 48 - Tract A. Tract A of Royce Area 48 in Illinois contains all or part of the following present day counties ^{1/} ranging from

^{1/} The references in the above material to counties is to facilitate location of the areas being discussed. At valuation dates, most of the present day counties had not been organized. The record contains a number of Illinois county histories from which some of the facts recited in our findings have been taken.

the southern portion northward: Alexander, Pulaski, Union, Massac, Johnson, Pope, Hardin, Jackson, Williamson, Saline, Gallatin, Randolph, Perry, Franklin, Hamilton, White, Monroe, St. Clair, Washington, Jefferson, Madison, Clinton, Marion, Bond, Fayette, and Effingham. The tract contains 6,279,118 acres of which 352,000 acres were American Bottom lands described below. The balance of Tract A consisted of $\frac{3}{4}$ timber lands and $\frac{1}{4}$ prairie.

A. American Bottom Lands. The American Bottom is a strip of rich alluvial soil along the eastern bank of the Mississippi River. It was 100 miles long and from 3 to 15 miles wide with an average width of from 5 to 6 miles. It stretched from the mouth of the Illinois River on the north to the mouth of the Kaskaskia River on the south, extending from north to south through the present day counties of Madison, St. Clair, Monroe, and Randolph.

The soil of the American Bottom reached 25 feet in depth and was described by 19th century authors as of unsurpassed fertility, the finest body of land to be found in the "west" (now the mid-west), and by far the most beautiful and fertile tract in the "western" country. It was believed to be capable of supporting more people than any other tract of equal size in what was then the United States.

The American Bottom was enclosed on the east by a ridge of highlands which rose abruptly from the plain, in some places becoming rocky precipices, in others beautiful sloping hills, and everywhere crowned with trees. A number of streams flowed from the bluffs and many fine

springs issued from the limestone rocks. The smaller streams formed ponds and lagoons well supplied with fish and frequented by millions of wild fowl. There were also larger lakes teeming with fish and wild fowl.

On its western edge, along the banks of the Mississippi River, the American Bottom was covered for about a mile eastward with lush, almost tropical forest, which, in addition to timber, contained fruit and nuts in abundance. Between the forest and the bluffs marking the eastern edge, there was an undulating meadow with belts of timber along the lakes, ponds, streams, and reedy marshes.

This area was heavily used from time immemorial by American Indians. The opulence of the area attracted white settlers from the moment it was discovered by non-Indians. It was the original seat of the French settlements of Kaskaskia around 1700, Prairie du Rocher in 1722, Fort Charles, Cahokia, in 1699, and Prairie du Pont in 1760. The French made no attempt to displace the Indian inhabitants.

American settlement of the American Bottom began in 1779. In 1783 Piggot's Fort was established. In 1786 New Design was founded and in 1800 Bellefontain, Whiteside's Station and Goshen. For a number of years more than three-fourths of the population of Illinois lived in the American Bottom area.

B. Tract A - Portions not Containing American Bottom Lands. While the portions of Tract A which contained the American Bottom lands were the finest in the tract and the first to be settled, in some cases long before the 1803 cession date, the remainder of the tract contained much excellent

and desirable land. Present day Jackson, Union and Alexander counties were bordered on the west by the Mississippi River. They all contained fine arable lands, rich bottom lands, large stands of timber and few areas of the prairie-type land avoided by early settlers. There were many streams, lakes and marshes where fish and wild fowl were plentiful. White pipe clay and potters clay were abundant and useful to the settlers, and in these and other areas, there were surface coal deposits.

Present day Pulaski, Massac, Pope, Hardin and Gallatin counties were on the Ohio River. They contained rich soil, a great deal of excellent timber and fruit trees and were easily accessible by water. Brick clay, potters clay and limestone were present in parts of these areas and there were plenty of building stones for the settlers' use. White County, just north of Gallatin, was bordered on the east by the Wabash River and was quite similar to Gallatin.

The interior areas of Tract A contained areas which were rolling, sometimes broken and hilly. Little was too broken for successful cultivation. Drainage in these areas was generally good because of the small streams which traversed the land and emptied into the large rivers. Heavy stands of timber covered much of the land and there were no large areas of prairie. There were some thinly timbered areas known as "oak openings". The small prairies and the surrounding uplands were excellent places for the growing of grapes and other fruit, wheat, oats, corn, tobacco, castor beans, cotton, timothy and clover. Often the soil was thick and black and highly productive. All of this country was well

watered by small creeks and by larger rivers such as the Big Muddy and its tributaries. In some areas there were mineral springs, and easily mined surface coal and clay. The northern part of Tract A was traversed by the Kaskaskia River and drainage was good in these parts. Transportation to and from the interior areas was not as easy as in the lands bordering on the navigable rivers, but none of the lands were impassable and settlement of these areas, though slow at first, was steady.

43. Royce Area 48 - Tract A'. Tract A' is located in central Illinois and is overlapped by Royce areas 48 and 110. It contains 3,824,842 acres of land of which about 3/4 consisted of prairie lands and 1/4 timbered lands. The Kaskaskia Indians ceded this area in 1803 and the Kickapoo treaty ceding the same land was effective in 1821.

All or portions of the following counties are in Tract A': Jersey, Madison, Bond, Fayette, Effingham, Macoupin, Montgomery, Shelby, Sangamon, Christian, Moultrie, Coles, Logan, Macon, Piatt, Douglas, Champaign, DeWitt, McLean and Ford.

Much of the land in this tract was located in the so-called Grand Prairie portion of central Illinois. The soil was rich black loam well suited to the growing of a large variety of crops. The topography was not as hilly as that of Tract A and the area was not as accessible by means of large rivers. The timbered areas were primarily in the vicinity of smaller rivers and streams which criss-crossed the tract, and it was to these places that the settlers first came. The northwestern portion

of the tract was not far from the towns of Peoria and Pekin from which supplies could be brought into the tract without much difficulty. The climate in the northern part of the tract was excellent with short winters and long pleasant summers.

Settlement in Tract A' commenced later than in Tract A and the population growth was slower. Americans explored Madison County in 1790 and founded the Goshen settlement there in 1800. In Bond County which was further inland and to the east of the Mississippi, settlement began in 1811. Settlers came in greater numbers after the conclusion of the War of 1812.

The first settlers in Fayette County which lies midway between the Mississippi and Wabash rivers, arrived in 1815. In Montgomery County, the first non-Indian settlement was established in 1816. The first permanent settlement in Shelby County occurred in 1818. In Christian County the settlers arrived in 1820 and in Macon County settlement did not commence until 1828.

Wild game was plentiful in some portions of the tract, particularly deer, bison, elk, wolf and bear. Some of the considerable deposits of coal in this tract were visible from the surface. All sorts of clays used in building were available in the tract. Drainage was not a problem in this tract.

44. Royce Areas 96a and 110 - Tract B. Tract B is in north-central Illinois and is overlapped by Royce areas 96a and 110. It includes all

or part of the following counties beginning in the southwest corner of the tract: Jersey, Green, Macoupin, Scott, Sangamon, Morgan, Cass, Menard, Logan, DeWitt, Mason, Tazwell, McLean, Woodford, Livingston, Marshall, Putnam and LaSalle. The tract contains 5,117,115 acres approximately 60% of which were prairie and 40% timber. The valuation date is January 13, 1821.

The southwestern and western portions of the tract are bordered on the west and north by the Illinois River which flows into the Mississippi River in Jersey County. The lands drained by the Illinois River and its tributaries were exceptionally fertile. The bottom lands, particularly those which were above high water mark, were considered by the Indians and later by the non-Indians as the best land imaginable for the raising of crops. The bluffs along the river were covered with fruit trees and grapevines and contained quantities of clay used by the settlers in building. These areas were predominantly timbered which made them attractive to settlers who commenced coming into the area prior to the extinguishment of Indian title, i.e., as early as 1815. In most of this area there was little or no flooding and the climate was pleasant. The usual mineral springs were present and were valued for their medicinal properties. Even the occasional barrens or hickory flats could be used for growing wheat, and there were grasses which were useful for cattle grazing. In a few places, particularly in the northern part of the tract along the Illinois River in Marshall County, flooding occurred and some of the area contained swamps. Even in these places the wild game was plentiful.

Those portions of Tract B not on the Illinois River were well drained by the Sangamon, Vermillion and Mazon rivers and by Salt Creek. There were fine stands of timber along all of the many watercourses in the tract and the prairie lands were either rolling or level and were exceedingly fertile. In the few places where drainage was poor, cereal crops could be grown profitably and there was usually an abundance of wild game.

Settlement commenced in Jersey County in 1815, prior to the 1821 valuation date. The first grist mill was built in the county in 1821 and the first blacksmith shop in 1824. The first settlement in Green County was also in 1815 and immigrants began to pour into the county immediately after the Kickapoo cession treaty was signed in 1819. The first settlers came to Sangamon County in 1816, having heard much of the desirability of the land in this county. Settlers began arriving in Morgan County in 1816 and in greater numbers in 1819. There were a few non-Indian settlers in Cass, Morgan, Scott and Woodford counties prior to 1821. After the valuation date, settlement continued at a swift pace.

45. Royce Area 110 - Tract C. Tract C of Royce Area 110 contains 2,193,176 acres located in east central Illinois. The valuation date is January 13, 1821. This area was ceded to the United States by the Kickapoo Indians only. Two thirds of this tract consists of prairie land and one third is timbered. It includes all or part of the following counties beginning at the southwest corner of the tract: Shelby, Cumberland, Jasper, Crawford, Clark, Moultrie, Coles, Douglas, Edgar, Champaign, Vermillion, Ford, Livingston and Iroquois.

Most of Tract C was well drained by numerous creeks and by the Embarrass River which flowed through much of the area and was navigable by flatboat. This river contained an abundance of fish such as bass, catfish, pike and buffalo fish. Timber grew along the river and the creeks, and flooding was not a serious problem. There were some swamps but they usually dried out sufficiently in summer to permit cultivation. Clay was found in most areas and was used by the settlers in building. The prairie areas were very fertile and had thick black soil which was excellent for growing corn, wheat and grass. Most of the timber was hardwood and the timbered areas were settled first. The Wabash River was not far to the east of Tract C and provided drainage and transportation. In addition to the Embarrass, the Kaskaskia River, also navigable, ran through part of the area providing transportation, access and drainage. Other rivers which benefitted this area were the Little Wabash, the Kickapoo, the Sangamon and the Vermillion rivers.

The earliest non-Indian settlement in Tract C was by the French. American settlement commenced in 1816 and continued at a slow rate until after the 1821 cession by the Kickapoos. Because the Kickapoos did not leave the area immediately following the cession, settlement was slow until about 1828. Settlers found that the land in portions of this tract was so productive that it was not necessary to practice rotation of crops. In areas where fruit trees did not grow well, there were berries and other bush fruits.

46. Royce Area 110 - Tracts D and E. Tracts D and E of Royce Area 110 are in the northeastern portion of the 1821 Kickapoo cession. Tract D. contains 890,014 acres, 98% of which are prairie lands and 2% timbered lands. The tract's acreage is located in all or part of the following counties: Livingston, Ford, Iroquois, Kankakee, LaSalle, Grundy and Will.

Tract D is bordered by the Illinois River on the north and the Kankakee tributary of the Illinois on the northeast. It is also drained by the Mazon River, the Vermillion tributary of the Illinois, and by numerous other streams. Timber occurred on broken areas of the high plateaus and along the Illinois River where speculators early bought the fine stands of timber. There was also good timber along the Vermillion River. The first and second bottom lands along the Illinois in this tract were described as having inexhaustible fertile alluvium and as being nearly 2 miles wide, enriched by annual floods which sometimes caused damage. The upper bench terraces along the river were sandy loam. Portions of Tract D were of black prairie mold and mucky soil which held water for periods of time. In the late 1820s coal, which was visible, was in use by blacksmiths. Travel in the tract was easy over well defined Indian trails which paralleled the Illinois River and led to Chicago some 40 miles beyond the tract. Since 1812 there had been talk of a canal linking Lake Michigan with the Illinois River and that canal was actually completed in 1848 to the great benefit of this area.

Tract E contained 844,794 acres of approximately 80% prairie land and 20% timbered land. This tract included all or part of the following counties: Livingston, Iroquois, Kankakee, Ford and Vermillion.

The tract was drained by the Iroquois River, the Vermillion and Kankakee tributaries of the Illinois River and by numerous creeks. The bulk of the tract is located in Iroquois County (which also extends into tracts D and C) and was the former bed of Lake Kankakee. Most of the land was exceedingly fertile with black vegetable mold 1-1/2 to 2 feet deep. In the 1830's Tract E was traversed by two main thoroughfares: Hubbard's Pack trail from Danville, Illinois, in Tract G, to Chicago; and the Butterfield Trail. The Kickapoos remained in the area after the 1821 cession and non-Indian settlement did not commence to any degree until 1828.

47. Royce Area 110 and 98-Tracts G and I. Tract G, containing 402,870 acres, constitutes the western portion of Royce Area 98 and is overlapped by a portion of the Kickapoo cession of Royce Area 110. The tract is partly in Illinois and partly in Indiana. The Kickapoo, Potawatomi and Wea tribes each has an undivided one-third interest. The Potawatomi and Wea interest are valued as of October 2, 1818, and the Kickapoo interest as of January 13, 1821. Tract I contains 351,756 acres wholly in western Indiana. The Wea and Potawatomi each have an undivided one-half interest. The valuation date is October 2, 1818.

Tract G includes portions of the following counties: Vermillion, Illinois; Warren, and Benton in Indiana. Tract I includes portions of Warren, Benton, White and Tippecanoe counties in Indiana.

The Illinois portion of Tract G is drained by three forks of the Vermillion River and its tributaries and by the Little Vermillion. These watercourses were bordered with timber in belts of from one to three miles in width. The prairie land in the area was of black, dense, mucky soil of variable depth. Good supplies of well water were obtainable at from 15 to 50 feet, including artesian flows in the northwest portion of Vermillion County. An important Indian saline in the county was in great demand by settlers. Early pioneers

preferred timbered portions of the tract although some settled on prairies and river bottoms. A portion of the Grand Prairie in the tract formed a treeless area dreaded by travelers. The climate was marked by great extremes with hot, dry summers and severe winters.

The Indiana part of Tract G contained about 220 square miles and was bordered on the west by the Illinois-Indiana line and on the east by the Wabash River. The area contained rich bottoms and some terraces in the river valleys. The terrace, or "second bottom" rose about 40 feet above the "first bottom" and was from one to four miles wide. It furnished a broad stretch of rich, well drained farming country. The soil of the second bottom was black, sandy loam and produced very abundant crops. Rising from the second bottom were abrupt bluffs reaching 120 to 130 feet above the river and forming the border of the Grand Prairie which was in the central part of Tract G. The bluffs and bottoms were timbered with oak, hickory, maple and walnut. Although the first non-Indian settlers came to Tract G in 1816, the Kickapoos and Potawatomies remained for several years thereafter.

That part of Tract G which lies in Indiana along the Wabash River is extremely scenic. Its western and northern portions form a part of the Grand Prairie with gently rolling land and a uniformly rich, sandy, loam soil. Mineral springs were in various parts of this area. Some portions of the prairie in the southwest part of the tract required extensive tile draining. Banks of the Wabash were heavily timbered. The early settlers preferred the timbered portions and considered the Grand Prairie to be poor land for settlement.

Tract I is in the vicinity of the Wabash and Tippecanoe rivers, and includes portions of Warren, Benton, White and Tippecanoe counties in Indiana. It is well drained by those rivers and also by Rine, Indian, and

Burnett creeks. The Wabash at this point contained salmon, bass, red horse and pike. Buffalo fish were found in the Tippecanoe River. Geese duck and other game birds were abundant in this area. The Wabash River was navigable by light draft boats.

The prairie portions of Tract I were very fertile and either level or gently undulating. There was good timber land and ~~there were many~~ wild fruit-bearing trees and bushes. Except for some inferior land in the oak barrens, the soil of the timberlands was of excellent quality.

Settlement in Tract I commenced in 1820 and increased once the Indians had left.

48. Royce Areas 110 - Tract H. Tract H lies in western Indiana in Benton County and constitutes the overlapping portion of Royce Areas 110 and 180. The Kickapoo and Wea tribes each had an undivided one-third interest in this 51,384 acre tract. The Wea interest is valued as of October 2, 1818, and the Kickapoo interest as of January 13, 1821.

Most of Benton county consists of gently rolling prairie dotted by seven groves of oak, hickory and maple. Much of the surface soil is of various silt loams ranging from clay to rich black loam. The county is drained by five major creeks and the headwaters of the North Fork of the Vermillion River. However, certain portions of the county have small lakes and wet ground requiring ditch and tile drainage to make the land fit for cultivation. The early settlers arrived in the 1820's and kept to the timbered portions or near them. The area was particularly well adapted to the growing of corn and other grain. The first settlers in Tract H

arrived in 1820 and continued coming into the tract even though the Kickapoo Indians were still present.

49. Population. The total population of the United States and of the states adjacent to the subject tracts at the pertinent times, reflected a potential source of purchasers of the land and of its products. Throughout the period of 1790-1820 the total population of the country was in its period of most rapid expansion and the population of the immediate region of the subject tracts was rising even more rapidly than in the country as a whole, a situation indicative of a strong demand for this land.

In 1790 the estimated population of the United States was 3,929,000; in 1803 it was 5,872,000; in 1818 it was 9,139,000; and in 1821 it was 9,939,000. Kentucky, immediately south of Illinois, was a source of many of the early settlers. Kentucky grew from 73,677 in 1790 to 220,955 in 1800; to 406,511 in 1810; and to 564,317 by 1820.

The population in Ohio increased from 45,365 in 1800 to 230,760 in 1810, 250,000 by 1812 and to 581,434 in 1820. In 1800 Indiana included areas which later became Illinois and Michigan. Its 1800 population was 5,641 including 3,124 people in the portions which later became Illinois and Michigan. By 1810 the population of Indiana which by then occupied its present day boundaries, had increased to 24,520 and by 1820 to 147,178.

Illinois had 12,282 people when its first regular census was taken in 1810. The population was located chiefly in the southern part of the state. After the War of 1812 and the passage of the pre-emption Act of 1813,

a new era in western movement began. A land office was opened at Kaskaskia in 1814. By 1815, the Illinois population was about 15,000. In 1818, the year in which Illinois was admitted to the Union, its population was estimated variously from 30,000 to 50,000. By 1820 the population had risen to 55,200, a 349.5% increase since 1810, in spite of the fact that only small areas had been opened for settlement. The percentages of increase in neighboring states for the same period were 500.2% for Indiana, 38.8% for Kentucky, 236.6% for Missouri, and 152.0% for Ohio.

Between 1810 and 1820 Illinois gained in population at a rate of more than 10 times the United States as a whole. Indiana had gained population at ten times the national rate between 1800 and 1810, and at a faster rate between 1810 and 1820. Between 1810 and 1820 Ohio and Kentucky passed their peak rates of growth which were nearly equal to that of the United States. and they and the eastern states became exporters of population to the "west".

50. Farming. Prior to American settlement of the lands in suit, Indians were farming along portions of the Illinois River in Tract B and the Wea Indians had extensive cultivated fields in the bottoms of the Wabash and Tippecanoe Rivers along the borders of Tract I in Indiana. By 1700 the Illinois Indians were farming in the American Bottom portions of Tract A. The Piankeshaw farmed in the vicinity of Danville in Tract G. As noted in earlier findings, the French farmed much land in the American bottom.

Most of the American settlers who came into the subject tract arrived with a team of horses or oxen and a wagon, some household goods, tools, and a little money. Some arrived on foot with few possessions, and

managed to exist and gain a foothold in the new land by working for the more prosperous settlers. At first the settlers lived in lean-tos which were replaced by log cabins. A relatively few settlers were well-to-do farmers who arrived with substantial savings. Most settlers tended to acquire as much land as their means would allow. They commenced with subsistence farming and only later were able to produce excess crops which they could sell at a profit.

Most of the early settlers preferred to settle in or along the edges of the forested lands, preferably along the wooded banks of the many streams that criss-crossed the Illinois lands. Timber furnished material for their buildings, containers, furniture, tools, equipment, boats, fencing, and fuel. It also provided shelter from the heat, wind and cold of the prairies. In the forest they found animals which were useful for food, skins and furs. The forest provided fruits, honey and nuts and forage for their hogs and other livestock. Probably because they were not accustomed to prairie lands in their eastern homes, they avoided the prairies for the most part unless they could find areas where there was a good mixture of prairie and timbered land. The early settlers did recognize the value of the prairies as pasturage for their stock. The density and toughness of the prairie sod was the most serious deterrent to settlement and farming because the early settlers came with primitive wooden plows and harrows which could not make much of an impression on the tough soil of the prairie.

Once the prairie sod was turned, it required a year to rot sufficiently for cross plowing. A first year sod-crop of corn could be planted by

chopping through the sod with an axe to make a hole for the corn kernels. Up to 10 bushels per acre could be obtained in this manner if the fields were fenced from livestock. Thereafter, up to 50 bushels per acre could be realized. Fencing was costly and difficult and in the absence of wood it was necessary to fence with turf dikes or a combination of dikes, hedges and ditches. The early settlers also considered the prairies, unrelieved by trees, to be unhealthy. They were certainly uncomfortable in the hot summers and the cold winters. Although these prairie lands were later to be very valuable for the growing of grains and corn, the earlier settlers found it easier to clear fields from timberland.

The varying climate, terrain, drainage and soil conditions of the subject lands permitted, with varying degrees of success, crops of corn, wheat, barley, oats, rye, buckwheat, grasses, clover, Irish and sweet potatoes, tobacco, castor beans, flax, cotton, apples, peaches, plums, grapes, a variety of berries, melons and garden vegetables.

Farm production in the early days of settlement was mostly for home consumption and labor barter, although where river transportation was available, as it was on the borders of the subject lands, excess farm produce could be sold at a profit and shipped to established settlements such as New Orleans.

51. Banking and Finance. The First Bank of the United States was chartered by Congress in 1791. It dominated banking in the United States from its foundation until the expiration of its charter in 1811. The capital of the bank was limited to \$10,000,000. The bank's total debt

outstanding at one time, including its banknotes circulating as currency, was limited to \$10,000,000 over and above the amount of its deposits. The interest it could charge on loans and accounts was limited to six percent a year. Its bills or notes payable in gold and silver were receivable in all payments due to the United States. The Government pledged itself to establish no other bank during the life of the Bank of the United States. Its central office was at Philadelphia and branches were in New York, Baltimore, Boston, Washington, Norfolk, Charleston, Savannah and New Orleans. Only the central office could issue currency.

The Government derived four principal advantages from this bank: safekeeping of the public moneys, transfers of public funds, collection of revenue, and loans. The bank prevented undue expansion of the currency but also served to drain specie from the west to the east, and because of substantial foreign ownership of its stock, to Europe. The bank did not enjoy a monopoly on issuing currency and state banks continued to issue currency except insofar as the new Federal bank required specie payment of state banknotes. Its large capital and its preeminence operated to give the bank a commanding position in this country such as was occupied by the Bank of England among the other banks of that country.

Congress refused to renew the charter of the First Bank and it went out of existence in 1811. Thereafter both the citizens and the government had to rely on state chartered or unchartered institutions for their banking needs and, largely, for their currency. It became difficult to

make transfers of funds from one part of the country to another because the notes of the banks in one section did not pass as currency in other sections.

During the War of 1812 the country suffered from inflation which persisted after the conclusion of the war in 1814. This was due to both Congressional and State actions.

Banking in the "west", i.e., Kentucky, Ohio and Tennessee, started with merchants and fur traders who often undertook the making of loans, cashing drafts, and selling drafts, checks and bills of exchange for their customers. The Kentucky Insurance Company, chartered by Kentucky in 1802, appears to have been the first western chartered corporation to issue currency. In 1803 the Miami Exporting Company was incorporated in Ohio and had "banking privileges". By 1818 there were 43 banks in Kentucky, 10 in Tennessee and 8 in Ohio. By this time there were two chartered banks in Missouri and a few unchartered private banks.

In frontier communities in the early part of the 19th century, banks were regarded as agents for the creation of capital. They were not necessarily organized because there was capital seeking investment or because existing business needed their aid, but rather for the purpose of increasing the supply of money for further development through the issuance and lending of their own bank notes without prior saving by the community.

Between 1800 and 1810 a private unchartered bank was operating at Vincennes. It was a bank of discount and deposit. Similar banks later

opened at Madison, Corydon and Lawrenceburg. By 1814 the Territorial Government formally chartered the Bank of Vincennes and the Farmers and Mechanics Bank at Madison. Both banks prospered.

By law, only specie and U.S. Treasury notes were acceptable at United States land offices, but in actual practice notes of sound banks, such as the Bank of Vincennes, were accepted. After the establishment of the Second Bank of the United States in 1816, land office receivers could accept U.S. Bank notes and other banknotes which were acceptable for deposit at par in the United States Bank. When Indiana became a state in 1816, the legislature made the Vincennes Bank a State bank and increased its allowable capital. New branches were established at Brookville, Corydon and Vevay. Despite some very questionable banking practices which resulted in suspension of the bank's right to act as a Federal depository in 1819, the bank did substantially increase the money supply of Indiana between 1817 and 1820.

The earliest bank in Illinois, the Bank of Illinois at Shawneetown just outside the southeastern edge of Tract A, grew from a mercantile business. The business commenced in 1804 and by 1813 the owner began to accept deposits, to lend money and to issue bills of credit. A charter was applied for in 1816 and the bank was well run and highly regarded.

In January, 1818, a group headed by Senator (formerly Governor) Ninian Edwards and Benjamin Stephenson, the receiver of public moneys at the local U.S. land office, obtained a charter for the Bank of Edwardsville.

This bank and the Bank of Illinois at Shawneetown were depositories for Federal land office receipts and secured permanent deposits of Government funds. These banks survived the financial panic of 1819. In 1821 the Bank of Illinois at Vandalia was chartered. The existence of state and private banks was uncertain and there were frequent failures and suspensions.

The Second Bank of the United States, founded in 1816, was intended by Congress to serve national purposes, particularly to establish a sound currency and provide a safe depository and ready means of transfer of Federal funds. The Congress decreed that only specie, Treasury notes, notes of the Bank of the United States and notes of such state banks as were payable on demand in specie, could be accepted in payment of amounts due to the United States. After first refusing to resume specie payment, the state banks finally agreed on condition that the national bank extend its discounts as they contracted theirs. The Bank of the United States accepted this condition and allowed \$30,000,000 of discounts in its first year which more than made up for the tightening of credit by the state banks. During the crises of 1819, credits had to be curtailed and branch banks were prohibited from accepting any bank notes except their own and all state bank notes held by the Federal banks had to be presented for payment at once. This policy helped precipitate the 1819 panic by driving many state banks into bankruptcy.

The restrictive policies of the Bank of the United States resulted in a business depression from which the country did not fully recover until the 1830's.

52. Public Land Laws of the United States applicable to Indiana and Illinois at valuation dates. The Harrison Act of 1800 applicable to public lands in Ohio and Indiana, provided for public sale at auction of surveyed public lands in 320 acre half sections for not less than \$2.00 an acre. Lands remaining unsold might then be sold at private sale for \$2.00 per acre. The immediate payment in specie or evidence of indebtedness of the United States of one-twentieth of the purchase price was required. Within 40 days, a quarter of the purchase price (less the twentieth already paid) was to be paid. Another quarter was payable within two years, another within three years, and final payment within four years. Six percent annual interest was to be charged upon each of the last three payments except that a discount at the rate of 8 percent a year, calculated on the amount demandable on the due date, was allowed for advance payment. The discount reduced the cash payment to \$1.84 per acre. If the first payment of one-fourth was not timely paid, the land and all amounts paid were forfeited. If the first quarter price was paid, the land was no longer subject to simple forfeiture, but one year after the due date of the last payment, if not made, thirty days notice of sale could be given and the land then sold for arrears. If the whole sum due, with interest, was not bid and paid, the land reverted to the United States and all sums paid by the purchaser were forfeited.

After the admission of Ohio in March of 1803, the Act of March 26, 1804, extended the public land laws to the remainder of the Old Northwest Territory including the lands in suit. Rectangular surveys were to be

extended over the area, private land claims adjudicated, certain areas reserved, and the remainder of the land to which Indian title had been extinguished was to be sold in a manner similar to that provided in the 1800 Act. The \$2.00 minimum price per acre was retained but the land could be offered at both public and private sales in 160 acre quarter sections. Other restrictions of the 1800 act were eased. United States land offices were established at Detroit, Vincennes and Kaskaskia. In 1807 a land office was established at Jeffersonville, Indiana, and in Shawneetown, Illinois, in 1812. In 1816 a land office with jurisdiction over lands in Illinois was established at Edwardsville, Illinois and in 1820 land offices were established at Vandalia and Palestine, Illinois.

The Act of February 22, 1817, 3 Stat. 346, authorized the sale of 80 acre tracts in six out of every 36 sections. The Act of April 24, 1820, 3 Stat. 566, required that all public land be offered in 80 acre tracts. The minimum price of public lands was reduced to \$1.25 per acre and credit sales were abolished, full payment on the date of purchase being required.

Since law applicable to Illinois and Indiana did not permit sale prior to survey, and substantial periods were required to make surveys of the Indian land cessions, the Government's total inventory of public lands exceeded the supply actually available for purchase by the public.

53. Squatters, Speculators, and Preemption Rights. Prior to 1830 American law did not recognize on a general basis any right of squatters on the public lands to purchase the tracts containing their improvements. Instead, the Act of March 3, 1807, c. 46, 2 Stat. 445, made it a misdemeanor

to remain on public lands without special permission of the register and receiver of the local land office, after three months' notice from the U.S. Marshal to quit. This law was little enforced. Moreover, a number of statutes applicable to special areas or special classes of persons, granted preferential rights to purchase, called preemption rights. The Act of February 5, 1813, c. 20, 2 Stat. 797, granted a preemption right to Illinois residents to purchase, at private sale for the minimum price, not more than one quarter-section of unreserved public land in that tract which they had actually inhabited and cultivated prior to enactment of the law. Preemption rights based solely on settlement were not granted in Indiana prior to 1830.

Despite the law, settlers swarmed over public lands and even unceded Indian lands in Indiana, Illinois, and elsewhere in the United States. Sometimes they moved further west when their lands were put up for public auction. At other times they stayed and were outbid. Frequently they attended the land office auction and bid in the land they were occupying for the minimum price.

The settlers, or "squatters" often arranged matters among themselves prior to the sale. If two were interested in the same subdivision, one would ask the other what he would take not to bid against him. If neither would consent to be bought off, they would draw lots. If a speculator should make a bid on land a settler wanted, he often would be driven from the crowd. As early as 1806, it was reported that a considerable portion of the bottom land along the Ohio River, worth \$8.00 per acre, had been

bought for the minimum price of \$2.00 per acre through collusion of the bidders. Later, organized societies of settlers, with written constitutions, were formed for the purpose of mutual help in obtaining land from the Government at the minimum price. Competitive bidding at Federal public land sales in the area north of the Ohio River became increasingly rare and was the exception rather than the rule after 1816.

Speculators buying public land as an investment continued in business despite the opposition of settlers. One of their methods was to buy up at private sale, following the close of the auction, lands surrounding the settlers' small tracts. If the settler prospered, he would buy more land from the speculator, at the latter's price. If he failed, he would be forced to sell his tract with its improvements for what the speculator offered. Where speculators bid against each other, the winner might pay the losers less than the premium he had bid over the Government minimum price, so that they would not bid against him again, and then relinquish the land, to buy it for the minimum price when reoffered. The speculators also had their associations. Their agents would obtain the numbers of every valuable tract prior to sale and agree to bid them off for a fraction over the minimum price. After the Government auction, the speculators would have their own auction, dividing the proceeds among themselves. Speculators also used squatters as front men, particularly under the preemption laws, to claim lands at the minimum price and convey over to them at a pre-agreed markup.

In pre-industrial America, speculation in land was one of the few

outlets for any considerable amount of capital. But it was more than that; on the frontier it was practically the only activity in which men could give free scope to their business ability. Speculation played a large part in the peaks in volume of public land transfers in 1818, 1824, 1836, 1838, and 1846. These peaks occurred in periods of marked business activity for the country as a whole, and corresponded generally with the intensity of speculative movement shown by other business indicators. Land sales usually peaked before commodity prices, and bottomed earlier in a depression.

Great landowners moved west with, sometimes ahead of, the vanguard of frontiersmen, following closely the footsteps of the surveyor. Great holdings of land, sometimes running to a quarter of a million acres and more, were acquired for resale to other speculators, to actual settlers, or for rental to tenants. At every government land sale these men were in attendance. At every land office town they maintained conspicuous offices, their advertisements providing much of the patronage of the struggling frontier newspaper. These landowners expressed their great confidence in the future of the "west" by sinking great sums, in part borrowed capital, in the purchase of unimproved land from the Government.

Speculators who bought large tracts of choice land and held them for resale at prices which settlers could not afford, were a serious deterrent to the settlement of the subject lands.

54. Public Land Sales at Land Offices Northwest of the Ohio River.

A. Sales under the Credit System 1800-1820; Earlier Sales

in Ohio. The following sales were made by the United States of its public lands at land offices in Ohio, Indiana, and Illinois from the first opening of land offices (in 1800) through June 30, 1820, which was the last day upon which credit sales were permitted and on which the minimum price remained \$2 per acre:

OHIO

Year	Acres	Dollars	Weighted Average Price Per Acre
1800	67750.93	135501.86	2.00
1801	497939.36	1031893.26	2.07
1802	271080.37	532160.74	1.96
Subtotal 1800-1802	836770.66	1699555.86	2.03
1803	174156.04	349292.18	2.01
1804	398155.99	817270.50	2.05
1805	581971.91	1186562.09	2.04
1806	501893.07	1045542.34	2.08
1807	194204.67	403902.61	2.08
1808	156357.78	384461.23	2.46
1809	110435.21	254698.15	2.31
1810	181532.00	398663.50	2.20
1811	380417.71	819308.16	2.15
1812	273776.61	601450.86	2.20
1813	410271.11	874980.51	2.13
1814	817714.40	1720895.05	2.10
1815	781846.71	1650689.29	2.11
1816	637555.25	1331422.25	2.09
1817	565016.74	1430035.67	2.53
Subtotal 1800-1817	7002072.86	14968730.25	2.14
1818	558760.50	1123119.72	2.01
1819	298950.72	604011.01	2.02
First Half 1820	36848.05	74301.06	2.02
Grand Total	1593247.53	32278505.20	2.03

	Year	Acres	Dollars	Weighted Average Price Per Acre
	1818	391772.83	836785.67	2.14
	1819	151622.80	326037.88	2.15
First half	1820	20820.22	44547.72	2.14
Grand total		7566288.71	16176101.52	2.14

INDIANA

	Year	Acres	Dollars	Weighted Average Price Per Acre
	1807	51961.62	106247.55	2.04
	1808	34230.99	68461.98	2.00
	1809	39163.02	78326.04	2.00
	1810	43431.91	86863.82	2.00
	1811	53300.52	106601.00	2.00
	1812	45027.58	90057.16	2.00
	1813	59719.23	119758.46	2.01
	1814	166312.13	332624.26	2.00
	1815	187802.43	375604.84	2.00
	1816	527257.54	1203713.45	2.28
	1817	482588.54	966499.76	2.00
Subtotal		1690795.51	3534758.32	2.09
	1818	576112.01	1154934.08	2.00
	1819	201153.18	402306.36	2.00
First half	1820	22675.47	45351.44	2.00
Grand total		2490736.17	5137350.20	2.06

ILLINOIS

	Year	Acres	Dollars	Weighted Average Price Per Acre
	1814	158461.32	342047.92	2.16
	1815	138197.19	279593.82	2.02
	1816	116528.09	233692.34	2.01
	1817	285501.66	571039.33	2.00
Subtotal		698688.26	1426373.41	2.04

B. Sales under the Cash System 1820-1825. The following sales were made by the United States of its public lands in Ohio, Indiana, and Illinois, between July 1, 1820, when the minimum price was reduced to \$1.25 per acre and cash payment was required, and September 30, 1825.

	Year	Acres	Dollars	Weighted Ave. Price Per Acre
<u>OHIO</u>				
Second half	1820	54293.73	\$ 67625.75	\$1.2456
	1821	114946.85	150192.94	1.3066
	1822	185172.40	235550.61	1.2721
	1823	124735.32	155919.18	1.2500
	1824	166752.01	209996.08	1.2539
	1825	141928.61	175845.89	1.2390
Total		787828.92	\$995130.45	1.26 (5 1/2 year weighted ave.)
<u>INDIANA</u>				
Second half	1820	162490.82	\$ 214533.79	1.3203
	1821	264578.38	362197.77	1.3690
	1822	252982.34	329066.71	1.3007
	1823	165046.69	211157.30	1.2794
	1824	154558.51	197111.40	1.2753
	1825	162270.71	203306.47	1.2529
Total		1161927.45	\$1517373.44	1.31 (5 1/2 year weighted ave.)
<u>ILLINOIS</u>				
Second half	1820	6699.99	8707.04	\$1.2996
	1821	50382.15	63568.85	1.2617
	1822	27374.11	34268.80	1.2519
	1823	60534.77	75797.22	1.2521
	1824	43987.97	55119.47	1.2531
	1825	45804.28	57784.80	1.2616
Total		234063.27	\$295246.18	1.26 (5 1/2 year weighted ave.)

55. Relief Legislation for Delinquent Credit Purchasers of Public Lands.

The Act of April 18, 1818, 3 Stat. 433, suspended forfeitures and sales for overdue installments of purchase money (except the first installment), until March 21, 1819. The suspension was extended until March 21, 1820.

More general relief legislation was enacted in the Act of March 2, 1821, 3 Stat. 612, which provided among other things, that debtors could relinquish a portion of the land they had bought and have all the payments previously made credited to the land they retained. All accrued interest due was forgiven. Those who had paid only one-fourth of their obligations were allowed to pay the balance in eight annual installments with other relief provisions for those who had paid more. In cases where the purchase had been made at the old minimum price of \$2.00 an acre, the purchaser could complete payment at the new \$1.25 minimum. Extension of the relief provisions of this act were enacted through 1823. It was not until well after the valuation dates in this case that Congress authorized refunds of amounts forfeited when public land purchases were not completed (1828).

56. The Illinois Military Tract. The Illinois Military Tract contained approximately 5,360,000 acres of which about two-thirds, or 3,500,000 acres were reserved as bounty lands for soldiers. The tract bordered Tract B in Royce Areas 96a and 110 (valuation date January 13, 1821). It lay immediately to the west of Tract B between the Illinois and Mississippi rivers and occupied all but the northern fifteen miles of Royce Area 77. This area had been ceded to the United States by the Sauk and Fox in 1804 and is known as Royce Area 50. 7 Stat. 84. In 1816 the United States took a cession of much of the same land from the Ottawa, Chippewa and Potawatomi Indians. 7 Stat. 146.

The Illinois Military Tract was established in fulfillment of various acts of Congress offering bounties of 160 acres or 320 acres for troop

enlistments before and during the War of 1812. A government survey of the land was begun in 1815 and completed in 1822. The Ottawa, Chippewa and Potawatomi Indians who lived along the Illinois River vigorously opposed the survey until they ceded their interest in the land in 1816. Even the Sac and Fox, who had ceded their interests in 1804, did not relinquish their hunting rights in the land until the Treaty of August 4, 1824, 7 Stat. 229. Indians continued to roam this tract in large numbers even after 1824 and fear of them was a deterrent to settlement.

As sufficient land was surveyed to satisfy bounty claims of soldiers, the government began to issue military land bounty warrants in the latter part of 1817. The bounty act provided that a soldier to whom a land warrant was issued by the War Department was to deliver it to the General Land Office where he was then entitled to draw by lot one of the surveyed quarter sections in the military reserve. Much of the good land in the military reserve lay along navigable streams and, being fractions of quarter sections, could not be drawn as bounty lands. A patent to the land drawn would be issued in due course. The land was supposed to be arable. Any soldier who drew land unfit for cultivation and who had moved there intending to settle, was permitted, after 1830, to surrender his claim and to locate another claim in any specified military land district. The privilege did not extend to anyone who had acquired title to the land from a soldier.

To protect the soldiers, the bounty act contained specific provisions

against the assignment or transfer of rights under the warrants until after the patents were granted. All sales or mortgages, etc., prior to patent for the purpose of alienating, pledging or mortgaging such claims were declared null and void. Nevertheless, many soldiers, through the granting of a power of attorney to another person to receive the land patent, actually disposed of the land before patents were granted by the government.

Very few of the soldiers who received bounty lands cared to settle on them. The remoteness of the lands and the poverty of the soldiers resulted in most of the lands being sold to eastern land speculators. The fact that many of these purchasers were merchants suggests that the bounty lands were accepted as payment of the soldiers' debts. Many a fine section was disposed of for a horse, a cow, a watch, a gun, a saddle, a pair of shoes, or some other consideration of small value.

The climate and physical and geographical features of the Illinois Military Tract were similar to those of the lands in suit although the tract was more remote from established settlements. About two-thirds of the tract, principally the northern part, was prairie land. The remainder was well timbered. There were numerous streams and bottom lands, some of which were subject to periodic overflow. Uplands lying 200 to 300 feet above the main water courses comprised about 90% of the total area. So-called "barrens" consisting of ridges unsuited for cultivation and covered with oak, hickory, hazel and sumac, skirted the streams in the western uplands. Some of the prairie areas were low and wet while others were dry for

considerable periods of time.

Most early settlers in the Illinois Military Tract were squatters having no color of title. However, public opinion recognized the validity of squatters' claims to the extent that later settlers were forced to purchase any improvements made by the squatters before the settlers could take possession.

Great confusion existed over the status of land titles in the Military Tract. In addition to the bounty lands, the tract contained 1,860,000 acres of "Congress land" subject to pre-emption by squatters. The latter land was not officially opened for entry until the middle of the 1830's. Settlers had trouble determining which quarter sections were bounty land and which were not. The various types of land titles added to the confusion, and a settler who could locate an owner under one title, could not be sure that there might not be other claimants to his property. Acts to quiet title were not passed until 1835 and title suits were common.

The Military Tract lands in Illinois were not "comparable" to the land in suit because of their very status as bounty lands. The soldier recipients for the most part transferred their interests to speculators and creditors, often under circumstances rendering the titles void. The confusion over the location of several types of land, the several types of titles, the tax status of the land, speculation at tax sales, redemption of titles at sales for taxes and the problem of quieting squatters' rights, left land titles very uncertain. The price-depressing trend of these factors and the deterrent presence of Indians in the area was not compensated

by the fact that the lands were surveyed and purportably arable.

57. Sales Evidence of Plaintiffs in Dockets 15-D, 311, 313, 314-A and 315. Counsel for plaintiffs in these dockets jointly employed as their valuation expert, Dr. Roger K. Chisholm, Associate Professor of Economics at Memphis State University. Plaintiffs' counsel rely on sales data prepared by Dr. Chisholm and have also introduced in evidence and have analyzed sales evidence of early sales in Indiana which defendant's expert collected but which defendant did not introduce in evidence. In addition, they rely on certain findings made by this Commission in Miami Tribe v. United States, Docket 67, 4 Ind. Cl. Comm. 346 (1956), aff'd in part, reversed in part and remanded, 146 Ct. Cl. 429 (1959), relating to Royce Area 99 lying immediately south of Royce Area 98 in Indiana and involved in this proceeding.

A. Plaintiff's sales data prepared by Dr. Chisholm. In his report, Dr. Chisholm gives a summation of 508 recorded land sales in six Illinois counties in Tract A, Royce Area 48 and then writes a general discussion of the land prices and their significance.

The general discussion notes that land values increased in Illinois from 1786; that in 1814 auctioned land at very desirable sites was taken up at "high prices", while less desirable tracts sold at the government price for public land; that a year later, 1815, lands near some insignificant salt springs were bringing \$6 to \$8 per acre.

Professor Chisholm's market sales analysis resulted from a systematic retrieval of data from Illinois counties in which there were land sales during and prior to 1820: St. Clair, Johnson, Randolph, Madison, Monroe and Gallatin. Although the present day counties of these names are located

mostly in Tract A of Royce Area 48, the counties were larger at the time the sales were made and thus constituted a larger portion of Illinois than the present day counties of those names. Dr. Chisholm eliminated transactions involving governmental bodies, sheriff's and estate sales, sales between parties with the same names, and sales for no, or for obviously nominal, consideration.

The 508 sales used by Dr. Chisholm occurred over a 31 year period from 1789 through 1820 except for one sale each in the years, 1821, 1822 and 1848. The largest number of sales took place in 1818 when 56 tracts were sold. The largest single tract sold was 5,724.68 acres while the smallest was .01 acres. The per acre consideration ranged from 2 cents per acre to \$5,400 per acre. The highest prices (\$5,000 per acre in 1810, and 1811, and \$5,400 in 1812) were for sale of townlots in Harrisonville.

Dr. Chisholm obtained a weighted average price per acre of \$2.38 by dividing the mean total consideration of \$575,872 by the mean acres sold (242,885). The median value for the 508 transaction is \$2.13.

Dr. Chisholm found that 42, or 8.26% of the 508 sales, were of 10 acres or less. Removing these sales from the sample resulted in a weighted average of \$2.32 per acre, showing that the effect of including the small tracts in the computation effected the results by only \$.05 per acre.

Dr. Chisholm noted that a number of speculators purchased large tracts of 18,000 or more acres during the period included in his sample but he did not include such sales in the 508 sales selected.

A tabulation of the six 1803 sales used shows that they totaled 2,534.75 acres which sold for a total of \$2,920.50 giving a weighted average price of \$1.15 per acre. A recapitulation of 29 sales from 1798 through 1807 produces a weighted average price per acre of \$1.17.

Similar treatment of 80 sales in 1818 resulted in a weighted average price per acre of \$4.05. A similar computation involving 25 sales in 1820 and a single sale each in 1821 and 1822, produces a weighted average price per acre of \$3.66.

The evidence does not indicate whether or not any of the land involved in the sales included improvements. Much of the rich American Bottom land in Tract A was settled prior to the extinguishment of Indian title and may have contained some improvements placed on those lands by squatters.

B. Plaintiffs' Analysis of Sales Data Collected, but Not Used, By Defendant. Defendant's expert witnesses, Messrs. Harry and Everett Fenton, commissioned a Mr. Thomas L. Keller, an appraiser, to gather pre-1833 sales data in 30 counties in Indiana. Data were gathered in counties bordering Royce Area 98 on the south and in Warren and Tippecanoe counties north of the Wabash River, extending into Royce Area 98. The only sales data he submitted which involved sales taking place prior to 1818 were in the area of Clark's Grant (Royce Area 25- Indiana) on the southern border of Indiana. He submitted a number of sales in this area between 1790 and 1802 for comparison with the 1803

cession of Royce Area 48 by the Kaskaskia Indians. There were a number of post-1803 sales which Mr. Keller did not research. None of the data collected by Mr. Keller were used by Mr. Fenton or introduced in evidence by defendant because Mr. Fenton decided that sales of 160 acre tracts, which many of Mr. Keller's sales represented, were not suitable for valuation purposes. He rejected sales of land along the south bank of the Wabash in the 1820's as being too late to be comparable to the valuation dates for Royce Area 98 (October 2, 1818). At the request of plaintiffs' counsel, defendant produced the data on the 47 pre-1803 sales in the Clark's Grant area and plaintiff introduced this material in evidence as Plaintiffs' Exhibit Y 60.

In making the selection of 47 sales, Mr. Keller eliminated any town lot sales, sales of tracts having small acreage; sales with extremely long boundary descriptions, or descriptions which he found hard to read, or from which it was difficult to compute a per acre price, and most sales at \$4 or more per acre, on the assumption that such sales must have included improvements. He testified that he selected sales which were easy to pick and which fell in the range of from \$1 to \$3 per acre. He characterized such a price range at that time and place as "normal".

Plaintiffs eliminated seven sales which involved parties having the same names and recapped the balance. In spite of the obvious bias of Keller's selection procedure which was guaranteed to result in the lowest possible price per acre, the weighted average per acre price

thus obtained for the Clark's Grant sales in 1800, 1801, and 1802 were \$1.88, \$1.91, and \$1.76, respectively, and the overall weighted average for all forty sales was \$1.68.

C. Sales evidence in Miami Tribe v. United States, Docket 67, 4 Ind. Cl. Comm. 346 (1956) aff'd in part and Remanded for Further Proceedings on the Matter of Value, 146 Ct. Cl. 429 (1959). The Miami case involved the valuation of Royce Area 99 consisting of 7,036,000 acres in central Indiana immediately south and east of Royce Area 98 in this suit. The valuation date was October 6, 1818. On remand, the Commission found the land to be worth on the average, \$1.15 per acre. 9 Ind. Cl. Comm. 1 (1960).

58. Sales Evidence of Plaintiffs in Docket 29-B. Plaintiffs in this docket have an undivided one-third interest in Tract G of Royce Area 98 and Royce Area 110 in Illinois and Indiana, and an undivided 1/2 interest in Tract I of Royce Area 98 in Indiana. Counsel for the Hannahville and Forest County Potawatomis employed Dr. Helen Hornbeck Tanner, an ethnohistorian, consultant and expert witness in a number of cases involving Indian claims. She is a lecturer in the University of Michigan Extension Service. Dr. Tanner used an historical approach to value the lands in Royce Area 98 (Tracts G and I) and to value Tract H of the overlapping portions of Royce Areas 110 and 180. She found her material in county histories, most of which were written, as she pointed out, many years after the valuation date, but containing much valuable and reliable data bearing on the 1818 value of the lands in suit. She also used material from Government census records and records of the federal land offices. Her

sales data came from the latter sources. She noted that it was about 10 years after the cession of the subject lands that sales in any appreciable numbers took place in the tract. After examining the sales figures for Indiana in the American State Papers, Public Lands VII, she observed that tracts equal to the size of Royce Area 98 were sold within three or four years in Indiana in the early 1820's and during any eighteen month interval in the early 1820's. She examined the prices at which the Indiana commissioners offered Indiana Wabash and Erie canal lands for sale, i.e., from \$3.50 for 1st rate land to \$1.50 for third rate land. The middle figure set by the canal commissioners was \$2.50 per acre. Dr. Tanner believed that because all parts of Royce 98 were within a day's journey of the Wabash River and because the relatively small tracts were of generally high quality land having a diversity of local resources, a bonus factor estimated at fifteen cents per acre should be added to the base figure of \$2.50 per acre for a final average valuation as of 1818 for the tracts in Royce Area 98 of \$2.65 per acre. She did not think this price should be discounted for size or for the period during which it would be held before sale, but rather that the accessibility, quality and natural resources of the area required that the base value per acre be enhanced.

59. Defendant's Sale Evidence. Defendant's expert witnesses were Mr. Harry R. Fenton, an appraiser and a real estate consultant, and his son, Mr. Everett Fenton, a real estate sales analyst and appraiser. Everett Fenton was responsible for the historical research in the case and his report was admitted in evidence over objections attacking his expertise as

an historian. The Fentons employed Dr. Albert Larson, a geography professor at the University of Illinois, and Mr. Roy Brod, a cartographer at the same University. Dr. Larson and Mr. Brod constructed a set of maps showing the climate, soils, vegetation, population, etc., of the areas in suit. The maps, while helpful, were somewhat incomplete and occasionally inaccurate.

A. Royce Area 48. Harry Fenton prepared the defendant's valuations, relying upon Everett's report for his historical background. In valuing Royce Area 48, he rejected sales data gathered by Mr. Thomas L. Keller, a real estate appraiser, from 30 counties in Indiana, evidence which was ultimately introduced by plaintiffs. Instead, Mr. Fenton relied on sales in the Illinois Military Tract, and sales in Missouri and in Ohio. In Finding 56, we concluded that sales in the Illinois Military Tract were not comparable for the purposes of this valuation proceeding. Some of the sales reported were recorded in Madison and St. Clair counties which were located in the rich American Bottom area of Royce Area 48, but examination revealed that the lands in question were actually located in the Illinois Military Tract, in Missouri, and in Iowa, and hence were not comparable.

Defendant's expert, Mr. Harry R. Fenton, theorized that land sales on the American frontier, regardless of time, place, quality of land, or other conditions usually deemed requisite to comparability, were all "comparable", for the purposes of this valuation since the "frontier" was a moving phenomenon which kept many of its characteristics intact. Accordingly, in reaching his valuation, Mr. Fenton and the defendant relied on sales of 18 other tracts, none of which we find to be comparable to Royce Area 48. These sales included large tracts of land in western New York

State sold in the late 1700's by the State of Massachusetts to individuals or to land companies. Indian title had not yet been extinguished to much of this land and the title acquired by the purchasers was clouded at best. Other sales of Indian lands in New York and Pennsylvania made by New York State in the late 1700's and by Connecticut in 1795 were not actual sales and were certainly not comparable. Other sales relied on by defendant included purchases of land in western Pennsylvania by the Holland Land Company (1792-1793) from an undisclosed seller, and resales of lands included in the large earlier purchases of lands in New York State. All of the sales took place prior to 1800 and were highly speculative.

B. Royce Areas 110, 98. In connection with his valuation of Royce Areas 110 and 98, Mr. Everett Fenton employed a Mr. Doug Foster, an appraiser, to gather sales data from the Illinois Military Tract and from areas around Albion in southeastern Illinois just east of Tract A in Royce Area 48.

The data collected by Mr. Foster from the Albion area, were not introduced in evidence by defendant who instead relies exclusively on sales in the Illinois Military Tract as the basis for valuing the Potawatomi, Kickapoo and Weas lands in Royce areas 110 and 98. In particular, defendant relies on sales in Henry, Knox and Fulton Counties. Since parts of each of these counties lie outside the Military Tract and there is nothing in the record to show whether the sales relied on were in or out of the military tract, these sales are not helpful in showing the probable value of the lands in the Illinois Military Tract.

A study of over 1500 of the original military bounty land transfers in

or around 1819, shows that quarter section tracts in 14 of the counties located within the Illinois Military Tract sold for an average price of 72 cents per acre. The sales data for Fulton, Knox and Henry counties, (in or out of the Military Tract, as the case may be), shows average sales prices of 68, 76 and 58 cents per acre respectively, in 1818; 74, 40 and 39 cents per acre in 1819, the year of the financial panic, and 85, 54, and 72 cents per acre in 1821.

Since we have concluded (Finding 56) that Illinois Military Tract land sales were not comparable for the purpose of valuing the lands in this suit, the sales figures mentioned above are of little help in valuing the land.

60. Sales of Townsites, Town Lots and Commercial Sites. Land in or near towns and adjacent to roads or other primary transportation locations, were greatly enhanced in value in comparison to unimproved rural areas. Speculation was frequently involved in the sale of townsites, town lots and sites for mills, ferries and other commercial enterprises. Such speculation raised the prices of these sites and adjacent lands. Between 1810 and 1812 townlots in Harrisonville, Illinois, sold at prices ranging from \$1,428.57 to \$5,400 per acre. In Tuscarora County, Ohio, town lots were selling at \$30 to \$1,000 for lots measuring 60 by 90 feet, and an unimproved millsite near Zanesville, Ohio, sold for \$50 an acre. There was active speculation in town lots in Indiana just after the close of the War of 1812, particularly along the Wabash River a few miles downstream from Royce Area 98; at Bloomington, Indiana; at places on the road from Vincennes to Louisville; on the

Ohio, and elsewhere in the state. In 1818 a townsite in St. Clair County (Tract A of Royce Area 48) sold for \$13.03 per acre, or \$1,700 for the 130.42 acres in the site. The buyer laid out the land as the town of Illinois and began selling town lots therein that same year. Three lots were sold in 1818 for \$289.47, \$578.95 and \$1,153.85. At Palestine, the first capital of Lawrence County in southern Indiana east of Vincennes, 157 town lots averaging 1/3 acre in size, sold in 1818 for over \$14,000, averaging \$90 per lot. Banks at Edwardsville in Madison County (Royce Area 48) and Shawneetown (Royce Area 48) participated actively in the speculative boom in town lots which swept Illinois in 1819. In the summer of 1821, town lots at Greenville, Illinois (Bond County, Tract A of Royce Area 48), sold for \$44.60 a lot.

In 1821 competition was keen for land at the site of the city of Indianapolis, selected as the new capital of Indiana. Four sections of land consisting of 2,560 acres, were laid out in the wilderness some 40 to 60 miles from the nearest settlement. Three hundred lots were sold at the first sale in October, 1821, for a total price of \$35,596.25, or \$118.65 per lot on the average. Many lots sold for \$500.00.

The agricultural settlement of New Harmony, Indiana, 100 miles south of Royce Area 98, was established in 1813 on 24,734 acres purchased from the Government for \$2.50 per acre. This land was resold in 1824 for \$182,000 or approximately \$7.50 per acre.

A William Digby, first proprietor of the town of Lafayette, Indiana, at the site of the old Wea Towns and Ouiatenon at the south central edge of Tract I, purchased 80 acres in 1825 at the Government price of \$1.25 per

per acre. He divided 50 acres into 148 lots which he sold three days later for \$4.80 per acre. Digby retained ferry privilege, and later sold the 20 remaining acres for \$60, or \$3 per acre. Digby's purchaser resold five-eighths of the odd numbered lots consisting of about 15 acres for \$130, or \$8.66 per acre.

The town of Danville, Illinois, in Tract G, was laid out in 1827. In April of that year 42 town lots were sold for \$22 each. At Warrenton, Indiana in Tract I, 7 miles up the Wabash River from Williamsport in Tract G, town lots sold for \$10 to \$20 in 1828. In 1829 combinations of bidders for the townsite of Pekin, Illinois, in Tract B just south of Peoria, managed to reduce the initial bid of \$100 per acre to \$1.25 per acre.

Speculation in townsites prevented the orderly settlement of land in Indiana and Illinois. Speculators would buy land from the Government at the minimum price and then keep the land off the market, particularly any land within two or three miles of a public road or other transportation site, until it could be sold for high prices. As a result of this practice, the land around Joliet, Illinois, north of Tract D, brought from \$40 to \$50 per acre, sometime prior to 1838, the town lots sold for from \$500 to \$600 each. The prevalence of speculative land buying in Illinois was evidence of the optimism felt about the future of these lands.

61. Highest and Best Uses. Portions of the land in suit contained cultivated pre-cession Indian corn fields and well established Indian villages. There were also non-Indian villages, many established in the 1700's by the French, and some by Americans. There were a number of thriving businesses such as mills, breweries, trading posts for trade with the

Indians, farms and plantations. The well established non-Indian settlements and businesses were chiefly in the American Bottom portion of Tract A. A number of pre-cession non-Indian farms and businesses were in Tract B, including a grist mill. Some pre-cession non-Indian farms and businesses were also in tracts A' and C of Royce Area 110, but they were fewer in number than in Tracts A and B. A valuable Indian saline in Tract C was appropriated and further developed by non-Indians prior to the cession date. Such properties had immediate resale, lease or rental value for the indicated uses.

Timber lands had a highest and best use generally for farms and were highly sought for that use because they furnished materials for building, fencing, tools, containers and fuel and also provided shelter, fruits, nuts honey, game and furbearing animals, forage and good water. In Tract D and in some places in other tracts, the timber had an immediate commercial value. In Tract C timber was used to build flatboats for the river traffic.

The prairies which were in the immediate vicinity of timbered lands had a highest and best use at the valuation date for subsistence farming and as pasturage for farm animals. Later they would become valuable for the raising of grain crops. The balance of the prairies which were not located in the immediate vicinity of timbered lands, were most valuable for hunting and for their potential use for farms, grazing and in some places, for the development of coal, other minerals, and iron.

All areas in suit had an obvious potential at valuation dates for speculation in the sale of townsites, town lots and commercial sites for mills, ferries, etc.

Many of the early settlers who came to the lands after cession, saw the area as ideal for subsistence farming in parcels of 40 acres or more. Subsistence farming included the use of part of the land for the grazing of cattle and other livestock and the growing of crops to supply the settler's immediate family needs. Eventually, the land owner strove to raise a surplus crop to be sold at a profit. Such surpluses from farms could be taken down the Mississippi or other rivers or transported overland and sold at the various villages which already existed in or near the subject tracts. Such surpluses could also be sold to settlers who had not yet had the opportunity to raise a crop or buy cattle.

In summary, the highest and best uses for the subject lands varied from tract to tract but included subsistence farming, farming to raise cash crops, townsite and town lot speculation, business enterprises based on mill sites, commercially exploitable timber, and hunting and trapping for profit.

62. Plaintiff's Valuation of Royce Area 48. The valuation date of the Kaskaskia cession of Royce Area 48 is December 12, 1803. The Peoria plaintiff in Docket 313, on behalf of the Kaskaskia Nation, bases its valuation on the testimony of Dr. Chisholm.

Plaintiff's valuation is based on the physical characteristics of the area, access thereto, population data, export sales, banking, natural resources, soils, settlement, economic development and comparable land sales. Dr. Chisholm's market sales analysis of 508 sales in six Illinois counties is discussed in our finding 58-A. Plaintiff and Dr. Chisholm concluded that on

the basis of the sales data, land in Illinois between 1789 and 1820, was worth from \$2.10 to \$2.35 an acre. The \$2.10 figure was apparently derived by rounding off Dr. Chisholm's median sale figure of \$2.13, and the \$2.35 figure and rounding off the weighted average figure of \$2.32.

Recognizing that their sales data are not precise and deciding that a value to the nearest dime would be the closest estimate of value possible, Dr. Chisholm and plaintiff concluded that a value of \$1.90 per acre was reasonable for Royce Area 48 as of the 1803 valuation date.

Plaintiff computes the Kaskaskia interest in Royce Area 48 on the basis of 100% interest in Tract A, which contains 6,279,118 acres; and an undivided one half interest in Tract A' which contains 3,824,843 acres, making a total Kaskaskia interest in 1803 of 8,191,539 acres. Applying the \$1.90 per acre value, plaintiff reaches a valuation of \$15,563,924.10.

63. Defendant's Valuation of the Kaskaskia Interest in Royce Area 48.

The defendant did not adopt the valuation of its expert, Mr. Harry R. Fenton, for Royce Area 48. A discussion of Mr. Fenton's sales data is in finding No. 60. Mr. Fenton's valuation assumed that a hypothetical buyer in 1803 would be a speculator paying with cash in U. S. gold dollars or the equivalent in specie, and would be buying to resell the land in smaller tracts. He assumed that it would take 10 to 30 years for the buyer to resell the land and make his profit and that the buyer would take a substantial discount for this delay and subtract from his purchase price the costs of surveying, recording, quieting title, policing and defending the property, plus all resale expenses. He concluded that the buyer would pay only a fraction of

the small tract per acre price and would resell at from 3 to 5 times his initial cost.

Mr. Fenton believed that early sales of very large tracts of land on the American frontier were comparable for the purpose of valuing Royce Area 48 in Illinois in 1803. Accordingly, he calculated the average per acre price of the Gorham-Phelps tract, the Robert Morris purchase, the Maccomb's purchase, and the Boston 10 Towns tract, all in New York State in the 1700's, at 9 cents per acre. Similarly he computed the average per acre price of the Ohio Land Company lands, the Western Reserve land and the Symmes tract, all in Ohio, at 18 cents per acre. He considered Tract A of Royce Area 48 to be similar to the Ohio lands but worth a little less, and on that basis valued Tract A at 15 cents per acre. He considered Tract A' to be worth two-thirds of the per acre price of Tract A, or 10 cents per acre.

Mr. Fenton applied the above values to the Kaskaskia's a 100% interest in Tract A, consisting of 6,279,118 acres, obtaining a value of \$941,868 therefor, and to the Kaskaskia's one-half undivided interest in Tract A' consisting of 3,824,842 acres, obtaining a value of \$190,242 therefor, for a total value of \$1,133,110 which he rounded off to \$1,135,000.

Defendant followed a different approach in its valuation of Royce Area 48. Defendant started with the proposition that Royce Area 48 was two-thirds timbered and one-third prairie with the less favored prairie land concentrated in the northern one-third part of the area. Defendant assumed that a 1803 purchaser would expect to resell the land and that it would take 30 years to resell the southern 68% of the land in small tracts. Defendant

concluded that the average holding period for the southern portion would be 20 years. Defendant then assumed that it would take 35 years to resell the northern portion of the area and that the average holding period would be 25 years.

Defendant assumed that the purchaser could have made 10% per annum on his money by investing it in some unspecified investment other than the land in suit. On this premise, defendant justified the discounting of comparable small tract sales figures to determine the then "present worth" of such lands on a per acre price basis if payment were deferred 22 years at 10% annual interest.

Defendant next considered three sets of sales figures. First, defendant considered 68 of the 508 Illinois sales introduced by Dr. Chisholm for plaintiffs. The 68 sales selected were of 40 or more acres each during the period 1790-1809. Of these, the defendant selected 16 sales for the years 1801-1803. They show an arithmetic average price per acre of \$0.83 which defendant reduced to \$0.102 by application of the "present worth" factor. Present worth tables show that each dollar so deferred has a present worth of \$.122,845. Defendant separately considered 31 sales of 400 acres each, included in Dr. Chisholm sales data for the years 1793 through 1809. Defendant appears to have assumed that these sales represented military donation tracts. Whether they were such tracts or were improvement grants under 1791 legislation, grants of either type generally sold well below the market value of the land, especially in the initial sales thereof. Defendant's weighted average per acre price of those 31 sales was \$.88 which

defendant discounted to \$.118 by applying the present worth factor.

Second, defendant considered 39 of the 47 sales of small tracts in the Clark's Grant area of Indiana. These sales, collected for Mr. Fenton by Mr. Keller, were introduced in evidence by plaintiff. The 39 sales considered by defendant excluded seven sales between persons of the same name and one sale of less than 40 acres. Defendant found a weighted average price for these sales of \$1.68 which defendant discounted to \$.206 by application of the present worth factor.

Third, defendant considered earlier sales of large tracts of frontier land by the State of Massachusetts in what is now New York State; by the State of Connecticut and by the United States of lands in Ohio, and of various other early private sales. Defendant found 9 cents per acre was the average price for the New York lands, and 18 cents per acre average for the Ohio lands as did defendant's expert, Mr. Fenton.

Defendant concluded that the fair market value of the 10,103,960 acres in Royce Area 48 in 1803, was 14 cents per acre.

Applying the 14 cents per acre value, defendant valued the Kaskaskia's 1803 100 percent interest in 6,279,118 acres in Tract A at \$879,076; and the Kaskaskia's one-half undivided interest in the 3,824,842 acres in Tract A' at \$367,736, for a total of \$1,146,815, which defendant rounded off at \$1,150,000 as the value of the Kaskaskia's interest in Royce Area 48.

64. The Commission's Valuation of the Kaskaskia Interest in Royce Area 48. For the reasons given in our opinion, considering all of our findings herein relative to this tract, and on the basis of the entire record in the case, we find that the value of the Kaskaskia Nation's interest in Royce Area 48 as of December 23, 1803, was \$5,776,800.00 for the 6,279,118 acres in Tract A, or an average per acre value of approximately \$0.92; and was \$1,376,950.00 for the Nation's undivided one-half interest in the 3,824,842 acres in Tract A', or an average per acre value of approximately \$0.72. The total value of the Kaskaskia Nation's interest in Royce Area 48 in 1803 was \$7,153,750.00.

65. The Kickapoo Plaintiffs' Valuation of Royce Area 110. The valuation date of the Kickapoo interest in Royce Area 110 is January 13, 1821. Because Royce Area 110 partially overlaps Royce areas 48, 96a, 98, 177 and 180, the portions of Area 110 involved in this proceeding have been designated as tracts A', B, C, D, E, G and H.

Plaintiffs rely on the \$2.13 median price per acre of the 508 sales gathered by Dr. Chisholm from 6 Illinois Counties from 1789 through 1848 as the basis of their valuation. Considering this price, and the easy access of Royce Area 110, its fertile prairie soil, its known natural resources and all of the other factors discussed in Dr. Chisholm's report, plaintiffs conclude that \$2.00 per acre on the average was the probable value of the lands in Royce Area 110 in 1821.

The Kickapoo had an undivided 1/2 interest in the 3,824,842 acres

in Tract A'; a 100% interest in the 5,117,115 acres in Tract B and in the 2,193,176 acres in Tract C; an undivided 1/2 interest in the 890,014 acres in Tract D and in the 844,794 acres in Tract E; and an undivided 1/3 interest in the 402,870 acres in Tract G and in the 51,384 acres in Tract H. Plaintiffs applied the \$2.00 per acre value to these interests to obtain a total value of \$20,483,068 for the Kickapoo interest in Royce Area 110.

66. Defendant's Valuation of the Kickapoo Interest in Royce Area 110. Defendant has adopted the valuation of its expert witness, Mr. Harry R. Fenton, of the Kickapoo interest in Royce Area 110. Mr. Fenton based his valuation on the assumption that there would be a single purchaser who was a land speculator, able to pay cash and planning to develop the land and resell it in small tracts at a profit to pioneer subsistence farmers. Mr. Fenton assumed that even though his buyer would have had no discount tables, he would have known that a dollar in hand in 1821 was worth more than a dollar to be received at a later date and that it would take him from 10 to 30 years or even more to complete the reselling of the land.

Mr. Fenton reasoned that the hypothetical buyer would estimate the then diminished present worth of monies to be received on ultimate resale and would deduct therefrom costs of surveying, recording, quieting title, policing and defending the property plus the resale expenses and would conclude that he could pay only 1/3 to 1/5 of the small tract price per acre if he were to make a profit.

To determine the small tract price per acre, Mr. Fenton examined his data on sales in Fulton, Knox and Henry counties in the Illinois Military Tract for the years 1817-1820 showing that in Fulton County there were no sales in 1817; that in 1818-1820 the average prices per acre were \$0.68, \$0.74 and \$0.92, respectively. In Henry County, the bulk of which was north of the Military Tract, the average prices per acre in 1817-1820 were \$0.47, \$0.58, \$0.39, and \$0.79, respectively. In Knox County the average prices in 1817-1820 were \$0.70, \$0.76, \$0.40, and \$0.74, respectively. Mr. Fenton concluded from these sales which we have found not to be comparable for the purpose of valuing the lands in suit, that the small farm-sized tract value of Royce Area 110 was \$.70 per acre. Mr. Fenton further concluded that the buyer would discount this price by 80% to cover anticipated expenses, risks, and profits on resale and would accordingly offer 1/5 of the \$0.70, or \$0.14 per acre as the starting value of Royce Area 110.

To reach a net overall value for the Kickapoo interest in Royce Area 110, Mr. Fenton started with a value of \$1,865,387 based on 13,324,195 acres at \$0.14 per acre. From this he attempted to deduct the value of the non-Kickapoo interest in the several component tracts to arrive at the residual Kickapoo value. This method presented certain hazards.

Mr. Fenton believed that the land in Tract A' was worth only \$0.12 per acre. To end up with the value of the Kickapoo 1/2 interest in the 3,824,842 acres in Tract A' at \$0.12 per acre, Mr. Fenton should have

deducted from his pre-calculated overall value of \$1,865,387, one half of \$0.16 per acre as the non-Kickapoo 1/2 interest in Tract A'. Instead, he deducted 1/2 of the \$0.12 per acre for Tract A', thus inadvertently leaving \$0.16 per acre as the value of the Kickapoo interest in Tract A'.

Mr. Fenton deducted from his overall valuation 1/2 of the \$0.14 per acre value of tracts D and E and 2/3 of the \$0.14 per acre of Tract G to end up with the residual value of the Kickapoo 1/2 interest in tracts D and E and the Kickapoo 1/3 interest in Tract G. However, to end up with the 1/3 Kickapoo interest in Tract H, he deducted only 1/3 of the \$0.14 per acre value thereof from his pre-calculated total, thus inadvertently leaving the Kickapoo with a 2/3 instead of a 1/3 interest in Tract H.

After deducting the non-Kickapoo interests (two of which were erroneously calculated) from his overall valuation for Royce Area 110, Mr. Fenton concluded that the Kickapoo interest in Royce Area 110 was worth \$1,492,260, which he rounded off to \$1,500,000.00.

The defendant adopted Mr. Fenton's small tract valuation of Royce Area 110 at \$0.70 per acre based on sales in Fulton, Knox and Henry counties in the Illinois Military Tract. Defendant also accepted Mr. Fenton's conclusion that a buyer would pay only 1/5 thereof or \$0.14 per acre, and on that basis urged that the value of the Kickapoo interest in Royce Area 110 was \$1,500,000.00

67. The Commission's Valuation of the Kickapoo Interest in Royce Area 110. For the reasons given in our opinion, considering all of our findings herein relative to this tract, and on the basis of the entire record in the case, we find that the value of the Kickapoo interest in

the various tracts located in Royce Area 110 is as follows:

<u>Tract</u>	<u>Kickapoo interest</u>	<u>Value of Kickapoo Interest</u>	<u>Approximate value per acre</u>
A'	one-half	\$2,141,912.00	\$1.12
B	all	\$6,140,538.00	1.20
C	all	\$2,368,630.00	1.08
D	one-half	\$ 511,758.00	1.15
E	one-half	\$ 484,700.00	1.15
G	one third	\$ 163,834.00	1.22
H	one third	<u>\$ 21,958.00</u>	1.28
Total		\$11,833,330.00	

68. Valuation by Potawatomi Plaintiffs in Dockets 15-D and 311 of Royce Area 98; valuation by Peoria Plaintiff on Behalf of the Wea in Docket 314-A, of Royce Area 98 and Tract H. The valuation date of the Potawatomi cession of Royce Area 98 consisting of tracts G and I in Illinois and Indiana, and of the Wea cession of Royce Area 98 and the Tract H overlap of Royce areas 110 and 180 in Indiana, is October 2, 1818. The plaintiffs have submitted a joint proposed finding on the value of those areas as of that date, relying on the record facts concerning the natural resources, the development of the areas, and the sales data contained in the report of their expert witness, Dr. Chisholm.

Dr. Chisholm and plaintiffs begin with the median per acre sales price of \$2.13 obtained by Dr. Chisholm from his study of 508 sales in six Illinois counties from 1789 to 1848. They reasoned that such a median value was more than justified by the location of the tracts on rivers,

the fertility of the soil, the excellence of the natural resources, although they conceded that it would be several years after 1818 before settlers arrived in great numbers. They concluded that under all the facts and circumstances \$2.10 was a reasonable estimate of the value of tracts G,H and I as of 1818.

On the basis of the above, the Potawatomi plaintiffs in Dockets 15-D and 311 valued the undivided 1/3 Potawatomi interest in the 402,870 acres of Tract G and the undivided 1/2 Potawatomi interest in the 351,756 acres of Tract I at \$651,352.80. On the same basis the Peoria plaintiff on behalf of the Wea Nation in Docket 314-A valued the Wea's like interests in tracts G and I in the same amount, and the Wea's undivided 1/3 interest in the 51,384 acres of Tract H at \$35,968.80, for a total Wea interest in tracts G,H and I of \$687,321.60

69. Valuation by Potawatomi Plaintiff in Docket 29-B of Royce Area 98. Dr. Helen H. Tanner, plaintiff's expert witness, had recommended a value of \$2.65 per acre for the land in Royce Area 98 for the reasons set forth in our Finding 58. Counsel for plaintiff, however, rejected Dr. Tanner's recommendation and urged that land in Royce Area 98 was worth not less than \$3.00 per acre in 1818; that consideration should be given to the interim loss of use value or to interest on such use value, and that an allowance should be made for inflation or the decrease in the value of the dollar since 1818.

70. Defendant's Valuation of Tracts G, H and I. Defendant's appraiser, Mr. Harry R. Fenton, submitted separate appraisal-valuations for

the Wea interests in tracts G, H and I and for the Potawatomi interest in Royce Area 98, tracts G and I. In both appraisals Mr. Fenton assumed that the lands would be purchased by a hypothetical single purchaser who would be a land developer or speculator planning to resell the land in small tracts to subsistence farmers. He assumed that before any sales were entered into, the land would have been exposed to the market for an optimum time which he defined as 3 to 5 years, to develop the greatest possible range of prospective buyers although he readily admitted that in fact there had been no such exposure. He also assumed that there was a general market in 1818 for such large tracts of land and that the buyer would pay cash in United States gold dollars or specie. Mr. Fenton estimated that were it not for the hypothetical cash requirements in his assumptions, the property would be worth 40% more on a small tract sales basis.

Mr. Fenton reasoned that his hypothetical buyer would have had to hold his retail prices below the \$2.00 per acre minimum government price for lands. He believed that his buyer would have been influenced by the experience of the Holland Land Company in New York, which had taken 26 years to dispose of its lands and by 1818 had not yet disposed of all of its holdings.

Mr. Fenton's principal reliance was on sales data from Fulton, Knox and Henry counties in the Illinois Military Tract, discussed in our Finding 56. Defendant adopted the \$0.19 per acre value which Mr. Fenton finally put on the land in tracts G, H and I. On that basis defendant estimated that

the Wea's undivided 1/3 interest in the 402,870 acres in Tract G was worth \$25,515.10; that the Wea's undivided 1/3 interest in the 51,384 acres in Tract H was worth \$3,254.00; and that the Wea's undivided 1/2 interest in Tract I was worth \$33,417.00, for a total Wea interest in Docket 314-A of \$62,186.10 which defendant rounded off to \$63,000.00.

On the same basis discussed above, defendant urged that the Potawatomi plaintiffs in Dockets 15-D, 29-B and 311, jointly had an undivided 1/3 interest in Tract G worth \$25,515.10 and an undivided 1/2 interest in Tract I worth \$33,417.00, for a total Potawatomi interest in Royce Area 98 of \$58,932.10, rounded off to \$59,000.00.

71. The Commission's valuation of the Potawatomi Interest in Royce Area 98 and of the Wea Interest in Royce Area 98 and Tract H.

For the reasons given in our opinion, considering all of our findings herein relative to these tracts, and on the basis of the record in the case, we find that the value of the Potawatomi interests in Royce Area 98 is as follows:

<u>Tract</u>	<u>Potawatomi interest</u>	<u>Value of Potawatomi interest</u>	<u>Approximate value per acre</u>
G	one third	\$154,434.00	\$1.15
I	one-half	<u>\$202,612.00</u>	1.15
Total		\$357,046.00	

We further find that the value of the Wea interests in tracts G, H and I is as follows:

<u>Tract</u>	<u>Wea interest</u>	<u>Value of Wea Interest</u>	<u>Approximate value per acre</u>
G	one third	\$154,434.00	1.15
H	one third	\$ 20,828.00	1.22
I	one-half	<u>\$202,612.00</u>	1.15
Total		<u>\$377,874.00</u>	

13, 1803, 7 Stat. 78, the Kaskaskia's perpetual annuity of \$500 in goods which they were receiving under Article IV of the Treaty of Greenville of August 3, 1795, 7 Stat. 49, was increased to \$1,000. The third article of the 1803 treaty provided that whereas the greater part of the tribe had been received into the Catholic Church, the United States would give them \$300 to assist in the erection of a church and \$100 annually for seven years for the support of a Catholic priest who, in addition to the duties of his office as a priest, would instruct as many as possible of the tribe's children. In further consideration of the land cession under this treaty, the United States promised to pay \$580 to procure necessary articles for the tribe and to relieve the tribe of debt without specifying the nature of the necessary articles or the subject of the indebtedness.

Defendant is entitled to a credit as consideration under the 1803 Treaty of the \$10,000 capitalized value of the \$500 increase in the tribe's perpetual annuity; \$700 representing the seven annual payments of \$100 for the support of the tribe's priest; and \$300 for the erection of the church, making a total consideration of \$11,000.00. In the absence of a showing by defendant concerning the nature of the necessary articles procured with the \$580 promised in the treaty, we find it reasonable to infer that such money was spent for food, rations or provisions and therefore not creditable against the award as a payment on the claim under Public Law 73-494, 88 Stat. 1499.

73. Potawatomi Consideration in Dockets 15-D, 29-B and 311. Under the Treaty of October 2, 1818, 7 Stat. 185, the Potawatomi were promised a perpetual annuity of \$2,500 in silver, the capitalized value of which is \$50,000.00.

Under the treaty of November 15, 1861, 12 Stat, 1191, approximately two thirds of the Potawatomi Nation elected to become United States citizens. Those individuals subsequently were paid for their interest in the capitalized value of the annuity and the tribal portion of the \$2,500 annuity was reduced to \$894.50 on the basis of the tribe's reduced population. The latter amount was disbursed annually until 1910 when all permanent annuities then being paid to the Prairie Band of Potawatomi Indians, totaling \$9,037.90 (including the \$894.50 annuity under the 1818 treaty), were commuted at 5% as provided in an agreement of March 16, 1909, ratified by the Act of April 4, 1910, 36 Stat. 289.

Both parties agree that the \$2,500 annuity was the sole consideration given by defendant for the 1818 cession and that the capitalized value of the annuity is \$50,000. It is uncontested that the tribe has been paid the \$50,000 capitalized value of the annuity. Accordingly defendant is entitled to a credit of \$50,000.00 against the Potawatomi award in the subject dockets.

74. Wea Consideration in Docket 314-A. The sole consideration received by the Wea under the Treaty of October 2, 1818, 7 Stat. 186, was a \$1,850 perpetual annuity payable in silver. Defendant commuted this annuity under Article 6 of the Treaty of May 30, 1854, 10 Stat. 1072, for \$34,478.16.

We credited the commuted sum against the award in Peoria Tribe of Indians v. United States, Docket 314 (amended), 9 Ind. Cl. Comm. 274, 288, 290-291 (1966), aff'd on other grounds, 169 Ct. Cl. 1009 (1965). Accordingly, defendant is not entitled to credit for this annuity as considered in this proceeding.

75. Kickapoo Consideration in Docket 315. In return for land ceded and obligations released under the Treaty of July 30, 1819, 7 Stat. 200 as amended by the Treaty of July 19, 1820, 7 Stat. 208, involved in Docket 315, defendant promised and paid to the Kickapoo \$2,000.00 in silver annually for 15 years. Article 6 of the July 30, 1819 treaty states that the United States delivered \$3,000 worth of merchandise to the tribe on that date. Defendant also promised and delivered to the Kickapoo 1,868,500 acres of land in the Territory of Missouri, hereinafter referred to as the "exchange land". This tract in Missouri will be valued as of January 13, 1821, the effective date of the amended Treaty of July 30, 1819.

In return for land ceded and the release of an annuity of one thousand dollars, the Treaty of August 30, 1819, 78 Stat. 202, provided that defendant would pay to the Kickapoo \$2,000 annually in specie for 10 years, and \$3,000 in cash. The "one thousand dollars" annuity which the Kickapoo released under the August 30, 1819 treaty included a \$500 perpetual annuity granted to them under the 1795 Treaty of Greenville; the \$400 and \$100 perpetual annuities granted them under the Treaty of December 9, 1809, 7 Stat. 117; and the Kickapoo's interest in a salt annuity (not to exceed 150 bushels) granted jointly to eight tribes under the Treaty of June 7, 1803, 7 Stat. 74. The value of the released monetary annuities, capitalized at 5% is \$20,000. The similarly capitalized value of the Kickapoo's 1/8 interest in the salt annuity is computed

by multiplying the 150 bushels by 1/8, times the average unit price of \$1.375 per bushel = \$25.7812, + .05 = \$515.62, which we round off to \$500. This sum at 5% interest would produce the approximate value of the Kickapoo share of the annuity. The combined cash and salt annuity has a capitalized value of \$20,500 for which the Kickapoo are entitled to a credit by deducting this sum from the consideration paid to the Kickapoos under the 1819 treaty, as amended.

The allowable value of the consideration received by the Kickapoo under the foregoing treaties, less the capitalized value of the released cash and salt annuities, is summarized in the following table.

Treaty of July 30, 1819, as amended:

\$2,000 annuity for 15 years	\$30,000.00
Merchandise (3,000)	0
Exchange land (1,868,500)	373,700.00

Treaty of August 30, 1819, as amended:

\$2,000 annuity for 10 years	20,000.00
Cash	<u>3,000.00</u>

Total	\$426,700.00
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Less the capitalized value of the \$1,000 annuity and other obligations released by the Kickapoos on July 30, 1819	- <u>20,500.00</u>
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Net consideration	\$406,200.00
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The \$3,000.00 worth of merchandise promised by Article 6 of the July 30, 1819 treaty, may, in the absence of any proof to the contrary, be deemed to have been food, rations or provisions within the meaning of the Act of October 27, 1974, prohibiting the deduction of the value of such items as payments on the claim.

76. Kickapoo Exchange Land - Location. The Kickapoo exchange land was a 1,868,500 acre tract about 75 miles long and 60 miles wide located in the southwestern part of Missouri. The tract was mapped as Royce Area 179 (Royce map No. 38 of Missouri in the Eighteenth Annual Report of the Bureau of American Ethnology (Part 2), Indian Land Cessions (1896-97)) following the Kickapoo's re-cession of the tract to the United States under the Treaty of October 24, 1832, 7 Stat. 391. With reference to present day counties in Missouri, the boundaries of the tract are as follows: beginning at the confluence of the Pommès de Terre and Osage rivers in Benton County; thence up the Pommès de Terre River in a southerly direction to the dividing ridge which separated the watersheds of the Osage and White rivers in Greene County; thence along said ridge in a southwesterly direction to a point in the northwestern tip of present Christian County near the headwaters of the Sac River; thence in a westerly direction in a straight line to the Osage boundary line established by the Treaty of November 10, 1808, 7 Stat. 107; thence north along said line to Nerve Creek in Barton County; thence northeasterly down said creek to a point thereon due south of the mouth of White Clay Creek, or Richard Creek (presently known as Clear Creek) on the Osage River; thence north to the mouth of White Clay Creek on the Osage River; thence northeasterly down the Osage River to the point of beginning.

77. Kickapoo Exchange Land - Topography, Soils, Minerals and Timber. The Kickapoo exchange land was in the western portion of the Ozark Plateau known as the Springfield Plain. Its topography was predominantly undulating to steep, with step-like hilly lands near the rivers. It sloped gently from about 1,000 feet elevation near its eastern line to about 1,000 feet on its western line with local differences of about 100 to 300 feet.

The tract had some large, treeless prairie-like areas in the southwest portion. It also contained numerous swales, depressions and minor streams, many of which were bordered by stands of timber. About two thirds of the tract was of combined timber and prairie land and about one fifteenth was prairie. The remainder was timber land. The tract was drained by the Sac, Osage and Pomme de Terre rivers which, with their tributaries, flowed through steep sided but somewhat shallow valleys averaging about a mile in width.

The soils were of three main types. The predominant type was Bazter-Nixa, a stony limestone soil, greyish to reddish brown with chert rocks two to four inches in diameter almost universally present through the soil mass. The other two types were Bates-Boone, and Parsons-Gerald, both of which were also stony. These soils ranged from good to medium fertility and were capable of growing grain crops in the better watered areas and grass for grazing in the less watered places. The soils in the valleys were generally of alluvium and were fertile except for large sections which were steep, rocky and gravelly.

At the time of valuation in 1821, the tract had many stands of timber but they were insufficient to provide a potential for lumbering. The timber was sufficient to supply some of the needs of settlers. At valuation time the tract had no known mineral potential

78. Kickapoo Exchange Land - Climate. The annual mean temperature of this land ranges from 40 degrees Fahrenheit in the northwest to 58 degrees in the southeast, the average for the state being 54 degrees. Periods of extreme cold are of short duration and the temperature seldom falls .

lower than 10 degrees below zero. During the summer months the temperature frequently reaches 90 degrees or more.

The average date of the last killing spring frost varies from April 12 in the south to April 22 in the north. The first killing frost varies from October 18 in the south to October 12 in the north. The average length of the growing season is 180 days.

Precipitation is heaviest in the spring and early summer and lightest in late fall and winter; this is true of the entire state. Rainfall averages approximately 27 1/2 inches during March through September. There are occasional periods of drought, usually in July.

79. Kickapoo Exchange Land - Highest and Best Use. Considering the topography, natural resources, and climatic conditions in the Kickapoo tract, the highest and best use in 1821 would have been for subsistence farming which could have been carried on in the forested acreages along the river valleys and in other well watered areas. The prairie expanses and other areas lacking one or more of the good combinations of soils, water and timber, would have been useful for the grazing of livestock in connection with a general farming operation.

80. Kickapoo Exchange Land - Surveyor's Notes. The earliest surveys in the subject tract were made from 1833 to 1835 when a government surveyor surveyed the north end of the tract which included about 20 sections. His survey included river lands and uplands. His notes show that some of the land in both areas had a combination of rich soil, timber and enough water to accomodate settlers. He also found some sites with springs and other sites useful as millsites or quarries. He recommended that the government open for

settlement about 75% of the portion of land he surveyed. He reported that much of the land was unfit for cultivation because it was too rough, broken, stony or gravelly. Also in 1835, another government surveyor of an 8 section strip in the western portion of the tract, noted that some of that land was fit for cultivation and that three sections were of second rate land.

81. Kickapoo Exchange Land - Population. In 1820 the non-Indian population of the Territory of Missouri was 66,586. Most of these people were located in the eastern portion along the Mississippi River, with a concentration in northeastern Missouri near St. Louis and along the Missouri River around the Boone's Lick country. The non-Indian population in southwestern Missouri where the exchange tract was located, was less than 2 persons per square mile at that time.

82. Kickapoo Exchange Land - Transportation, Travel and Accessibility. In 1821 there were no roads in the tract, only Indian trails. None of the rivers in the tract were used for navigation by non-Indians. No non-Indian travel or trade routes had developed through or near this tract. However, by 1821 the Osage River had a reasonably foreseeable potential for navigational use.

The nearest travelled route was the Missouri River upon which great commerce had yet to be developed. Steamboats did not appear on the Missouri until many years after the 1821 valuation date. The nearest roads were in eastern Missouri along the Mississippi River.

In 1821 the subject tract was not easily accessible. It was difficult to enter from the east because of the very rough Ozark highlands between it and the Mississippi River. It was accessible from the south via a long

difficult journey up the White River which flows into the Arkansas River just above the confluence of the latter and the Mississippi River, but that route had not developed by 1821. It was also accessible from the north by travel up the Missouri River and its tributary the Osage, but in 1821 this had not been done.

83. Kickapoo Exchange Land - Development. In 1821 the general area around and adjacent to the subject tract had experienced practically no development or settlement. The tract was still a part of a vast wilderness extending from near the Missouri River on the north to and beyond the Arkansas Territory on the south; and from the rough Ozark highlands on the east to the near level prairie lands of Kansas and beyond.

The subject tract was then considered rough, raw land hunted by Indians and non-Indians for its game. It had no operating political structure even though on the January 13, 1821, valuation date, the Missouri Territory was being prepared for statehood which it achieved on August 10, 1821. The tract was not near or easily accessible to market centers, its roughness discouraged entry and it was not attractive to settlers who bypassed it in favor of more desirable lands elsewhere.

The rate of settlement in Missouri reached a low point in 1820 when there were no sales of public land in the entire territory. In addition to millions of acres of good lands in Missouri available for sale, there were many more millions of acres of suitable lands available to settlers in better located places to the east of this tract. The normal flow of immigration in 1821 was down the Ohio River, into Kentucky, Ohio, Indiana, Illinois and northeastern Missouri above St. Louis. There was also some settlement taking

place in the Boone's Lick area some 70 miles northeast of the subject tract. That area, along with the northeastern Missouri settlements, represented the farthest westward movement of migrant settlers at that time.

84. Kickapoo Exchange Land - Public Lands Sales in Missouri. Congress established the first public land office in the Missouri Territory at St. Louis in 1811. Because the land surveys were not sufficiently advanced, actual sales did not begin until 1818. In the same year Congress established two other land offices, one at Franklin in Howard County (for Boone's Lick) and the other at Jackson in Cape Girardeau County. In 1823 a fourth land district was located at Lexington, Missouri, and in 1825 a fifth land district was established at Palmyra.

The first annual report from the St. Louis land office showed that from October 1, 1818, through September 30, 1819, some 470,990 acres of Missouri land, valued at 1.1 million dollars, or \$2.33 per acre, were sold with payments made to the Treasury of \$280,000.

In the period 1818 through 1826, a total of 15,887,931 acres of public land in Missouri were put on the market and some 1,061,667 acres were sold, the vast majority bringing \$1.25 per acre cash. No public land was sold in Missouri in 1820. The lands involved in the sales were more desirable than the Kickapoo exchange lands, being of better quality for agriculture and settlement and far more accessible and close to major river arteries.

85. Kickapoo Exchange Land - Expert Witness Valuations. The Kickapoo plaintiff presented no expert witness, or value evidence on the Exchange lands except plaintiffs' Joint Exhibit X which is a copy of defendant's expert witness report offered in evidence in Osage Nation or Tribe of Indians v. United

States, Docket 105, 21 Ind. Cl. Comm. 67(1969), involving a large tract of Missouri lands including this tract, and in which the expert placed a value of 15 cents per acre as of April 28, 1810, on the whole tract. Defendant's expert witness in that case was Dr. William G. Murray.

In this case, Docket 315, Dr. Murray was defendant's expert witness on the value of the Kickapoo exchange land. He submitted a 92 page appraisal report valuing the land as of July 30, 1819, instead of the correct valuation date of January 13, 1821. Dr. Murray testified that there would have been little change in his valuation between 1819 and 1820 and we find the same holds true as of the actual valuation date in early 1821.

Considering the same value criteria outlined above in our findings, Dr. Murray concluded that the highest and best uses of the tract was for farming and stock raising, being of the opinion that the land had no commercial grazing value in 1820.

Since there were no land sales near to the Kickapoo exchange lands in 1819, Dr. Murray chose three Missouri tracts which were some distance to the east. One tract consisted of two townships 30 to 40 miles west of the Missouri River. A second tract included 7 townships bordering the Mississippi River. The third tract which was not put on the market until 1823 and 1831, was a much larger area bordering the Des Moines and Mississippi rivers. The data was not used to show the value of the land but rather the amount of land sold in each year. In the first two townships which were somewhat isolated but not as isolated as the exchange lands, there were a few sales in 1819 but none from 1820 through 1825. Dr. Murray concluded that if the exchange lands had been located near the Missouri or Mississippi rivers and had been placed on the market in 1819, the choice tracts would have been purchased.

Dr. Murray determined the 1819 value of the exchange lands by computing what a buyer would pay if at 7% interest he hoped to recover over a 30 year period the 1819 public land cash price of \$1.64 per acre. He concluded that such a buyer would pay 23 cents per acre for the tract in 1819 and that such amount, at 7% interest, would produce \$1.64 per acre in about 30 years.. On this basis Dr. Murray calculated that the tract had a fair market value of \$429,755 in 1819. Since 1819 is not the proper valuation date for the exchange lands and because by January 13, 1821, the price for public lands had changed from the \$2.00 per acre used by Dr. Murray to \$1.25 per acre, Dr. Murray's calculations would require some adjustments.

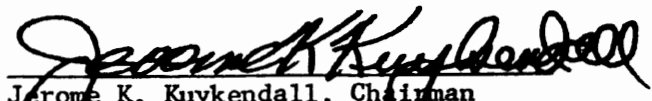
86. Kickapoo Exchange Land - Conclusion on Fair Market Value. For the reasons stated in our opinion and on the basis of the whole record, we find that on January 13, 1821, the 1,868,500 acre Kickapoo exchange tract had a fair market value of \$373,700, or approximately 20 cents per acre.

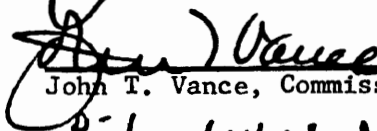
87. Kickapoo Offset Against Consideration. From the total consideration of \$426,700 promised by defendant in the treaty of July 30, 1819, as amended, and the Treaty of August 30, 1819, as amended, the Kickapoo are entitled to a deduction of \$20,500 representing the capitalized value of the perpetual annuity obligation of defendant which the Kickapoo released under those treaties. This leaves a net consideration in Docket 315 of \$406,200.

88. Conclusion. In the light of the consideration paid by defendant for each cession of land having the fair market values we have determined herein, we find the amounts paid in each instance were so grossly inadequate as to constitute unconscionable consideration. Accordingly, the Commission

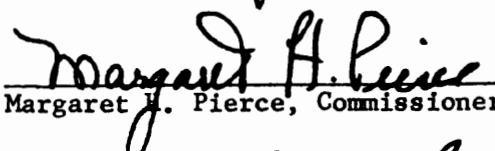
concludes that plaintiffs are entitled to the value of the interests they ceded less the consideration received and properly deductible, as summarized below:


<u>Cession</u>	<u>Value</u>	<u>Allowable Consideration</u>	<u>Award</u>
Docket 313: Kaskaskia, Royce Area 48	\$ 7,153,750	\$11,000	\$ 7,142,750
Dockets 15-D, 29-B, 311: Potawatomi cession of Royce Area 98	357,046	50,000	307,046
Docket 314-A: Wea cession of Royce Area 98 and Tract H	377,874	0	377,874
Docket 315: Kickapoo cession of Royce Area 110	11,833,330	406,200	11,427,130


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS,)	
)	Docket No. 15-D
)	
Plaintiffs,)	
)	
HANNAHVILLE INDIAN COMMUNITY, FOREST COUNTY POTAWATOMI COMMUNITY,)	
)	Docket No. 29-B
)	
Plaintiffs,)	
)	
CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, and POTAWATOMI NATION,)	
)	Docket No. 311
)	
Plaintiffs,)	
)	
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, on behalf of the KASKASKIA, WEA, and PEORIA NATIONS,)	
)	Docket Nos. 313 and 314-A
)	
Plaintiffs,)	
)	
THE KICKAPOO TRIBE OF KANSAS, THE KICKAPOO TRIBE OF OKLAHOMA,)	
)	Docket No. 315
)	
Plaintiffs,)	
)	
POTAWATOMI INDIANS OF INDIANA AND MICHIGAN, INCORPORATED,)	
)	Docket Nos. 15-D and 29-B
)	
Intervenor,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER SETTING AWARDS SUBJECT TO OFFSETS

Upon the findings of fact and opinion this day entered herein, and which are hereby made a part of this order,

IT IS ORDERED that (subject to allowable offsets, if any):

1. The Peoria plaintiff in Docket 313, on behalf of the Kaskaskia, is awarded \$7,142,750 as additional compensation for the Kaskaskia's 1803 cession of Royce Area 48;