

BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, et al.,	)	Docket Nos. 128, 309, 310
)	
Plaintiffs,)	
)	
THE POTAWATOMIE NATION OF INDIANS, THE PRAIRIE BAND, et al.,	)	Docket Nos. 15-N, 15-O, 15-Q, 15-R
)	
Plaintiffs,)	
)	
THE HANNAHVILLE INDIAN COMMUNITY, et al.,	)	Docket Nos. 29-L, 29-M, 29-O, 29-P
)	
Plaintiffs,)	
)	
POTAWATOMI INDIANS OF INDIANA AND MICHIGAN, INCORPORATED	)	Docket Nos. 128, 309, 310, 15-N,
	)	15-O, Q, R, 29-L, M,
	)	O, P
Intervenors,)	
)	
IRA SYLVESTER GODFROY, et al., on relation of THE MIAMI TRIBE OF INDIANA,	)	Docket No. 124-B
)	
Plaintiffs,)	
)	
THE MIAMI TRIBE OF OKLAHOMA, et al.,	)	Docket No. 254
)	
Plaintiffs,)	
)	
THE PEORIA TRIBE OF OKLAHOMA,	)	Docket No. 314-B
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 8, 1978

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings numbered 1 through 18 entered herein on December 28, 1973 (32 Ind. Cl. Comm. 461, 497-580).

19. Area Involved. ^{1/} The territory to be valued is generally that portion of Indiana which lies north of the Wabash River. Excluded from the subject area are Royce Area 98, which lies along the Wabash at the Indiana border to the south and west of the subject property, and lands lying in the central and northern portions of Elkhart, LaGrange, and Steuben Counties and the northeast quarter of St. Joseph County. The subject area extends from the Illinois border on the west to the Ohio border on the east, with a small tract in Michigan along Lake Michigan just north of the Indiana border.

Three separate Indian tribes have been adjudged to possess title to the various tracts of land. 32 Ind. Cl. Comm. 461. These tribes are the Potawatomi, the Miami, and the Wea Indian nations.

The subject lands were ceded to the United States pursuant to a series of treaties from 1818 to 1833. Royce has designated the various cessions as Areas 132, 133, 146, 180, and 181 in Indiana, and Area 145 in Michigan.

20. Interests of the Various Tribes.

A. Potawatomi Tribe.

(1) On February 7, 1827, the Potawatomi plaintiffs ceded their rights to Royce Areas 132 (Tract Y-1) and 133 (Tract *1). The Potawatomi

^{1/} See Appendix I, Map of subject area.

possessed an undivided 30 percent interest in Tract Y-1, with the remaining 70 percent interest belonging to the Miami. The Potawatomi owned 100 percent of Tract *1.

(2) On January 7, 1829, the Potawatomi ceded their rights to Royce Areas 145 (Tract *2) and 146 (Tracts Y-4 and *3). The Potawatomi were the sole owners of Tracts *2 and *3, and possessed an undivided 50 percent interest in Tract Y-4.

(3) On October 26, 1832, the Potawatomi ceded their interests in Royce Area 180. These interests were 100 percent of Tract *4, an undivided 50 percent interest in Tract AB, and an undivided 50 percent interest in Tract Y-2.

(4) On January 21, 1833, the Potawatomi ceded their interests in Royce Area 181. These consisted of a 100 percent interest in Tract *5 and an undivided 50 percent interest in Tract Y-3.

B. Miami Tribe.

(1) On January 24, 1827, the Miami Tribe ceded its interests in Royce Areas 146, 180, and 181. In Area 146, the Miami possessed an undivided 50 percent interest in Tract Y-4. In Royce Area 180, the Miami owned an undivided 50 percent interest in Tracy Y-2. The Miami interest in Royce Area 181 was an undivided 50 percent interest in Tract Y-3.

(2) On February 7, 1827, the Miami Tribe ceded its interest in Royce Area 132 (Tract Y-1). The Miami possessed an undivided 70 percent interest in Tract Y-1.

C. Wea Tribe.

(1) On October 2, 1818, the Wea Tribe ceded its interest in Tract AB within Royce Area 180. The Wea owned an undivided 50 percent interest of this tract.

21. History of the Area Involved and Adjacent Areas of the Northwest Territory.

A. French Period: pre-1763.

The French period of the Northwest Territory began in 1679 when Sieur de La Salle crossed the St. Joseph-Kankakee portage near the present city of South Bend. French explorers established Fort St. Joseph in the early 1690's. This outpost was utilized as a missionary settlement and a trading center, as well as a frontier fort. At this time there was virtually no migration into the area by settlers. The French did not encourage settlements since their primary concern was the fur trade.

To protect water routes connecting with Lake Erie and Ohio River, the French established three outposts in Indiana. They were Fort Miami, near present-day Fort Wayne, about 1700; Fort Ouiatanon, near Lafayette, about 1718; and Fort Vincennes, about 1727. These forts served as trading centers for the bartering of furs with the Indians and the annual packing center for the shipment of skins to Montreal and New Orleans. For some time these forts continued to be dominated by the French even though the area changed hands from France to England and finally the United States.

In the early 1700's the presence of British traders became increasingly more prevalent. Both countries claimed the upper Ohio River and the streams flowing into it. While British traders were active in expanding the fur trade, the British Government was slow in developing a policy to maintain it. At this time, the British were still tolerant of the French presence in America. Both countries employed the Indians in pushing their trade further into the interior. Conflict between the British and French developed on frontiers between the French and British colonies. The fight for fur trade of the Ohio and Wabash valleys was the most bitter.

The French and Indian War, which broke out in 1754, was the culmination of this rivalry between France and England for the control of the Indian fur trade. Both sides sought the aid and alliance of the various Indian tribes inhabiting the regions affected by the war.

B. British and American Colonial Period: 1763-1783.

In 1763, at the conclusion of the French and Indian War, the British emerged victorious. As a result of the Treaty of Paris in 1763, France ceded Canada and the French North American Empire east of the Mississippi River to Great Britain. Under English control, the royal governors of the colonies abutting the new frontier were given partial administrative control over this area.

The British Government, under the Quebec Act of 1774, strove to evolve administrative policies conducive to the problems of its recently obtained territory. Parliament, by this act, added to Quebec Province a

vast area reaching as far west as Wisconsin, and south to the juncture of the Ohio and the Mississippi. This region would be later divided into the states of Ohio, Indiana, Michigan, Wisconsin, and Illinois.

The commercial-minded British believed it more profitable to leave the West to the fur traders and the Indians. As did the French, the British discouraged white settlement in order to keep on good terms with the Indians and to avoid the ruination of the fur trade. From previous experience the British were aware that settlers entering new areas cleared large amounts of land and disrupted and sometimes destroyed the habitat of fur-bearing animals.

In the early American period the valley of the Ohio River became a battleground between Indians and westward moving colonial Americans. Indian raids on the white settlements were common. In avenging such raids the Americans indiscriminately retaliated against both guilty and innocent Indian villages. Because of such injustices, other tribes increased their raids with bitterness. The Indians, in an effort to retard American settlement of their ancestral lands, allied themselves with the English.

Primarily through the campaigns of George Rogers Clark and his men, the Northwest Territory fell under American domination during the Revolutionary War. In 1778 and 1779, Clark and his men captured Kaskaskia, Cahokia, and Vincennes. With the success of the American army in other regions of the country, the British-owned land east of the Mississippi River came under American authority.

C. American Period: 1783-1837.

The United States' view of the northwest lands differed from that of Great Britain and France, and the new country sought legislative provisions for the settlement and government in the new territory. Although the United States was uncertain whether it could retain the land against the Indians and the British from Canada, it passed the Ordinance of 1785 and amendments to that law providing for the method of survey and the terms of sales for those lands. The Ordinance of 1787 created the machinery of government and outlined the process by which states could be formed and admitted to the Union. At this time, lands in the Northwest Territory sold in large tracts for \$1 per acre.

While the ordinances of 1785 and 1787 were in effect, there was a wave of land speculation by large land companies that were able to obtain special terms from the Government. The Ohio Company, for example, signed a contract to buy 1,500,000 acres of land. The price of the land was that fixed in the Land Ordinance, \$1 per acre, considerably more than the company had intended to pay. Shortly after this purchase, the first permanent settlement in Ohio was established at Marietta. Later that year another band of pioneers laid the foundations of Cincinnati.

In the mid-1790's two events occurred, both affecting the immediate future of the Northwest Territory. The first occurred on August 20, 1794, when an American army under the command of General Anthony Wayne defeated the Indians at the Battle of Fallen Timbers. Wayne's victory was decisive. Indian spirit was broken when the British (whose Fort Miami was in the

proximity of the battle) refused to aid them. The victory at Fallen Timbers, coupled with the 1794 English agreement to abandon all military posts in the Northwest (discussed below), led to the signing of the Treaty of Greenville on August 8, 1795 (7 Stat. 49). Under that treaty, the Indians surrendered the southern half of Ohio, a triangle of land in southern Indiana, and 16 small tracts to be used for trading or military posts on strategic waterways. In Indiana these included the Wabash-Maumee portage, Ouiatanon, Clark's Grant, and the Vincennes Tract around the village on the Wabash.

The second event was Jay's Treaty between the United States and Great Britain, which was signed on November 14, 1794 (8 Stat. 116). Under its terms Great Britain agreed to surrender her northwest posts by June 1, 1796, but in return the United States guaranteed Canadian traders perpetual passage over portages along the border, allowed them to operate south of the boundary, promised not to tax the furs they carried back to Montreal, and agreed to levy the same tax on their trading goods as on those of its own nationals.

On May 7, 1800, the territory of Indiana was formed by an act of Congress (2 Stat. 58). The capital for the Indiana Territory (which included the current states of Indiana, Illinois, Michigan, and Wisconsin) was set up at Vincennes. The Michigan Territory was established in 1805.

In November 1811, William Henry Harrison and his troops defeated a contingent of Shawnees at the Battle of Tippecanoe. This further drove the Indians in the Northwest into relying upon and allying themselves

with the British as their only way of maintaining their remaining lands. With the outbreak of the War of 1812, British-encouraged and British-aided Indian uprisings, along with British engagements, kept the Northwest Territory in turmoil.

With the American victory and the signing of the Treaty of Ghent in 1814, the British were compelled to abandon the Indians once again, and Canadian fur traders were forbidden to operate south of the border. Because the Indians no longer had a British ally to assist them in resisting the frontier invasion of their lands, American acquisition of these lands became more rapid. Along with the land purchases, the United States constructed or rebuilt a series of forts throughout the old Northwest Territory in order to protect the advancing settlers. Fort Wayne and Fort Harrison in Indiana were among them.

In 1816, Indiana attained statehood. Illinois followed in 1818. In 1825, the Erie Canal was completed, relieving much of the difficulty New Englanders faced in migrating into the Northwest Territory. With the increasing influx of settlers into the Northwest, the United States Government realized that all Indian lands would eventually be needed for the settlers. The Government looked to the territory west of the Mississippi River as an area in which to resettle the northwest Indians.

In 1818 and for 15 years thereafter, various cessions by the Indians resulted in the transfer of the subject tracts to the Government. Some settlers, having previously settled the southern portion of Indiana, now moved into the subject tracts as did settlers from Kentucky, Ohio, New England, and other areas.

The old Northwest Territory took on a semblance of tranquility. However, in 1832, the Black Hawk War erupted across Wisconsin and Illinois. This short and final Indian war in the area, won by the United States, culminated in the Bad Axe Massacre, which was one of the more tragic events in the history of American-Indian relations. American ruthlessness had its desired effect on the other tribes of the Northwest. Resistance meant ultimate extermination, and it was wiser, therefore, to move west than be annihilated. By 1837, nearly all of the Northwest was held by the United States.

22. Topography. The surface of northern Indiana can be generally characterized as champaign country--level and open--although marked changes in elevation occur at different points. While much of the land was classified as prairie at the valuation date, there were large forests of useful timber. Throughout the subject-tract area, there were groves of trees, called "openings" by the early travelers, which frequently interrupted the otherwise flat and even surface of the prairies. These openings were level to gently rolling areas, with widely scattered oaks (or hickory trees), no undergrowth of young trees or brush, and the surface of which was covered with grass. Burr oak openings, where they occurred, differed from regular oak openings in that the surface was level and the oaks evenly spaced.

During wet seasons the level prairie land experienced drainage problems in some areas, lending to it a marshy appearance. This occurrence was most profound in the western portion of the tract, where occasional swamps were encountered.

Lands bordering on Lake Michigan contained sand ridges, or dunes, along the lake's edge and for a short distance inland. These were generally covered with trees, though not oak. Along many of the rivers and streams oak and hickory trees followed the rivers' course.

23. Soils. The portion of subject tracts *1, *2, and *4 that border on Lake Michigan, and for a few miles inland, possess gray-brown podzolic and humic-gley soils. These lands are nearly level to rolling landscapes of deep sands in which dunes are common. The land was formerly lake beds of Lake Michigan. Most of the central and the eastern half of the entire subject area is also of a grey-brown podzolic soil. These soils are moderately productive and responsive to good management. Both of the foregoing type soils are light colored soils developed under forest vegetation.

Along the Wabash, Eel, and other rivers and streams exist alluvial soils of stream bottomlands. These soils occupy the lowest topographic position in the landscape. In general, alluvial soils are not as acid as the more weathered soils on the uplands. Because of their generally high fertility and level surface, alluvial soils have an agricultural significance greater than their total area suggests. These soils are often subject to the flooding that occurs from adjoining waterways.

Much of the western half and part of the central portion of the subject area is composed of dark colored soils developed under prairie vegetation. The particular soils in this area are classified as brunizem and humic-gley. The land in this portion of the subject area (mostly

Tract *4) is nearly level to gently sloping. At the valuation dates, these areas were marshy but could be adequately drained with ditches. The soils are dark colored and neutral to strongly acid. The soils are low in fertility but are responsive to good management. The area is conducive to grain farming. The chief limitations are erosion on the sloping areas and inadequate drainage of the depressed areas.

In the extreme northwest portion of the subject area, in parts of Tract *1 and Tract *4, the land consists of dark colored soils with restricted drainage. The soil classification is known as humic-gley and low humic-gley. Soils of this group occupy small depressions in morainal areas with poor or very poor drainage. These soils intermingle with areas of other soils and create problems of usage and management. The land is generally level to undulating and, when adequately drained, the soils are highly productive.

The remaining portion of the western half of the subject area contains soils similar to the land of the eastern half of the region and those lands adjacent to Lake Michigan.

The extreme southeast segment of the subject tract, from Fort Wayne to the Ohio border, consists partially of alluvial soil, similar to the bottomlands along the Wabash, Eel and other rivers and streams, and of dark colored soils with restricted drainage similar to that in the extreme northwest portion, though somewhat lighter.

24. Rivers and Drainage. The Wabash River drains the southern third of the subject area through numerous tributaries, primarily the Tippecanoe River and the Eel River. The northwestern portion of the subject tract is drained principally by the Kankakee River and the Iroquois River. The northcentral portion is drained by the St. Joseph, the Elkhart, and the Pigeon Rivers or by small streams emptying into Lake Michigan. Finally, the northern portion of the subject area lying in Michigan drains into the St. Joseph River on the east and into Lake Michigan on the west.

25. Vegetation. Natural vegetation in the subject area in the settlement period was principally Blue Stem prairie grass on the prairies with mixed patches of forest and groves of trees. Beech, maple, walnut, aspen, oak, and hickory forests covered parts of the area. Much of the area was frequently interspersed with oak and hickory openings, as well as small prairies.

Though not as densely forested as the lower portions of Indiana, timber was found along many of the subject area's streams and rivers. The portion of the subject tract lying in Michigan possessed similar vegetation, though containing a higher proportion of timber to prairie than did that portion of the area lying in northern Indiana.

26. Climate. Indiana has a humid continental climate, which is generally temperate, with distinct seasonal variations. The average temperature in the subject area during July is 74° F., and during January, 25.6° F. The normal annual precipitation for the area ranges from 30 inches to 39 inches. The growing season, generally occurring

from late April and early May to early and mid-October, encompasses from 150 to 180 days.

27. Minerals. Most of Indiana's mineral resources were concentrated in the south and central west. By the 1830's it was known that coal existed in the western portion of Indiana, but little, if any, was found in the subject area. Iron ore had been found throughout a number of the counties of Indiana, but at the time of valuation there had been no discoveries of iron within the subject area. Though several counties in northern Indiana would later report iron ore in significant quantities, these reports occurred years after the valuation dates. The value of the subject area, therefore, was not enhanced by the presence of minerals.

28. Agriculture. The settlers coming to the area turned to agriculture to produce many of the necessities of life. Farming at a subsistence level became the primary and, for many, the sole way of making a living.

Due to the climate and soil, much of the Indiana land was used for the production of crops and the raising of livestock. Wheat and corn were the principal crops, although oats, rye, potatoes, hemp, and tobacco were also grown. The Fort Wayne region was good country for raising livestock due to the luxuriant growth of grass. Oftentimes, the corn was fed to hogs rather than sold since the price of pork provided the farmer with a higher profit margin.

29. Transportation.

A. Rivers, Streams, and the Great Lakes. The Wabash River and the Maumee River were extensively used by the French and British during the periods they exercised control over the area. However, with British control of the frontier posts in the Great Lakes region continuing for several years after the Revolutionary War, the upper Wabash portions of Indiana were generally used only by the Indians and fur trappers and traders. The bulk of American settlers and commerce moved along the Ohio River.

During the late 1790's and early 1800's, river transportation and commerce were conducted along the Ohio River by way of canoes, pirogues (dug-outs), flatboats, and keelboats. As the southern portions of Indiana were being opened for settlement, those tributaries of the Ohio in Indiana became extensions of the water routes used for travel and commerce by the settlers. Notably, the Wabash River, which had been previously used by the French and British, was now being used by the Americans as well. The Wabash was navigable to within about 10 miles of Fort Wayne in northern Indiana. However, for many years the Fort Wayne furs traveled the Maumee River into Lake Erie and the various northern ports rather than down to New Orleans via the Mississippi.

Due to the achievements of Robert Fulton, who had introduced the steamboat to America in 1811, the steamboat New Orleans plied on western waters to and from Cincinnati and Louisville. Other steamboats soon followed, and, as the steamboat improved, more cities were reached.

The trip to New Orleans was now far faster than it had been. However, obstacles such as low water, too much ice, or snags, continued to plague regular steamboat operation.

In 1823, the first steamboat traveled up the Wabash, reaching as far upstream as Terre Haute. The first steamer reached Lafayette in 1826. The Wabash, navigable for 470 miles, bore the heaviest travel of all northern Indiana streams. The St. Joseph River of Lake Michigan and the Elkhart River were the next most heavily traveled streams. The Elkhart River and parts of the St. Joseph River, in which it merged, were navigable for over 100 miles.

With the development of Chicago in the 1830's, the St. Joseph area attracted new settlers. Vessels arriving at Chicago would occasionally stop at St. Joseph. As inland settlement and cultivation occurred, the mouth of the river developed a greater shipping business. River transportation was carried on at first by the use of keelboats and flatboats. Service ran to Elkhart, with Niles, South Bend, and Mishawaka as intermediate stops. As of 1833 there were three keelboats running on the river. Very little freight was carried downstream.

Though the St. Joseph River became accessible to American settlers years after they began moving up the Wabash, it was not an unfamiliar or unused location. After St. Joseph (the French fort and trading post) fell into the hands of the English in 1761, the harbor at the mouth of the St. Joseph River was occasionally visited by sailing vessels bringing supplies. In 1785, William Burnett reestablished a trading post there.

He is known to have employed sloops and schooners in his traffic, receiving small cargoes of goods from Detroit and other points, and sending pelts, sugar, and other articles in return.

In 1821, steamboat navigation entered Lake Michigan. The first steamboats to Chicago were those carrying troops and supplies during the Black Hawk War in 1832. The first steamboat entered the St. Joseph River to pick up troops during this period. Chicago in 1833 had four boat arrivals from the lower lakes; two years later there were 250 arrivals. By 1835, there was regular steamboat service between St. Joseph and Chicago.

Other water courses of some importance in or near subject tracts were those rivers and streams that emptied into the larger rivers. Whitewater River, White River, St. Joseph of the Maumee, Tippecanoe, and Eel rivers were all courses that merged into either the Wabash or the Ohio River. The latter three of these rivers flowed within the subject tract.

The Kankakee River, joined by the Iroquois River, merged with the Des Plaines River in Illinois to become the Illinois River. The Illinois emptied into the Mississippi River. The Kankakee and its connecting streams were navigable for approximately 300 miles. The record does not indicate the extent to which the Kankakee was used for navigation.

The streams in the northern part of the state, which empty into the Wabash and Illinois Rivers, have their branches interwoven with many of the rivers running into Lake Erie and Lake Michigan. As a result, travel

up one stream with a small portage to another stream and down the latter stream was quite common.

Though winters were often severe in the subject area, freezing of the rivers did not terminate travel and commerce along these routes. Rather, in the winter the rivers usually provided the easiest route of travel by means of the sleigh.

B. Roads, Trails, and Portages. Though the most desirable method of traveling westward to the Northwest Territory was by way of rivers, overland travel did occur. By various routes of travel--the Genesee Turnpike in New York, the old Forbes route in Pennsylvania, the Cumberland Road, the Federal Road (Three-Notch Road) westward from Georgia, and mountain passes like the Cumberland Gap--settlers moved westward. Within the subject area, overland travel became more frequent once communities were established. The first land routes were the Indian trails which connected the various Indian villages.

In southwestern Michigan, paths radiated from villages situated on the St. Joseph River, both at its mouth and in the vicinity of Niles, Michigan (just east of the subject area). Some roads or trails led south to the Wabash River. Routes along Lake Michigan were extremely common and well worn. One such Indian route was almost identical with that of the later Detroit to Chicago road opened in 1833. Though the Detroit to Chicago road was planned to follow a different course, it ultimately followed the well-traveled Indian route.

In 1830, a road was authorized from Pleasant Lake (just east of the Michigan subject tract) to Pulaski, Indiana (inside the subject area, near the Wabash River). In 1833, the Legislative Council of Michigan passed acts authorizing and directing the laying out of more territorial roads. One such proposed road was to run from the mouth of the St. Joseph River to South Bend, Indiana. Another road was to run to the northern boundary of Indiana and from there on a direct route to Chicago. Throughout the 1830's, roads were authorized from the St. Joseph River to other parts of Michigan.

The first stagecoach line reaching southwestern Michigan was started in 1831. The route included connections between Niles and Detroit. In 1833, stage lines were established along the Detroit to Chicago road. They first ran tri-weekly, but by 1835, the stages ran daily. The stage route passed through the area of Michigan City, Indiana, which was laid out in 1835.

By the treaty with the Potawatomi in 1826, the United States obtained land to build the Michigan Road from the Ohio River to Lake Michigan. The Michigan Road, started in 1828, ran from Michigan City on Lake Michigan west through South Bend. From South Bend the road ran almost directly south to Indianapolis and then continued to the Ohio River. The road went through the heart of the subject area.

As to the other areas of Indiana, in 1824, the first road actually laid out within the limits of Allen County (Fort Wayne area) ran nearly south from Fort Wayne. Road travel to Fort Wayne from Ohio or southern Indiana was extremely difficult due to streams and swamps, particularly

during seasons of high water. There were reports of settlers coming to Fort Wayne from New York City, by way of Toledo, in which the overland trip to Fort Wayne from Toledo was as costly as the trip from New York City to Toledo.

Overland travel was difficult and slow. As of 1830 river transportation was still the chief artery of communication. However, even river transportation occasionally required the portaging of canoes over land to reach one's ultimate destination.

One of the most important and earliest used portages was the one between the St. Mary's River and the Little Wabash River. This portage had been used by Indians and by the French on their route from the Great Lakes to their posts along the Wabash. This portage was approximately 8 miles long. It made it possible to travel up the Maumee River and then downstream along the Wabash River. The ultimate effect was to connect Lake Erie with the Wabash, the Ohio, and the Mississippi river.

A second portage was the short portage between the Chicago River and the Kickapoo branch of the Illinois River. This portage allowed travel from Lake Michigan to the Illinois River and then down the Mississippi. Though this portage was outside of the subject area, the Chicago River was easily accessible to settlers living in Indiana near the Lake Michigan shoreline. Another portage of 4 miles existed between the St. Joseph River of Lake Michigan and the Kankakee River. This connected the Kankakee River to Lake Michigan.

Other portages in the subject tract and neighboring areas included one of 2 miles between the Kankakee and the Grand Calumet River, one

of a half-mile between the Grand and Little Calumet Rivers, and numerous ones between the head branches of the two St. Joseph Rivers.

Many of the distances involved in the portages varied according to the dryness or moisture of the season. Occasionally, during wet seasons, a portage area would be completely covered by water making it possible for a traveler to continue without interruption where, ordinarily, a portage would have been required.

C. Canals. One of the landmark events immediately shaping the future of the northwest states was the completion of the Erie Canal in 1825. The canal connected New York City with the waters of Lake Erie. Its effect was to lure commercial traffic in the Great Lakes region towards the canal and New York City. Freight costs were dropped to one-tenth their former level and the travel time was reduced to 8 days. The canal also provided a route for settlers from the northeastern United States desiring to immigrate to the Northwest. Settlement followed the canal and the population of the western areas affected grew tremendously.

During the 1820's, a craze for internal improvements (especially canals) swept the Northwest. The first state to actively pursue internal improvement was Ohio, the most populous of the Northwest Territory states. An 1825 act committed the state to a massive building program. Several canals were completed. However, by the late 1830's, the cost of the building program had severely weakened the financial capacity of Ohio.

In Indiana, the region was peculiarly adapted to the development of a system of canals. The broad strip stretching between the Ohio River on the south and the Great Lakes to the north was to a remarkable degree

void of any major elevation change. The many streams throughout the area invited the construction of canals.

The portage at Fort Wayne, connecting the Wabash River to the Maumee River, had long been recognized as an ideal spot for a canal. George Washington, who had hopes of connecting the Ohio River with the Atlantic coast, wrote in 1785 to Henry Knox suggesting that the Maumee-Wabash portage was the most feasible point for water communication between the Ohio River and Lake Erie. Captain James Riley, who surveyed and examined the area in 1819, suggested that a canal might easily be cut uniting the Wabash River to the St. Mary's River. A canal connecting Lake Erie with the Wabash River was soon brought to the attention of the Indiana legislature. With the completion of the Erie Canal in 1825, the argument for furnishing an outlet from Lake Erie to the Ohio River grew stronger.

The Miami treaty of 1826 ultimately opened the door for the construction of the Wabash and Erie Canal (including the Wabash-Maumee Canal). A congressional act in 1827 granted to Indiana land adjacent to the proposed route. To connect to Lake Erie, the cooperation of Ohio was necessary. This was achieved by October 1829. By 1832, the necessary funds were acquired and the canal was finally under construction. The work began near Fort Wayne and progressed westward toward Lafayette, the head of steamboat navigation. By 1835, 30 miles of the canal were open to traffic. As a result of the canal, Fort Wayne became a center for agricultural products from towns more than 60 miles away.

The movement for internal improvements in Indiana reached its apex in 1836 when the state legislature passed the so-called Mammoth Bill, providing for a general system of internal improvement. The bill furthered the completion of the canal and the removal of obstructions on other parts of the Wabash River. The Mammoth Bill also authorized a canal along Whitewater River, another from Evansville to the Wabash and Erie Canal, and still another from Lafayette through Terre Haute. However, by 1840, Indiana was in a chaotic condition financially and the state managed to either halt or sell to private companies those projects not yet completed. Only the Wabash and Erie Canal project remained in state control.

In Illinois a canal was sought between Lake Michigan and the Illinois River. This Illinois-Michigan Canal was authorized in 1825, but work did not begin until 1836. The canal was finally completed in 1848. Other internal improvements were also being sought during the construction of the Illinois-Michigan Canal. These projects deeply burdened the state's treasury. Eventually, all other canal projects were abandoned, with the Illinois-Michigan Canal being the only one completed.

Though the canal (and later railroad) projects left the Northwest Territory states in financial difficulty, the canals did have a very positive effect. Those regions affected by the canals experienced an increase in real property values, a lowering of the cost of imports, and the stimulation of settlement. Regions bordering the Wabash and Erie Canal exhibited a population growth rate of 40 percent in the decade after the waterway was opened.

D. Railroads. The first American railroad venture did not begin until 1828. It would still be several years before any railroad building began in the northwestern states.

In 1832, the legislature of the territory of Michigan incorporated the Detroit and St. Joseph Railroad Company. The company was authorized to build a railroad from Detroit to St. Joseph. However, only a portion of the road was completed. In 1837, Michigan became a state and the new government inaugurated a system of internal improvements, including the construction of three railroads. One was the completion of the earlier route between Detroit and St. Joseph. However, by 1846, the rails had only reached Kalamazoo.

In 1837, the Illinois legislature committed that state to the creation of hundreds of miles of railroad. Only a few miles of rail were laid before the Panic of 1837 struck the state. As with the other states, Indiana's railroad development was slow. By 1838 only 20 miles of rail had been laid in the entire state. In sum, the influence exerted by rail travel in other states was not felt within the subject area until years after the valuation dates.

30. Economic Conditions. In 1811, the First Bank of the United States was terminated. With its demise went its influence and power over the financial aspects of much of the nation. As a consequence, state banks flourished, issuing bank notes at their directors' discretion. Bank notes were highly sought. With such a demand, bankers issued more and more notes, eventually greatly exceeding the margin of safety in coin reserves kept on hand for redemption. The seeds of inflation were being sown.

With the British raids on the Chesapeake Bay and the burning of Washington near the end of the War of 1812, almost all banks outside of New England suspended specie payment. The New England region gradually drained away much of the specie from the other regions of the country. Throughout the United States only paper money now remained in circulation and much of this had declined in value.

Direct losses to the Federal Government, as a consequence of the suspension of specie payment, totaled more than \$5,000,000. In 1816, John C. Calhoun introduced a bill calling for the establishment of a Second Bank of the United States. With assistance from Henry Clay and others, the measure passed. The bank was opened for business in January 1817, and within a few months nineteen branches were opened in various states. The establishment of the Second Bank of the United States was intended to get other banks to resume specie payments. To further effectuate this goal, Congress passed a measure requiring all Government debts to be collected in gold or silver, or their equivalent, after February 20, 1817.

Until 1817, the Federal Government had accepted paper for land purchases, thereby encouraging land sales, which rose accordingly. The situation was most favorable for wild speculation. Land buyers, in accordance with the provisions of the Land Act of 1800, purchased more land than they could afford and were not able to keep up their payments. As the western population became more indebted to the Federal Government, the Second Bank of the United States curtailed credit, and its various branch banks were instructed to accept no bank notes other than their

own. The bank, which had lent money freely during its first two years (1817 and 1818), had to call in its loans ruthlessly in order to avoid bankruptcy. The bank's new policy helped to precipitate the Panic of 1819 by driving many state banks into bankruptcy. Through foreclosure, enormous amounts of property were acquired by the bank. The year 1819 was the last for several years to witness an extensive migration into the interior, for the Panic of 1819 checked business, migration, and the purchase of land.

The depression effect of the Panic of 1819 continued through the early years of the next decade. The country's gross national product (GNP), which had been \$816 million in 1818, did not again reach the 1818 level until 1825's GNP of \$849 million. Except for a drop in 1827, the GNP continued to increase year after year until 1837, when another depression struck the United States.

Agriculture was the primary activity of the residents of the northwestern states, particularly those of Indiana. Although the factory system was emerging, manufacturing did not become significant during the first half of the nineteenth century. Until at least 1850 Indiana society continued to be characterized by methods and processes which were peculiar to the pioneer era.

The national farm gross product in 1810 was \$363 million. At the end of the next decade the farm gross product had increased by one million dollars. By 1830 it had risen to \$491 million, and by 1840 it had increased at its greatest rate, reaching \$769 million. The crop portion

of the farm gross product rose during each decade, whereas, after a falling back in 1820, the livestock portion for the decades ending in 1810, 1830, and 1840 were all characterized by large increases.

With the advent of faster and cheaper transportation, particularly through the Erie Canal, commodity prices dropped in the western areas. The influx of settlers created an increasingly large demand for land in the Northwest. During the valuation period, the supply of public lands in the area was more than sufficient to meet this demand. Nevertheless, many areas of available public lands in Indiana, Illinois, and Michigan were unattractive to settlers because of remoteness, lack of timber, paucity of established settlements, and the poor quality of the lands.

Interest rates in the Northwest were also affected by the distance from financial sources as well as the amount of risk involved. Ordinarily, settlers on the frontier had little security to offer for borrowing purchase money for their lands. Loans secured only with unimproved land commanded high rates of interest.

31. Land Policies of the Federal Government: 1800-1837. The Land Act of 1800 set a minimum price of \$2 an acre for a minimum tract of land of 320 acres. After survey, public land was first subject to sale at auction for a period of 3 weeks and was then available at the minimum price. The 1800 land act also established a credit system for the purchaser, and a system of local land offices to make the sales of public lands convenient to the settlers. The credit provisions required that a purchaser pay 5 percent of the sale price on the day of purchase and 20 percent additional within 40 days. Another 25 percent was due at the

end of the second year, and 25 percent due at the end of the third and fourth years. Failure to pay on time resulted in 6 percent interest charged from the date of sale. If a person paid in cash, the purchase price was discounted by 8 percent. Whether paying in cash or by credit, the purchaser was also required to pay \$3 for surveying expenses, and \$4 for a patent fee.

In 1804, another land act provided for the disposal of lands in the Indiana Territory. The Land Act of 1804 revised the 1800 land act by reducing the minimum size purchasable to 160 acres, abolishing all fees except certain postage charges, and not charging interest until after a payment was due. In addition, land offices were established at Detroit, Vincennes, and Kaskaskia.

After the War of 1812, a large influx of settlers entered western lands, greatly increasing the number of public land sales. Since the credit provision did not require a second payment until nearly 2 years after the first, many purchasers bought as much land as they could, with the hope of amassing the necessary payments during the next two years. With the occurrence of the Panic of 1819, the credit system, for all practical purposes, collapsed. Farm prices fell rapidly and many settlers who had bought land on credit were now unable to pay and faced the possibility of foreclosure. In response to this situation, Congress, in 1820, passed a new land act aimed at preventing additional foreclosures.

The Land Act of 1820 mandated a system of cash purchases, extinguishing the credit provisions of the earlier land acts. The minimum price of land

was reduced to \$1.25 an acre, and the minimum size of sales tracts was lowered to 80 acres. The auction period was also reduced from 3 to 2 weeks. Through the Land Act of 1820 and the Relief Act of 1821, earlier purchasers unable to meet their payments were aided by the following possible courses of action: (1) they could relinquish a portion of their land and apply payments already made to the remainder; (2) continue their payments at the reduced rate of \$1.25 an acre; or (3) spread installments still due over a longer period.

The reduction of the minimum price of \$1.25 an acre did not reflect the economic value of the land. The change in price was not a primary issue in either houses of Congress; it was merely a concomitant of the change from credit to cash, further discount as it were, in favor of immediate payment. The reduction ultimately encouraged land speculation.

As more people moved into the interior, other land offices were opened. The Government land office in Fort Wayne was established in 1823. However, under the Land Act of 1820, the Government continued to offer for sale more land than the market could absorb. The amount of offered, but unsold, lands steadily increased.

Those settlers who desired lands not yet open for settlement, or who lacked sufficient funds to make the initial purchases of available land, settled lands by way of squatting. Since there was more land than the demand required, many squatters occupied land without interference from others. Those settlers purchasing land avoided buying lands already being used by squatters. Squatters generally improved the lands they

were on, and to protect their investment they sought the right of preemption which would exempt them from competitive bidding on the tracts they occupied. Under the various preemption acts passed by Congress, squatters were able to gain title to their lands at the minimum public land price.

32. Public Land Sales. Only small amounts of public land were sold at auction. The bulk of the land was sold privately at the minimum price as fixed by Congress. Between 1807 and June 30, 1820, over two million acres of Indiana public land were sold at an average price of \$2.06 an acre. During this period, the greatest amount of land sold was in the years 1816, 1817, and 1818.

In 1816, Indiana became a state and that year the public lands sold at an average of \$2.28 an acre. By 1817 and 1818 and lands were again selling near the minimum price of \$2 an acre. Between July 1, 1820, and December 31, 1829, another two million plus acres of public land were sold in Indiana. An indication of the demand for public lands was the establishment of offices in Jeffersonville (southeastern portion of the state), Vincennes (southwestern portion of the state), Indianapolis (central portion of the state), Crawfordsville (west-central portion of the state), and at Fort Wayne (northeastern portion of the state). All but the office at Fort Wayne were in operation during the entire decade. The Fort Wayne office was not opened until 1823.

Little land was sold at the Fort Wayne office. Not until 1829 were more than 4,000 acres sold. The Crawfordsville and Indianapolis land

offices sold the greatest number of acres during this period. This land included much of the area of central Indiana up to the Wabash River. During the years 1826 to 1829, the Crawfordsville and Indianapolis land offices sold more than 860,000 acres of land. This accounted for nearly 40 percent of the acreage sold throughout Indiana during the decade.

During this decade the nearly 2,170,000 acres of public land sold in Indiana compared favorably to 1,405,000 acres sold in Ohio, 667,000 acres sold in Illinois, and 413,000 acres sold in Michigan. Up through 1834, more lands were sold in Indiana than in Illinois and Michigan. Only in 1833 were more lands sold in Ohio than in Indiana. For the first 5 years of the 1830's, Indiana's total acreage of public lands sold was approximately 4,267,000 acres. This compared with 3,644,000 acres sold in Illinois, 3,287,000 acres sold in Michigan, and 2,741,000 acres sold in Ohio.

In a report to the Secretary of the Treasury in December 1834 Elijah Hayward, Commissioner of the General Land Office, disclosed the amount of sold and unsold public lands in the states or territories of the United States as of September 30, 1834. Of the old Northwest territories and states, only in Ohio was there a higher percentage (69 percent) of public land sold than in Indiana at 43 percent. In Michigan and Illinois only 18 percent and 16 percent, respectively, of the public lands had been sold.

During the latter part of the 1820's, Congress considered the possibility of further reducing the minimum price of public lands. In order for Congress to fully assess the situation, the various land offices

reported on the unsold public lands. Many of these reports indicated how much of the land was unfit for cultivation and attempted to classify the unsold land according to its quality.

The five land offices in Indiana responded to the inquiry, giving the status of their public lands as of June 30, 1828. The two land offices in southern Indiana, Jeffersonville and Vincennes, contained 48 percent of the total acreage unsold in Indiana. Jeffersonville and Vincennes reported 18.5 percent and 50 percent, respectively, of their unsold acreage as unfit for cultivation. Vincennes did not place an average value on its unsold acreage, while Jeffersonville valued its average acre at \$.44. The lands administered by these two land offices were the farthest removed from the subject area.

The Crawfordsville land office reported 5 percent of its unsold acreage unfit for cultivation and the remainder generally as first and second rate land. The Crawfordsville office further reported that "the average value of unsold lands is not less than the present minimum price of \$1.25 an acre." Def. Ex. F5.1.

The Indianapolis office divided its land into five equal classes, with the first class being well worth the \$1.25 minimum, and the second class also bringing the \$1.25 price once the first class lands had sold. The third class land was valued at \$.75, the fourth class land at \$.50, and the fifth class land was without value.

The Fort Wayne office reported that "a very small portion, indeed, (if any) of the lands in this district is totally unfit for cultivation, for all, or nearly all, that is too wet for plough land is excellent

for meadow," Id. The more highly valued lands were those adjacent to the Maumee, the Wabash, the St. Mary's, the Mississinewa, and the Salamonie rivers. The Fort Wayne office further reported that on May 1, 1827, lands along the north boundary of the Fort Wayne district were withdrawn from sale for canal purposes. These lands, according to the report, amounted to the best and, except for some lands along the Mississinewa and the St. Mary's, almost the only lands in the Fort Wayne district which were at that time in great demand.

The Fort Wayne office further reported that the land on Elkhart River was of excellent quality. It also reported that people were moving to the St. Joseph River of Lake Michigan like "flocks of pigeons" and were squatting on Government land until it was offered for sale. Some of this land was in Michigan and some in Indiana. (The St. Joseph River flowed through some lands not included in the subject area, but adjacent thereto.) In addition, the office noted that lands along the Wabash canal route were very desirable to the people and suggested that this land be brought into market as soon as possible.

As the construction of the Wabash-Maumee canal began in the 1830's, there was an increase of demand for public land in the area. So much land was purchased that in 1836 the land office at Fort Wayne ranked third highest in the nation in the number of acres sold (1,294,357) and money received (\$1,620,617.34).

In 1831, a land office was opened in White Pigeon, Michigan. This office administered the sale of lands within the subject area lying in southwestern Michigan.

33. Preferred Locations. Settlers during the valuation period preferred locations that combined timber, prairie, and water, and were, if possible, accessible to transportation routes. Settlers also favored lands with good drainage. Wet prairie lands were not desired in the early period of settlement. Areas along the Wabash River were highly sought since this river was widely used for transportation and communication purposes. Areas along the shore of Lake Michigan were also attractive to settlers, especially to the earlier town planners and speculators who envisioned the growth of Chicago and other port facilities along the lake. Many of the planned towns, however, did not develop beyond the planning stages.

Areas where Indians frequented or had established villages were considered choice spots since Indians in this part of the country were rarely, if ever, found on barren land. Similarly, areas where trappers, traders, or soldiers established posts or forts were sought out as the early centers of settlement.

In sum, the previous existence of Indian villages in an area often assured good land, whereas the existence of trading posts or military forts gave the settlers a familiarity with a particular area. Both conditions prevailed within the subject tracts as far as Indian settlements were concerned and on the borders of the tracts with respect to trading posts, military forts, and some small settlements.

34. Settlement Trends. Prior to 1832, much of the subject area was closed to white settlement. Since the southern portions of Indiana and Illinois and the whole of Ohio afforded the earliest opportunities for the selection of choice farms, these areas were the first to be settled. Furthermore, the bulk of the early settlers came from Kentucky and other southern areas, and thus, first settled the southern regions of the Northwest.

With the signing of the Potawatomi treaties in the early 1830's, the subject area was completely opened to white settlement. The more desirable lands in the subject tract were subject to land rushes. The Wabash River valley was highly sought due to the importance of the Wabash River. However, areas along the upper Wabash River remained sparsely populated through the early 1830's mainly because the upper reaches of the Wabash River were not as easily accessible. This problem was abated as the various portions of the Wabash and Erie Canal were completed. For example, in 1837 the canal reached Wabash, Indiana, resulting in a great number of settlers entering the area, primarily due to the existence of a better avenue of transportation. In present-day Kosciusko County, the Turkey Creek Prairies experienced a mild land rush.

Some portions of the subject area were believed to be unfit for settlement because they contained swamps or marshes. This view attached to the western wet portions of the subject area as well as various smaller portions throughout the Indiana subject area.

The Erie Canal, when completed, provided access for settlers from the northeastern United States. The Michigan Territory was especially affected by this new route to the Northwest. Lands along the Great Lakes became desirable. With the development of the town of Chicago in the early 1830's, settlements between there and Detroit experienced increased population. That portion of the subject area lying in Michigan benefited from this population growth. Though settlement in the Michigan subject area was begun prior to the 1830's, the success of Chicago insured the continued existence of such settlements. As internal improvements developed in the subject area, the attractiveness of the area increased. The potential of Chicago and surrounding area was generally predictable by the later valuation dates. A number of observers, travelers, and writers of the period expressed optimistic views regarding the settlement potential of northwestern Indiana.

35. Population. At the time of Indiana's organization as a territory in 1800, its total non-Indian population was estimated at 5,641. Over half of these people resided in areas that would later become parts of other states. Of the inhabitants residing east of the Wabash in 1800, nearly one quarter lived in the Vincennes district and most of these were French. By 1810 because of American settlement, the non-Indian inhabitants east of the Wabash had increased to 24,520. These settlers were located in three well-defined areas: (1) the original area of settlement in and around Vincennes; (2) the "gore" in southeastern Indiana; (3) and Clark's Grant in southern Indiana together with the public lands within the bounds of the Jeffersonville land district, also in southern Indiana.

The first large migration of settlers into Indiana coincided with the conclusion of the War of 1812. The settlers first took up lands in the southern portion of the state. These settlers were predominantly from Virginia and Kentucky, having migrated into the region overland and then down the Ohio River.

By 1820, the Indiana population had reached approximately 147,178 people. Most of the inhabitants were still located in the southern portion of the state. A small number of people had settled in Fort Wayne, built in 1794. However, by the late 1820's, Fort Wayne was still relatively isolated from the East and from other western communities.

The completion of the Erie Canal in 1825 opened an inexpensive and safe avenue for migration. Whereas the earlier migration consisted largely of southerners, the Erie Canal attracted settlers from New England and the mid-Atlantic states. The northern portions of Indiana were not immediately affected by the completion of the Erie Canal since much of this land was still in the possession of Indians. With the completion of the various Indian treaties, the northern portion of Indiana was available for settlement. Actual settlement in this area began about 1829.

Those Indiana counties with substantial portions of their areas within the subject lands, and which had been organized as of 1830, along with their population, were as follows: Cass, 1,154; St. Joseph, 287; Allen, 1,000; Carroll, 1,611; and Elkhart, 935. Tippecanoe and Warren counties, though organized by 1827, did not contain substantial amounts of land within the subject area. By 1840, every present-day county of Indiana, except for Starke County, had been organized.

The population in northern Indiana increased dramatically between 1830 and 1840. For example, the 1830 counties (excluding Tippecanoe and Warren counties) having a combined population of 4,987 in 1830 possessed by 1840 a population of 32,326. The population of the entire state of Indiana grew at a rate much higher than the national growth rate. The 1820 Indiana population of 147,148 had grown to 343,031 by 1830 and had reached 685,866 by 1840. Most of the population was concentrated in lands south of the subject area. During the period between 1830 and 1840, the settlement of northern Indiana and southern Michigan started.

The portion of the subject tract located in southwestern Michigan was situated in Berrien County, although the county included areas not involved in this valuation. A permanent non-Indian settlement of the area did not occur until the 1820's. Berrien County was created in 1829 but an agreement reached shortly thereafter attached the county to Cass County. In 1831, the county was detached from Cass and again made a separate county. Settlement in Berrien County began in 1829. As a result of the activities on the St. Joseph River, by 1831, the area had begun to attract emigrants, particularly from southern Indiana and central and southwestern Ohio. By 1834, settlers from New York and New England moved into the area. At the end of the decade, the population of Berrien County reached 5,111.

36. County Histories and Reports - Indiana.^{2/}

^{2/} See, Appendix II, infra, County Map of Indiana, delineating the subject area and the counties wholly or partially within it. Several counties such as Tippecanoe and Warren, which had small parts of their areas within the subject tracts, are not included in this series of findings.

A. Eastern Portion of Subject Area.

(1) Allen County: Allen County experienced non-Indian settlement in the early 1820's. The surface of the county was generally flat with an occasional wet prairie. The timberland was also wet and initially thought to be useless. Instead, when cleared the land dried and produced excellent farms. The county was drained by the Maumee and Wabash Rivers and their respective tributaries. The soil in the county was of excellent quality, well adapted to the cultivation of wheat, rye, corn, and oats. The site of Fort Wayne in Allen County was a center for the trade in skins, and remained so for many years after its first non-Indian settlement. In 1830, the county had a population of 1,000 people, and by 1840, had risen to 5,942. Approximately half of the county was situated outside of the subject area.

(2) DeKalb and Steuben Counties: DeKalb County did not acquire any non-Indian settlements until about 1834. The first settlers into Steuben County arrived in 1831 and settled on Jackson Prairie where they primarily relied on subsistence farming. Less than half of Steuben County lay within the subject area.

(3) LaGrange County: The first non-Indian settlement in this county was near Howe, in the vicinity of a Potawatomi village on the Pigeon River. However, this settlement was in that portion of the county outside of the subject area. The Little Elkhart River rose in marshes located in the western portion of the county, part of which was outside the subject area.

(4) Noble County: This county was first settled by non-Indians in 1827. Few settlers in northern Indiana stopped in the county but, rather, continued to the prairies that lay to the north and west. By the time the county was organized in 1836, there were approximately 100 families residing there. The census of 1840 indicated that the population of the county had risen to 2,702. About one-half of the county was timbered and, except for one prairie of approximately 4,000 acres and several small prairies, the balance was in oak openings. The soil was rich and well adapted to growing crops and grain.

(5) Whitley County: Whitley County had its first public land sale around 1831. All lands in the county were offered for sale except those reserved for school purposes, canal land, and that held by the Government as swampland.

The presence of numerous lakes, swamps, and marshes resulted in ague afflicting the settlers. Heavy timber, underbrush, stagnant pools, and streams made excellent breeding grounds for mosquitos.

(6) Huntington County: Huntington County was heavily forested, except for occasional wet prairies. The county began to receive settlers between 1828 and 1830. The Government land sales in the county did not commence until 1830. Excessive land speculation in the county hindered settlement until after the Panic of 1837. Much of the speculation centered around lands adjacent to the route of the Wabash and Erie Canal, which ran through the northern portion of the county. The canal was opened between Fort Wayne and Huntington in 1835.

B. Central Portion of Subject Area.

(1) Wabash County. In 1827, the first non-Indian settlement was established on the north side of the Wabash River. Other settlers migrating into the area sought lands along the banks of the Wabash River. In 1830, the county's population was 2,861. As of 1840, the number of people in the county had risen to 5,656. About 60 percent of the county was situated inside of the subject area.

(2) Miami County: Much of this area lay outside of the subject tract. Settlement in the county began along the banks of the Wabash River, with much of the early settlement occurring inside the subject area. Portions of the county within the subject area contained marshes during the early period of settlement in the 1830's. The location of these marshy areas is not clear from the record. Generally, there was little natural drainage in the southern portion of the county.

(3) Kosciusko County: The main drainage system of the county was the Tippecanoe River and its tributaries. Portions of the county were also drained by the Eel, Kankakee, and St. Joseph rivers. Even with so many rivers providing drainage, the northwestern portion of the county was poorly drained. With the ratification of the treaty of 1832, settlers made a rush for the Turkey Creek Prairies.

(4) Elkhart County: The first permanent settlements in the county were made in 1827 and 1828, though French traders had previously lived in the area. The early settlers in the county resided in areas outside of the subject area, near the mouth of Elkhart River. The great flood of immigration to the area did not occur until the years 1830 and

1831. The prairies were by then highly sought by the settlers. In 1830, the population of the county numbered 935 and by 1840, had risen to 6,660.

(5) St. Joseph County: The earliest settlers in the area were fur traders. As with other Indiana counties, settlers had migrated to the area prior to the opening of the public land sales. Most of these early settlers resided in the vicinity of South Bend, in the eastern part of the county lying within the subject area. As the Indians in the area were friendly, settlement of the county was rapid. Land offices opened in 1829, and land sales followed immediately. Large numbers of immigrants arrived around 1830. In that year the population of the county numbered 287, and by 1840, had risen to 6,425.

A part of the county was in the Kankakee River marshes which did not experience agricultural development until decades later. The Kankakee River rose in marshy lands west of South Bend, within the subject tract. Marshes were located for some distance on both sides of the Kankakee River. Approximately one-half of the county was oak opening, one-third heavy timber, and the remainder either wet or dry prairie. In the pre-settlement period, most of the uplands area of the county was covered with a heavy growth of deciduous forest. The soil in the county was otherwise regarded as excellent.

(6) Cass County: The first settlement in the county was made near present-day Logansport. Few settlers arrived in Cass County during the mid-1820's. By 1828, the county had a population of slightly less than 300. By 1830, the population had risen to 1,154 and had grown

to 5,480 by 1840. The county, when first organized, contained a much larger area than it now presently covers.

The Michigan Road, passing through Logansport, provided an excellent means of transportation--both for immigration and commerce in and out of the county. The Wabash and Erie Canal, which further increased commerce in the area, was opened between Fort Wayne and Logansport in 1838.

The southern part of the county was composed of heavily timbered bottomlands. The central portion of the county was mostly bottomlands or high bluff land. The northern portion of the county was principally prairie land. The prairie land was best adapted to the growing of wheat and grain, and the bottomland for the growing of corn. The timberlands were capable of growing any kind of grain or grass.

The Wabash and the Eel rivers ran through the county. Lands bordering the two rivers were undulating or hilly. The remainder of the county was primarily level. Some marshes existed in the northern part of the county. The southern portion was outside of the subject tract.

C. Western Portion of Subject Area.

(1) LaPorte County. When the first settlers arrived in 1829, a large part of the county was forested. When the county was organized in 1832, over 100 families were situated there. Fur trading and lumbering were important sources of income for the early settlers to LaPorte County. By 1840, the population had grown to 8,184.

The county contained part timberland and part prairie, with the prairies interspersed with groves of trees and small lakes. Generally, the northern portion of the county was better timbered. The southern portion of the county contained oak openings, the Kankakee marshes, and a few dry prairies.

(2) Porter County: The first permanent settlers in the county were French fur traders establishing themselves in 1822. Permanent non-Indian inhabitants arrived in 1833. The public lands went on sale in 1835. In the early history of Porter County, Michigan City (situated on Lake Michigan) was an important market for produce and supplies.

The surface of the county was gently undulating. About one-fourth of it was timbered, one-third openings or barrens, and the remainder prairie and bottomland. Except near Lake Michigan and the Kankakee marshes, the general character of the soil was good and best adapted to wheat, corn, oats, and grazing.

(3) Lake County: In 1834, Government surveyors arrived in the county, followed by squatters. The first settlers established in the area in 1833. The Detroit to Chicago (Fort Dearborn) road passed through the county as early as 1833.

The region was rich in waterfowl, and was considered a very valuable fur-bearing area. The greatest trapping grounds were along the Grand and the Little Calumet rivers, near the present site of Gary. Along

the course of the Grand and the Little Calumet rivers were located occasional marshes, and during the spring and winter, these rivers overflowed their banks rendering a very marshy appearance to the region.

The prairie portion of Lake County was in its south-central sections. The soil here was more productive than that of the northern part containing sand hills overgrown with trees. As early as 1834, Cedar Lake, in the central part of the county, was highly regarded by persons seeking land. The area between the north and central parts of the county was low, flat, and swampy. The southern portion of the county was in the Kankakee Valley or Kankakee marshes. Approximately one-half of the county was low, wet country.

(4) Starke County: Starke County, which lay largely within the Kankakee Valley (heretofore characterized as generally marshy or swampy), was the last county in the subject area to be organized (1850). The county was very level. The entire county rested on a sand base in which large quantities of groundwater collected a few feet below the surface. Nearly 75 percent of the county contained poorly drained soils.

(5) Pulaski County: At the time of the treaty of 1832, the county was populated by the Potawatomi who did not leave the area entirely until 1842. After the Treaty of 1832, white trappers, hunters, and squatters began to appear in the county. By 1840 the non-Indian population had increased to 561, sufficient to permit the organization of the county.

The surface of the county, mostly level, was composed of one-half prairie lands and the other half of oak openings.

(6) Carroll County: Only the northwestern section of Carroll County was within the bounds of the subject area. The sale of Government land at Crawfordsville in 1824 opened the county to the first permanent settlers. Early fear of the Indians, and rumors of unhealthy living conditions, slowed settlement during the first few years. Following the Treaty of 1826, the Indians moved westward and the county was organized in 1828. Early settlements were along the Wabash River. Most of these were on the southern side of the Wabash and outside of the subject area, although adjacent thereto. Before drainage systems were installed, drainage was poor and marshes and swamps were common.

(7) White County: Portions of White County were outside of the subject area. The first permanent settlers in the county arrived in 1829. The record indicates that settlers came to Burnettsville (within the area) in 1831. The county was officially organized in 1834. During the years 1834 and 1835, many more settlers entered the county. These settlers generally selected land along the Tippecanoe River because of its freedom from standing water, which was a fever-causing condition, and because of the presence of timber. In 1830, the population of the county numbered 30, and by 1840, had risen to 1,832.

(8) Benton County: The first settlers came to Benton County in 1831. From 1832 to 1835 several families settled in the same

localities--Denton's Grove and along Big Pine Creek. Most of Big Pine Creek was located outside of the subject area, though a small portion of it ran through Tract H. The population of the county increased very slowly and most of the people settled in areas outside of the subject area.

Benton County was situated on the eastern part of what was commonly known as the Great Prairie. Many portions of the county were wet at the time of early settlement. The southwestern portion of the county, in particular, remained wet for many years after the valuation date. The northern portion of the county was watered by tributaries of the Iroquois River. The surface of the county was largely composed of prairies, with a few groves of trees bordering the various streams.

(9) Jasper County: Jasper County was not open to settlers until after the Treaty of 1832. The first settler did arrive, however, as early as 1832, having been attracted by the abundant fur-bearing game and the prospect of trading with the Indians. Originally, Jasper County included what is now Newton County. Jasper County contained the common county seat for the two areas, was more thickly settled, and had less marsh land and wet prairie than Newton County.

The southwestern half of the county was gently rolling prairie. The northern and northeastern portions of the county contained oak openings and prairies interspersed with sandy knolls and ridges. The county was drained by the Kankakee River in the north and the Iroquois

River in the south. The divide in the northern part of the county, which separated the two rivers, was interspersed with swampy valleys. There was a narrow strip of land along the southern margin of the Kankakee that contained good soil and was well timbered and highly productive. Groves of timber were occasionally found along the water-courses. Generally, in the early history of the county, the river banks were impassable marshes. Substantial areas of the county were composed of swamplands.

(10) Newton County: As noted above, Newton County was at one time a part of Jasper County. In addition, Jasper County was more convenient to immigration than Newton County. Since immigration naturally gathered near the county seat, there was little settlement in the area that became Newton County.

The early settlers regarded the area as being unattractive prairie and swampland. Swamplands did constitute a large part of the county. As in most areas containing large open prairies, prairie fires in the county were always feared by the early settlers.

In general, the county was a low, marshy county. Some timber was found on the fringes of the southern bank of the Kankakee River, which formed the northern boundary of the county. The Iroquois River, which flows through the southern portion of the county, also contained timber along its banks. South of the Iroquois River lay a portion of the Great Prairie of Illinois. Between the Iroquois and the Kankakee

rivers there was generally low prairie land, mostly wet, and a scattering of groves of trees. The northern third of the county contained large amounts of marshes and swamplands. The soil in the county, particularly the southern part, was quite rich but drainage was necessary.

37. County Histories and Reports - Michigan.

Berrien County: Portions of Berrien County east of the St. Joseph River were situated outside of the subject area. A small portion, lying west of the river in southeastern Berrien County and making up most of the Bertrand Township, was also outside the area.

The first entries of land in Berrien County were made in 1829 though settlers had squatted as early as 1823. The town of St. Joseph was located at the mouth of the St. Joseph River. Its harbor was known to explorers of the region as early as 1679. Trading posts at different periods were situated in the vicinity of the town. Several small towns, such as Galien, Buchanan, and Three Oaks were established between 1833 and 1836. By 1840, the population of Berrien County totaled 5,111.

The surface of Berrien County was greatly diversified. It embraced a large proportion of rolling country, a considerable area that was level, wet, and swampy, and some that was broken into ravines and abrupt elevations of land. There was little prairie land in the county. Marshes existed along the shores of the St. Joseph River for some distance above its mouth. Sandy bluffs or hills extended along a large portion of the Lake Michigan shoreland lying in the county. Much of the soil was equal to the best in Michigan for wheat raising.

38. Contemporary Views of the Land. In 1809, William Johnston kept a log of his journey from Fort Wayne through South Bend to Chicago. He stated that "about one-half of the unceded lands of the Indians lying north of the present boundary in Illinois and Indiana West of the Wabash and Miami of the lake and East of Illinois and Chicago River, and including Michigan Territory, is rich and level . . ." The other half he reported to be divided between swamps, ponds or lakes, and prairies. He found the prairies, by far, the most extensive and would support immense herds of cattle.

Observation of several American military officers who became acquainted with the subject area during expeditions against the Indians were included in Samuel R. Brown's The Western Gazetteer; or Emigrant's Dictionary, published in 1817. One officer's report, written around 1814, noted that the "country [between Fort Wayne and the St. Joseph River] in every direction is beautiful, presenting a fine prospect. There are no hills to be seen; a champaign country, the greater part prairie, affording inexhaustible grazing, and presenting the most delightful natural meadows . . .; there are also vast forests of value timber, and the soil is exceedingly rich." Pet. Ex. MH-49, p. 143.

Another officer, who explored the country between the Wabash River and Lake Michigan, described this area as a country "admirably calculated for the convenience of inland navigation. The sources of the rivers are invariably in swamps or lakes, and the country around them perfectly level . . . The country around the head branches of Eel River, Panther's

Creek, and St. Joseph's [of the Maumee], is generally low and swampy; and too wet for cultivation. But even in that quarter there are many beautiful situations . . . The wood lands line the water courses; but branch out frequently into the prairies . . . The immense prairies on the south bank of the St. Joseph's [of Lake Michigan], afforded us many rich, beautiful, and picturesque views." Id. at 143-144.

David Thomas, an American writer on agriculture, traveled through Indiana in 1816. He noted the effect of the prairie in developing a farm and home. He disclosed in his notes that because of the wood necessary for fuel and fencing, farmers were not yet ready to forego such a convenience by settling on the prairie. In addition he found that the first growing season on the prairie exhibited little of the productivity that was supposed to occur during the succeeding years.

Brown's Western Gazetteer, supra, also furnished information on the entire region lying between the Allegheny and Rocky Mountains. In discussing the Upper Wabash region of Indiana, Brown noted that "the best proof of the excellence of the land on the Upper Wabash, is the circumstance of its being the scene of a numerous Indian population. These sagacious children of nature are good judges of land. Indeed, they are rarely, if ever, found on a barren soil." Id. at 164-165.

Regarding the price of improved lands in Indiana, Brown found that "farms containing a log house and fifteen or twenty acres, sell as high as eight or ten dollars; in some instances the necessities or rambling dispositions of the inhabitants induce them to dispose of their plantations at a trifling advance upon the original price." Id. at 168.

Thomas Dean traveled to Indiana in 1817 and maintained a journal of his observations. He noted that at the head of the Wabash River there was a portage of about 9 miles which would connect it to the Maumee and then to Lake Erie. He further noted that "in the spring of the year during high water, boats have frequently passed and repassed by water, from the Wabash to the Miami of the lake [Maumee], without unloading." Def. Ex. F4.4, p. 344.

Thomas Scattergood Teas traveled through Indiana in 1821, crossing several prairies. At one such prairie he wrote that "like most other prairies, the water on it is bad, and fevers and ague must be the companions of those who settle on it." Def. Ex. F4.2, p. 217.

William Keating served as geologist on the expedition sent to explore the headwaters of the Mississippi River. Keating's narrative on the expedition of 1823 disclosed that "the country to the west of Fort Wayne is much more promising than that which lies east of it. Though wet, and in some places swampy, it is much less so than that through which we had previously travelled. The soil is thin, but of good quality; prairies are occasionally met with; the forests consist of white oak . . ." Pet. Ex. W-7, p. 12.

John Scott's 1826 Indiana Gazetteer or Topographical Dictionary described portions of Indiana. Regarding the interior and northern portion of the state, Scott noted that the land was generally level, though in some places marshy. Scott further noted that the "Tippecanoe, coming from the north, will no doubt afford extensive settlements." Pet. Ex. W-8, p. 2.

In 1828, the various Indiana land offices were requested by Congress to report on the quantity and quality of unsold public lands (see finding 32, supra). The Fort Wayne land office reported that "the country generally, composing the Fort Wayne district, presents a level surface, a deep rich soil, and an abundant growth of timber; and, in a state of nature, a large portion of it appears, at first view, too wet for cultivation, but this objection is generally found to disappear when the lands are cleared of the timber, and brought into a state of culture." Def. Ex. F5.1, p. 10. The Fort Wayne office, in addition to reporting on the unsold land within its jurisdiction, also discussed the remaining lands in northern Indiana and Michigan that had not yet been placed on the market. The land office stated that "crowds of emigrants are already pressing onto the country, particularly the northern part of Indiana and the Michigan Territory . . . Great part of this tract of country is said to be very fine, especially that which is watered by the St. Joseph's and its branches: at all events, we have conclusive evidence that the lands would sell and settle with wonderful rapidity, if brought into the market." Id. at p. 11.

In 1829 Zophar Case journeyed along the Wabash River. He indicated that a wet prairie lay immediately west of Fort Wayne. The bottomlands of the Wabash River area were considered by Case to be fine with oak, beech, walnut, hickory, and ash timber.

Reland Tinkham wrote to his brother of his 1831 trip from Detroit to Chicago. He commented on the prairie of southwestern Michigan and described it as being "level and very rich." Pet. Ex. W-5, p. 1. When

he reached Niles, Michigan, he disclosed that this region was "celebrated among all imigrants [sic] for the richness of its soil." Tinkham also noted immense forests along the St. Joseph River as he traveled downstream towards its end at Lake Michigan.

Hugh McCulloch, Secretary of the Treasury, passed through portions of the subject area in 1833. His travels included the area between Logansport and South Bend. He noted that the land north of the Wabash was full of oak openings. He also reported that there were but two cabins encountered on his way to South Bend. West of South Bend, he encountered his first prairie, a wet and swampy-looking one. He further noted that the prairie, long since having been drained, "had proved to be more fertile than its higher and much more beautiful neighbor." Pet. Ex. W-7, p. 148.

McCulloch also journeyed through LaPorte and the Door Prairie, both of which he found to be beautiful country, but scantily populated. Leaving LaPorte, he rode eastward over what he described as a rich but unsettled country, to Goshen, the county seat of Elkhart County.

Solon Robinson, a land promotor who settled in the extreme northwestern corner of Indiana in 1834, wrote prolifically of the surrounding area. He reported that the Door (LaPorte) Prairie was quite fertile. Regarding the northern end of Indiana, Robinson stated that this area

will most certainly become the garden spot of the state. A very erroneous impression has been impressed upon the public in regard to the country purchased of the Potawatomis in 1832, lying within this state. It has ever been represented upon the map of the state as one immense swamp -- But instead of that being the fact, it is directly the contrary. Ten thousand acres of fine high dry Prairie, to one of swamp, is more correct. Nearly all the streams are bordered with marsh, on

which grows the most luxuriant crop of grass, which affords the greatest abundance of good hay to the new settlers. So that instead of being a detriment to the settlement of the country, it is the greatest advantage -- and as the water of these marshes is generally pure spring water and no decaying timber on them they are in no way unhealthy.
(Pet. Ex. MH-51, p. 54)

Robinson further discussed the various obstacles many potential settlers believed would deter them from coming to northwestern Indiana.

He noted that

some persons who would like to emigrate to the Potawataomie country, are deterred from it by fear of the Indians. Such if once here would soon dismiss their fears. They are by no means unpleasant neighbors -- besides it is probable that they will all leave the country in the course of next summer, for their new home west of the Mississippi. Others are deterred from emigrating in consequence of the land not yet being in market. No difficulty is to be apprehended from making improvements before purchasing. Congress provided for all of the settlers of 1833, at the last session, by a removal of the pre-emption law. No doubt the same favor will be extended to those who have settled since that time, at the present session of congress [sic]. If not, the claims of settlers are most singularly respected by common custom. For instance a person comes here and looks out a piece of land that suits him, he will perhaps lay the foundation of a cabin is [sic] "claimed" or located, and no person will interfere or presume to settle upon it without first purchasing the first claimant's right. There is a vast body of most beautiful country yet unclaimed in this purchase. Thousands of "first rate chances" may yet be had on this Prairie and in the groves adjoining.
(Id. at 55,56)

Regarding the soil of northwestern Indiana, Robinson indicated that it was quite rich. Almost every kind of vegetable was reported to flourish well. A year later, in 1835, Robinson wrote that "the country south of the Kankakee does not compare in fertility, or facility of market with that north . . ." Pet. Ex. W-2, p. 61. In addition Robinson reported

that "the whole of the Pattawattamie country, although long considered by many in the south part of the state as hardly worth purchasing, will eventually support a greater population, and add more wealth to Indiana than any other tract of the same size in any part of the State." Id. at p. 61.

39. Land Purchasers and Their Use of the Land. Two distinct types of buyers were visible at the time of the valuation periods, the settler and the speculator. The settler purchased his land and used it for subsistence farming along with some cattle raising. Any surplus of cattle raised or crops and grain grown might be sold if the particular settler was capable of transporting his goods to market. Also, he might sell his surplus to other settlers passing through the area who required further provisions. On the whole, the settler generally endeavored simply to supply his family's needs.

The speculator purchased his lands primarily for the purpose of reselling it to settlers at an increased value. Though many settlers also sold portions of their lands to other settlers, there was a distinction between these settlers and the speculators. The speculator generally never cultivated his lands. He simply held title to the land until its market value had risen to a point worthy of sale to awaiting buyers. Whereas the settler purchased between 80 and 160 acres, the speculator's purchase totaled several times that amount. Because such speculative activity did not generally comprehend productive use of the land, actual settlement in the area was hindered for several years.

40. Highest and Best Use. The highest and best use of most of the land was for subsistence farming in relatively small, farm-sized tracts. Various crops and grain could be grown, along with the raising of small numbers of cattle. Surpluses could be sold if the purchaser were capable of transporting his goods to market. Within several years the farmer might expect to produce cash crops and even sell a portion of his land holdings.

There was no known mineral potential of the subject tracts on the valuation dates. Iron ore and coal were present but were not discovered until later. Fur-bearing animals were plentiful and provided some income, but fur trading would not have been a major use of the land by settlers.

41. Plaintiffs' Appraisers, Docket 29-L. The appraisal witnesses for the Docket 29-L plaintiffs were Galen D. Todd and George Banzhaf of George Banzhaf and Company. Their report was an evaluation of land covered by seven Royce Areas, all but one of which are involved in this case. The bulk of the report consisted of a severely abbreviated historical review of settlement and transportation in the region. A discussion of the Wabash-Erie Canal and Government land policies were also included in the report.

According to the appraisers, the \$1.25 per acre public land price in 1820 lowered from the previous \$2.00 per acre, was a purely political adjustment, having no relation to the economic value of the land. The appraisal report emphasized the prevalence of squatters in the area and the ultimate need of preemption acts.

The Todd-Banzhaf appraisal was based on the examination and analysis of 93 sales, taken from 12 Indiana counties between 1827 and 1859. Of these sales only 21 occurred prior to 1833. The 93 sales involved a total of 21,882.99 acres which sold for an aggregate of \$51,413.43, or about \$2.35 per acre. The approach used in valuing the subject areas consisted of a simple average and standard deviation for the 93 sales, discounted or appreciated to the years of valuation at the rate of 3 percent per year. For the valuation dates of 1827, 1829, 1832, and 1833, the respective per acre values were \$2.16, \$2.30, \$2.51, and \$2.58. These values were then directly applied to the individual subject tracts. There was no discussion as to the comparability, drainage requirements, size, or accessibility of the sales data with that of the tracts involved.

42. Plaintiffs' Appraiser, Dockets 128 and 15-N.

A. General Economic Background.

The appraisal witness for the plaintiffs in Dockets 128 and 15-N was Dr. Roger K. Chisholm, Associate Professor of Economics at Memphis State University. Dr. Chisholm has previously rendered his services to several other proceedings before the Commission. His appraisal report analyzed a number of factors pertinent to the region in which the subject lands are located. The following is a summary of Professor Chisholm's report.

In addition to a well-documented historical description of the old Northwest Territory, with its emphasis on events leading to the white settlement of the area, Dr. Chisholm centered his background report on

various economic and demographic variables having a more direct bearing on the land market in areas west of the Appalachians. These variables, which Dr. Chisholm found to be favorable to settlement and land sales generally, included population, income, banking, currency, and related economic factors.

With regard to population, Dr. Chisholm indicated that Indiana and Michigan were being populated at a greater rate than the national growth rate. Population in general was on the increase throughout the study period, indicating the growth of demand for land. From population statistics and patterns, Dr. Chisholm felt that the rapidly increasing population created an immediate demand for land and that this demand seemed to increase land prices.

Dr. Chisholm discussed income factors during the crucial periods affecting the valuation. Specific data involving the subject area was not included but rather a general analysis was made of the gross national product, the farm gross product, and national income. The depressing effects the panics of 1819 and 1837 had on such categories were readily apparent. Generally, the period from 1820 to 1840 showed marked increases and great productivity within the respective categories.

With regard to banking and currency, Dr. Chisholm's report dealt with these factors in the nation, in general, including the influence of the national banks. The Second Bank of the United States was found by him to have provided a sound currency for the entire country. No state banks, according to Chisholm, were established within the subject area, though a

number of banks were located within a reasonable distance. Shortly after the last valuation date, the total bank circulation in the Northwest was doubled, while in the country as a whole the increase was 35 percent. Chisholm concluded that a period of monetary availability, coupled with confidence in the money supply, existed at this time and, as a result, many settlers were able to enter the land market. This influx of persons resulted in an increase in the value of the land.

Other economic variables studied by Dr. Chisholm such as Government expenditures and the labor force, were also found to produce favorable conditions for the economy and a consequent favorability for land acquisition.

Dr. Chisholm included in his report various descriptions of the lands in the subject area from many diversified sources and periods, including county soil surveys. Predominantly, the historical descriptions were based on eye-witness accounts. The conclusions derived from these reports was that the land was ideal for settlement though portions were wet and more difficult to cultivate. The county soil surveys support our findings regarding drainage, soil quality, and location of timbered areas and types of ground cover.

Dr. Chisholm also focused specific emphasis on the development of the Wabash and Erie Canal because of the important role the canal was to play in the progress and settlement of much of Indiana along the Wabash River. Dr. Chisholm indicated that the canal had a direct effect in increasing the value of nearby lands. Sales of lands bordering the canal, sold by the Canal Commissioners, were analyzed by Dr. Chisholm.

One hundred sixty land transactions made between 1830 and 1835 were examined. Most of the sales were of lands lying in Allen County.

Dr. Chisholm found that the value of the median acre sold by the Canal Commissioners was \$1.50. The average consideration per acre of the 160 land transactions was \$1.99.

B. Dr. Chisholm's Market Data.

Dr. Chisholm's valuation was based on an analysis of 1,960 land sales by private parties in Indiana, Michigan, and Illinois. The sales took place in the Indiana counties of Vermillion, Noble, DeKalb, Whitley, Huntington, Montgomery, Fountain, Wabash, Grant, Jay, Elkhart, La Grange, Clark and Hamilton. The Illinois sales were from the counties of St. Clair, Johnson, Randolph, Madison, Monroe, Gallatin, and Vermillion. Finally, the Michigan county sales were from Berrien and Allegan counties.

The data covered a period from 1800 to 1836. Dr. Chisholm noted that the earlier years provided fewer available transactions while there were a relatively large number of transactions covering the years of the valuation dates.

Dr. Chisholm indicated that the average size tract involved in the sales data was 126.4 acres and the median sized tract was 80 acres. There were 534 sales of 80 acre tracts (27.2 percent of total), 207 sales of 160 acre tracts (10.6 percent), and 50 sales of 400 acres (2.6 percent).

The consideration paid per acre for these sales ranged from \$.06 to \$10,000. According to Dr. Chisholm, the most frequently observed price was \$2.50 per acre, affecting 181 transactions, or 9.2 percent of the

total. The simple average of the consideration per acre of all the sales was \$63.19. Dr. Chisholm noted that this figure was biased upward by the presence of a few very highly priced tracts. Therefore, Dr. Chisholm regarded the median value, \$2.50 per acre, as being more representative of the general per acre value.

C. Cost of Improvements and Drainage.

Dr. Chisholm presented the observations of knowledgeable individuals familiar with the earliest improvements undertaken by the settler such as building of a cabin and the clearing of the land.

Chisholm first indicated the shape the cabin took, how it was built, and its notable characteristics. Of particular note was a report that money was practically unknown on the frontier and that hired labor was seldom depended upon for assistance in building a home and clearing a farm. Hence, in order to build the cabin the neighboring settlers would help each other.

The clearing of the land was also reported to be a frontier community activity. The men would cut the trees while the women would pile and burn the brush. Because of the amount of labor required, Chisholm noted that many farms were only partially cleared at first. More horse labor was required on the prairie since the first plowing was difficult--the grass having deep and tough roots. One report estimated that it cost \$5 an acre to achieve the first plowing and \$3 or \$4 for the second plowing. The farther from woodland a farm was located, the more difficult and expensive it was for the farmer to fence his land.

Some reports cited in Dr. Chisholm's appraisal favored prairie land since, as one source indicated, the soil was generally richer and only plows were needed to clear the land. The same report noted that 60 acres of land cleared out of a quarter section (160 acres) added \$10 per acre to the value of the entire tract.

An 1843 account presented the relative costs in making improvements on a typical 320 acre farm, of which half was to be brought immediately into cultivation. The land purchased was presumed to be prairie. The estimated cost of the farm, consisting of the initial land purchase (at \$1.25 an acre), breaking up of 160 acres (at \$2 per acre), fencing four fields, and constructing cabin, stables, etc., was placed at \$1,145. The author noted that in many instances the first crop of wheat paid for the initial purchase, fencing, and breaking of the land, and the cultivating, harvesting, and the transportation of the crop to market.

Dr. Chisholm also offered an account by Solon Robinson in 1835, dealing with prairie land and the cost of preparing it for farming. According to Robinson, the cost of breaking up and fencing the prairie, where it lies adjacent to timber, was placed at \$3 an acre. The account also noted that the first crop paid for the breaking, fencing, sowing, and harvesting and, in addition, left a surplus to pay for the land.

Referring back to the resale data, Dr. Chisholm indicated that some of the lands involved may have been minimally improved with only a cabin and a small amount of cleared land. The prairie land was estimated to cost \$2 to \$3 an acre to break if others were hired to do the work.

However, Chisholm noted that the farmer often did his own work, and, if not, the first crop paid for this cost. Consequently, Dr. Chisholm disregarded breaking cost as a discount factor. He then pointed out that the resale data involved areas more heavily timbered and thus the value of improvements must be calculated on the basis of timbered lands.

He asserted that the average total value for improvements would be \$100, \$50 of which was for the cabin and \$50 for 10 acres of cleared timberland. The clearing in timberland, according to Chisholm, was small, thus accounting for his estimate of 10 acres. He discerned from his data that the average tract sold contained 80 acres. Hence, the improvements were valued at \$1.25 an acre. Dr. Chisholm assumed that only 20 percent of the sales involved improved lands and therefore placed the value of improvements for the whole area at an average of \$.25 an acre.

In considering drainage, Dr. Chisholm indicated that drainage was required in several of the subject tracts. He also noted that areas where drainage was not a serious problem would benefit from improved drainage. Open ditch drainage methods were in use in Indiana as early as 1799, and were described as being from two to six feet deep. The cost of open ditches was reported to be from \$.10 to \$.20 per cubic yard of dirt moved.

In 1832 Tippecanoe and Warren counties, according to Dr. Chisholm, were authorized to undertake drainage activities. Carroll and White counties received similar legislation in 1835, Steuben County in 1838, Allen County in 1846, and Cass, Pulaski, and Fulton counties in 1848.

Based on the soil surveys available to him, Dr. Chisholm estimated the percentages of marshy soils of the various counties involved in the valuation. The estimates were as follows: Carroll County - 18.9 percent, Noble County - 21 percent, Miami County - 10.6 percent, Kosciusko County - 21.7 percent, Elkhart County - 11.1 percent, and Cass County - 9.9 percent.

The drainage costs were determined by Dr. Chisholm to be approximately \$.47 an acre, with 10 to 20 percent of the area in each of these counties requiring drainage.

D. Market Data Conclusion - Dr. Chisholm

Dr. Chisholm suggested that an analysis of economic conditions in the United States pointed to conditions favorable for the sale of lands. Land in northern Indiana and adjacent areas was directly in the path of settlement and the soils in this area were capable of high productivity if properly managed. According to Dr. Chisholm, data from land sales by the Wabash and Erie Canal Commissioners revealed a yearly rise of close to \$.07 per acre. The median value of the resale data came to \$2.50 an acre. The average per acre value of improvements was calculated by Chisholm to be \$.25 per acre and drainage at an average cost of \$.47 per acre for those acres actually drained.

Excluding the Wea's interest, the valuation dates occurred between 1827 and 1833. Dr. Chisholm applied the \$2.50 median land value per acre to the middle year, 1830. After allowing for improvements of \$.25 per acre, the per acre value of the land within the subject tract was lowered to \$2.25. From this figure, Chisholm either added to, for

later years, or subtracted from, for earlier years at a rate of \$.07 per acre, which represented the yearly rise in value noted above. Thus, in 1827 the per acre land value was \$2.04; in 1828 it was \$2.11, and it increased by \$.07 for each additional year until 1833 was reached with a per acre value of \$2.46.

E. Individual Tract Valuation - Dr. Chisholm.

Taking separately the valuation date of each parcel or tract, Dr. Chisholm determined the per acre price for that tract in the year the land was valued. The following were his determinations.

Tract Y-1 (1827): Chisholm attributed an increase of \$.23 in per acre value for this tract due to its proximity to the Wabash River and the Wabash and Erie Canal route. The necessity for drainage resulted in 4.8 cents per acre being deducted from the tract's value. The final value of Y-1 was then set at \$2.22 per acre.

Tract *1 (1827): Due to its proximity to Lake Michigan, the St. Joseph River, and several important roads or trails, Chisholm found that the favorable transportation facilities increased the per acre value of the land by \$.18. Drainage was necessary towards the eastern edge of the tract which amounted to a total decrease in value of 2.6 cents per acre for the entire tract. These factors resulted in net per acre value of the tract of \$2.19.

Tracts Y-2, Y-3, Y-4 (1827): According to Dr. Chisholm these tracts differed only slightly in their drainage needs. Road and river access to all three tracts were about equal. Approximately 15 percent of Tract

Y-2 required drainage. The per acre value for this tract was placed at \$1.97. Fourteen percent of Tract Y-3, Chisholm reported, needed drainage. The per acre value of the entire tract was also placed at \$1.97. Tract Y-4 required 15.8 percent of its surface drained. Likewise, the per acre value of this tract equaled \$1.97.

Tract *2 (1829): Dr. Chisholm stressed that the tract was well located on the shore of Lake Michigan. The tract was crossed by the Detroit to Chicago Road. The eastern boundary was the St. Joseph River. Chisholm noted that there were early settlements in nearby Benton Harbor and Niles. These factors, according to Chisholm combined to add 10 percent to the per acre value of the tract which resulted in a per acre value of \$2.39.

Tract *3 (1829): Chisholm indicated that this tract was located adjacent to areas in Ohio and Michigan where settlement began early. He further asserted that several rivers began in the area and that the tract was crossed by the trail from Fort Wayne to Lake Michigan. Twenty-one percent of the tract required drainage. The per acre value of the tract was placed at \$2.08.

Tract Y-4 (1829): This tract was previously valued by Dr. Chisholm for an 1827 valuation date. However, he concluded that the drainage requirement in 1829 translated to a \$.07 per acre deduction and concluded that the per acre value of the tract was \$2.11.

Tract AB (1832): Chisholm determined that this tract required drainage over 20.5 percent of its surface, and found the per acre value at \$2.29.

Tract H (1832): Almost no artificial drainage, according to Chisholm was required. The per acre value was set at \$2.39.

Tract *4 (1832): Dr. Chisholm observed that the northern edge of the tract was along Lake Michigan where both water and land transportation were favorable. However, the more southern parts of the tract were more distant from water transportation. The net effect on the value of the tract was increased by 1 percent. Drainage requirements amounted to 22.1 percent of the area. The tract was valued at \$2.31 per acre.

Tract Y-2 (1832): This area was previously valued by Dr. Chisholm for an 1827 valuation date. By 1832, the per acre value was set by Chisholm at \$2.32.

Tract Y-3 (1833): This area was previously valued by Dr. Chisholm for an 1827 valuation date. By 1833 the per acre value had risen to \$2.39, according to Dr. Chisholm.

Tract *5 (1833): The Michigan Road formed the western border of this tract. The drainage of Kosciusko County was taken as typical. Consequently, 21.7 percent of the land required drainage. The resulting per acre value came to \$2.36.

Total, All Tracts, and Wea Interest: The final land values based on the tribe's proportionate share and respective valuation date was then tabulated by Dr. Chisholm. As to the Wea interest, valued as of 1818, Chisholm stated that very high prices existed at that time. He valued the 1818 Wea interest at \$2.10 per acre. Chisholm's final determinations resulted in the total value for the various tracts being placed at \$11,991,761.12, summarized as follows:

Year	Sub-Tract	Acres	Land Value	Total Value
1827	Y-1	752,000	\$2.22	\$1,669,440.00
	*1	234,000	2.19	512,460.00
	Miami Y-4	60,500	1.97	119,185.00
	Miami Y-2	211,096.5	1.97	415,860.10
	Miami Y-3	287,933	1.97	567,228.01
1829	*2	153,558	\$2.39	\$ 367,003.62
	*3	853,000	2.08	1,774,240.00
	Potawatomi Y-4	60,500	2.11	127,655.00
1832	Potawatomi AB	90,738	\$2.29	\$ 207,790.02
	Potawatomi 180-H	17,218	2.39	41,152.02
	*4	1,821,376	2.31	4,207,378.56
	Potawatomi Y-2	211,096.5	2.32	489,743.88
1833	*5	260,134	\$2.36	\$ 613,916.24
	Potawatomi Y-3	287,933	2.39	688,159.87
1818	Wea - Tract AB	90,738	\$2.10	\$ 190,549.80
Total Acres		5,391,821	Total Value:	<u>\$11,991,761.12</u>

43. Defendant's Appraiser - General Background Study. The defendant's appraisal report was divided into two separate parts. Volume I consisted of an historical and economic background compiled by Mr. Everett W. Fenton. Volume II, compiled by Mr. Harry R. Fenton, contained the valuation study of the subject tracts. Mr. Harry R. Fenton has been previously employed by the defendant in other proceedings before the Commission. A summary of Volume I follows.

According to Mr. Everett W. Fenton, the late eighteenth century revealed a wave of land speculation in the Ohio area. The results of this speculation were reported to be unsuccessful for many of the large land companies. There was simply too little demand at that time. Lands selling to speculators in New York State were compared to the subject tracts. These land speculators, according to Fenton, acquired land for as little as \$.05 per acre and never for more than \$1.00 per acre.

In the late 1790's and early 1800's, Kentucky was a rapidly growing state, and it was this state and other southern ones that produced the early influx of settlers into the Northwest. Mr. Fenton noted that settlements in the Indiana Territory were heavily concentrated in the southern portions of the region, largely due to the proximity of the region to these settlers. Government land was selling at that time for \$2.00 an acre.

The end of the War of 1812 was interpreted by Fenton as signifying British abandonment of the Indians, and the beginning of the main surge of settlers into the area. With new settlement, and increased settlement likely, land purchases from the Indians was hastened. By 1833 the subject area was totally under American ownership.

Mr. Fenton's land policy report traced the various reforms and modifications from the 1800 land act forward. The resulting increase of land sales, noted Fenton, drove more and more new settlers toward the interior of regions away from the Ohio Valley where settlers had earlier established themselves. Fenton also cited an 1828 report by the Committee

on Public Lands revealing that in Indiana and Illinois only 24 percent and 6.7 percent, respectively, of the available Government land had been sold.

As to various methods of travel and transport, Mr. Fenton cited one author to indicate that the advent of the steamboat did not immediately replace other means of water transportation such as keelboats, flatboats, and barges, which remained important means of travel through the 1830's. The internal improvement programs associated with the improvement of transportation were extremely popular in the Northwest from the mid-1820's to the Panic of 1837, which swiftly halted many projects. Financial chaos was suffered by the states of the Northwest as a result of these expensive public projects but this condition did not affect the areas until several years after the last valuation date.

The great migration into the Northwest which occurred after the War of 1812 was discussed by Fenton along with the later waves of settlement. As noted above, migration from the South accounted for the first large influx of settlers. Later migrations continued to include southerners but in diminished proportions.

Regarding settlement of the prairies, Fenton quoted an author who listed some of the difficult aspects of settling the prairies. These were: (1) the mistaken belief of the infertile nature of the prairie; (2) harshness of the winters; (3) prairie fires; (4) difficulty encountered in breaking the land; (5) lack of water; (6) lack of timber; and (7) inaccessibility to navigable waterways. In addition, Fenton indicated

that the areas which were least desirable were the last to have Indian titles ceded.

In discussing economic factors, Mr. Fenton stated that with the demise in 1811 of the National Bank of the United States, the growth of state banks increased rapidly. Between 1814 and 1818 the banking capital doubled in the Northwest, accompanied by the rise of commodity prices. This inflation helped to encourage the purchasing of land since the Government accepted paper money for its land purchase until 1817. After 1817, specie payment was required. Mr. Fenton indicated that the Panic of 1819 caused a depression lasting until 1826 and created great hardship in the Northwest. Money was in short supply and, in citing another source, Fenton indicated that the interest rate in the Northwest was 30 percent to 50 percent per year.

With regard to public lands, Mr. Fenton pointed out that, with all Government land priced the same, settlers sought only the best land. They continued west until they found desirable lands, by-passing average or marginal lands. Reports of various land offices were also included in Fenton's discussion. The Illinois land offices reported that first class lands were generally worth \$1.25 an acre, second class lands \$.50 to \$1.00 an acre, and third class lands from zero to \$.75 an acre. Lands unfit for cultivation were reported to be worth from zero to \$.25 per acre. Fenton placed the average value per acre at from \$.25 for high percentage poor lands to \$1.00 for high percentage good lands. Reports from Indiana land offices were also included, but Fenton did not directly interpret their results.

Mr. Fenton devoted some space to a discussion of the Illinois Military Tract, established by Congress to provide lands for the veterans of the War of 1812. The tract, according to Fenton, was of interest in the appraisal of lands in Michigan and Indiana due to the land being somewhat similar to land in these two states. Land warrants were issued as early as 1817. Settlement followed the same pattern as Indiana--the southern regions being occupied first. Mr. Fenton disclosed that very few veterans desired settling these lands and speculators soon began to buy them up. According to Fenton, their sales averaged about \$.70 per acre.

Finally, Mr. Fenton determined that the highest and best use of the subject area was for agriculture. According to Fenton, clearing the land and putting it into a state of cultivation was the most difficult task the pioneer encountered. Starting a farm in prairie areas was believed to be more difficult than in timbered areas. Another difficulty in cultivating prairie areas was that it took at least a year for the turf to rot. Moreover, there were devastating winds, prairie fires, poor roads, and lack of timber. Various accounts from early settlers and observers of the area were included in the report. One such account by William Faux revealed that the cost of developing, clearing, planting, and harvesting an acre for two years was \$20.75. The value of the acre, however, was \$36.25 after two years, leaving a profit of \$15.50. The necessary expenses of a farmer and his family arriving with a capital of \$2,000 was placed at \$1,240.

44. Defendant's Appraiser - Valuation Study (Vol. II).

A. General Description of the Area.

Mr. Harry R. Fenton, who was responsible for the preparation of Volume II, asserted that as of the valuation dates the area had poor access and was far from any centers of population. He also noted that, in general, during the 1820's and 1830's northern Indiana was considered something of a wasteland and the settlers were passing it by. Mr. Fenton outlined the various methods of travel and routes taken through the area, and described the positive effects brought about by the construction of canals. As to the topography of the subject area, Mr. Fenton concluded that it was very flat. Mr. Fenton described the soil of the area as being excellent where drainage was not immediately required.

The report described the counties within the subject area as well as those used by Mr. Fenton as comparable sales areas, with emphasis on soil, topography, and settlement. The latter group consisted of Clark, Floyd, Delaware, Fountain, Jay, Madison, Montgomery, and Vigo counties.

B. Valuation, General.

Mr. Fenton relied on several counties in Indiana to represent lands, the sales of which would constitute comparable sales of equal quantities of land within the subject area. Fenton defined a "good comparable land sale" as "the sale of a parcel of land which would be equally desirable and acceptable to the typical buyer interested in acquiring the subject property, were it not available for purchase. The substitute property that he would be most likely to buy is the best comparable sale that can be found, be it near or far from the subject land." Def. Ex. F.8.

Mr. Fenton noted that records of the period of the cessions herein did not reveal any sales of large tracts of land comparable in size to the subject lands. Consequently, sales of small parcels of land were used for Fenton's comparison.

According to Mr. Fenton, the first settler of a particular area sought only a subsistence crop. It was the second or third buyer, he said, who desired a cash crop. He further stated that the first settler was oftentimes a squatter rather than a purchaser.

C. Comparable Sales Studies.

Twelve studies of comparable land sales were included in Mr. Fenton's final determination of the value of the subject tracts. These twelve studies were the following:

(1) Land Office Reports: The reports from the land offices were in response to official inquiries as to the value of the unsold land within their custody and the quantity of land still remaining for disposal. The Ohio land offices reported that they had no unsold first class land remaining. Small portions of the unsold lands were valued at \$1.25 per acre, although the bulk of the land was reported as being worth \$1.00 per acre or less.

The Indiana land offices reported first class lands to be still available within most of their districts. One land office, Crawfordsville, in west central Indiana, estimated the value of its unsold acreage at \$1.25 an acre. The Fort Wayne and Vincennes offices did not place a value on their unsold acreage. The Jeffersonville office valued its

unsold lands at \$.44 an acre. The per acre value of unsold lands within the Indianapolis land office was determined to be \$.70.

The Illinois land offices varied in the reports. One Illinois office estimated the value of its unsold acreage at \$1.00 per acre. The other land offices valued their unsold acreage at around \$.50 per acre. All of the Missouri land offices, save for Franklin, placed a per acre value of from \$.63 to \$.15 for their unsold lands. The Franklin land office did not place a value on its lands.

Mr. Fenton concluded from these reports that the average value of the unsold Government land was \$.50 per acre and that 20 percent to 40 percent of the land in some areas was considered worthless. He added that a hypothetical developer would have had to be competitive with the federal prices for his best land and below federal prices for his poor land. Moreover, the developer's marketing period was figured by Fenton to be between 10 and 20 years, with considerable amounts of land unsaleable. Finally, Mr. Fenton believed that a developer buying one of the land tracts could have averaged sales at between \$.50 to \$.75 per acre.

(2) Indiana Sales: A total of 246 sales in 20 counties were studied. The sales from along the south side of the Wabash River were taken from the 1820's to 1834. Earlier dated sales from Clark County in the southern portion of the state were also included. Mr. Fenton believed that the earlier situation in that county was comparable with the early conditions in the counties along the Wabash River.

A graph summarizing the results of the sales for each year revealed that in 1815 land sold for approximately \$1.00 per acre, and in 1816, \$1.18 per acre. Sales during 1817 and 1818 averaged \$1.25 and \$2.26 per acre, respectively. Subsequently, prices continued to remain at \$2.00 an acre through 1823. According to Mr. Fenton, the effects of the depression from 1819 to 1822 did not reach the land market until 1824 and 1825, when the per acre value dropped to \$1.55 and \$1.25, respectively. The prices reportedly rose again in 1826 and stabilized through the remaining years of Mr. Fenton's sample.

In conclusion, Mr. Fenton asserted that the market for land in the counties south of the Wabash River was very sparse from 1815 to 1826. As to the pertinent valuation dates, Mr. Fenton found that sales along the Wabash River had the following approximate per acre values: 1818, \$2.25; 1827, \$1.85; 1829, \$2.10; 1832, \$2.35; and 1822, \$2.35. Additionally, Mr. Fenton presumed that these values for lands included such improvements as were typical and needed by the first settler for survival. Finally, Mr. Fenton opined that those sales prices which were markedly below or above the main average were atypical and poor evidence of the general market value.

(3) Michigan Sales: Mr. Fenton noted that there were very few sales in southern Michigan prior to 1833. Thirty-three sales covering the counties of Berrien, Branch, Cass, and St. Joseph were used in his valuation. The earliest reported sales were in 1830. From the data used,

Mr. Fenton concluded that from 1830 to 1833 the per acre value of southern Michigan land sales were the following: 1830, \$2.20; 1831, \$2.32; 1832, \$1.86; and 1833, \$2.89.

(4) Western Illinois Sales: Regarding Illinois, Mr. Fenton believed that the settler might well pass "and many did pass" Indiana entirely. In lieu of taking up land north of the Wabash, the settlers would continue on to Illinois to settle along the Mississippi. Access to these lands was said to be similar to that of northern Indiana. Mr. Fenton further noted that southern and western Illinois had been settled first.

A total of 291 sales were considered for comparability purposes. Mr. Fenton indicated that the prices of many of the sales included, as a minimum, marginal improvements. The higher priced lands were presumed to have had improvements included. Sales well below the price pattern were assumed to be sales of relatively worthless land. Sales appearing to Mr. Fenton as family transactions or containing incomplete data were eliminated from consideration. Of the total 291 sales, 236 of them were located in the Illinois Military Tract.

From the data he concluded that small tracts of typically surveyed and improved land in Illinois had the following per acre values at the various valuation dates: 1818, \$1.35; 1827, \$2.40; 1829, \$1.65; 1832, \$2.90; and 1833, \$2.25.

(5) Unlocated Sales in the Illinois Military District: Mr. Fenton presented evidence of 1,817 sales of lands located in Knox, Henry, and Fulton counties. Most of the sales were reported to be the

first private sales of land originally patented by veterans. For some years this area was subject to an active speculative market. Many sellers had never seen the land, and sold it for very little money, mostly to speculators.

According to Fenton, "the market in military land tracts was a classical example of the working of the principle of demand and supply in a free, unrestricted real estate market, the like of which has seldom been seen." Def. Ex. F.8 at p. 91.

The compilation of sales extended from 1817 to 1833, inclusive. The average per acre value was highest in Fulton (\$.81), then Knox (\$.46), and then Henry (\$.36). The northernmost county (Henry) had the lowest per acre value. The per acre values for all the sales as of the valuation dates were the following: 1818, \$.65; 1827, \$.80; 1829, \$.50; 1832, \$.40; and 1833, \$.65.

(6) Speculators' Accumulation of Land in the Illinois

Military Tract: The land sales used were drawn from Theodore L. Carlson's book, The Illinois Military Tract. Def. Ex. Y-60. The speculators listed in this book bought 1,147,280 acres and sold 822,720 acres. The average price paid by the speculators was \$.32 an acre. Those speculators who purchased and then sold lands paid an average of \$.31 an acre and sold at an average of \$.29 an acre.

(7) Sale Made by Martin F. Mayher: The transaction used by Mr. Fenton was the sale by Mayher of 22,080 acres of military bounty land to Washington Hall for \$.45 an acre. The sale occurred in 1820 and

involved 138 quarter sections scattered over the Illinois military bounty land. Fenton regarded the lands involved in the sale as some of the best in the area. Fenton felt that most of the land was still in its virginal state, although the land had been surveyed and located. Mr. Fenton further presumed that the sale was made by a speculator (Mayher) who likely bought the patents from the original grantees, assembled them, and then sold them in one transaction to Hall, presumably another speculator.

In conclusion, Mr. Fenton noted that neither the buyer nor the seller was likely uninformed. From all information available, he thought the sale fit the definition of fair market value. It was therefore felt by Fenton that the market value of land in the military tract in 1820 was \$.45 per acre.

(8) Sale Made by Jesse Robinson: This sale used by Mr. Fenton occurred in 1832. Jesse Robinson sold to John Tillson bounty land amounting to 29,600 acres for \$6,475 cash. This represented a per acre value of about \$.22.

Fenton concluded that the sale price represented the best price that Robinson could command and, hence, was a fair market sale. Consequently, Fenton placed a \$.25 market value for the military bounty lands in 1832.

(9) Sales of Land in Eastern Iowa: Based on a small sampling of private sales, Fenton estimated the approximate per acre value of land sold during the valuation dates as the following: 1818, \$1.25; 1827, \$1.25; 1829, \$1.25; 1832, \$1.25; and 1833, \$2.10.

(10) Sales of Land in Eastern Missouri: Based on sales from Missouri records, Fenton calculated the approximate per acre value for the valuation dates to be the following: 1818, \$1.75; 1827, \$2.00; 1829, \$2.50; 1832, \$2.75; and 1833, \$3.50. Fenton believed that the majority of the parcels sold were operating farms at the time of sale, and thus had at least minimal improvements such as fencing, cabins, wells, and barns. In one particular district, where sales prices ranged between \$3.25 and \$4.40, Mr. Fenton felt that such prices must be discounted at least \$2.00 per acre for improvements.

(11) Sales of the Wabash-Erie Canal Lands: Lands bordering the proposed canal route were given in alternate sections to the states of Ohio and Indiana. Sales of the Indiana land began at Logansport and Lafayette in October 1830. Mr. Fenton indicated that 234,000 acres were offered for sale and 41,000 acres were sold. The highest price at Logansport was \$4.06, the lowest \$1.25, and the average \$1.75. Lafayette reported highs at \$4 to \$6 per acre.

In citing another source, Mr. Fenton introduced data from 354 canal land sales made along the Maumee River in Ohio as of April 1, 1834. Of the total number of sales, 338 sales at \$1.25 per acre were listed. The next most numerous sales listed were 11 sales at between \$1.25 and \$5 per acre. Between \$5 and \$10 there were four sales and a single sale at over \$10 per acre.

Mr. Fenton concluded that the vast amount of surveyed land available at \$1.25 an acre controlled the upper limits of value of the canal lands.

He further noted that the canal lands were sold in small parcels and thus were not priced at what a developer would pay for the whole in order to subdivide his purchase for sale to settlers.

(12) Sales of the Illinois-Michigan Canal Lands: The state of Illinois was granted land to be sold to finance the construction of the proposed canal between the Illinois River and Lake Michigan. Mr. Fenton studied the sales of these lands made between April 19, 1830, and March 7, 1831. A total of 94 sales, covering 10,568 acres, was included in the analysis.

Of the total number of sales, 86 were for \$1.25 an acre. Six sales were between \$1.25 and \$2 an acre, and the remaining two sales were at \$5 per acre.

Mr. Fenton presumed that the tracts surveyed, with exceptions, were virgin land. From the data collected, he concluded that the market value of Illinois-Lake Michigan Canal lands in 1830 was \$1.25 an acre.

45. Defendant's Appraiser's (Mr. Harry Fenton) Data Analysis.

A. Cost of Improvements.

In most second sales, Mr. Fenton presumed that the sales price included, besides the land itself, the previous owner's improvements--cabins, plowed lands, wells, and miscellaneous structures.

Fenton surmised that the typical settler bought 160 acres, developed 40 acres or less, and held the remainder for either future use or future sale. He assumed that the typical settler bought the 160 acres for \$2.50 an acre, or \$400.00 for the whole. Subtracted from that amount was \$40

for the cost of breaking 20 acres of land, \$100 for the cost of a cabin, \$100 for fencing costs, and \$50 for miscellaneous costs such as a well, sheds, etc. This left \$110, or a per acre value of \$.69 for the raw land in the sale. Conversely, the cost of typical subsistence farm improvements ran about \$1.80 an acre. Proceeding with the above results, Mr. Fenton concluded that land in occupied, frontier, surveyed quarter sections (160 acres) was worth around \$.70 per acre during the valuation period.

As to the 12 sales studies previously noted, Mr. Fenton estimated the value of the raw land in those sales, after subtracting \$1.80 per acre for improvements. The final result of this tabulation for the various valuation dates was the following: 1818, \$.80; 1827, \$.86; 1829, \$.80; 1832, \$.90; and 1833, \$1.09.

B. Accessibility - Value Factor.

Access to a navigable waterway, according to Mr. Fenton, had an increased value-effect on the land. Fenton asserted that land values dropped 40 percent or more on property located 25 miles or more from a navigable waterway. In his ultimate valuation conclusions, finding 46, infra, Mr. Fenton made value adjustments for reasons of access.

C. Comparison of Small Parcel Values with Large Tract Values.

The hypothetical buyer of the subject tracts was assumed to be purchasing the entire tract in one transaction, taking poor land along with the good. Hence, it was Mr. Fenton's view that the sale of small selected tracts did not properly reflect the value of a purchase of a very large tract.

In reviewing the history of early land speculation, Mr. Fenton noted that oftentimes the speculator overestimated the purchasing power of the western population. Mr. Fenton stated that the increase of land prices to \$2 per acre after 1800 abated the speculative fever that was prevalent in so many areas of the United States. Further, the Government's increase to \$2 per acre was too steep for the average western settler. He felt that the Government made the same mistake that the speculators did, namely overestimating the purchasing power of the settlers.

Mr. Fenton found that the decrease of the federal land price to \$1.25 an acre increased sales but still did not match the huge supply of lands. Indiana, as of 1834, had sold less than half of its available land. Mr. Fenton deduced that the lands sold were the choicest lands available and the fact that large amounts of land remained unsold indicated that the \$1.25 price was "above the general market value for the typical wild tract of land." Def. Ex. F.8 at p. 132. Mr. Fenton further noted that a developer would realize that lands were selling slowly due to the overpriced nature of the land and, should he buy lands, it would take a long time to sell off a huge tract of land similar to the parcels involved in the valuation.

D. Cost Factors to be Considered by Hypothetical Purchaser.

Along with the above consideration, the developer of the land would have had to consider various expenses necessary for the land's development. Included by Fenton were the interest rates, residual lands that were unsaleable, cost of surveying the land into quarter sections, taxes on

land, and expense of advertising and promoting the property.

Mr. Fenton offered a tabulation revealing how much a developer could pay for a large tract of wild land. Fenton assumed that the developer could expect to sell the land over a 20-year span, asking \$1 per acre for the first 5 years, \$1.25 an acre for the next 5 years, and \$2 an acre for the last 10 years. Twenty percent of the tract was assumed to be worthless and would be abandoned. Surveying costs were placed at \$3 per mile or \$.05 per acre. Promotional expense and advertising were estimated at 15 percent, and commissions at 10 percent. Bad debts were estimated at 10 percent, and taxes estimated at \$.01 per acre. Taking these into account, Mr. Fenton determined that if the land could be sold for between \$1 and \$2 per acre, the promoter could only afford to pay \$.15 to \$.37 per acre.

For the various valuation dates Mr. Fenton concluded that surveyed but unimproved quarter sections in the Northwest had typical per acre values of the following: 1818, \$.81; 1827, \$.86; 1829, \$.80; 1832, \$.90; and 1833, \$1.09. After assuming that the developer would pay, at most, 25 percent of the retail price, Mr. Fenton indicated that the developer would pay the following per acre raw land price: 1818, \$.20; 1827, \$.22; 1829, \$.20; 1832, \$.23; and 1833, \$.27.

46. Defendant's Appraiser's Value Conclusions:

A. Tract Y-1 (752,000 acres).

Valuation date: Potawatomi - Feb. 7, 1827

Miami - Feb. 7, 1827

Interest: Potawatomi - 30 percent

Miami - 70 percent

Mr. Fenton assumed that perhaps as much as 30 percent of the tract was useless. This was based upon the wetness of particular areas and the rough lands in the river valleys. However, this tract was regarded as having the best access of all the subject tracts. Mr. Fenton had previously estimated the per acre value of typical raw land in large parcels in 1827 as \$.22. Having found Tract Y-1 to be better than average due to its long river frontage, Mr. Fenton valued the tract at \$.28 per acre for 752,000 acres, or \$210,560, rounded to \$210,750. Thus, the Potawatomi interest was valued at \$63,225 and the Miami interest at \$147,525, rounded.^{3/}

B. Tract Y-2 (422,193 acres).

Valuation date: Potawatomi - Oct. 26, 1832

Miami - Jan. 24, 1827

Interest: Potawatomi - 50 percent

Miami - 50 percent

This tract was said to contain much wet prairie and swampland at the time of cession. Mr. Fenton stated that the land was extremely flat. The only rough land was located along the rivers. Mr. Fenton opined that at least 30 percent of the land was useless. Access to the tract for the early settler was judged as fair. Mr. Fenton found that the southern half of the tract, within 20 miles of the Wabash River, was the most valuable. Water transportation, according to Fenton, was limited to the Tippecanoe River.

^{3/} Mr. Fenton mistakenly assumed that the Potawatomi and Miami possessed a 50 percent joint interest in the tract. However, the actual division was 30 percent-70 percent, respectively. The defendant's brief corrected this mistake and rounded the interest values to \$63,225, Potawatomi, and \$147,525, Miami.

Mr. Fenton concluded that the land had better access than the typical raw land in large parcels but poorer than average drainage. Consequently, for the January 24, 1827, valuation date, Tract Y-2 was estimated to have a per acre value of \$.22, equal to the 1827 estimate for raw land in large parcels. For the valuation date of October 26, 1832, the tract had a per acre value equal to the 1832 estimate for typical raw land in large parcels, that is, \$.23. In sum, the Miami interest was \$46,441.23, while the Potawatomi interest equaled \$48,552.20, rounded to \$46,500 and \$48,625, respectively.

C. Tract Y-3 (575,866 acres).

Valuation date: Potawatomi - Jan. 21, 1833

Miami - Jan. 24, 1827

Interest: Potawatomi - 50 percent

Miami - 50 percent

Mr. Fenton reported that originally the area was mostly forested with some small prairies. A third of the tract was within a day's wagon ride of the Wabash River, regarded as the only practical water access. As of the two valuation dates, the tract was believed by Fenton to be average with that of his typical raw land in large parcels. As a result, at the time of the 1827 valuation date the per acre value was \$.22, and as of the 1833 valuation date, it was \$.27. Thus, the Miami's interest had a value of \$63,345.26, and the Potawatomi's interest was valued at \$77,741.91, rounded to \$63,375 and \$77,750, respectively.

D. Tract Y-4 (121,000 acres).

Valuation date: Potawatomi - Jan. 7, 1829

Miami - Jan. 24, 1827

Interest: Potawatomi - 50 percent

Miami - 50 percent

From the geological survey of the area, Mr. Fenton indicated that the tract had small prairies between numerous groves along the creeks, and was largely forested. Some of the prairies were believed to be wet. The tract was considered typical of northwestern land and had estimated per acre values on January 24, 1827, of \$.22. The average value of northwestern land in large parcels in 1829 had dropped to \$.20. However, Fenton assumed that the land in this tract did not drop in price as much as the typical land and thus had a per acre value in 1829 of \$.21. Hence the total Potawatomi interest had a value of \$12,705, and the Miami interest was valued at \$13,375.

E. Tract *1 (234,000 acres),
Valuation date: Potawatomi - Feb. 7, 1827
Interest: Potawatomi - 100 percent

In determining the per acre value of this tract, Mr. Fenton disclosed that cities such as Michigan City, Gary, and East Chicago were not in existence at the time of the valuation date and that Chicago was only a minor outpost. He indicated that access to the tract was overland from the Wabash River or from Detroit via Lake Erie and overland. Lake Michigan, according to Fenton, was not yet being used. Mr. Fenton estimated that between 50 percent and 80 percent of the land was forested. However, due to its relative inaccessibility, he determined that the tract was worth less than the average estimate of \$.22 for large parcels of northwestern land in 1827. He placed a per acre value of \$.18 per acre, resulting in the Potawatomi interest receiving a total value of \$42,120, rounded to \$42,250.

F. Tract *2 (153,558 acres).

Valuation date: Potawatomi - Jan. 7, 1829

Interest: Potawatomi - 100 percent

This tract was located in southwestern Michigan. Mr. Fenton noted that the land differed from most of the Indiana tracts in that the Michigan tract was more rolling, wooded, and the soil was more rocky. The soil was not regarded as fertile as lands in Indiana, though the Michigan soil was better drained.

Mr. Fenton further asserted that access to this tract at the time of the cession was principally overland from Lake Erie. He noted that traffic across Michigan and Indiana was light and that transportation by way of Lake Michigan was almost nonexistent. Due to this tract's relatively inaccessible location, Mr. Fenton placed a per acre value on the land of \$.20, equal to that of the average estimated for large northwestern land tracts in 1829. Thus, the Potawatomi interest was valued at \$30,711, rounded by Fenton to \$30,750.

G. Tract *3 (853,000 acres).

Valuation date: Potawatomi - Jan. 7, 1829

Interest: Potawatomi - 100 percent

Mr. Fenton stated that access to this area at the time of cession was overland from Lake Erie, or, for small boats, via the Maumee River. Fenton further reported that the area was quite isolated and inaccessible. The soil was considered good, though Fenton indicated that much of the land had to be drained. The per acre land value was regarded by him to be average with the value of large parcels of northwestern land at that

time. Thus, \$.20 per acre was affixed to this tract, the total amounting to \$170,600, rounded off by Fenton to \$170,750. In his report, Mr. Fenton considered a second cession in 1833 in which the per acre value was increased to \$.27. However, no such cession of that tract occurred.

H. Tract *4 (1,821,376 acres).

Valuation date: Potawatomi - Oct. 26, 1832

Interest: Potawatomi - 100 percent

This tract contained much of the Kankakee Valley, which Mr. Fenton reported to be a swamp. Access to the tract was mainly from the Wabash River in the south and overland from Lake Erie in the north. Mr. Fenton indicated that, at the time of the cession, little traffic moved on Lake Michigan. The entire tract was noted by Fenton as being both "quite remote and much of it poorly drained." Def. Ex. F.8 at p. 180. At the date of cession, October 26, 1832, Mr. Fenton's estimated per acre value of a typical large parcel of northwestern land was \$.23. However, he considered Tract *4 to be below average in desirability and placed a per acre value of \$.19 on the tract. This totaled \$346,061, rounded to \$346,250.

I. Tract *5 (260,134 acres).

Valuation date: Potawatomi - Jan. 21, 1833

Interest: Potawatomi - 100 percent

At the time of the cession, the Wabash River offered the closest effective transportation other than by horse and wagon. The river was 25 to 40 miles away from the tract's southernmost boundary. Mr. Fenton reported that most of the tract was forest, with small grassland areas interspersed. Due to its isolation, Mr. Fenton considered the tract to

be below the average value of large parcels of northwestern land. The average value of such land was estimated to be \$.27 per acre as of 1833. Mr. Fenton found the value of Tract *5 to be \$.25 per acre, totaling \$65,034, rounded to \$65,000.

J. Tract AB (181,476 acres),
Valuation date: Wea - Oct 2, 1818
Potawatomi - Oct. 26, 1832
Interest: Wea - 50 percent
Potawatomi - 50 percent

Mr. Fenton asserted that the area, based on the Coast and Geodetic Survey topographical maps, was undoubtedly so wet as to be difficult to farm until it was ditched. For the most part the area was prairie on the level lands above the Tippecanoe River and along the Wabash watershed. The eroded lands were heavily forested, while the uplands and plateaus were largely prairie. Much of the prairie, according to Mr. Fenton, was poorly drained. About half of the area was reported by him to be useless to the first settler.

Access to this tract was considered relatively difficult. Mr. Fenton reported that all of the area was more than 18 miles north of the Wabash River. Though the tract was within 5 miles of the Kankakee River and touched the Tippecanoe River, Mr. Fenton noted that these rivers "were only charitably deemed to be navigable for more than canoes." Def. Ex. F.8 at p. 187. Consequently, most of the tract suffered in value due to its comparative inaccessibility and wetness.

As of the 1818 valuation date, the typical northwestern land in large parcels had a per acre value of \$.20. Fenton viewed the tract as typical and thus allocated the per acre value of \$.20, which resulted in the total Wea interest being \$18,147, rounded to \$18,250. The land was still regarded by Fenton as average as of 1832 and thus affixed the 1832 per acre value (\$.23) for typical northwestern land in large parcels. In total, the Potawatomi interest was valued at \$20,869, rounded to \$20,875.

K. Tract H (51,384 acres).

Valuation date: Potawatomi - Oct. 26, 1832

Interest: Potawatomi - 33-1/3 percent

Access at the time of cession was overland from the Wabash or the Ohio rivers. According to Mr. Fenton, almost all of the area was grass-land. As of the valuation date, the average value of northwestern land in large parcels was estimated by Fenton to be \$.23 per acre. Mr. Fenton judged Tract H as average and assigned the per acre value of \$.23 to this tract. Therefore, the total Potawatomi value amounted to \$3,939, rounded to \$4,000.

47. Commission's Market Data Evaluation. The Commission finds that the sales data furnished by Dr. Chisholm, the plaintiffs' appraiser, contains, with some significant modifications, a sound basis on which to determine the fair market value of the lands in question. The acceptable sales data, how it was applied, and the conclusion drawn from it are discussed in the opinion entered herein.

The Commission further finds much of the sales data presented by Mr. Fenton, the defendant's appraiser, to be of little comparability to

the subject tract. The data derived from the Illinois Military Tract are not comparable because of the manner in which the bounty lands were sold, the remoteness of the tract, and the nature of the "owner" of the bounties. These ~~veterans~~ veterans often did not desire to settle on the bounty lands and sold their bounties for far below the market value of the lands. In addition, the early dates in which many of these sales were transacted makes this data nonprobative of the conditions existing at the time of the various tracts' valuations.

We further find the method in which some of the sales were gathered to be somewhat unreliable. Mr. Keller, who collected the Indiana sales for Mr. Fenton, testified that he excluded certain sales which he believed contained improvements or, by judging from the sales price, were atypical sales. From the sales finally collected by Mr. Keller, Mr. Fenton made further eliminations of "atypical" sales. However, in his valuation of the subject tract he reduced the valuation on the basis that a portion of the sales data contained improvements. Additional analysis of Mr. Fenton's valuation is found in our opinion entered herein, supra.

Finally, the Commission finds that the sales data submitted by Mr. George Banzhaf and Mr. Galen Todd, appraisers for the plaintiffs in Dockets 29-L, M, O, and P, are too remote in time to be of any significant importance in our valuation of the subject tracts. Of the 93 sales presented, only 21 of them occurred during the valuation period of 1827 through 1833. There were no sales prior to that period included in the sales data. Also, factors such as accessibility, remoteness, size, and

comparability of the sales data to the subject tracts were not considered. For the above reasons and those discussed in our opinion, we find the sales data of Messrs. Banzhaf and Todd to be inapposite.

48. Commission's Analysis of the Acceptable Sales Data.

A. From the 1,960 land sales presented by Dr. Chisholm, we chose those sales occurring during the valuation year and the immediate three preceding years. Other than sales from Vermillion County, Illinois, all the other sales were taken from counties in Indiana and Michigan. We chose only those counties that were the most proximate to the subject tracts. However, different counties were used for the various valuation dates. The particular counties that were chosen depended on which counties had land sales during the valuation period and where the counties were located.

After selecting the counties to be used, we excluded all sales of less than 40 acres. We found this amount of acreage necessary in order to fulfill the highest and best use found for the lands in question. This selection also resulted in the elimination of extremes in prices since a considerable number of sales under 40 acres involved town lots.

B. From the selected sales used in our valuation, we calculated both the average and the mean values of the sales data for the respective valuation years, with the following results:

<u>Valuation Date</u>	<u>Average Price Per Acre</u>	<u>Mean Per Acre Sale</u>
1827	\$2.52	\$2.32
1829	2.50	2.47
1832	2.55	2.66
1833	2.74	3.07

On the basis of our analysis of the sales data and all the evidence of record, the Commission finds that lands in the areas comparable to the subject tracts were selling, on the average, in the range of \$2.45 to \$2.85 per acre between 1827 and 1833.

C. To relate the foregoing "retail" per acre sales values to the subject tracts and to the pertinent valuation dates, the Commission considered various discounts and comparability variables. A value discount was made for improvements which we found to have existed in approximately 20 percent of the sales data. In addition, further discounts were taken for the size of the tracts and for the special attributes of the tracts such as drainage and accessibility. These latter discounts varied in amounts according to the particular tract. Our opinion entered this day fully discusses each tract under consideration and the discounts, if any, applied to them.

49. Value of the Subject Tracts. Based on all the pertinent evidence of record and the preceeding findings of fact, the Commission finds that the total fair market value of the subject lands was \$7,027,727.39 and that the value or respective share of the parties therein, on the indicated valuation dates, is as follows:

Tribe	Interest (%)	Tract	Acres	Per Acre Value	Total Value
<u>Miami</u>	70	Y-1	526,400	\$1.40	\$ 736,960.00
	50	Y-2	211,096.5	1.36	287,091.24
	50	Y-3	287,933	1.32	380,071.56
	50	Y-4	60,500	1.44	<u>87,120.00</u>
				Total Miami Share:	<u>\$1,491,242.80</u>
<u>Potawatomi</u>					
	30	Y-1	225,600	\$1.40	\$ 315,840.00
	50	Y-2	211,096.5	1.50	316,644.75
	50	Y-3	287,933	1.66	477,968.78
	50	Y-4	60,500	1.48	89,540.00
	100	*-1	234,000	1.50	351,000.00
	100	*-2	153,558	1.58	242,621.64
	100	*-3	853,000	1.31	1,117,430.00
	100	*-4	1,821,376	1.08	1,967,086.00
	100	*-5	260,134	1.48	384,998.32
	33 1/3	H	17,128	1.55	26,548.40
	50	AB	90,738	1.44	<u>130,662.70</u>
				Total Potawatomi Share:	<u>\$5,420,340.59</u>
<u>Wea</u>					
	50	AB	90,738	1.28	\$ <u>116,144.00</u>
				Total Wea Share:	<u>\$ 116,144.00</u>

50. Treaty Consideration. The Commission finds that the following amounts were paid by the United States to the plaintiffs pursuant to the agreements made by the parties under the several treaties indicated below and that these amounts are to be deducted as payments on the claim under section 2 of our act:

1. <u>Miami</u> , Treaty of October 23, 1826:	\$232,095.00
Total Miami	<u>232,095.00</u>
2. Potawatomi, Treaty of October 16, 1826	\$107,187.00
Treaty of September 20, 1828	118,642.00
Treaty of October 26, 1832	453,698.00
Treaty of October 27, 1832	242,998.00
Total Potawatomi	<u>\$922,525.00</u>

The Commission further finds that the below listed amounts were promised or disbursed by the United States for food rations and provisions under the indicated treaties. These amounts are not payments on the claim by reason of the Act of October 27, 1974, P.L. 93-494, (88 Stat. 1499), which amended Section 2 of our Act precluding the deductions of funds disbursed for food, rations, or provisions.

<u>Treaty</u>	<u>Treaty Promise</u>	<u>Actually Disbursed</u>
October 23, 1826	\$ 72,300.00	\$ 86,462.84
October 16, 1826	31,447.71	31,447.51
September 20, 1828	47,500.00	45,882.02
October 26, 1832	130,000.00	128,856.60
October 27, 1832	42,000.00	38,250.64

51. Conclusions.

A. In the case of the Miami, the Commission finds that the value of the consideration which the United States paid under the Treaty of October 23, 1826, was \$232,095.00. Considering the defendant's payment of that amount for interest in land which had a fair market value of \$1,491,242.80 on the valuation date, the Commission further finds that the amount so paid the Miami for the cessions herein was so grossly inadequate as to render the consideration unconscionable.

B. In the case of the Potawatomi, the Commission finds that the aggregate value of the consideration which the United States paid under the foregoing treaties was \$922,525.00. Considering the defendant's payment of that amount for interests in lands which had a combined fair market value of \$5,420,340.59 on the respective valuation dates, the Commission further finds that the amounts so paid the Potawatomi for the cessions herein were so grossly inadequate as to render the consideration unconscionable.

C. In the case of the Wea, the United States makes no claim for consideration under the Wea cession of lands having a fair market value of \$116,144.00.

D. Accordingly, the Commission concludes on the basis of the opinion and the findings of fact entered herein and all the evidence of record that the plaintiffs are entitled, under the provisions of Clause 3, Section 2 of the Indian Claims Commission Act to recover from the defendant a total net award of \$5,873,107.39 (less any gratuitous offsets which may subsequently be allowed) allocated in accordance with the interest or share owned by the individual tribes as follows:

1. Miami:	\$1,259,147.80
2. Pottawatomi:	4,497,815.59
3. Wea:	<u>116,144.00</u>
Total	\$5,873,107.39

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Brantley Blue
Brantley Blue, Commissioner

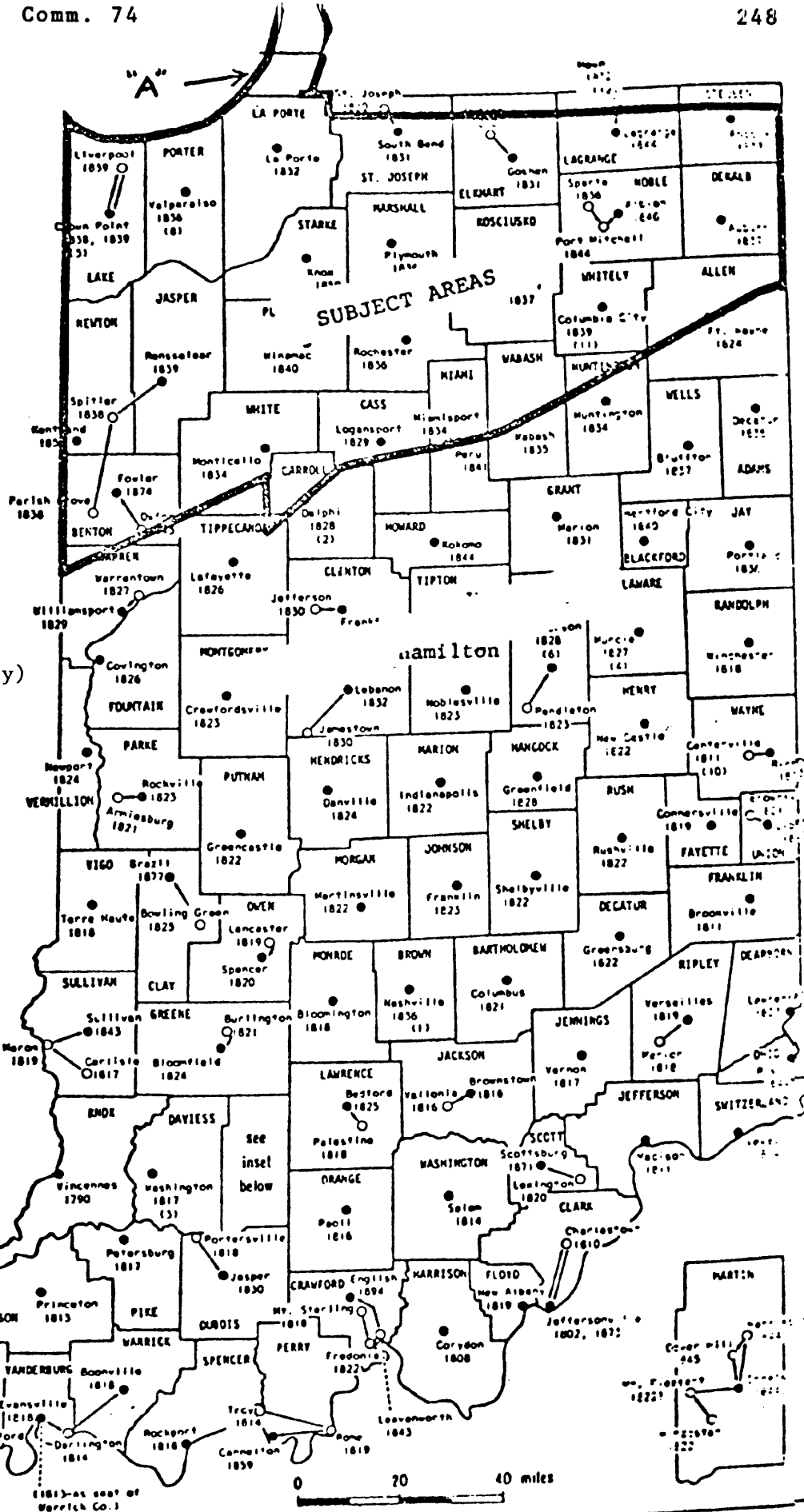
Jerome K. Kuykendall
Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner

APPENDIX II*

COUNTIES AND COUNTY SEATS



"A" = Michigan Area, (Berrien County)

(*Adapted from Def. Brief, Fdg. No. 8, p. 9-10.)

BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS	)	Docket Nos. 128, 309, 310
OF OKLAHOMA, et al.,)	
)	
Plaintiffs,)	
)	
THE POTAWATOMIE NATION OF INDIANS,	)	Docket Nos. 15-N, 15-O, 15-Q, 15-R
THE PRAIRIE BAND, et al.,)	
)	
Plaintiffs,)	
)	
THE HANNAHVILLE INDIAN COMMUNITY,	)	Docket Nos. 29-L, 29-M, 29-O, 29-P
et al.,)	
)	
Plaintiffs,)	
)	
POTAWATOMI INDIANS OF INDIANA AND	)	Docket Nos. 128, 309, 310, 15-N,
MICHIGAN, INCORPORATED	)	15-O, Q, R, 29-L, M,
	)	O, P
)	
Intervenors,)	
)	
IRA SYLVESTER GODFROY, et al., on	)	Docket No. 124-B
relation of THE MIAMI TRIBE OF)	
INDIANA,)	
)	
Plaintiffs,)	
)	
THE MIAMI TRIBE OF OKLAHOMA, et al.,	)	Docket No. 254
)	
Plaintiffs,)	
)	
THE PEORIA TRIBE OF OKLAHOMA,	)	Docket No. 314-B
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER SETTING AWARDS

Upon the findings of fact 1 through 18 entered herein on December 28, 1973, 32 Ind. Cl. Comm. 461, and the findings of fact and opinion this day entered herein, all of which findings of fact and opinion are hereby made a part of this order,

IT IS ORDERED that: