

BEFORE THE INDIAN CLAIMS COMMISSION

THE OMAHA TRIBE OF NEBRASKA,)
)
 Plaintiff,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 225-A

Decided: November 28, 1958

FINDINGS OF FACT

The Commission makes the following Findings of Fact which are supplemental to its Findings of Fact Nos. 1 to 29, inclusive, entered January 18, 1957, and amended February 6, 1958:

30. By Article 15 thereof; the Omaha treaty of March 16, 1854, 10 Stat. 1093, became obligatory upon the parties thereto when ratified by the United States. This occurred April 17, 1854. The land here involved, which was ceded by that treaty, is to be valued as of that date.

31. The 4,982,097.87 acres here involved are described in our Finding of Fact No. 28 as amended. The tract is located in northeastern Nebraska and encompasses all of Cedar, Pierce, Wayne, Stanton, Cumings, Dakota, Dodge, Washington, Douglas, Burt and Sarpy counties, most of Dixon County and parts of Knox, Colfax, Antelope, Boone, Madison and Platte Counties. The tract lies within the Missouri river watershed and drains to the southeast with a waterfall of from six to ten inches. It is bounded on the north and east by the Missouri river,

on the south by the Platte river and the Elkhorn river flows through it from northwest to southeast. Many of the tributary streams within it are spring-fed but the northwest section is fairly arid. In the field notes of the original surveys conducted during 1855 through 1866, ten of the 243 townships containing Omaha cession land which were then surveyed were described as destitute of water, some ten others were described as partially so, and some thirty-five are said to be poorly watered. The elevation ranges from 1,000 to 2,000 feet. The uplands are rolling with gentle slopes to the terraces. From terrace to bottom lands the slopes are frequently steep and in some places along the Missouri river they are precipitous. Some overflow is reported along the Missouri river as well as along the Platte river. Only the Missouri river is navigable.

32. Annual temperature varies from 48° to 53° ; precipitation varies from 22.24" in Knox county to 30.22" in Cumings county, with an average of 27", whereas 30 inches is normally regarded as necessary for good agriculture. Rainfall is heaviest during the growing season and is frequently excessive over brief periods of time.

(Def. Ex. 122, p. 51-2) The soil has a lime subsoil with good water retention capacity. The length of the growing season varies from 145 days in the western section to 170 days in the east. The area is adapted to raising stock and growing small grains, although during the growing season wheat is found to be especially susceptible to rust.

33. The soil is classified as East Loess Hill land, which predominates, Loess Sandhill Transition, River Valley Lowland and some

Dakota-Nebraska Eroded Tableland. A planimeter measurement of a Land Use Capability Map published in a 1949 issue of the Nebraska Experimental Station Bulletin No. 395 (Pet. Ex. 358, p. 135), which is based upon a 1942 field survey, gives an acreage classification within the Omaha cession as listed below. For purposes of interpretation, Class I land is silty textured, well drained and nearly level. Class II land is gently sloping, of silty content, and may require subsurface tillage or contour farming to avoid runoff and erosion. Class III land is rolling, subject to rapid water erosion under cultivation, susceptible to wind erosion, and requires conservation practices to sustain production. Class IV land is very susceptible to erosion, being steeply rolling or moderately sandy. It should be cropped only intermittently. Class V land is poorly drained or alkali soil on relatively flat flood plains and subject to flooding. It is suitable only for permanent grasses. Class VI is suitable only for grazing, is finely textured, susceptible to severe wind and water erosion, or it is steeply sloping, or gravelly and stony. Class VII is sandy land, and steep, broken areas with sparse vegetation. Class VIII is wasteland. The last two classes may be grazed if conservation is practiced in a moderate degree in the first instance and to a restricted degree in the second. (Pet. Ex. 303, pp. 21-5) In 1854 these soils were in general in a better condition than is reflected by this table:

Class	Acres	Percentage of Whole
I	1,463,579.67	29.4
II	315,355.84	6.3
III	1,843,613.88	37.0
IV	697,337.94	14.0
V	124,072.27	2.5
VI	409,480.86	8.2
VII	<u>128,647.41</u>	<u>2.6</u>
	4,982,037.87	100.0%

34. With but few exceptions the timber upon this tract is confined to streambeds, ranging from a few trees up to narrow belts as wide as 240 feet along the stream banks. It is cottonwood, box elder, elm, oak, some black walnut, white ash, cedar, hickory, sugar and long-headed black and silver leafed maples, with other species. The original field notes fail to comment upon the presence of timber in 13 townships. Only in 11 interior townships and 36 fractional border townships is it reported in quantity sufficient to interest a settler, and 84 townships were reported to be completely destitute of all timber. With the exception of a very few townships, the timber appears to be confined to a few sections in each. None of it possessed a commercial value in 1854. (Davis, Trans. P. 340) Sawmills were constructed at an early date, however, and the available lumber was used for fencing, posts, ridge poles and like purposes.

35. Other than building stone which was reported in the field notes of the original survey as being present within a number of the townships, there were in 1854 no known minerals within the Omaha tract.

36. Due to immigration from Europe the population of the United States increased rapidly after 1830. An estimated increase from

12,866,020 people that year to 17,089,453 in 1840 included 599,125 immigrants; the increase to 23,191,876 in 1850 included 1,713,250 immigrants and the estimated increase to 31,443,321 in 1860 included 2,598,214 immigrants. The population density moved steadily westward and transportation terminals moved up the Missouri river from Chariton, Missouri in 1819 to Kansas City by 1840, Council Bluffs by 1850 and Sioux City subsequent to 1855. The river was subject to winter ice, shifting sand bars and seasonally low water but by 1854 it carried more traffic to the important river ports of Council Bluffs and Bellevue than arrived by overland travel. At these points emigrant trains made up and were outfitted for their trek westward, traveling along the north banks of the Platte river through Fremont, Columbus and Fort Kearney. In 1846-7 the first wagon-train of Mormons, 83 individuals, wintered at Florence, and the heavy stream of Mormon traffic through Fremont during the next decade gave their name to the Mormon trail. In 1855 the western route was designated a military road. Two years later a second Federal road, running through the subject tract from Bellevue northwest to the Niobrara river valley, was authorized. Ferries were built across the Missouri at Florence in 1847 and across the Elkhorn. (Pet. Ex. 356, p. 102) The Loup river was first ferried at Columbus during 1850.

Another popular western route ran from St. Joseph, Missouri, into Kansas, entered Gage County, Nebraska and followed the south bank of the Platte river, passing a considerable distance southwest of the subject tract.

37. On the valuation date the railroad terminated east of the Mississippi river, in Illinois, but a line to St. Joseph, Missouri, was under consideration. The huge increase in population, the Mexican Purchase of 1846, settlement of the Oregon boundary dispute with Canada and the establishment in Oregon of a provisional government which it was feared might seek independent sovereign status, Sutter's discovery of gold in California on January 12, 1848, and the western hegira of the Mormon faithful all contributed to an increasing national desire to reach the western coast by railroad. Congress authorized a survey to determine the most feasible route west of the Missouri in 1853 and an exploratory trip through Omaha country and Nebraska Territory was made in 1856. On the valuation date three western routes were being considered, one via St. Joseph and passing south of the subject tract; one across the northern tip of the subject tract from Sioux City, which in 1855 had only two cabins (Pet. Ex. 315, p. 400) and up the Niobrara river valley, and one across the southern tip of the tract, running west from Council Bluffs along the north side of the Platte river. The decision to adopt the Council Bluffs route was made in 1863 and the railroad reached that town three years later. (Pet. Ex. 356)

38. When the Kansas-Nebraska Territorial Act was passed on May 30, 1854, the slavery question was left to the future decision of the settlers. While both pro-slavery and anti-slavery forces immediately moved to secure a foothold by early settlement, attention was concentrated on Kansas and slavery had little, if any, effect upon the

rate of settlement in Nebraska. The first census of that state was taken November 20, 1854, at which time there were 1,692 males, 1,127 females and 13 slaves, a total of 2,832 people recorded. Ten years later there were 9,580 people in the state, exclusive of Indians. The various census of those counties encompassing the Omaha cession of 1854 list 914 whites in 1854, 1,535 whites in 1855, and 9,636 in 1860, at which time there were 171,468 acres or 2.88% of the area in farms.

39. Trading posts and military forts were the first white structures in Nebraska. A trading post was built at Bellevue in 1810; the Council Bluffs Indian Agency was moved there in 1823, a post office was added in 1845 and a town company was organized February 9, 1854. Fort Atkinson was built in 1819 and abandoned in 1827; Fort

houn was built in 1824, and Fort Kearney in 1848. (Pawnee Tribe v. United States, Ind. Cl.Com. Dkt 10) Florence grew from the Mormon wintering quarters of 1846-7. Omaha, DeSoata, Fontenelle and Tekamah were settled in 1854. Within 10 years of its cession 15 settlements were established within the subject area. (Pet. Ex. 358, P. 184)

40. With the passage of the Territorial Act of 1854, the Pre-emption Act of 1841 (5 Stat. 453) amended March 27, 1854, became applicable to the public domain in Nebraska. Under it settlers entering upon the unsurveyed public domain acquired the right to purchase up to 160 acres for \$1.25 per acre if paid before the land was offered at public sale. Under the Act of April 24, 1820, 3 Stat.566,

the surveyed public domain was available at public auction in 80-acre tracts at a minimum of \$1.25 per acre, and unsold land could be bought in 160-acre tracts at that price following the auction. Military scrip and land warrants were applicable upon the purchase at \$1.25 per acre, and after 1852 these were assignable. During 1854-5 they were listed on the stock markets as low as \$1.08 and \$1.10 per acre.

The Graduation Act, proposed as early as 1840, and passed August 4, 1854 (10 Stat. 574), reduced the minimum of unsold public land according to a schedule based upon the years it had been offered. It was replaced by the Homestead Act of 1862. While it did not apply to the subject tract, its provisions served to enhance the competitive value of lands affected thereby.

41. The early settlers expressed a decided preference for sites near transportation routes with available timber or stone for building and fencing purposes and an adjoining tract of prairie which could be farmed without time and labor expended in clearing the land. Defendant's Exhibits 123 and 125 clearly illustrate that the land speculators and settlers first entered the Omaha cession in the southeast. Surveys were first run there. As settlements were made along the Platte, Elkhorn, Maple and Missouri rivers the surveys were run along them. According to the June 30, 1856, report of the Commissioner of the General Land Office to the Secretary of the Interior "most of the settled district had been surveyed" as of that date. (Pet. Ex. 358, p. 11) By the close of 1858 80% of the cession land was surveyed and the entire area was marked off before 1867.

42 Prior to 1857 the Omaha Land Office which was established July 22, 1854, included all land in Nebraska to which Indian title had been extinguished. This comprised eastern and central Nebraska and included the Kansas cession of 1825, (7 Stat. 244, Royce Area 124, B.A.E., Vol. 18, Pt. 2, Nebr. Map 1); the Otoe, etc. cession of 1830 (7 Stat. 328, Royce Area 155, supra); the Otoe and Missouriia cessions of 1833 (7 Stat. 429, Royce Area 186, supra) and 1854 (10 Stat. 1038, Royce Area 314); and the two Pawnee cessions of 1833 (7 Stat. 448, Royce Area 191, supra) and 1848 (9 Stat. 949, Royce Area 270, supra), as well as the land under valuation. Up to September 20, 1856, only 786 pre-emption claims were registered with this office and up to January 1, 1858, only 28,590.38 acres were purchased under pre-emption.

A total of 3,746,440 acres were offered in the first public land sale which opened in 1859. (Pet. Ex. 358, p. 373) Only 802,000 acres were disposed of for cash, scrip or warrants prior to July 1, 1859. Roughly, approximately 2/3 of the Omaha cession remained unsold eight years after its purchase. The record does not disclose when the last lands were disposed of.

43. "From 1849 onward, soil exploitation was the method adhered to in the prairie farming procedure. The cheapness and abundance of the land coupled with new labor saving machinery influenced the farmers, who could so afford, to plant larger and larger fields of crops." (Davis, Pet. Ex. 358, p. 318) The reaper, the steel plow which scoured itself in the prairie sod, the mower, planter, roller, cultivator,

drill and harrow were recent inventions. The thresher and wire fencing were developed in 1850. A pioneering farmer could expect to spend about \$1,000 preparing to farm. Common labor at Council Bluffs drew from \$1.50 to \$2.50 per day; agricultural labor earned \$150 annually plus board and room. Sod breaking averaged \$2.50 per acre but varied from \$1.50 to \$5.00 per acre. Fencing for 40 acres cost from \$112. to \$224 with 160 acres requiring twice that. Many settlers substituted Osage hedge for fence but if timber was purchased the average cost increased to \$320 for 40 acres and as much as \$1,000 for 160 acres. Draft animals cost from \$150 to \$200 each; cattle \$500 a head. A log cabin ran from \$25 to \$100; a four-room cottage from \$425 to \$450. Seed wheat cost from \$1 to \$2 per acre. Family maintenance from arrival until the first crop was harvested usually ran \$1,000. Transportation from Boston to St. Louis per person was \$29 first class and \$13 emigrant class; from St. Louis to Council Bluffs cabin fare was \$12 and deck passage \$5. (Def. Ex. 115)

44. Economically the country experienced a financial panic in 1847 which lasted about two years. The gradual recovery suffered a second recession the last of 1853, and other low periods prevailed in August, 1857, and immediately before and after the Civil War in 1861 and 1865. These depressive periods would not have been anticipated by a prospective purchaser or seller of the Omaha land in 1854, but their effect would have been less noticeable in the western countries where the railroad had not yet penetrated and the market was dependent upon local supply and demand. The St. Joseph, Missouri,

the on May 3, 1854 quoted the following local prices:

Wheat:		
Ordinary to fair	\$.95 to \$	1.00 per bu.
Prime to strictly prime	1.00 to	1.20 per bu.
Eggs	.10	per doz.
Butter	.12 to	.15 per lb.
Lard	.065 to	.08 per lb.
Mules	65.00 to	125.00 each

The Council Bluffs Eagle in 1855 quoted flour at \$5 per hundred-weight, corn and oats 30¢ per bushel, wheat \$1.25 per bushel and common labor at \$1 to \$2.50 per day, and commented: "Stock of all kinds bears a good price, from the fact of this place being the great outfitting emporium for immigrants westward." (Def. Ex. 122, p. 94)

45. The parties are agreed that a prospective purchaser of the land at the public sale on April 17, 1854, could expect to pay not less than 8% interest upon any money required to finance such purchase.

46. The obvious preference for homesites along the established emigrant routes and along the waterways with timbered areas resulted in less attractive land, particularly in the older states, remaining unsettled or being abandoned in favor of more preferable sites in the west. The vast amount of federally held land had by 1840 caused Congress to evidence concern about the manner of its acquisition and disposition. A number of Congressional investigations were made and several reports are of record. Of the 1,360,100,000 acres available within the United States on June 30, 1853, there were 4,100,000 acres in Illinois, 22,700,000 acres in Missouri and 22,800,000 acres in Iowa.

With the passage of the Graduation Act on August 4, 1854, the following acreages in the United States, Iowa and Missouri became available at the reduced prices stated below:

Price per Acre	Acres in Iowa	Acres in Missouri	Acres in U.S.
\$1.00	299,840	2,471,000	18,766,000
.75	295,640	2,612,000	15,654,000
.50		1,843,000	11,541,000
.25		456,000	6,486,000
.12 $\frac{1}{2}$		6,468,000	25,114,000
	595,480	13,850,000	77,561,000

Information concerning the amount of unsold public land in the various states would have been available to a prospective purchaser of the Omaha land in 1854, and the imminent passage of legislation reducing its minimum price would have been known to a well informed and interested prospective purchaser.

47. The immigrants arriving yearly from Europe were a body of potential buyers which a prospective purchaser of the Omaha land would have considered when determining the rate of turnover he could anticipate. The effect of this group upon the disposition of the public domain is reflected in the following table:

<u>Year</u>	<u>Immigration into U. S.</u>	<u>Acres of Public Domain Sold</u>	<u>Acres Sold under Graduation Act</u>
1850	370,000	1,405,800	
1851	379,000	2,055,900	
1852	372,000	894,800	
1853	369,000	3,787,100	
1854	428,000	7,894,446	4,928,437
1855	201,000	6,487,378	5,472,910
1856		2,542,782	2,704,182

