

BEFORE THE INDIAN CLAIMS COMMISSION

THE KIOWA, COMANCHE and APACHE)
 TRIBES OF INDIANS,)

Petitioners,)

v.)

Docket No. 32

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: December 13, 1955

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 to 5, heretofore made herein:

6. By virtue of the Treaty of October 21, 1867, 15 Stat. 581, the Kiowa, Comanche and Apache Tribes of Indians acquired title to 2,991,933 acres of land (described in Finding 1) situated generally in the southwestern part of what is now the State of Oklahoma. This area is indicated and described as tract No. 510 in Royce's Land Cessions. By the provisions of Section 6 of the Act of June 6, 1900, (Finding 3) the United States acquired 2,033,583 acres of the lands within the reservation for a consideration of \$2,000,000. By said provisions of the Act of June 6, 1900, the Indians were given at least ninety days to select allotments of 160 acres each and certain other lands were reserved to their use. The parties to this action have stipulated (Pet. Ex. 102, Tr. 348, 577) the acreage as follows:

K. C. A. Reservation	2,991,933 acres
Allotments to Indians	445,000
Pastures	480,000
Agencies, schools, etc.	10,310
Wood Reserve	23,040
Total Reserved by Indians	<u>958,350</u> acres
Acreage acquired by the United States	2,033,583 acres

7. Finding 4, heretofore made by this Commission, is hereby amended to include in said finding at 1 Ind. Cl. Comm. 519, following the words "other purposes" the words "and 23,040 acres for a wood reserve" so that said finding will describe accurately the disposition of the reservation lands.

8. Generally speaking, the ceded area is located south and west of Oklahoma City. It is bounded on the east by the 98th Meridian, and on the south by the Red River, on the north by the Washita River, and on the west by the north fork of the Red River. Today, the area of the reservation is divided into and includes all of the counties of Kiowa, Comanche, Cotton and Tillman and portions of Caddo, Grady, Stephens, Washita and Jefferson Counties in Oklahoma.

9. Oklahoma Territory, comprising generally the north and western part of the present state of Oklahoma, was organized in 1890 pursuant to Act of Congress (26 Stat. 81). The first lands in Oklahoma Territory to be opened to settlers were the "Unassigned Lands" or Old Oklahoma opened by Presidential Proclamation on April 22, 1889, then followed the opening of the Oklahoma Panhandle in 1890; the Iowa, Sac, Fox, Pottawatomie and Shawnee surplus lands in 1891; the Cheyenne and Arapahoe Indian surplus lands in 1892; the Cherokee Outlet or Strip, and the Tonkawa and Pawnee Indian surplus lands in 1893; and the Kickapoo Indian surplus lands in 1895.

The area called "Old Greer County" which was adjacent to the Kiowa, Comanche and Apache Reservation on the west was organized in 1886 under the laws of Texas, but in 1896 it was determined that this area was properly a part of the Territory of Oklahoma and it was annexed to that Territory and opened to settlement in 1897. The occupants of Greer County, who had purchased their land from Texas prior to March 16, 1896, were given the right to perfect title thereto under the homestead laws by paying only the land office fees and they could also obtain 160 additional at one dollar per acre.

10. The population of Oklahoma Territory increased from 60,417 in 1890 to 396,904 in 1900. During this period, out of the 20,215,575 acres of land which had been made available for settlement, a total of 14,481,000 acres had been filed on or reserved as of June 30, 1900, and there remained in the Territory 5,733,385 acres available for homestead entry and 3,211,931 acres of these lands were located in Beaver County. Much of this land remaining open for homesteads was described by the Governor of the Territory in his 1900 report as being broken and rough and unfit for farming. Of the lands entered in Oklahoma Territory during the 1890-1900 period, however, only 2,300,000 to 2,800,000 acres, or from 20 to 27%, had been listed for taxes up to the year 1900 and presumably paid for and patented. In 1900, Guthrie and Oklahoma City, cities of over 10,000 population, were in existence northeast of the reservation some 40 and 60 miles distant, respectively. Chickasha on the northeastern border was a rail center.

11. The reservation was in what has been characterized as a humid area. The average annual precipitation in the area from 1891 to 1900

was approximately 30 inches. The average growing season in the area usually extends from April 1st to November 1st. The climate is favorable to agricultural uses although the area being subject to erratic precipitation has had a history of drought years. The elevation of the reservation is approximately one thousand to fifteen hundred feet above sea level with the exception of the Wichita Mountains in the west central portion thereof and the area consists generally of level to rolling terrain interspersed with streams or creeks.

12. (a) In the areas surrounding the reservation, the following facts of record are pertinent as to the settlement of Oklahoma Territory. Adjoining the reservation on the west was Greer County, consisting of some 1,531,520 acres with a population of 17,922 as of 1900. Greer County, according to the 1900 census, had 3,465 farms containing 912,804 acres of which 189,582 acres were improved. The value of these farms shown by the census for land and improvements (except buildings) was \$3,272,440, while the buildings were valued at \$392,920. Greer County was organized in 1886 under the laws of Texas but in 1896 it was made a part of the Territory of Oklahoma. A branch line of the Chicago, Rock Island and Pacific Railroad from Chickasha in Indian Territory, opened early in 1900, ran across the northern edge of the reservation to the town of Mangum in Greer County.

(b) In 1900, Roger Mills County adjoined the reservation at the northwest corner and had a reported population of 6,190. The county, according to the 1900 United States census, had 762,240 acres with 1251 farms of a total acreage of 267,986 acres, of which 44,273 acres were improved. The value of the land and improvements (except buildings) of these farms was reported to be \$970,830 and the buildings \$108,250.

(c) Washita County which adjoined the reservation on the north had a population of 15,000 in 1900. The United States census for 1900 reported the county to contain 632,320 acres of land with 2780 farms totaling 490,473 acres, of which 162,721 acres were improved lands. The value of the land and improvements (except buildings) of these farms was reported to be \$3,327,320, while the value of the buildings was stated to be \$454,870.

(d) One of the three Texas counties adjoining the reservation on the south was Clay County which had a population of 9,231 in 1900. This county, consisting of 741,120 acres, was reported to have 1153 farms in 1900, totaling 637,201 acres, of which lands 191,671 acres were improved. The value of the land and improvements (except buildings) on these farms as of that date was reported to be \$4,462,460, according to the census, and the value of the buildings was \$513,160. The county was created in 1857, disorganized in 1862, and reorganized in 1873. The Fort Worth and Denver Railroad which ran through the county had been in operation for a number of years prior to 1900.

(e) Wichita County, Texas, also adjoined the reservation on the south. In 1900, it had a population of 5806. It was created in 1858 and organized in 1882. In 1900, the county, consisting of 386,560 acres, had 399 farms containing a total acreage of 326,628, of which 106,152 acres were improved. The value of the land and improvements (except buildings) of these farms was reported to be \$2,630,550, while buildings were valued at \$240,150, according to the census. This county was also served as of 1900 by the Fort Worth and Denver Railroad, and had been for a number of years.

(f) The remaining Texas county adjoining the reservation on the south was Wilbarger County, consisting of 493,920 acres, which was organized in 1881. In 1900, it had a population of 5,759. The Census of 1900 reported 608 farms in the county, consisting of 401,725 acres, of which 116,221 acres were improved lands. The value of the land and improvements (except buildings) on these farms was reported to be \$1,998,160, while the buildings were valued at \$247,130. The Fort Worth and Texas Railroad opened in 1888, also ran through this county.

(g) The 1900 United States Census made a report on the Wichita, Kiowa and Comanche Reservations jointly, consisting of approximately 3,735,543 acres. On these lands there were reported to be 459 farms having 438 buildings. Of the 2,600,676 acres listed as farms, some 21,763 acres were considered as improved lands. The land and improvements, except buildings, were reported to be worth \$8,066,050, and the buildings were valued at \$165,080. On the basis of this information, the average acres per farm would be 5,665 acres but actually much of the land in the reservation was leased in large blocks to cattlemen who used the area for grazing. As of June 1900, approximately 40 leases were in force covering approximately 2,130,000 acres of the K. C. A. Reservation. These leases were made with cattle ranchers for grazing purposes and called for payment of annual rentals in the amount of \$210,632.60, and ten of the leases required the lessees to build fences.

(h) Adjoining the ceded area on the east was Indian Territory. Immediately adjoining the K. C. A. Reservation on the east were the lands of the Chickasaw Nation. The United States Census for 1900 reported the

Chickasaw area to have 16,374 farms with 3,246,187 acres in these farms, of which 1,111,631 were reported to be improved lands. The census reported the value of land and improvements (except buildings) of these farms to be \$18,127,010, while the buildings were valued at \$2,254,750.

(i) The United States Census for 1900 for Oklahoma Territory, including Indian Territory, reported 108,000 farms containing 22,988,339 acres, of which 8,574,187 were improved lands. The value of all farm property was \$277,525,433, with the value of land and buildings reported to be \$170,804,675. The average acreage per farm was 212.9 acres with approximately 80 acres per farm being improved. The average value per acre of land and buildings was \$7.43, while the average value per acre of land alone was \$6.50.

13. The Chicago, Rock Island and Pacific Railroad which, by 1891, had completed a line from El Reno, Oklahoma Territory, south into Texas, extending north and south just east of the entire eastern portion of the reservation and generally parallel to its border was operating in or near the reservation in 1900, and by March 31, 1900, this railroad had constructed a line westward from Chickasha, Oklahoma Territory, across the entire northern border of the reservation. This branch line generally followed the valley of the Washita River, but cut across the northwestern corner of the reservation into Greer County and terminated at Magnum in that county.

14. From shortly after the Civil War, to about 1880, large quantities of cattle were moved from Texas to Kansas, across the present State of Oklahoma via the Chisholm Trail which passed through Oklahoma just a few miles east of, and ran parallel to, the eastern boundary of the

reservation, following approximately the future course of the Chicago, Rock Island and Pacific Railroad. After 1880, the Dodge City Cattle Trail was generally used for that purpose and it crossed the northwestern portion of the reservation. As of 1900, the Fort Sill and Camp Auger Road extended from Fort Sill in a southwestwardly direction to the crossing at the Red River while another road, the Fort Sill-Texas Road, extended generally southeast from Fort Sill and left the reservation in its southeastern corner. The Traders Trail extended generally from Anadarko on the northern border of the reservation south through Fort Sill and then followed the Fort Sill-Texas Road while the Stage Road extended north from Fort Sill to Wichita, Kansas, through Anadarko. A road also crossed the reservation from east to west, at about its center, passing through Fort Sill.

15. (a) A study of the land records from 1894 through 1900 with respect to the sale of small, undoubtedly improved tracts of land in Washita County to the north of the reservation, of Beckham County to the northwest, of Greer and Jackson counties to the west, all in Oklahoma, and of Wilbarger, Wichita and Clay counties, Texas, to the south of the reservation, disclosed that over that period of time there had been 1,986 sales recorded, totaling 628,541 acres at an average price per acre of \$5.92. If the Texas sales, which occurred in an area which had been under development for a much longer period of time, are eliminated, then the Oklahoma sales would be 277 in number, totaling 47,761 acres at an average consideration of \$4.92 an acre for the 1894-1900 period.

(b) For the year 1900, the record shows that in all the above counties in both Texas and Oklahoma there were 545 sales of small tracts

totaling 141,659 acres for an average consideration of \$6.49 per acre. If only the Oklahoma sales are considered for 1900, then there were 146 sales for a total of 24,771 acres at an average consideration of \$5.62 per acre.

16. In 1900, the Governor of Oklahoma Territory in his annual report to the Secretary of the Interior of the United States wrote as follows:

(Pet. Ex. 116)

The farm lands of Oklahoma, like those of all sections of the country, vary in fertility, and these conditions, together with cultivation, improvements, and proximity to market, all combine to fix the selling value of farms in the Territory.

While many farms near the larger towns sell from \$25 to \$50 dollars per acre, good farms fairly well improved, from 4 to 10 miles from market, can be bought in any part of the Territory from \$8 to \$15 per acre, and in many sections much cheaper.

The large immigration into the Territory the past two years has caused a steady demand for lands, and considerable farm property is changing hands in every county. The increased demand and the absorption of all the desirable Government lands, which will take place within a year or two, will cause a steady increase of price of land in the Territory for the next few years.

In addition to the school and other public lands rented by the Territory, good land can be rented in almost every county for crop rentals of from one-third to two-fifths of corn, wheat, and oats and one-fourth of cotton and cash rent ranging from \$1 to \$3 per acre.

The Governor listed total sales of farm lands for the months of May and June 1900, by counties for the Territory. The average price paid per acre in the Territory was \$11.83. In Roger Mills County the average price per acre of 13 sales was \$3.14, and in Washita County for 18 sales the average price per acre was \$4.70. This report also states that the principal occupation of the people of Roger Mills County was stock raising

in 1900, and that the products of the farms therein were cattle and cattle feed, corn, cotton, and wheat. The principal occupation of the people of Washita County was agriculture and the products of the county were cotton, wheat, corn, castor beans, cattle, and hogs. This report states that the principal occupation of the people of Greer County was agriculture and stock raising and that the products of the county included wheat, cotton, corn, cane, cattle and sheep.

17. With respect to the reservation itself, the Governor of Oklahoma Territory in his report to the Secretary of the Interior in 1900 wrote as follows:

For years the white people of the Southwest have looked upon this beautiful and picturesque reservation with longing eyes, and the zealous manner in which it has been guarded by the Indian agents and the Indians has but served to increase the desire to possess what appeared to many to be a veritable land of milk and honey.

The rich bottom lands of the Washita Valley, producing magnificent crops of wheat and corn, the fertile lands bordering many other streams, the beautiful undulating plains stretching away to the Red River on the south and west, and the magnificent mountain parks indeed offer an inviting field for the agriculturist; but a thorough inspection of the entire reservation shows much land that is alone suitable for grazing, and much more that is absolutely waste, while many thousand of acres on the mountains will be absolutely valueless except for such minerals as may be found there. A careful examination of the land over a large portion of the reservation convinces me that about one-half of the land which will be left for settlers will be desirable farming land, the rest being suited for pasture and stock feed, with a considerable area of wholly waste land. The land that is suited for farming, however, is of the very best, and within a few years this reservation will be as thickly populated and as prosperous as any other portion of the Territory, producing crops of the many products so successfully grown throughout all Oklahoma.

While there are rich valleys and beautiful parks scattered all over the reservation the largest bodies of uniform agricultural land lie east of a line passing north and south at the western limit of the Fort Sill Military Reservation. The

northeastern quarter of the reservation contains much good land, but is somewhat broken by a chain of hills. The southeastern quarter is mostly undulating prairie, fertile and unbroken. The southwest quarter of the reservation is mostly high and rolling except in valleys of the Red River. Any of the uplands will produce good crops of wheat, but much of this part is best adapted to pasture. In the northwest quarter is some of the very finest land in the valleys of the streams and in the parks of the Wichita Mountains, which occupy much of this portion.

The reservation is the best watered in the Territory. Large rivers bound it on three sides and hundreds of streams cross it in every direction. * * * There are hundreds of fine springs, several being among the largest in the West, and good water can be found anywhere at a depth of from 20 to 40 feet.

The rainfall is abundant in all parts of the reservation, the official record at Fort Sill showing an average fall of 30 inches for the past nine years. The climate is delightful and invigorating.

* * *

The greater portion of the Indians upon this reservation have built houses, made some few improvements, and, as they will in the majority of cases select their allotments where they have built, they will take up all of the Washita Valley and many of the other choicest portions of the reservation with the best water and timber.

While thousands of people are looking toward this reservation and anxiously awaiting its opening, and I myself am most desirous of seeing its early transformation from a great cattle pasture into busy, progressive communities constituting several counties of the Territory, * * *. A spring opening after April 1 will leave the people to get through a year and a half before they can have a crop to use or market, and in a new and untried country this means much hardship and suffering to the settlers.

18. Petitioners' appraiser made a study of the soils of the Kiowa, Comanche and Apache Reservation and grouped them into four broad soil associations. Of these four groups, he reported that the "alluvial" soils were generally well adapted to crop production; that the "reddish prairie" soils, were generally adapted to crop production, although some

types were suited only for grazing; that the "rolling plains" soils were generally reasonably well suited for cultivation but many of the soil associations in this group were best suited for pasture and grazing; and that the "cross timbers and mountains" were the poorest soils. In his study of the soil areas he concluded that the Indians generally selected slightly better quality land in general than the land acquired by the United States in that 94% of the land selected by the Indians is now considered as fairly good land; whereas, only 83.7% of the land acquired by the United States would be so classified. Petitioners' appraiser further broke down the soils in the reservation to show the percentage of soils retained by the Indians as compared to those acquired by the Government as follows: (Pet. Ex. 70, pp. 109-111).

Soil Associations	Acquired by United States		Retained by Indians	
	Acreage	% of Total	Acreage	% of Total
1. Alluvial	120,115	5.9	113,951	11.9
2. Reddish Prairie	658,703	32.4	193,947	20.2
3. Rolling Plains	932,383	45.4	592,978	61.9
4. Cross timbers and Mountains	331,383	16.3	57,474	6.0
Totals	2,033,583	100.0	958,350	100.0

19. As of June 1900, the greater portion of the reservation lands were being used for cattle grazing. (Finding 12 (g)). A study of the surveyors' notes and other evidence of record such as the 1900 report of the Governor of Oklahoma Territory reveals that a large part of the lands of the reservation were adaptable to agricultural uses. The

evidence further reveals that there was a great demand for the opening of these lands for such use. The highest and best use in 1900 to which these lands were adaptable and in demand for was as farm lands to be devoted for the most part to stock husbandry. This conclusion was shared by the Governor of the Territory in 1900 when he said: "It is generally conceded that stock husbandry is the most profitable branch of farming, and that for agriculture to be put on a substantial and profitable basis in a given locality enough stock should be kept on every farm to consume the greater part of the products produced there." (Pet. Ex. 116, p. 649). He also added that "the great corn, cane, and kaffir fields, the cotton and other products afford cheap and abundant fattening foods * * *." Such use of the lands in a newly opened and undeveloped country would be necessary until transportation and markets for produce become available.

20. The Act of June 6, 1900, provided that after the Indians made their selection of individual and pasture lands that the remainder of the land should be disposed of under the general provisions of the homestead and town-site laws of the United States. By acts of Congress the time for opening of the area was extended. By presidential proclamation, dated July 4, 1901, the Kiowa, Comanche and Apache surplus lands, together with the Wichita surplus lands, were opened to public entry starting on August 6, 1901. Of the 2,033,583 acres acquired by the United States, the proclamation reserved from entry and settlement certain forest and military areas and four sections of land in each township to be used for educational and public purposes for the Territory of Oklahoma. Approximately 2,000,000 acres of land were available for homestead entry in the

two reservations, of which approximately 1,500,000 were in the Kiowa, Comanche and Apache Reservation.

Because of the great demand for these lands among prospective settlers, the United States determined that the choice of homesteads would be determined by a lottery. Prospective settlers registered at two land offices, and as their names were drawn they were allowed to make selections. This process continued until all available land was selected. No person was entitled to more than 160 acres of land. After 14 months, a settler who had settled on the land and made the prescribed improvements could secure a patent by the payment of \$1.25 per acre. Other settlers could acquire their patents at the end of 5 years, but they, too, were required to pay \$1.25 per acre. The land was tax free until patented. All homesteaders were required to pay the regular land-office fees.

Three town-sites of 320 acres each were set aside at Anadarko, Hobart and Lawton in the reservation. These sites were to be county seats for the counties of Caddo, Kiowa, and Comanche, respectively, which had been created in anticipation of the opening. The town-sites were divided into business and residential lots which were sold at public auction for cash. These towns were built literally almost overnight. The gross sum received from the auction of the townsites was \$736,033, with a net, after deducting all expenses of sale, of \$724,917.62.

The Act of Congress of March 3, 1901, (31 Stat. 1093, 1094) providing for the sale of the town-sites provided that the receipts from the sale of the lots after deducting the expenses incident to the surveying, subdividing, platting and selling of the same, should be used to build

court houses, construct bridges, roads and other public improvements, including payment of all expenses actually necessary to the maintenance of the county governments until the time for collecting taxes in the calendar year next succeeding the time of the opening. Gross fees from homestead entries were \$162,932 and net fees were \$142,141, about three-fourths of which would be attributable to fees on ceded lands.

A total of 164,416 individuals registered at one of the two available land offices in an effort to secure one of the 13,000 homesteads available on the two reservations. The registration lasted from July 10, to July 26, 1901. Starting August 6, 1901, drawings were had each day until October 4, 1901, in order to determine those entitled to make a selection of land. A total of 11,638 entries were made during the 60-day period. The remaining lands were rapidly settled upon and entered under the general homestead laws. The Assistant Commissioner of the General Land Office, who had charge of the disposal of these lands, reported on October 9, 1901, "Without strife or contention, but in a quiet, peaceful, and orderly manner these lands have passed from the condition of an Indian reservation to that of a populous, thrifty, peaceable agricultural community."

The great demand for the reservation lands existed notwithstanding that on May 17, 1900 there had been enacted what has been called the Free Homestead Act wherein prior settlers on agricultural public lands could acquire patents without payment except for land office fees. This act was not then and never was applicable to the Kiowa, Comanche and Apache Reservation. The demand for the right to settle on the

reservation and pay \$1.25 per acre, plus the land office fees, for the ceded land discloses that the settlers believed that the purchase of the ceded land at \$1.25 per acre under the generous terms of the homestead laws of the United States, plus land office fees, was a bargain.

21. The mineral resources of the ceded area as of June 6, 1900 were not of sufficient economic importance to have any effect upon the fair market value of the lands.

22. The ceded area consisting of 2,033,583 acres had a fair market value as of June 6, 1900, of \$4,067,166, being at the rate of \$2.00 per acre. The Kiowa, Comanche and Apache Tribes are chargeable with the \$2,000,000 consideration received under the Act of June 6, 1900, leaving a balance payable to petitioners of \$2,067,166, from which will be deducted the offsets, if any, hereafter to be determined in accordance with the rules of the Commission.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner