

BEFORE THE INDIAN CLAIMS COMMISSION

ABSENTEE DELAWARE TRIBE OF OKLAHOMA,)	
DELAWARE NATION, EX REL., W. E.)	
EXENDINE AND MYRTLE HOLDER,)	
)	
Petitioners,)	
)	
v.)	Docket No. 337
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 22, 1961

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. The petitioner tribe, the Absentee Delaware Tribe of Oklahoma, as represented by individual petitioner members, W. E. Exendine and Myrtle Holder, has the right and capacity to bring and maintain this suit on behalf of the descendants of the Delaware Nation as constituted in 1818, pursuant to the provisions of the Indian Claims Commission Act (Findings 5, 6, 7, 8, and 9, Dockets 27-A, 241; 2 Indian Claims Commission 253; Commission's Interlocutory Order and Conclusions of Law, September 20, 1957, Docket 337).

2. By the treaty of October 3, 1818 (7 Stat. 188), the Delaware Nation of Indians ceded to the United States all its right, title, and interest to the lands in Indiana. On the effective date of this treaty, the Delaware Nation of Indians had a recognized one-half interest in some 3,859,000 acres located in the southern part of that area in Indiana officially designated as Royce Area 99, and being that country watered by the White River (Findings 2, 3, and 4, Docket 67 (consolidated), 2 Ind. Cl. Comm. 617; see Interlocutory Order, September 17, 1956).

3. As of October 6, 1818, the agreed date of evaluation between the parties herein, the Commission found that the subject lands within Royce Area 99 had a fair market value of \$1.15 per acre. (Findings 6-46, Docket 67, 4 Ind. Cl. Comm. 346, as amended June 30, 1960, 9 Ind. Cl. Comm. 1).

4. In consideration of the cession of all Delaware claims to any lands in Indiana under the 1818 Delaware Treaty, it was provided among other things that:

" . . . the United States agree to provide for the Delawares a country to reside in, upon the west side of the Mississippi, and to guaranty to them the peaceable possession of the same." (Art. 2, 7 Stat. 188).

Thereupon and in accordance with the provisions of the 1818 Treaty, the Delaware Nation removed to a tract of land west of the Mississippi River, and located upon the James Fork of the White River in the State of Missouri. There the Delawares remained until 1829.

5. On September 24, 1829, the Delaware Nation entered into a treaty with the United States which was designated as a "Supplementary article to the Delaware Treaty, concluded at St. Mary's in the State of Ohio, on the 3rd of October 1818." (7 Stat. 327)

Under the terms of this supplemental treaty, the Delawares gave up their residence on the James Fork of the White River and agreed to accept in lieu thereof, and as their permanent residence, a reservation described as follows:

" . . . it is hereby agreed upon by the parties, that the country in the fork of the Kansas and Missouri Rivers, extending up the Kansas River to the Kansas line, and up the Missouri River to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line, for an outlet; shall be conveyed and forever secured by the United States, to the said Delaware Nation as their permanent residence: . . ."

6. The 1829 treaty reservation completed the obligation of the United States under the 1818 Delaware Treaty to provide a permanent home west of the Mississippi River for the Delaware Nation. This reserve was part payment for the 1818 Delaware cession of its Indian lands. The Commission finds, therefore, that before fixing the value of this portion of the total consideration for the 1818 cession, it shall be necessary under further proceedings to determine the acreage and the fair market value of the Kansas lands as of 1829 (Findings 15, 16; Docket No. 27-A, 241, 3 Ind. Cl. Comm. 622).

7. Besides providing the Delaware Nation with a permanent home west of the Mississippi, the United States made other payments as part of the consideration for the 1818 Delaware cession of its Indiana lands. As stated in the 1818 Treaty, these items included payment for improvements on the ceded lands, payment of removal expenses to their new home, including provisions, payment of a perpetual annuity of four thousand dollars, annual payments to support a blacksmith after the removal of the Delaware Nation to the west side of the Mississippi, and finally a payment of some thirteen thousand dollars to liquidate certain claims against the Delaware Nation.

As proof that the United States did in fact disburse various sums of money to cover the above expenses, the defendant introduced into evidence as "Defendant's Exhibit A-1" a 1954 G.A.O. Report, referred to hereinafter as the Report, which contains among other things a detailed accounting of monies disbursed for the benefit of the Delaware Tribe of Indians under the treaty of October 3, 1818. The petitioners have conceded the accuracy and correctness of the figures as listed in the Report (Tr. 170, 171).

8. Under Section 3 of the 1818 Treaty, the United States agreed to pay to the Delaware Nation,

" . . . the full value of their improvements in the country hereby ceded: which valuation shall be made by persons to be appointed for that purpose by the President of the United States; and to furnish the Delawares with one hundred and twenty horses, not to exceed in value forty dollars each, and a sufficient number of perogues, to aid in transporting them to the west side of the Mississippi, and a quantity of provisions, proportioned to their numbers, and the extent of their journey." (Art. 3, 7 Stat. 188)

In "Disbursement Schedule No. 3" of the Report (pp. 24, 25) which covers disbursements for the Delaware Tribe of Indians under the appropriation, "Carrying into effect sundry Stipulations in several Indian Treaties," there is totaled the following expenditures with respect to those items under Article 3 of the 1818 Treaty:

"Payment of improvements	\$4,501.00
Provisions	3,895.98
Purchase of 120 horses	4,800.00
Purchase of perogues	<u>1,200.00</u>
	\$14,396.98"

(a) The Commission concludes that the \$4,501.00 appropriated and disbursed for the "payment of improvements" was the equivalent in money of the appraised value of the Delaware improvements on their ceded land. The Government's distinct obligation in Section 3 of the 1818 Treaty was thereby discharged. The Commission finds that the above payment for improvements is part of the consideration for the cession of the Delaware lands.

(b) Since the removal of the Delawares is a natural consequence

of the cession of these lands, the Commission finds that the \$9,895.98, which was appropriated and disbursed by the United States in accordance with Section 3 of the 1818 Treaty to cover the cost of the removal of the Delaware Indians to the west side of the Mississippi, is a part of the consideration for the cession of the Delaware lands.

9. In Article 5 of the 1818 Treaty, the United States agreed to pay the Delawares a perpetual annuity of four thousand dollars. In fulfillment of its obligation under Article 5, the United States made thirty-five annual payments of \$4,000.00 each to the Delaware Nation of Indians in the years 1819-1854.

By Article 4 of the Treaty of May 6, 1854 (10 Stat. 1048), the Delaware Indians agreed to relinquish and commute all their permanent annuities for the sum of \$148,000. Included therein was this 1818 permanent annuity which was commuted for \$78,514.58, and which amount the Commission finds to be a part of the consideration for the 1818 cession of the subject lands.

10. As further consideration for the 1818 cession, the United States agreed in Article 6 of the 1818 Delaware Treaty to provide and support a blacksmith shop for these Indians upon their removal to the west side of the Mississippi River. Thereafter annual expenditures were made by the United States to meet this obligation. Under Article 4 of the Treaty of May 6, 1854, this "blacksmith annuity", having an assigned value of \$940 per annum, was commuted for the sum of \$18,450.92, which is the amount the Commission finds is the value for the consideration

covering the blacksmith service agreed to be furnished under the 1818 Treaty (pages 12, 13, 17, Defendant's Exhibit 1-A).

11. As further consideration for the 1818 cession of the subject lands, the United States obligated itself in Article 8 of the 1818 Treaty to pay certain claims on the Delawares, "not exceeding thirteen thousand three hundred and twelve dollars and twenty five cents" (Art. 8, 7 Stat. 188). Thereupon Congress appropriated \$13,312.25 under the Act of March 3, 1819 (3 Stat. 519), and said amount was disbursed in accordance with above treaty provision. (Disbursement Schedule 4 "Claims against the Delawares to be paid by the United States" p. 26, Def. Ex. 1-A).

12. The Commission concludes that the United States paid as consideration for the Delaware cession under the Treaty of October 3, 1818, of all its right, title, and interest to the subject lands the following amounts:

(1) A reservation in Kansas under the supplemental Treaty of September 24, 1829 (7 Stat. 327) of which the acreage and the 1829 fair market value shall be determined in further proceedings;

(2) \$14,396.98 under Article 3 of the 1818 Treaty for improvements and removal expenses;

(3) \$78,514.58, being the commuted value of the perpetual annuity under Article 5 of the 1818 Treaty;

(4) \$18,450.92, being the commuted value of the "blacksmith

annuity" as provided under Article 6 of the 1818 Treaty, and;

(5) \$13,312.25, being the amount appropriated and disbursed in satisfaction of certain claims against the Delawares, as provided under Article 8 of the 1818 Treaty.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner