

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF  
THE LOWER BRULE RESERVATION,  
SOUTH DAKOTA,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 78

Decided: April 26, 1956

ADDITIONAL  
FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings numbered 1 through 8 made in the prior decision of this Commission:

9. The land involved in this case is a strip along the southern border of the Lower Brule Reservation in South Dakota. As indicated in the previous findings, there was an error in the survey as made in 1890 and as a result thereof the 44th parallel of latitude, which was officially designated as the southern boundary of the Lower Brule Reservation in the Act of March 2, 1889, 25 Stat. 888, was incorrectly located and resulted in a loss of a portion of the Lower Brule lands as described in the Act of March 2, 1889.

10. The correct location of the 44th parallel is 5,164 feet south of the monumented south boundary of the Lower Brule Reservation. The

area of land erroneously excluded from said reservation is 41.887 miles long, 0.978 of a mile wide and contains 40.965 square miles. This calculation was made by the U. S. Coast and Geodetic Survey (Def. Ex. 29).

11. The excluded land constitutes parts of Township 106 N., Ranges 73, 74, 75, 76, 77, 78 and 79 West of the 5th Principal Meridian, South Dakota, and to determine the acreage thereof the Bureau of Land Management located on copies of the official plats of said townships the 44th parallel as determined by the Coast and Geodetic Survey and computed the acreage of the fractional quarter section north of the 44th parallel. (Def. Exs. 27 (d) (e), 31-37). The total acreage as shown by these plats is 25,968.24 and we find it the correct acreage of the excluded area.

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Note - The tabulation of disposals within the excluded area as shown by defendant's Exhibit 28 shows a total acreage of 26,235.56, but this total, as a comparison with said exhibits 31-37 will show, includes lands lying south of the 44th parallel. And, as to computation of 26,218 acres made by the Coast and Geodetic Survey (Def. Ex. 29) it will be observed that such acreage was "based upon a standard section of 640 acres."

12. By the Act of March 2, 1889 (25 Stat. 888) it was provided in Section 21, "That all the lands in the Great Sioux Reservation, outside of the separate reservations herein described are hereby restored to the public domain \* \* \*."

The act provided in Sec. 28, that it should become effective upon proclamation by the President. The Presidential Proclamation was issued on February 10, 1890 (26 Stat. 1554). The act further provided in Sec. 21, "that all lands herein opened to settlement under this act remaining undisposed of at the end of ten years from the taking effect of this act shall be taken and accepted by the United States and paid for by said United States at fifty cents per acre \* \* \*. And said lands shall thereafter be part of the public domain \* \* \*." The Commission, therefore, finds that the date the Indian title to this excluded land passed to defendant was February 10, 1900, and is valued as of that date.

13. The area of land to be valued herein lies approximately in the south-central part of the state of South Dakota and in the county of Lyman. It is adjacent to the southern border of the Lower Brule Indian Reservation. The southeast corner of the line representing the beginning of the south border of the tract of land is located 7.75 miles north and 4 miles east of Reliance, South Dakota. The western end of the south line of the tract of land is approximately 6 miles north on Highway 83 and 2 miles west of U. S. Highway 83, north and south.

14. Going west from the east line of Range 73<sup>W</sup> through the west line of Range 74<sup>W</sup>, the character of the land is uneven and apparently

not cultivable. Range 75<sup>W</sup> is rolling to gently rolling. From the east line of Range 76<sup>W</sup> to the west line, the land is gently rolling. From the east line of Range 77<sup>W</sup> to the west line, is gently rolling to rolling. From the east line of Range 78<sup>W</sup> to the west line, is rolling and all of Range 79<sup>W</sup> is rolling. Starting with Range 75<sup>W</sup> and going through Range 79<sup>W</sup>, all of the land seems to be productive either as grazing or farming land. The two eastern ranges appear to be too rough for use as farm land and less valuable for grazing than the land farther west.

15. The climate of the general area is semi-arid with a rather long winter and comparatively short summer. There are no marshes or swamps in the area. The growing season averages 140 to 160 days a year. The frost dates usually run between May 5 and 10, in the spring, and September 30 to October 5, in the fall. The temperature range is fairly extreme and may go from over 100° in the summer to -30° in winter. The average rainfall in Lyman County is 18 inches and is about the lowest in the state. However, the major portion of the rainfall comes during the growing season. The only drainage in the area is furnished by Medicine Creek and its branches. The water supply for the area comes from rainfall, shallow wells, reservoirs and occasional artesian wells. In 1904, there were only three artesian wells in Lyman County. One of these was on the Lower Brule Reservation and two were north of Oacoma. Trees are scarce through the area, with what there are being confined to the stream banks. The transportation for this area was furnished by the Missouri River prior to the railroads. The Missouri is 12 miles east of the eastern end of the strip and 56 miles from its western end. By 1880 there was a railroad at Pierre, South Dakota, on the eastern side of the Missouri. This was about 36 air

miles from the western end of the area and 5<sup>1</sup>/<sub>4</sub> air miles from the eastern end. By 1890, there was a line to Chamberlain on the eastern side of the Missouri. This line was about 26 miles from the eastern end of the strip and 68 miles from the western end. It wasn't until 1905, that the railroads began to extend west of the Missouri. About 57% of the present rail network was available up until 1905. This meant that some 1900 miles of line east of the Missouri was in operation.

16. The soils within the area are capable of supporting grass for grazing purposes and also small grains and corn. There is approximately 65% of the soil which is adaptable to small grain and corn and about 35% which is usable only for grazing. That would seem to indicate that some 16,889 acres would have as its highest and best use the raising of small grain and corn; while 9,079 acres were adaptable as grazing lands only. However, the appraisers agree that the highest and best use for the lands as of 1890-1900 was for grazing lands.

17. The area around Lyman County was originally devoted to cattle raising because of the grassland. It wasn't until the advent of the railroads after 1905 that farming began to supplement and replace the cattle industry on any scale. The area of Lyman County was 3,456 square miles and it had a population of 2,632 in 1900. Nearly all of the towns in the county were founded around 1905 when the railroad came west of the Missouri River. The population in Lyman County increased from 233 in 1890 to 2,632 in 1900, because of the opening of the Sioux lands for settlement. During this same period, the population of the town of Chamberlain, which was a railroad terminal town on the east side of the Missouri, decreased from

932 to 874. Local inhabitants explained the drop by saying that there was nothing there for the people; that the banks had no money and economic conditions were such that the people left. While the general population of Lyman County was increasing between 1890 and 1900, the settlement within the excluded area was meager. For the period from February 10, 1890 to February 10, 1893, homesteaders took up only 276.20 acres at \$1.25 per acre. From February 10, 1893 through February 10, 1895, they took up 922.46 acres at 75¢ an acre, and from 1895 through February 10, 1900, they took up 652.80 acres at 50¢ an acre; making a total acreage homesteaded for the 10-year period of 1851.46 acres (Def. Ex. 27 (a)). None of this land had gone to patent by 1900, and final certificates were had on only 424.50 acres. (Def. Ex. 27 (b)).

18. The general economic conditions between the years 1890 and 1900 were bad. The depression of the early 1890's was serious and South Dakota was plagued with a serious water shortage during most of those years. The worst drought years were 1889 and 1894. Conditions in the area were such that thousands left the state after defaulting on mortgages. In 1890, the Indian troubles in South Dakota were extremely serious and led to uprisings in which death and damage were considerable. However, from 1895 on, the country began to shake off the grip of depression, drought, and Indian troubles. During this same period of time, the rate of interest on money ran to as much as 36% per year. From statistics quoted in defendant's Exhibit 38, it does not appear that there was any considerable change in the farmer's economic condition which would tend to cause any great increase in the value of the land under consideration from 1890 to 1900. The previous decade had been

one of prosperity for the farmers until the droughts of 1886, 1887 and 1889, and when the depression of the 1890's came along and with it the drought years of that decade there was a wholesale abandonment of homesteads and mortgage foreclosures which causes a demand for legislative relief.

19. There were few comparable sales within the area under consideration between 1890 and 1900. The defendant's appraiser mentions in his report a study of private sales in the counties of Lake, Miner, Sanborn, Jerauld, Buffalo, Brule, Lyman, Stanley, Hughes, and Sully, which, he says, are areas adjacent or close to the subject area. He states that most transfers were for 160 acres, more or less, and values ranged from \$80.00 to \$1600.00 (50¢ to \$10.00 per acre). The average sales for all these counties indicated a consideration of \$300 to \$500 per quarter section, more or less, or an average value of \$2.44 per acre. However, all of these counties with the exception of Lyman lie to the east of the Missouri River and are not particularly comparable lands because of the earlier settlement, better land, and railway development. Since the appraisal report lumped these counties together, there is no way to separate whatever sales there may have been during this period in the area west of the Missouri. The appraisal report does mention that in Brule and Buffalo counties, which are east of the Missouri, during the 1880's there were many delinquent tax sales where quarter sections were sold for \$15.00 to \$26.00, and that the records reveal no noticeable variance between the period of the 1880's and 1890's. At this same time, there were millions of acres of public lands opened to homesteaders. There were some nine million acres in the Great Sioux Reservation alone,

which had been opened in 1890. Of this ceded area only 1,044,727 acres had been entered during the ten years up to and including February 10, 1900, and this acreage included 135,826 acres of Indian allotments authorized by the Treaty of April 29, 1868, 15 Stat. 635, and confirmed by the March 2, 1889 agreement, leaving 7,261,592 acres of unappropriated Sioux lands outside the reserves. With only 1,851 acres of the excluded land being settled during this 10-year period, it would seem that the demand therefor was not great.

20. The conclusion of defendant's appraiser, Mr. Arneson, based upon the various factors considered by him and set forth in his appraisal report (Def. Ex. 38), is that the value of the tract as a unit would have been 63¢ per acre in 1890 and 67¢ in 1900.

21. Petitioner relied upon the testimony of two witnesses, Mr. Sharpe and Mr. Williamson. Mr. Sharpe testified that in his opinion the total area, as a unit, was worth \$472,700. He broke this figure down into \$7.50 to \$10.00 per acre for grazing land, with a mean of \$7.75 and \$10.00 to \$15.00 per acre for cultivable land, with a mean of \$12.50. He also testified that he appraised some 40,320 acres to arrive at that figure. He classified 32,000 acres as cultivable land at \$12.50 per acre and 8,320 acres as grazing lands at \$8.75 per acre. This figure would have to be adjusted to compensate for the difference in acreage. Mr. Williamson assigned a value of \$5.00 an acre to the grazing land and \$8.00 to \$10.00 an acre to the good farming land. There was no over-all value assigned to the area by Mr. Williamson, although he did classify the whole area.

22. There were no mineral resources in the area that would have affected its value as of 1900.



23. From a consideration of the entire record we find that the excluded lands had a fair market value as a body of seventy-five cents per acre as of February 10, 1900, and sixty-five cents per acre as of February 10, 1890. We, accordingly, find that the plaintiffs are entitled to an award of \$19,476.18, being the value of 25,968.24 acres at seventy-five cents per acre, less such offsets or counter-claims the defendant may be entitled to under the Indian Claims Commission Act.

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner