

BEFORE THE INDIAN CLAIMS COMMISSION

THE POTTAWATOMIE TRIBE OF INDIANS,)	
THE PRAIRIE BAND OF THE POTTAWATOMIE)	
TRIBE OF INDIANS, et al.,)	Docket No. 15-E
)	
HANNAHVILLE INDIAN COMMUNITY, et al.,)	Docket No. 29-C
)	
LAWRENCE ZANE, et al., ex rel.)	
WYANDOT TRIBE, et al.,)	Docket No. 120
)	
IRA SYLVESTER GODFROY, et al., ex rel.)	
THE MIAMI INDIAN TRIBE,)	Docket No. 130
)	
MIAMI TRIBE OF OKLAHOMA, et al.,)	Docket No. 252
)	
CITIZEN BAND OF POTAWATOMI INDIANS)	
OF OKLAHOMA, et al.,)	Docket No. 338
)	
THE PEORIA TRIBE OF INDIANS OF)	
OKLAHOMA, et al.,)	Docket No. 338
)	
KICKAPOO TRIBE OF OKLAHOMA, THE)	
KICKAPOO TRIBE OF KANSAS, et al.,)	Docket No. 338
)	
THE OTTAWA TRIBE OF OKLAHOMA, et al.,)	
as representatives of THE OTTAWA)	
TRIBE,)	Docket No. 338
)	
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 29, 1978

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact, which are supplemental to those findings of fact numbered 1 through 34 previously entered in the above-captioned consolidated dockets on August 9, 1973, 31 Ind. Cl. Comm. 89, 141-216 (1973).

35. History of Claim. In its title decision of August 9, 1973, supra, the Commission determined that, as of August 3, 1795, the effective date of the Treaty of Greeneville, 7 Stat. 49, the aboriginal tribes represented by the various plaintiffs in this consolidated proceeding each held aboriginal title to one or more of 15 separate enclaves in Ohio, Indiana, and Illinois, which enclaves were ceded to the United States under said Greeneville Treaty.^{1/}

The Court of Claims, at 207 Ct. Cl. 254 (1975), affirmed the Commission's decision as to every issue except one--the Commission's determination that the Beorias (on behalf of the Weas) were not entitled to compensation for the six-mile square enclave located at the Ouatanon or old Wea towns on the Wabash River because this enclave had, after the Greeneville Treaty, been returned to the Indians and later ceded again as part of a larger cession for which the aboriginal title holders had sought compensation in other dockets before the Commission.^{2/} The Supreme Court denied issuance of a writ of certiorari at 423 U. S. 1015 (1975).

Trial was held before the Commission, Commissioner Pierce presiding, on April 12 and 13, 1977, on the issues of value, consideration, and compensation for the Ouatanon enclave.

^{1/} The Commission also determined that two large tracts, located within Royce Area 11, Ohio, were aboriginally owned, as of August 3, 1795, by the Delaware and Shawnee Tribes, respectively. 31 Ind. Cl. Comm. at 216-17. The parties to those claims, however, entered into compromise settlements and final awards have been entered with respect to each of those claims. See 41 Ind. Cl. Comm. 158 (1977) (Delaware); 40 Ind. Cl. Comm. 173 (1977) (Shawnee).

^{2.} This issue was remanded for further findings. See 207 Ct. Cl. at 277-79. Further findings are made in our finding of fact No. 48, infra. The prior findings are vacated in the accompanying order.

36. Lands to be Valued. The lands to be valued consist of 15 separate areas (hereinafter termed "enclaves") located in Ohio, Indiana, and Illinois. The total acreage of these 15 enclaves is 336,790. The enclaves, and the acreage and ownership of each are as follows:

<u>Enclave</u>	<u>Acreage</u>	<u>Title Holder</u>
1. Royce Area 16, Indiana ^{3/}	23,040	Miami - 2/3 Wea - 1/3 ^{4/}
2. Royce Area 17, Indiana	2,560	Miami - 2/3 Wea - 1/3 ^{4/}
3. Portage Road from Royce Area 16 to Royce Area 17, Indiana	2	Miami - 2/3 Wea - 1/3 ^{4/}
4. Six miles square at Ouatanon or Old Wea Towns (unnumbered red line in west-central Indiana on Royce's map)	23,040	Miami - 2/3 Wea - 1/3 ^{4/}
5. Royce Area 18, Ohio	92,160	Ottawa
6. Royce Area 19, Ohio	17,280	Ottawa

^{3/} Numbered "Royce Areas" are from Charles C. Royce, Indian Land Cessions in the United States, 18th Annual Report of the Bureau of American Ethnology, Part 2 (1899).

^{4/} The Commission found in its decision (31 Ind. Cl. Comm. at 213) that the Weas were a part of the Miami Tribe during the 18th century. The Commission has previously found that the allocation of interests between the Miami and Wea with respect to land ceded before the separation of the Wea from the Miami in 1805 was 2/3 Miami and 1/3 Wea. Miami Tribe, et al., v. United States, Dkts. 253, et al., 22 Ind. Cl. Comm. 469 (1970). The parties agreed to this allocation of interests on a 2/3-1/3 basis at the trial, Tr. II, at 150.

	<u>Enclave</u>	<u>Acreage</u>	<u>Title Holder</u>
7.	Royce Area 20, Ohio	2,560	Wyandot
8.	Six miles square at Ft. Sandusky (unnumbered dotted black line near Sandusky, Ohio, on Royce's map)	23,040	Wyandot
9.	Royce Area 24, Illinois	23,040	Potawatomi
10.	Portage Road from Royce Area 24 to Illinois River	8	Potawatomi
11.	Area west of the Illinois River at the Old Piorias fort and village <u>5/</u>	7,360	Potawatomi
12.	Area east of the Illinois River at the Old Piorias fort and village <u>5/</u>	15,680	Kickapoo
13.	Area west of the Illinois River at its mouth <u>6/</u>	22,000	Potawatomi
14.	Area east of the Illinois River at its mouth <u>6/</u>	85,000	Kickapoo
15.	Royce Area 27, Illinois	20	Kaskaskia

37. Valuation Date. The valuation date is August 3, 1795, the effective date of the Treaty of Greeneville, 7 Stat. 49.

5/ These two areas together constitute a six-mile square tract identified on Royce's Map of Illinois 1 by a dotted black line on the Illinois River in north-central Illinois.

6/ These two areas together are identified on Royce's Map of Illinois 1 by a dotted black line at the confluence of the Illinois and Mississippi Rivers. The area identified by Royce exceeds the 12-mile square area described in clause (15) of the second paragraph of Article III of the Treaty of Greeneville, 7 Stat. at 50.

38. History of the Subject Enclaves. The enclaves ceded to the United States at the 1795 Greeneville Treaty were relatively small tracts of land located at important geographical locations throughout the old Northwest Territory. Those 15 enclaves in Ohio, Indiana, and Illinois, which are the subject of this proceeding (i.e., those enclaves previously held by the Commission to have been aboriginally owned by Indian tribes) are all located on or very near navigable waterways. Several of these enclaves in 1795 or earlier had been the sites of British and American forts. Most had, by virtue of their locations, been the sites of Indian settlements long before the American Revolution. In short, each of these enclaves had a history of utilization before 1795 by Indians and/or whites based primarily upon the location of the lands rather than upon the physical characteristics of the lands (e.g., agricultural fecundity, timber, etc.).

39. Population. In 1790 the population of the United States was 3,929,000, and in 1800 the population was 5,297,000. It has been estimated that the 1795 population was 4,607,000. Population of the United States was increasing at a rate slightly in excess of 3 percent per year.

The earliest population figures available for the Northwest Territory were compiled in 1800. In that year, the population of Ohio was 45,365; Indiana, 5,641; Illinois had no recorded population although it is known there were scattered settlers there. What population there was in Ohio and Indiana in 1795 was concentrated in the southern portions of those territories along the Ohio River which was the main (and almost exclusive) path of westward migration as of 1795. The areas of Ohio and

Indiana north of a thin belt along the Ohio River, together with all of Illinois, were, for all practical purposes, devoid of any white population in 1795. All of the enclaves were surrounded by what was then still Indian country.

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

Pursuant to the Land Ordinance of 1785, Congress provided that settlement would be only on surveyed parcels of land. The surveys were to be in the form of square townships, six miles square, with 36 one-mile square sections. Each section contained 640 acres. The purchase price of tracts was fixed at a minimum of \$1 per acre at public auction with the purchaser to pay the cost of survey.

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

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

In addition to Federal sales to speculators before 1796 of lands owned by the United States, the states of Pennsylvania and New York were also selling large tracts of state-owned lands to speculating land companies for resale after subdivision.

41. General Economic and Financial Factors. During the last decade of the 18th century, the economy of the United States expanded tremendously. Between the years 1789 and 1795 the gross national product more than doubled, from \$158.4 million to \$452.2 million. Agriculture was the primary economic activity, accounting for almost one-half of private production income during the 1790's. In such an agrarian economy, the nation's basic resource was land.

In 1791, Congress chartered the First Bank of the United States. The bank, during the 1790's, was able to stabilize what had previously been a near-chaotic banking and monetary situation. As a result, in the 13 states credit was becoming available.

In the Northwest Territory in 1795, however, the economy was still in a primitive stage. There were no banks and specie or currency were in short supply. A barter economy prevailed.

42. Climate and Precipitation. All of the enclaves to be valued in this proceeding lie within the temperate climate zone. The specific climatic conditions for each of the enclaves are shown below:

<u>Area</u>	<u>Weather Station</u>	<u>°F. Average Temperature</u>		<u>Average Yearly Precip.</u>	<u>Frost Free Days</u>	<u>Years Reported</u>
		<u>Jan.</u>	<u>July</u>			
Royce 16, Royce 17	Fort Wayne	26.7	74.1	34.13	176	39-40
Ouatanon	Lafayette	27.5	76.2	38.0	168	40
Royce 18, Royce 19	Toledo	26.9	74.0	32.11	185	40
Royce 20	Fremont	27.1	74.1	35.87	168	38
Sandusky	Sandusky	27.9	74.0	32.05	194	40
Royce 24	Chicago Univ.	25.7	73.9	31.85	196	40
Peoria	Peoria	25.6	76.4	35.01	188	40
Mouth Illinois River	White Hall	29.2	76.5	37.32	179	36-37
Royce 27	New Burnside Brookport	34.9	78.4	45.25 45.66	187	38-40 10

43. Topography and Soils. All of the subject tracts were located on or very near navigable waters. All of the tracts consisted of predominantly level to undulating terrain. A few possessed steep bluffs or slopes. Another few contained some portions of low-lying marsh lands.

As was common and natural in the case of lands bordering bodies of water, many of the low-lying areas of the tracts were subject to accumulation of water and the natural drainage was poor. All of the tracts were heavily forested.

Soil classifications vary, of course, in the 15 separate enclaves. Generally speaking, the soils can be classified as moderately to extremely fertile, subject, in almost every instance, to the necessity for artificial drainage.

In 1795, all of the tracts were isolated enclaves within the surrounding Indian country. The only means of ingress and egress were the navigable rivers and lakes which bordered or were close by each of the enclaves.

44. Plaintiffs' Valuations. Plaintiffs' expert witness was Dr. Roger K. Chisholm, associate professor of economics at Memphis State University. Dr. Chisholm is an expert on the subjects of economic and agricultural history.

Dr. Chisholm's analyses and valuations consisted of a discussion of various historical and economic factors affecting the value of land in general and the lands of the subject tracts in particular as of the valuation date.

Dr. Chisholm collected data on 5,263 sales occurring between 1786 and 1820 in southeastern Michigan, northeastern Ohio, northern Indiana, and in Illinois. From this data, Dr. Chisholm selected two separate sales samples he considered comparable to the hypothetical sales of the subject tracts.

His first sample consisted of 31 sales occurring between 1790 and 1800 of small, strategically located lands which he believed to be comparable to those small and strategically located enclaves among the 15 subject tracts. Twenty-nine, or 93.5 percent, of the sales were of lands in Wayne County, Michigan, the location of Detroit. The remaining sales were of lands in St. Clair County, Illinois (on the Mississippi River opposite present-day St. Louis, Missouri), and Trumbull County, Ohio (in eastern Ohio, bordering Pennsylvania). In this sample, lands sold in parcels ranging from 0.01 to 5.55 acres. The average tract was 0.61 acres, and the median, 0.092 acres. Prices per acre ranged from a low of \$10 to a high of \$50,000. The most commonly observed price was \$25,000 per acre, with three transactions, or 9.7 percent of the total, at this price. The median price of all the sales was \$7,954.54. The weighted average was \$1,211 per acre.

Dr. Chisholm's second sample consisted of 185 sales of tracts which he considered to be comparable to the larger and not especially strategically located of the subject enclaves. Of these sales, 117, or 56 percent, were of lands located in Wayne County, Michigan (Detroit), and 65, or 31.1 percent, of lands in Trumbull County, Ohio, which borders Pennsylvania in eastern Ohio. Lands in this sample sold in parcels ranging from 0.01 acres to 36,245.38 acres. The average tract was 636.9 acres, and the median tract, 161.6 acres. Prices per acre ranged from \$.02 to \$50,000. The median price per acre was \$1.36.

Relying upon his analysis of these sales, Dr. Chisholm valued the enclaves as follows:

<u>Enclave</u>	<u>Title Holder</u>	<u>Acreage</u>	<u>Per Acre Value</u>	<u>Total Value</u>
1. Royce Area 16, Indiana	Miami - 2/3 ^{7/} Wea - 1/3	23,040	\$ 5.60	\$129,024.00
2. Royce Area 17, Indiana	Miami - 2/3 ^{7/} Wea - 1/3	2,560	50.00	128,000.00
3. Portage Road from Royce Area 16 to Royce Area 17, Indiana	Miami - 2/3 ^{7/} Wea - 1/3	2	1,200.00	2,400.00
4. Six miles square at Ouatanon or Old Wea Towns (unnumbered red line in west-central Indiana on Royce's map)	Miami - 2/3 ^{7/} Wea - 1/3	23,040	5.60	129,024.00
5. Royce Area 18, Ohio	Ottawa	92,160	1.40	129,024.00
6. Royce Area 19, Ohio	Ottawa	17,280	9.80	169,344.00
7. Royce Area 20, Ohio	Wyandot	2,560	50.00	128,000.00
8. Six miles square at Ft. Sandusky (unnumbered dotted black line near Sandusky, Ohio, on Royce's map)	Wyandot	23,040	5.60	129,024.00
9. Royce Area 24, Illinois	Potawatomi	23,040	5.60	129,024.00
10. Portage Road from Royce Area 24 to Illinois River	Potawatomi	8	1,200.00	9,600.00

^{7/} See n.4, supra.

<u>Enclave</u>	<u>Title Holder</u>	<u>Acreage</u>	<u>Per Acre Value</u>	<u>Total Value</u>
11. Area west of the Illinois River at the Old Piorias fort and village <u>8/</u>	Potawatomi	7,360	\$ 14.00	\$103,040.00
12. Area east of the Illinois River at the Old Piorias fort and village <u>8/</u>	Kickapoo	15,680	9.80	153,664.00
13. Area west of the Illinois River at its mouth <u>9/</u>	Potawatomi	22,000	8.40	184,800.00
14. Area east of the Illinois River at its mouth <u>9/</u>	Kickapoo	85,000	1.40	119,000.00
15. Royce Area 27, Illinois	Kaskaskia	20	1,200.00	<u>24,000.00</u>
			Total	\$1,666,968.00

45. Defendant's Valuations. Defendant's valuation expert, Dr.

Ernest G. Booth, submitted a report and testified concerning the fair market value of the 15 enclaves. Dr. Booth is a professional real estate appraiser with the firm of Gordon Elmquist & Associates, Inc., of St. Paul, Minnesota. In addition, defendant used Dr. Charles D. Palit, an associate professor at the University of Wisconsin, to analyze Dr. Chisholm's statistical approach to his valuation.

8/ See n.5 supra.

9/ See n.6 supra.

In his report Dr. Booth described at length the various factors--historical, economic, sociological, geographical, population, settlement patterns--which he believed would have affected the value of each of the subject tracts. Dr. Booth recited and considered numerous speculative sales of large and smaller tracts during the years surrounding the valuation date. He concluded that the most accurate indication of retail market value, as of 1795, was the resales of speculative buyers selling wild lands without any development for their resale and without the increment of unearned surrounding settlement values. Upon analysis of numerous such sales, Dr. Booth concluded that in the years preceding 1800, wild land in farm-sized acreage was freely available at retail at under \$1 per acre in the Old Northwest within areas available for settlement.

Dr. Booth then applied all of the factors described above to each enclave individually. He analyzed each enclave under three approaches to fair market value. These approaches he termed "comparable sales," "developmental sales," and "income sales." First he determined what he considered to be the highest and best use for each enclave. Generally speaking, the larger enclaves he determined to be subsistence farming lands, while the smaller enclaves (and small portions of the larger enclaves) he determined to be potentially suitable for such uses as military forts, trading posts, townsites, and other specific uses. He anticipated a period of from 20 to 30 years for settlement or other utilization of the enclaves.

Under his comparable sales approach, Dr. Booth considered large acreage land transactions such as the Connecticut Land Company and Holland Land Company purchases in northwestern Pennsylvania and New York between 1792 and 1795 which included valid purchases and offering prices of \$.26 to \$.44 per acre. From this data he determined that \$.40 per acre was indicative of market value for average quality lands in the Old Northwest in 1795. From this figure he took a large discount (usually 50 percent) to reflect isolation of the various enclaves. He also considered smaller sales and used a price of \$2.07 per acre from which he discounted, in many cases up to 90 percent, for such factors as lack of immediate saleability, lack of access, location, and quality.

Under his developmental sales approach he assumed the viewpoint of a hypothetical land developer. He generally postulated a potential resale price for the various enclaves at \$2 to \$2.30 per acre within a 20 to 30-year period. These assumptions resulted in wholesale-resale ratios of as high as 1 to 12.

Dr. Booth's income sales approach was based upon the investment a speculator might be willing to make in 1795 on lands which in 20 to 30 years he could resell. Under this method he postulates a 10 percent return on investment of various estimates of per acre value. In the case of three of the small enclaves he used only this method because he asserted that data were not available upon which to analyze value under his first two methods. These three enclaves were the portage at Fort Wayne, the portage at Chicago, and Ft. Massac (Royce Area 27, Illinois).

Based upon such analyses, Dr. Booth concluded that the fair market ^{10/} value of the 15 enclaves as of 1795 was as follows:

<u>Enclave</u>	<u>Per Acre Value</u>	<u>Total Value</u>
1.	\$ 0.2387	\$ 5,500
2.	0.1953	500
3.	750.00	1,500
4.	0.1953	4,500
5.	0.217	20,000
6.	0.2025	3,500
7.	0.5859	1,500
8.	0.4123	9,500
9.	0.1736	4,000
10.	125.00	1,000
11.	0.2038	1,500
12.	0.1275	2,000
13.	0.1136	2,500
14.	0.1882	16,000
15.	150.00	<u>3,000</u>
	Total	\$76,500

^{10/} The same numbering system is used here as was used in finding of fact No. 44, supra. For identification of the enclaves refer to that finding of fact.

46. Commission's Valuation Considerations; Highest and Best Uses.

The Commission finds that a variety of factors, some applying generally to all 15 enclaves and some applying specifically to one or more of the said enclaves, would have affected fair market value in 1795.

With respect to all of the enclaves generally, factors to be considered are that each of these enclaves was completely isolated from existing white settlements (many by several hundred miles); that, at the time, the territory surrounding each enclave was Indian country; and that the Indian population had, until the previous year of 1794, been actively at war against the United States. In addition, except for very small portions of each of the enclaves which had been cleared previously for use as forts, trading posts, and Indian settlements, all of the lands of the subject enclaves were in wilderness condition--forested, poorly drained, and totally without any system of internal transportation. All of the enclaves were, however, located on or near navigable waters, thus permitting ingress and egress, although this would have involved long and precarious trips from the nearest white settlements.

Except for very small areas of certain of the enclaves, substantially all of the lands of the entire 15 enclaves would have been suitable for subsistence farming but extensive drainage would be necessary in the case of several of the enclaves.

The prevailing price of Government land available for settlement in 1795 had been set by the Land Ordinance of 1785 at a maximum of \$1 per acre for 640 acre tracts with the purchaser paying the cost of

survey. Evidence of resales of lands in more developed settlements in the Old Northwest during the last decade of the 18th century indicates that the median price for such resales was \$1.36 per acre.^{11/} Tracts of fewer than 100,000 acres were being sold in Pennsylvania and New York during this period for prices generally ranging from \$1.50 to \$2.00 per acre. There is evidence of retail sales in the Vincennes tract on the Wabash River in southern Indiana and Illinois at prices of \$1 per acre in 1796.

The Commission has, in previous decisions, valued several larger tracts in the Old Northwest. These decisions involved lands ceded during the early years of the 19th century which lands, in several instances, adjoined certain of the Greeneville enclaves being valued in this proceeding. These cessions occurred during the years 1803 to 1829. The Commission has valued the lands involved in these cessions at per acre prices ranging from \$0.92 to \$1.40.^{12/}

Other factors, peculiar to one or more of the enclaves, which would have affected fair market value in 1795 are as follows:

1, 2, and 3. Royce Areas 16 and 17, Indiana, and the portage (2 acres) between them - These areas consisted of basically level to undulating terrain, with poor natural drainage in the low-lying portions along the Wabash River and its confluence with the Maumee and St. Marys

^{11/} Data from Dr. Chisholm's larger sample, finding of fact No. 44, supra.

^{12/} Note of these decisions will, where relevant, be made infra in connection with findings made with respect to the individual enclaves.

rivers. The highest and best use was for subsistence farming, with a small portion suitable for and likely to become a trading post and/or townsite. Highest and best use of the portage was as a passage between the two enclaves. These enclaves border Royce Area 132 to the north which the Commission valued as of 1827 at \$1.40 per acre. Citizen Band v. United States, Dockets 128, et al., 43 Ind. Cl. Comm. 74 (1978). On the south-east they border Royce Area 87 which the Commission valued as of 1819 at \$1.20 per acre. James Strong v. United States, Dockets 13-F, et al., 43 Ind. Cl. Comm. 311 (1978). On the south they border Royce Area 99, valued by the Commission at \$1.15 per acre as of 1818. Miami Tribe v. United States, Dockets 67, et al., 9 Ind. Cl. Comm. 1 (1960).

4. Ouatanon - This area contained mostly undulating lands suitable for subsistence farming. Some low-lying areas would require drainage, and there were very small portions of rough terrain not suitable for cultivation. A small portion was a likely townsite and/or trading post. Royce Area 98 to the north was valued as of 1818 at \$1.15 per acre. Pottawatomie Tribe v. United States, 42 Ind. Cl. Comm. 354 (1978). Royce Area 99 was also valued at \$1.15 per acre as of 1818. Miami Tribe v. United States, supra.

5 and 6. Royce Areas 18 and 19, Ohio - These lands were at the mouth of the Maumee River in northwestern Ohio. The lands were generally fertile but there was much water coverdue to poor drainage. The location of these lands was such that control could be exercised over access to northern Indiana via Lake Erie, Maumee, Wabash, and St. Marys

rivers. To the south is Royce Area 87, valued at \$1.20 per acre as of 1819, James Strong v. United States, Dockets 13-F, et al., supra, and to the north is Royce Area 66, the Ottawa (southern)portion of which was valued at \$1.28 per acre as of 1808. Saginaw Chippewa Tribe v. United States, Docket 59, et al., 41 Ind. Cl. Comm. 327 (1978). The highest and best use was for subsistence farming but the strategic location also had value.

7. Royce Area 20, Ohio - This enclave was on the Sandusky River near Lake Erie, the later site of Fremont. Most of the lands were suitable for subsistence farming after drainage. The enclave is surrounded by Royce Area 87 valued as of 1819 at \$1.20 per acre. James Strong v. United States, Dockets 13-F, et al., supra.

8. Sandusky, Ohio - On Sandusky Bay, off Lake Erie. Approximately one-third of the lands were water covered; the remainder were suitable for subsistence farming.

9 and 10. Royce Area 24, Illinois, and the portage from Royce Area 24 to the Illinois River - This is the present location of Chicago; it was then the site of Fort Dearborn. Approximately one-quarter of the lands were water covered or marshlands (on Lake Michigan). The remainder was, with drainage, suitable for subsistence farming. The site had obvious potential as a townsite. It was also strategically located, controlling the Great Lakes path to interior Illinois, the Illinois River, the Mississippi River, and thence south to New Orleans and the Gulf of Mexico. It was surrounded on three sides by Royce Area 78, the value of which as of 1816 has been

determined, based upon the parties' stipulation, to be \$1.15 per acre.

Citizen Band of Potawatomi Indians v. United States, Dockets 216, et al., 42 Ind. Cl. Comm. 524 (1978).

11 and 12. Old Peorias fort and village - This enclave straddles the Illinois River midway between Chicago and the Mississippi River. Along the river the lands were water covered and marshy. There were also portions farther inland that were too steep for cultivation. Most of the enclave was suitable for subsistence farming. There was also potential for a trading site and townsite. Royce Area 110 on the south has been valued at \$1.20 per acre as of 1821. Pottawatomie Tribe v. United States, Dockets 15-D, et al., supra.

13 and 14. At the mouth of the Illinois River. This was very rich farmland but some of the enclave was water covered in 1795. There were small areas of steep terrain. The enclave was strategically located at the confluence of the Illinois and Mississippi rivers. A portion of the enclave would have been considered as a potential trading center and townsite. Surrounding lands were valued as of 1803 at \$0.92 per acre. Pottawatomie Tribe v. United States, Dockets 15-D, et al., supra.

15. Royce Area 27, Illinois (Fort Massac) - This 20-acre enclave was strategically located on the Ohio River a few miles from its confluence with the Mississippi. The lands, with drainage, would have been suitable for subsistence farming. Potential as a townsite is also indicated. Lands surrounding the enclave north of the Ohio

River have been valued at \$0.92 per acre as of 1803. Pottawatomie Tribe v. United States, Dockets 15-D, et al., supra.

47. Treaty Consideration. Article IV of the Greeneville Treaty, 7 Stat. at 51, provided \$20,000 in goods was to be apportioned at the treaty council among the signatory tribes and that perpetual annuities payable in ". . . useful goods . . ." would be delivered annually to the respective tribes. The treaty provided that said annuities payable in goods would have the following annual cash values:

Wyandots	-	Perpetual annuity of \$1,000			
Miamis	-	"	"	"	1,000
Eel Rivers	<u>13/-</u>	"	"	"	500
Weas	-	"	"	"	500
Ottawas	-	"	"	"	1,000
Pottawatomies	-	"	"	"	1,000
Kickapoos	-	"	"	"	500
Kaskaskias	-	"	"	"	500

The value of the consideration promised to the respective tribes under the Greeneville Treaty is, therefore, the sum of the capitalized value at 5 percent of these annuities plus a pro rata share of the \$20,000 in goods distributed at the treaty, or the following amounts:

Wyandots	\$22,100
Miamis (including Eel Rivers)	\$33,220
Weas	\$11,120
Ottawas	\$22,100

13/ The Eel Rivers were a constituent part of the Miami tribe. See 2 Ind. Cl. Comm. 617, 618 (1954); 5 Ind. Cl. Comm. 180, 181 (1957).

Pottawatomies	\$22,100
Kickapoos	\$11,120
Kaskaskias	\$11,120

48. Compensability for the Ouatanon Enclave. Under Article 3 of the August 3, 1795, Treaty of Greeneville, the signatory Indians ceded to the United States "one piece six milcs square at the Ouatonon or Old Weea town on the Wabash river." (7 Stat. 50) In Docket 13-G, et al, James Strong, et al. v. United States, 31 Ind. Cl. Comm. 89 (1973), affirmed as to title, and remanded for reconsideration with respect to this six-mile tract, 207 Ct. Cl. 254, 277-279 (1975), the Commission found that the Weas, who were still part of the Miami Nation in 1795, exclusively used and occupied the six-mile tract in question. Moreover, the Weas exclusively used and occupied lands immediately surrounding this tract. See the findings of fact of the Commission in Miami Tribe of Oklahoma, et al., Dockets 67 and 124, et al., entered March 26, 1954, specifically finding number 4 (1) in which the Commission found that on October 2, 1818, the Wea Tribe had exclusive title, recognized by the United States, to 815,000 acres occupied by it in the western part of Royce Area 99 in Indiana. This included that part of the six-mile tract which lay in Royce Area 99 south of the Wabash River. That portion of the six-mile tract which lay north of the Wabash River was in Royce Area 98 and was dealt with by the Commission in its findings in the title phase of the Pottawatomi Tribe of Indians, et al., Docket 15-D, et al., 30 Ind. Cl. Comm. 42 (1973), specifically finding 14 involving Wea title. In

that finding the Commission stated that the Wea recognized title which was ceded under the Treaty of October 2, 1818, 7 Stat. 186, consisted, among other things, of an undivided one-half interest in the eastern portion of Royce Area 98 designated as tract I on map appendix I, except for item (7) ceded under Article III of the Treaty of Greeneville of August 3, 1795. The item 7 referred to in that finding was the north of the Wabash part of the six-square mile tract which we held was owned by the Weas by aboriginal title and ceded to the United States under the Treaty of Greeneville.

Pursuant to the Treaty of September 30, 1809 (7 Stat. 113), the United States, in Article 8th, agreed to relinquish their right to the six-mile tract which was acquired from the Weas in the Treaty of Greeneville "so far at least as to make no further use of it than for the establishment of a military post." Although the Weas were not a party to this treaty, they gave their consent by signing the Treaty of October 26, 1809 (7 Stat. 116). In the treaty of October 2, 1818 (7 Stat. 186), the Weas ceded to the United States all of the lands claimed and owned by them within the limits of the states of Indiana, Ohio, and Illinois. The Weas then were no longer confederated with the Miami Indians. On October 6, 1818, the Miami Indians entered into a treaty with the United States (7 Stat. 189) ceding Royce Area 99 in Indiana which included that portion of the six-mile tract lying south of the Wabash River.

In the Pottawatomie case mentioned above, Docket 15-D, et al., and in which the Commission has recently entered final awards, 42 Ind. Cl.

Comm. 354, there was no award to the Weas for this six-mile tract of land which had been excluded, as pointed out above, in the title decision. In the Miami Tribe of Indians, et al., Dockets 67 and 124, 9 Ind. Cl. Comm. 1 (1960), a final judgment was entered for the cession of Royce Area 99 in Indiana which included that part of the six-mile strip lying south of the Wabash River. But there was no specific mention in that decision or award of the particular enclave or of the Weas' ownership of it. We infer that the southern portion of the enclave was included in the cession of the western portion of Area 99 in Indiana.

CONCLUSIONS OF LAW

1. The fair market value, on August 3, 1795, of the 15 separate enclaves ceded at the Treaty of Greeneville, 7 Stat. 49, was as follows:

<u>Enclave</u>	<u>Title Holder</u>	<u>Acreage</u>	<u>Per Acre Value</u>	<u>Total Value</u>
1. Royce Area 16, Indiana	Miami - 2/3 Wea - 1/3	23,040	\$1.08	\$24,883.20
2. Royce Area 17, Indiana	Miami - 2/3 Wea - 1/3	2,560	1.08	2,764.80
3. Portage Road from Royce Area 16 to Royce Area 17, Indiana	Miami - 2/3 Wea - 1/3	2	1.25	2.50
4. Six miles square at Ouatanon or Old Wea Towns (unnumbered red line in west-central Indiana on Royce's map)	Miami - 2/3 Wea - 1/3	23,040	1.08	24,883.20
5. Royce Area 18, Ohio	Ottawa	92,160	1.13	104,140.80

	<u>Enclave</u>	<u>Title Holder</u>	<u>Acreage</u>	<u>Per Acre Value</u>	<u>Total Value</u>
6.	Royce Area 19, Ohio	Ottawa	17,280	\$1.13	\$19,526.40
7.	Royce Area 20, Ohio	Wyandot	2,560	0.90	2,304.00
8.	Six miles square (Sandusky)	Wyandot	23,040	0.75	17,280.00
9.	Royce Area 24, Illinois	Potawatomi	23,040	1.17	26,956.80
10.	Portage Road from Royce Area 24 to Illinois River	Potawatomi	8	1.25	10.00
11.	Area west of the Illinois River at the Old Piorias fort and village	Potawatomi	7,460	1.08	7,948.80
12.	Area east of the Illinois River at the Old Piorias fort and village	Kickapoo	15,680	1.08	16,934.40
13.	Area west of the Illinois River at its mouth	Potawatomi	22,000	1.08	23,760.00
14.	Area east of the Illinois River at its mouth	Kickapoo	85,000	1.08	91,800.00
15.	Royce Area 27, Illinois	Kaskaskia	20	75.00	<u>1,500.00</u>
		Total			\$364,694.90

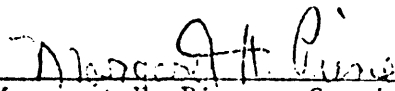
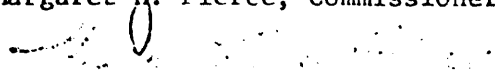
2. Consideration in the following amounts was paid under the Treaty of Greenville to the respective signatory tribes who are represented by plaintiffs in this proceeding: to the Miamis, \$33,220.00; to the Weas, \$11,120.00; to the Ottawas, \$22,100.00; to the Wyandots, \$22,100.00; to the Pottawatomies, \$22,100.00; to the Kickapoos, \$11,120.00; and to the Kaskaskias, \$11,120.00.

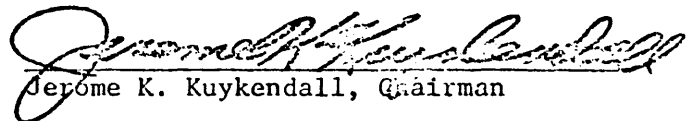
3. Consideration paid to the Miamis, Weas, Wyandots, and Kaskaskias for the cession of their enclaves at the Treaty of Greeneville was not so grossly inadequate as to render it unconscionable within the meaning of Section 2(3) of the Indian Claims Commission Act. The claims brought by the plaintiffs representing these tribes will, therefore, be dismissed.

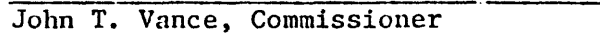
4. The consideration received by the Ottawas, the Pottawatomics, and the Kickapoos for the cession of their enclaves at the Treaty of Greeneville was so grossly inadequate as to render it unconscionable within the meaning of Section 2(3) of the Indian Claims Commission Act.


5. Defendant, pursuant to P.L. 93-494, 88 Stat: 1499, is not entitled to credit for any of the consideration paid as payments on the claim.

6. Those plaintiffs whom we have determined received unconscionable consideration are entitled to recover the following sums, less any gratuitous offsets to which defendant may be entitled under the provisions of the Indian Claims Commission Act: to the Ottawa plaintiffs, the sum of \$123,667.20; to the Pottawatomie plaintiffs, the sum of \$58,675.60; and to the Kickapoo plaintiffs, the sum of \$108,734.40.


 Margaret H. Pierce, Commissioner

 Brantley Blue, Commissioner


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner