

BEFORE THE INDIAN CLAIMS COMMISSION

JAMES STRONG, et al., as the)	
representatives and on behalf)	
of all members by blood of the)	
CHIPPEWA TRIBE OF INDIANS,)	Docket No. 13-F
)	
THE POTTAWATOMIE TRIBE OF INDIANS,)	
THE PRAIRIE BAND OF THE POTTAWATOMIE)	
TRIBE OF INDIANS, et al.,)	Docket No. 15-I
)	
THE DELAWARE TRIBE OF INDIANS,)	Docket No. 27
)	
HANNAHVILLE INDIAN COMMUNITY, et al.,)	Docket No. 29-G
)	
SHAWNEE TRIBE OF INDIANS OF OKLAHOMA,)	
et al.,)	Docket No. 64-A
)	
THE OTTAWA TRIBE, and GUY JENNISON,)	
et al., as representatives of THE)	
OTTAWA TRIBE,)	Docket No. 133-C
)	
LAWRENCE ZANE, et al., ex rel.,)	
WYANDOT TRIBE, et al.,)	Docket No. 141
)	
CITIZEN BAND OF POTAWATOMI INDIANS OF)	
OKLAHOMA, et al.,)	Docket No. 308
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 22, 1978

ADDITIONAL FINDINGS OF FACTS

The Commission makes the following findings of fact, which are supplemental to those findings of fact numbered 1 through 8 previously entered in the above-captioned consolidated dockets on May 23, 1973, 30 Ind. Cl. Comm. 337, 356-369.

9. Valuation Date, Acreage, Land Description.

The Commission, in its title decision of May 23, 1973, supra, affirmed by the United States Court of Claims at 207 Ct. Cl. 959 (1975), determined that plaintiffs ceded their recognized title in Royce Areas 87 and 88 to the United States as of January 4, 1819, the effective date of the Treaty of September 29, 1817, 7 Stat. 160, and the Treaty of September 18, 1818, 7 Stat. 179. Royce Area 87 contains 4,064,466 acres and Royce Area 88 contains 684,552 acres. These lands are located principally in northwestern Ohio, but small portions lie in eastern Indiana and southern Michigan.

10. Descriptive Boundaries of Royce Areas 87 and 88.

The descriptive boundary of Royce Area 87 is as follows: starting at the point where the Treaty of Greeneville boundary line intersects the principal meridian established 120 miles west of Pennsylvania's west boundary; thence north along said meridian line to the shore of Lake Erie, and continuing northward into the lake to meet the eastward extension of the Michigan-Ohio boundary line from the north peninsula of the bay at Toledo; thence west along such line and the bay shore and up the Maumee River southwestward to its junction with the St. Marys River near Fort Wayne, Indiana; thence southeastward up the St. Marys River to a point connecting southward toward the Miami River; thence southward to the Greeneville Treaty boundary near Laramie's store; thence eastward along such boundary line to the point of beginning. Excepted from the area of this tract are certain small enclaves. (See 30 Ind. Cl. Comm. at 357-60, findings of fact Nos. 2 and 3.)

The descriptive boundary of Royce Area 88 is as follows: starting at the point where the extension of the Michigan principal meridian meets the Maumee River; thence northward along said meridian to the south boundary of Township 65., R. 1W, in Michigan; thence westward from said meridian along said south base line some 24 miles to the western boundary of the State of Ohio projected northward into Michigan; thence southward on such projection and the western boundary of the State of Ohio to the Maumee River; thence northwestward down the Maumee to the place of beginning. Excepted from this area is a small portion of Royce Area 15 in Ohio.

11. Interest in Claims.

The Commission determined, at 30 Ind. Cl. Comm. 337, that, as to Royce Area 87: (1) an undivided one-half interest was held by the Wyandot Tribe, represented by plaintiffs in Docket 141; (2) an undivided three-tenths interest was held by the bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize, and Roche de Boeuf, represented by plaintiffs in Docket 133-C; (3) an undivided one-tenth interest was held by the Delaware Tribe, represented by plaintiffs in Docket 27; and (4) an undivided one-tenth interest was held by the Shawnee Tribe, represented by plaintiffs in Docket 64-A.

Undivided one-third interests in Royce Area 88 were held by: (1) the Chippewas of the Saginaw, represented by plaintiffs in Docket 13-F; (2) the bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented by plaintiffs in Docket 133-C; and (3) the Pottawatomie Tribe, plaintiffs in Docket 15-I, 29-G and 308.

Trial of value and consideration issues was held in this consolidated proceeding on April 8, 1977.

12. Colonial History.

In the century preceding the January 4, 1819, date of cession, several Indian tribes used and occupied various portions of the tract. Conflict between Great Britain and France over control of the area led to hostilities and was resolved by the Treaty of 1763, whereby the British gained control over the area.

13. American History.

Following the American Revolution, Great Britain, by the 1783 Treaty of Paris, surrendered control of the area to the United States. Despite this treaty, the British refused to relinquish several posts, and the British and their Indian allies retained substantial control over the area. In 1794, however, General Anthony Wayne broke the Indian resistance at the Battle of Fallen Timbers, the British withdrew from their posts in American territory, and in the following year the Indian tribes ceded southern and eastern Ohio to the United States at the Treaty of Greenville, August 7, 1795, 7 Stat. 49.

Royce Areas 87 and 88 were included within the lands comprising the Old Northwest Territory, the government of which was organized under the Northwest Ordinance of 1787. The Ordinance provided for the creation of territorial governments and, eventually, the admission of additional states to the Union. Ohio was the first territory in the Old Northwest to become

a state, being officially admitted to the Union on March 1, 1803. Indiana followed Ohio on December 3, 1818, and Michigan was given statehood status on January 26, 1837.

14. Population.

In 1790 the population of the United States was 3,929,000. This figure rose to 7,224,000 in 1810 and 9,618,000 in 1820. The compound annual growth rate was over 3 percent in the decade 1800-1810 and slightly under 3 percent in the years 1810-1820.

The population growth of New York and Pennsylvania was an important factor in the population growth of Ohio, Indiana, and Michigan since much of the westward migration during the period originated in these two states. New York's population rose from 589,051 in 1800 to 1,372,812 in 1820. Pennsylvania's population rose from 602,365 in 1800 to 1,049,458 in 1820.

In Ohio, the population rose from 45,365 in 1800 to 230,760 in 1810 and to 581,434 in 1820. Most of the early population growth occurred along the Ohio River and in the southern portion of Ohio which had been ceded at the 1795 Greeneville Treaty.

In 1805, five Indian tribes ceded Royce Areas 53 and 54 to the United States, thus opening the lands directly east of the subject tract to the white man's settlement. In 1808, Royce Area 66, directly north of the subject tract, was opened for settlement upon cession to the United States. While the population of Ohio was increasing more than tenfold from 1800 to 1820, settlers were also streaming into Indiana; its population climbed from, 5,641 in 1800 to 17,178 in 1820. Michigan, into which Royce Area

88 abuts, was bypassed by the primary flow of settlement and was relatively unpopulated as of 1820. Its population at that time was 8,896.

15. Public Land Policy.

The future of the Northwest Territory became a topic of discussion among the states even before the end of the American Revolution. Several of the original 13 states claimed sovereignty over the lands west and north of the Ohio River. The disputes were resolved when the original states, in accord with a resolution of the Continental Congress, ceded their claims northwest of the Ohio River, with the understanding that upon settlement these lands would be divided into states and admitted into the Union.

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

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

The proceeds of land sales were a source of federal revenue. Initially, Congress relied upon land speculators to purchase large tracts and subdivide and resell to settlers. Because of mismanagement, poor choice of land, and improper financing within the speculating land companies, this system collapsed and in 1796 Congress provided for direct sale of small tracts of

640 acres at a minimum price of \$2 per acre. The auctions at which these lands were sold provoked little competitive bidding and the \$2 per acre price tended to prevail.

In 1800 the minimum size of the tracts offered for sale was reduced to 320 acres. In 1804 this was lowered further to 160 acres and the cash price was set at \$1.60 per acre. By 1817 some sales of 80 acres were being made. After years of agitation by settlers for cheaper land, Congress, in April 1820, voted to do away with credit purchases of land. The cash price was set at \$1.25 per acre and tracts as small as 80 acres were sold.

After the War of 1812 sales of land, which had not advanced at nearly the rate expected, grew substantially. In 1819 over 4 million acres of land in the public domain was sold. By June 1820 over 11,000,000 acres of land in Ohio and Indiana had been sold to settlers, but much land remained available for sale.

16. General Economic and Financial Factors.

In the first two decades of the nineteenth century the general trend of the economy was expansionary although there were downturns of limited duration. The gross national product rose from \$459.1 million in 1800 to \$754.0 million in 1820. In the valuation year, however, the gross national product was in the process of falling from \$816.0 million (in 1818) to \$754.0 million (in 1819). The GNP fell further to \$655.7 in 1820. The overall income from private production declined during the second decade of the eighteenth century from \$901 million to \$855 million. The economy was based heavily on agriculture during this period.

17. The Economic Slump of the Late 1810's.

As evidenced by the decline in the GNP, the economy took a downturn in the latter portion of the 1810's. The hard times that manufacturers had suffered beginning in the middle of the decade now spread to other sectors. Prices of American food staples plummeted and the income of the merchants and farmers, which depended on food prices, declined also. The contraction in the economy precipitated a banking crisis (although the nation's fiscal policy in part contributed to the economy's initial difficulties). It became very difficult to get credit. Land sales in the Northwest Territory increased, however, each year up to, and including, 1819. Sales at this period were declining in Ohio (probably as a result of decreasing prime acreage available) but growing in Indiana and Illinois. Although sales remained on the increase through 1819, unpaid balances also rose swiftly, and in 1819 over 150,000 acres of land reverted to the United States.

18. Banking System as of 1819.

On the valuation date the nation's banking system was in turmoil. Many banks had recently closed and the amount of money in circulation decreased from \$104 million in 1817 to \$72 million in 1819. A Second Bank of the United States was established in 1812 but was not immediately successful in managing the nation's fiscal matters. By 1818 Ohio had 28 banks, more than many of the original 13 states. But the economic displacements of the late 1810's affected the ability of Ohio banks to retain specie and therefore affected their stability. Several banks failed. Banking systems in Michigan and Indiana were in their infancy at this time.

19. Topography and Soils of the Subject Tract.

The land area of Royce Areas 87 and 88 consists predominantly of two glacial plains, Lake Plains and Till Plains. The areas bordering on Lake Erie and the Maumee River are generally Lake Plains while the inland areas are Till Plains. The glacial deposits in the tract are characterized as lake deposits (predominantly occurring in the areas near Lake Erie) and ground and end moraines. The terrain is primarily undulating and cut by numerous rivers and streams. Drainage of the subject tract is generally to the north and Lake Erie, but a sizable portion of Royce Area 87 drains to the south and the Ohio River. Much of the tract is at a relatively low elevation. Lake Erie has an elevation of approximately 570 feet above sea level and the land rises slowly from this elevation to heights of approximately 1,000 feet at the southern boundaries of Royce Area 87. A great deal of the area is composed of low, poorly drained land.

The soils in the subject tract as a whole are relatively fertile and capable of sustaining grain and livestock farming. Many of the soils, however, would have required drainage. There are also limited areas of the tract that are unfit for agricultural use.

20. Climate of the Subject Tract.

The tract has an essentially continental climate. The areas near Lake Erie receive less rain but have longer growing seasons than those areas farther inland. The growing season ranges from approximately 200 days near Lake Erie to approximately 160 days inland. Those areas of the subject tracts in Indiana and Michigan have basically similar climates.

21. The Black Swamp.

Located within Royce Area 87 in the early 1800's was a swampy, inhospitable tract called the Black Swamp. The Commission previously has found that the Black Swamp "most likely covered all or most of Wood, Ottawa, Paulding and Putnam Counties, the lower parts of Henry, Seneca and Defiance Counties and the upper portions of Van Weat [sic], Allan [sic], and Hancock Counties. Although Lucas County was technically not in the Black Swamp, its flatness and wooded nature meant there were many areas that had excessive water, especially during the wet seasons."^{1/} It is difficult to define the boundaries of the Black Swamp with much precision.

Many areas within the Swamp were not wet all year. Beginning in the 1850's tile draining removed much of the water from the affected areas and today little swamp remains. At the time of the valuation of this tract, however, the Black Swamp presented a physical and psychological barrier to those who wished to settle in the general vicinity of the Maumee Valley or who wished to cross the Maumee Valley.

22. Transportation.

The road system in Royce Areas 87 and 88 was primitive as of the valuation date. Roads were apt to be horse trails following rivers and were likely to become nearly impassable in the winter or in wet weather. There was water access to Royce Areas 87 and 88. The Maumee, Sandusky, St. Josephs and St. Marys rivers facilitated transportation. The Ohio

^{1/} Ottawa Tribe v. United States, 27 Ind. Cl. Comm. 98, 122 (1972).

River was a main thoroughfare from which settlers could journey to northwestern Ohio. Royce Area 87 has a lengthy border on Lake Erie and portions of the shoreline are suitable for harbors. The age of steam in water transportation was beginning at the valuation date and potential purchasers of land would be aware of the possibilities, indeed the plans, for steamboat service on the Great Lakes. Furthermore, construction of the Erie Canal began in New York in 1817 and, thus, the very real potential for quick water passage from the eastern seaboard to northern Ohio was present.

23. Highest and Best Use.

The parties agree that the highest and best use for the subject tract as of January 4, 1819, was for subsistence farming by settlers using homestead tracts. Neither timber nor minerals would contribute to the tract's sale price. The Commission adopts these conclusions.

24. Plaintiffs' Valuation.

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

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

Dr. Chisholm's valuation analyses are based upon records of sales in the years 1817, 1818, and 1819, of what he considered comparable lands.^{2/} He analyzed 169 sales in 1817, 233 sales in 1818, and 169 sales in 1819, and submitted computer printouts listing each of the transactions, showing the date and location of each sale, the names of the parties, the acreage, and the total price. Separate computer printouts broke down the sales by price per acre and by the number of acres per transaction. Dr. Chisholm stated that the sales were screened to try to eliminate all sales that were not arms-length transactions. Dr. Chisholm did not eliminate sales involving improved lands but indicated that he believed few sales involved improved land and that the type of improvements that would have been made would have added little to the property.

The sales utilized were of lands located in what are now Medina County, Ohio (32 sales in 1817, 63 sales in 1818, 50 sales in 1819), Portage County, Ohio (61 sales in 1817, 72 sales in 1818, and 61 sales in 1819), Geauga County, Ohio^{3/} (no sales in 1817, 1 sale in 1818, and 4 sales in 1819),

^{2/} Originally Dr. Chisholm submitted exhibits Y-2, Y-44 and Y-45 analyzing 169 sales of land in seven different counties in Ohio, Illinois, and Michigan for the year 1817. At trial, under cross-examination, Dr. Chisholm testified that he chose sales in 1817 because he was under a mistaken impression as to the valuation date. After the trial, plaintiffs moved to admit plaintiffs' exhibits Y-2a, Y-44a and b, and Y-45a and b. These exhibits represent analyses of land sales in Ohio, Michigan, and Illinois in the years 1818 and 1819. 233 sales were analyzed in 1818 and 169 sales in 1819. Dr. Chisholm maintained that the additional data from these land sales in 1818 and 1819 were consistent with the price per acre valuation arrived at by an analysis of 1817 land sales. Therefore, plaintiffs moved to admit these additional exhibits but did not alter the valuation of the subject tracts. On June 21, 1977, the Commission admitted plaintiffs' exhibits Y-2a, Y-44a and b, and Y-45a and b into evidence.

^{3/} It is assumed that 'GA' on Pl. Ex. 44 and 45 stands for Geauga County.

Johnson County, Illinois (2 sales in 1817, none in 1818 or 1819), St. Clair County, Illinois (19 sales in 1817, 43 in 1818, and 23 in 1819), Randolph County, Illinois (2 sales in 1817, 10 sales in 1818, and 12 sales in 1819), Monroe County, Illinois (8 sales in 1817, 15 in 1818, and 17 in 1819), and Wayne County, Michigan (as its boundaries were at that time) (45 sales in 1817, 29 in 1818, and 37 in 1819).^{4/} The sales recorded in Ohio were of lands within approximately 30 to 90 miles of the eastern boundary of the subject tract. These sales took place in counties where lands had been under cultivation for some time and where the geologic and physiographic histories were somewhat different than the subject tract's. The sales in Michigan took place north of the subject tract and, it appears, in the general vicinity of Detroit.

The counties in Illinois from which sales are taken are well over 250 miles from the subject tracts. St. Clair, Monroe, and Randolph counties are located in the vicinity of St. Louis, Missouri, on the Mississippi River. These counties possess sought-after Mississippi River bottom lands. Johnson County, while not directly bordering a river, is only a few miles from the Ohio and the Ohio's confluence with the Mississippi.

The prices of the sales set forth ranged from a low of \$0.16 per acre to a high of \$12,499.99 per acre, and the acreage from a low of .03 acres

^{4/} Also listed is one sale for 'VN' County, in 1819. It is not known which county 'VN' is intended to represent.

to 7,044 acres. The average-size tract in 1817 was 173.2 acres and the median-size tract was 101 acres. The median sale price was \$4 per acre, and it is at this price that Dr. Chisholm valued the subject tract, Royce Areas 87 and 88.^{5/} No value was assigned to possible improvements on the land and no adjustments were made for improvements.

25. Defendant's Valuation.

Defendant's valuation expert, Dr. Ernest G. Booth, submitted a report and testified concerning the market value of Royce Areas 87 and 88. Dr. Booth is a professional real estate appraiser with the firm of Gordon Elmquist & Associates, of St. Paul, Minnesota. Defendant's report was signed by Dr. Booth and two other persons who assisted with it. In addition, defendant used Dr. Charles D. Palit, an associate professor at the University of Wisconsin, to analyze the statistical aspects of plaintiffs' valuation.

Dr. Booth's report described at length the historic, economic, and geographical factors affecting valuation of the subject property. Dr. Booth analyzed five large-scale land transactions which took place in the last decade of the 18th century--transactions which he considered to be

^{5/} Subsequent to trial Dr. Chisholm analyzed sales in 1818 and 1819. Although Dr. Chisholm found that median price was \$3.99 per acre in 1818 and \$4.50 per acre in 1819 he concluded that the \$4 per acre value, assigned to the subject tract as a result of the 1817 analysis, is correct.

comparable to the sale of the subject tract. Four of the sales were purchases by the Holland Land Company. These purchases were made in 1792, and ranged in size from 700,000 acres to 1,500,000 acres. Three tracts were in New York, the fourth was in Pennsylvania. The fifth sale was a tract of 2,841,471 acres in eastern Ohio. This transaction took place in 1795, and the purchaser was the Connecticut Land Company.

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

The Connecticut Land Company purchase consisted of the Western Reserve lands located approximately 30 to 90 miles east of the eastern boundary of Royce Area 87.^{6/} A valid offer of \$0.44 per acre was made for these lands, but the lands were actually sold for \$0.422 per acre.

Retail sales of the Western Reserve lands and of Holland Land Company lands in New York rose to as high as \$2.50 per acre but sales declined with the opening of more Western lands. In the first years of the 19th century the prevailing price for small tracts of Holland Land Company lands in New York and Pennsylvania was about \$2, but larger tracts were difficult to sell at even less than \$1 per acre. It took 40 years to liquidate the Holland Land Company purchases.

^{6/} Many of the Ohio sales analyzed by Dr. Chisholm were in the Connecticut Land Company purchase.

In the case of the Connecticut Land Company's Western Reserve Lands, while prices advanced in some areas where settlements were forming, sales by the company were much slower than had been anticipated. The company soon encountered difficulties in meeting its obligations and was plagued with mismanagement. The Connecticut Land Company was finally dissolved in 1809 without having disposed of all its lands in eastern Ohio. There is no evidence in the record to indicate that prices the company received for lands it sold in the early years of the 19th century ever rose appreciably above the \$1 per acre price of the initial offerings.

Dr. Booth applied three appraisal methods of Royce Areas 87 and 88. These approaches he denominated as comparable sales, development, and government sales.

26. Comparable Sales Approach.

A. Royce Area 87. On the basis of the prices paid by the Connecticut Land Company and the Holland Land Company, defendant's expert selected \$0.40 per acre paid in 1795 as indicative of the market value of Royce Area 87 during the period of those companies' operations. Dr. Booth allowed an annual increase of 5 percent or \$0.02 per acre for each year through the valuation date, 1819. Since 54 percent of the lands were judged to be marginal, however, the projected per acre value of the tract fell from \$0.88 to 0.4048. This figure was further adjusted by adding \$0.0292 per acre for better drained land within the marginal land. The fair market value of the land in 1819 was thus estimated at \$0.4340 per acre.

B. Royce Area 88. The initial valuation steps taken in Royce Area 87 were followed for Royce Area 88. Reduction for marginal lands, however, was 42 percent, leaving a market value of \$0.5104 per acre. At this point \$0.0346 per acre was added for better drained land within marginal land, resulting in a final estimate of \$0.545 per acre.

27. Development Approach.

A. Royce Area 87. This approach was based upon the hypothetical viewpoint of a real estate developer. Using the experience of the Holland Land Company in western New York during the period 1801 to 1811. Dr. Booth estimated maximum retail sales price potential of \$3.20 per acre. Dr. Booth estimated that due to the extended period needed for liquidation of this tract and the high risk of marginal lands, a purchase ratio of 1 to 8 would be required for purchase incentive.^{7/} Therefore, \$0.40 per acre is the fair market value of Royce Area 87.

B. Royce Area 88. Using the same \$3.20 per acre starting point, the lands in Royce Area 88 were discounted by a factor of 6 to arrive at a fair market value of \$0.5333. The discount was due to delays in providing access across the Black Swamp and the high risk of marginal lands.

28. Government Sales Approach.

A. Royce Area 87. Dr. Booth's final approach to valuation (as amended by Def. Ex. 70-A) is an attempt to estimate valuation from the

^{7/} Dr. Booth estimates that even in purchases with quick resale and low development cost a real estate developer would only pay one-half the price of expected resale.

costs of development and sale and the projected sale price based upon an expected retail price of \$1.25 (the government price beginning in June 1820). Dr. Booth estimated the cost per acre of extinguishing Indian title at \$0.434, expenses of sales cost at \$0.142, and unsaleable lands at \$0.675. Since the total exceeds \$1.25, Dr. Booth indicated there was little incentive to buy the subject tract. Finally, positing an average retail sales price potential of \$3.20 per acre, it is Dr. Booth's opinion that a developer would consider paying \$0.400 to \$0.4571 per acre (a ratio of 1 to 7 or 1 to 8) for the tract.

B. Royce Area 88. Making the same assumptions as for Royce Area 87, \$3.20 is posited as a sales average. A ratio of 1 to 6 or 1 to 7 was used, concluding that a purchaser might pay from \$0.4571 to \$0.5333 per acre for Royce Area 88.

29. Defendant's Final Valuation Figure.

Based upon his entire analysis, Dr. Booth gave as his opinion that the fair market value of Royce Area 87 was \$0.434 per acre and the fair market value of Royce Area 88 was \$0.545 per acre in 1819.

30. Availability of Alternative Acreage. There were federal public domain lands on sale in Ohio, Indiana, Illinois, and Missouri at the time parties would have been negotiating for the sale of the subject tracts. Notwithstanding the availability of these lands, primarily farther west, there was a substantial demand for tillable land in Ohio.

The evidence suggests that while much land remained in 1819, some of the best lands, for the agricultural uses of the time, had been purchased.

Much of the best land in western New York, Pennsylvania, Kentucky, Ohio, Indiana, and Illinois had been taken. Missouri was remote and was a potential slave state. An earlier Commission decision, Miami Tribe v. United States, Dockets 67, et al., 4 Ind. Cl. Comm. 346 (1956), aff'd in part, and remanded for additional findings, 146 Ct. Cl. 421 (1959), made findings of fact concerning government sales of land in a portion of the Greeneville area. These findings were upheld on appeal. The record in Miami showed that during the first 10-year period, 1800 to 1810, 33.4 (or 3.3 percent per year) percent of the Greeneville lands were sold at \$2 per acre. During the next 8 years, 40 percent (or 5 percent per year) of the land was sold. It could have been anticipated that in Ohio during the 1820's and 1830's land sales within a tract would meet or exceed the 5 percent per year rate of the 1810's. Ohio had been a state for 16 years and had a large and growing population. The very facts that the state attracted and retained early settlers and was a stable political unit would draw new settlers.

31. Treaty Consideration and Payments on the Claim.

Article 4 of the Treaty of September 29, 1817 (7 Stat. 160) and Article 4 of the Treaty of September 17, 1818 (7 Stat. 178) provide for certain payments to Indian tribes in return for their land cessions. What was promised under the two treaties combined to the tribes represented in this case was as follows:

Wyandots	-	perpetual annuity of \$4,500
Shawnees	-	perpetual annuity of \$2,500
Potawatomies	-	\$1,300 annuity for 15 years
Delawares	-	\$500
Chippewas	-	\$1,000 annuity for 15 years
Ottawas	-	\$1,000 annuity for 15 years; perpetual annuity of \$1,500

The Commission finds that the value of the consideration paid to the tribes pursuant to the treaties and the allowable payments on the claim herein are as follows:

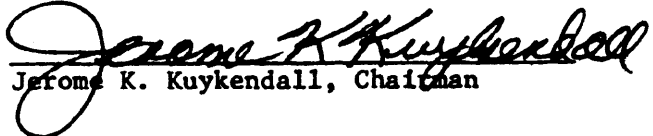
Wyandots	-	\$ 90,000
Shawnees	-	50,000
Potawatomies	-	19,500
Delawares	-	500
Chippewas	-	15,000
Ottawas	-	45,000

CONCLUSIONS OF LAW

1. The fair market value of Royce Areas 87 and 88, in Ohio, Indiana and Michigan, on January 4, 1819, was \$5,698,821.60, or \$1.20 per acre.
2. Consideration in the total amount of \$220,000 was paid under the Treaty of September 29, 1817 (7 Stat. 160) and the Treaty of September 17, 1818 (7 Stat. 179). This consideration was paid as follows: to the Wyandots, \$90,000; to the Shawnees, \$50,000; to the Potawatomis, \$19,500; to the Delawares, \$500; to the Chippewas, \$15,000; to the Ottawas, \$45,000.
3. The total consideration of \$220,000 for lands having a fair market value of \$5,698,821.60 was so grossly inadequate as to render it unconscionable within the meaning of section 2(3) of the Indian Claims Commission Act.

4. Defendant is entitled to credit for the entire consideration paid as payments on the claim, said payments on the claim to be charged against the respective plaintiffs as follows: to the Wyandots, \$90,000; to the Shawnees, \$50,000; to the Potawatomis, \$19,500; to the Delawares, \$500; to the Chippewas, \$15,000; to the Ottawas, \$45,000.

5. Plaintiffs are entitled to recover the following net sums, less any gratuitous offsets to which defendant may be entitled under the provisions of the Indian Claims Commission Act; to the Wyandot plaintiffs, \$2,348,679.60; to the Ottawa plaintiffs, \$1,692,028.56; to the Delaware plaintiffs, \$487,235.92; to the Shawnees plaintiffs, \$437,735.92; to the Chippewa plaintiffs, \$258,820.80; and to the Potawatomi plaintiffs, \$254,320.80.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner