

BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS )  
 OF OKLAHOMA )  
 )  
 and )  
 )  
 POTAWATOMI NATION REPRESENTED BY )  
 CITIZEN BAND OF POTAWATOMI INDIANS )  
 OF OKLAHOMA, ET AL., ) Docket No. 217

THE PRAIRIE BAND OF THE POTAWATOMIE )  
 TRIBE OF INDIANS, ET AL., ) Docket No. 15-K

HANNAHVILLE INDIAN COMMUNITY, ET AL., ) Docket No. 29-J

JAMES STRONG, ET AL., as the rep- )  
 resentatives and on behalf of all )  
 members by blood of the CHIPPEWA TRIBE )  
 OF INDIANS, including all descendants )  
 of Chippewa members of the UNITED )  
 NATION OF INDIANS, ) Docket No. 13-L

RED LAKE, PEMBINA, AND WHITE EARTH )  
 BANDS, ET AL., ) Docket No. 18-I

ROBERT DOMINIC, ET AL., as the rep- )  
 resentative and on behalf of all )  
 members by blood of the OTTAWA TRIBE )  
 OF INDIANS, ) Docket No. 40-J

Petitioners, )

v.

THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Decided: November 29, 1962

Appearances:

Howard D. Moses and Robert Stone  
 Johnson, with whom were Giddings Howd,  
 O. R. McGuire and Louis L. Rochmes,  
 Attorneys for Petitioners in Dockets  
 217 and 15-K.

Walter H. Maloney, Attorney for  
Petitioner in Docket 29-J.

James R. Fitzharris, Attorney for  
Petitioners in Dockets 13-L and 40-J.

Jay H. Hoag, with whom was Marvin J.  
Sonosky, Attorneys for Petitioner in  
Docket 18-I.

Sim T. Carman, with whom was Mr.  
Assistant Attorney General  
Ramsey Clark, Attorneys for the  
Defendant.

#### OPINION OF THE COMMISSION

Watkins, Chief Commissioner, delivered the opinion of the Commission.

This case is now before the Commission for a determination as to:

I. The proper parties in interest in these proceedings.

II. The validity of petitioners' claim of aboriginal Indian title to that portion of Royce Area 148 lying east of the Fox River of Illinois. Said area, for convenience, herein identified as area 148-A.

III. The effect of the reservation of acreage in favor of various individuals; said reservation being contained in the treaty of July 29, 1829.

IV. The validity of petitioners' claim of title to the lead lands lying within Royce Area 147.

V. The acreage of the tracts contained in Royce Areas 147 and 148 ceded by the petitioners in the treaty of July 29, 1829; the value thereof as of July 29, 1829; the value of the consideration paid by the defendant for the cession to the United States; the amount actually paid by the United States to the petitioners; and whether or not the value of the consideration paid by the United States under the terms of the Treaty

of July 29, 1829, was unconscionable.

#### I. THE PARTIES

Indian Claims Commission Dockets 13-L, 15-K, 18-I, 29-J, 40-J were by order of the Indian Claims Commission consolidated for trial herein as to both questions of liability of the defendant and the value of the lands involved in the treaty of July 29, 1829, (7 Stat. 320) with the United Nations et al., Indians, with the understanding that the evidence in any one case is to be considered insofar as competent as a part of the record for all purposes in the other actions. All interested parties herein have agreed with the foregoing statement. (Tr. p. 12-14) Each of the parties has heretofore been determined to have the capacity to institute and prosecute actions before the Indian Claims Commission and the claims asserted in their respective petitions are within its jurisdiction.

(Citizen Band of Potawatomi Indians of Oklahoma et al., v. United States,  
6 Ind. Cl. Comm. 414, 415).

The Commission has heretofore found in a case involving all the interested parties herein that the Indian group which executed the Treaty of July 29, 1829, was a band made up predominantly of Potawatomi Indians, with which individuals of small groups of Ottawa and Chippewa ancestry were affiliated or federated; that this group made a series of treaties all relating to lands in northern Illinois and southern Wisconsin, and that by its various descriptions it was recognized "as a grouping of Indians residing west of Lake Michigan on lands watered by the Illinois, Milwaukee and Manitoouk Rivers" (Finding 5, 4 Ind. Cl. Comm. 412-413). The Commission referred to this group of Indians as the United Nation, and it is so referred to herein.

The petitioners in Docket 18-I herein have in their proposed Findings and Brief conceded that they have no right or interest in the subject matter of this litigation (Pet. Findings of Fact, Dkt. 13-L, 40-J and 18-I, p. 4, footnote 6) and neither the evidence nor testimony introduced herein discloses such an interest; therefore the petition in Docket 18-I should be dismissed.

In Prairie Band of Potawatomi et al., v. United States, 4 Ind. Cl. Comm. 409, 412-413, 463-464, this Commission found that the petitioners in 13-L and 40-J were not a part of the United Nations et al., Indians which signed the treaty of July 29, 1829, nor did they have any interest in the lands involved in said treaty. Consequently the petitions in 13-L and 40-J should be dismissed.

The petitioners in Docket 15-K and 217 represent the Potawatomi Nation and comprise respectively the Prairie Band and the Citizen Band into which bands the Potawatomi Nation, formed by the Treaty of Council Bluffs of 1846, was subsequently divided. The Prairie Band and the Citizen Band have been recognized by the Government as the successors in interest to the Potawatomi Nation and were recognized as proper parties in interest in Indian Claims Commission Docket 4, Indian Claims Comm. 412-413.

Consequently the petitioners in 15-K and 217 have the right to bring and maintain suit in the herein entitled action.

For purposes of convenience, unless otherwise specified, the word petitioners as used herein shall pertain to the petitioners in Dockets 15-K and 217 only.

The history of the petitioners in 29-J has been set forth in our

Finding No. 6. However, it would seem pertinent to specifically identify the petitioners in 29-J both by group and individuals and state in brief their claim as set forth in their petition.

The petitioners in Docket No. 29-J consisting of two organized Indian communities, the Hannahville Indian Community located in Wilson, Michigan, and the Forest County Potawatomi Community located in Crandon, Wisconsin, and six individual Indians joined with them, assert interests in claims arising out of the Treaty of July 29, 1829.

One of the individual Potawatomi Indian petitioners, Elijah Petonquot, has not been identified in the evidence. The other five individuals gave testimony as follows:

(1) Frank Wandahsego, Sr., a member of the Hannahville Indian Community, and Valentine Ritchie and Ike (Isaac) George, members of the Forest County Potawatomi Community, each claims descent from Potawatomi Indians who in 1833 were members of the United Nations, et al., Indians which signed the removal Treaty of September 26, 27, 1833, but who did not remove west of the Mississippi River to the 5,000,000 acre reserve in the present State of Iowa provided to the Indians by that treaty.

(2) Michael Williams claims descent from members of the Pokagon Band, a group of Potawatomi Indians for whom a special provision was made under the Treaty of September 26, 27, 1833, exempting them from the removal provisions of that treaty.

(3) Albert Mackety claims descent from the members of the band known as the Potawatomi Indians of the Huron.

The Hannahville Indian Community of Wilson, Michigan and the Forest County Potawatomi Community of Crandon, Wisconsin each has been organized

under the Indian Reorganization Act of June 18, 1934, 48 Stat. 494. In their petition neither organization presents a claim in its own right, but each asserts it represents Indians whose ancestors were members of the so-called Potawatomi Nation which allegedly owned a one-third interest in the land ceded to the United States by the United Nations, et al., Indians under the treaty of July 29, 1829, and as a result they are entitled to participate in any award subsequently made by the Commission based upon that treaty. (Prairie Band of Potawatomi Indians et al., v. United States, 4 Ind. Cl. Comm. pp. 409, 476)

The petitioners in 29-J have submitted and confined their evidence in the same manner as they did in Prairie Band of Potawatomi Indians et al., v. United States (4 Ind. Cl. Comm. p. 427) Dockets No. 15-J and 71-A. In that action the petitioners in 29-J herein intervened under the theory that they represented Indians whose ancestors were members of the Potawatomi Nation and that because of this allegation they were entitled to participate in the suit and in any and all recovery in said action.

The decision of the Commission in that case was against the intervenors, reserving for a possible later claim the rights of the intervenors to share in proceeds in any lands east of the Mississippi River. In this regard the Commission quoted the case of C. W. McGhee et al., v. United States, reported at 122 C. Cls. 380, wherein the Court of Claims had before it the identical situation as here presented. That case involved the rights of the descendants of non-emigrating Creek Indians in eastern lands along with those Creeks who under a treaty stipulation moved west of the Mississippi River after 1814. In sustaining the claimed equal rights of the non-removal

Creeks in land claims arising out of a treaty made with their ancestors involving lands east of the Mississippi River the Court of Claims at pages 387-388 of that decision said:

We believe the rights of the Western Creeks to sue for the injuries arising out of the cession of the eastern land in 1814, arise by virtue of membership of their ancestors in the tribe recognized by the United States in 1814 as the owner of the land, and that those rights are in no way superior to nor different from the rights of the descendants of all members of the Creek Nation as it was constituted at the time the 1814 treaty was executed. Maintenance or lack of maintenance of tribal relations and the occurrence or non-occurrence of act of recognition of a tribal organization of Creek Indians in Oklahoma, or east of the Mississippi, subsequent to 1814, would not affect or change what was done to the Creek Nation in 1814. Any claim for an injury to the Creek Nation of 1814, is a claim belonging, if at all, to the descendants of all members of that nation, whether they live east or west of the Mississippi, and whether organized or not, recognized or not, subsequent to that date.

Consequently, all descendants of non-emigrating members of the United Nation et al., Indians as it existed in 1829 have interests in claims arising out of the Treaty of July 29, 1829.

The decision of the Commission in Dockets 15-J and 71-A was upheld by the Court of Claims on appeal by the Intervenor in 143 Ct. Claims p. 131, and certiorari was denied by the Supreme Court on February 24, 1959, 359 U.S. 905.

As a result of the facts disclosed in the cases cited above, the Commission finds that the petitioners in Docket 29-J who have a right to institute and maintain an action in a representative capacity herein are confined to those descendants of non-emigrating members of the United Nations of Indians et al., as it existed as of July 29, 1829, for any

interests in claims arising out of the treaty of July 29, 1829.

II-INDIAN TITLE AS TO PORTION OF ROYCE AREA 148

As stated above, the petitioners in 217 and 15-K herein allege a claim for additional compensation for land ceded under the treaty of July 29, 1829 (7 Stat. 320). The petitioners in 29-J also allege by separate pleadings a claim for additional compensation. The lands involved are located in northern Illinois and southwestern Wisconsin as hereinafter described. For convenience we will generally refer to these cessions by the tract number used by Royce on his Illinois and Wisconsin Land Cession published in the 18th Annual Report of the Bureau of American Ethnology for 1896-97.

Said areas are known and described as (1) Royce Area 147 on Royce Maps Wisconsin 1, Illinois 2, and Royce Area 148, Illinois 2, and are now more particularly described as follows:

Beginning at the Winnebago Village, on Rock River, forty miles from its mouth, and running thence down the Rock River, to a line which runs due west from the most southern bend of Lake Michigan to the Mississippi river, and with that line to the Mississippi River opposite to Rock Island; thence, up that river, to the United States' reservation at the mouth of the Wisconsin; thence, with the south and east lines of said reservation, to the Wisconsin river; thence, southerly, passing the heads of the small streams emptying into the Mississippi, to the Rock River aforesaid, at the Winnebago Village, the place of beginning. And, also, one other tract of land, described as follows, to wit: Beginning on the Western Shore of Lake Michigan, at the northeast corner of the field of Antoine Quitmette, who lives near Gross Pointe, about twelve miles north of Chicago, thence running due west, to the Rock River, aforesaid; thence, down the said river, to where a line drawn due west from the most southern bend of Lake Michigan crosses said river; thence, east along said line, to the Fox River of the Illinois; thence, along the northwestern boundary line of the cession of 1816, to Lake Michigan; thence northwardly, along the Western Shore of said Lake, to the place of beginning.

As shown in Findings of Fact, 8, 9, and 10 herein, the defendant has admitted that all of Royce Area 147, Wisconsin 1, Illinois 2, and that portion of Royce Area 148, Illinois 2 lying west of the Fox River in Illinois were ceded to the United States by the United Nations et al., Indians under the Treaty of July 29, 1829 and defendant has further conceded by his Finding No. 20 that petitioners' title, subject to certain U. S. reservations hereinafter discussed, has been established as to the lands in question other than the lands in Royce Area 148, Illinois 2, lying east of the Fox River in Illinois. For purposes of convenience and identification the portion of Royce Area 148, Illinois 2, lying east of the Fox River of Illinois will be referred to as Area 148-A and that portion of Royce Area 148, Illinois 2, lying west of the Fox River of Illinois will be referred to as Area 148-B.

The defendant contends that petitioners did not have original Indian title as to Area 148-A. The Commission therefore is presented with a question of determining Indian title to area 148-A. Original Indian title is the Indians' right of occupancy of lands based on their aboriginal possession. To sustain this claim petitioners must establish their exclusive use and occupancy of Area 148-A.

The defendant has advanced the argument that the right of petitioners in Dockets 217, 15-K and 29-J to recover on the lands lying in Area 148-A based solely upon Indian title can be no greater than that which the Indians held under original title on July 4, 1776, when defendant alleges the sovereignty of the United States attached and under which title said Indians must establish that they continued to exclusively use and occupy down to the date of cession, July 29, 1829. In support of this

theory defendant has cited the following cases: Red Lake Band et al., v. United States, 7 Ind. Cl. Comm. 576, 608; C. W. McGhee et al., v. United States, 122 C. Cls. 380, 396; Potawatomi Indians v. United States, 27 C. Cls. 403, 414; Potawatomi Indians of Michigan and Indiana v. United States, 148, U. S. 691, 705.

The petitioners do not recognize the defendant's contention as to the validity of the date of July 4, 1776, on the question of Indian title and argue that in any case the petitioners herein had valid Indian title under the evidence as introduced in this proceeding. In our Finding No. 11, we have set forth defendant's allegation as to the date the United States acquired title to lands of the Northwest Territory, of which lands Area 148-A is a part. However, we will not belabor the question of dates since we find substantial evidence from which to conclude that the petitioners had Indian title to Area 148-A prior to and on July 4, 1776, the date defendant relies on as set forth in paragraph next above.

The history of Indian occupation of Area 148 is fully set out in Findings 12 through 21 and therefore need not be repeated verbatim. However, in summation the following facts support the Commission's finding as to Indian title to Area 148-A.

The evidence introduced by both defendant and petitioners show that Potawatomi Indians were in Area 148-A prior to July 4, 1776. The petitioners in their exhibit 50 state that the Potawatomi were near Chicago and on some parts of the Illinois River as early as 1743.

The evidence of both the petitioners and the defendant shows that the Illinois Tribe of Indians were defeated by the Potawatomi and forced to relinquish their lands along the Illinois River to the Potawatomi.

In petitioners' exhibit 53, Hodge, in his Handbook of American Indians, p. 290, stated that after the conquest of the Illinois about 1765 the Potawatomes took possession of the part of Illinois lying northeasterly of the country seized by the Sauk, Foxes and Kickapoos. John Dean Caton in his work entitled, The Last of the Illinois and A Sketch of the Pottawatomies, published in 1870 (Def. Ex. 57) stated that this great event (the defeat of the Illinois)

. . . secured to the Pottawatomies all the territory then belonging to the Illinois, and the exclusive right to which was undisputed by other tribes. It extended their possessions to the lands of the Peorias on Peoria Lake. They occupied to the Wabash as far south as Danville and even beyond. On the other side they occupied to the Rock river, though their right to a strip of land on the east side of that river was disputed by the Sac and Fox Indians who ranged the prairies west of there and beyond the Mississippi.

The land described included Area 148-A.

Area 148-B, adjacent to the eastern portion of Area 148-A, was ceded to the United States by the United Nations treaty of July 29, 1829 (7 Stat. 320). Royce Area 78 lying southeast of Royce Area 148 was ceded by the United Nation under the treaty of August 24, 1816 (7 Stat. 146). Royce Area 187 lying immediately north of Area 148-A was ceded to the United States by the United Nations by the treaty of September 26, 1833 (7 Stat. 431).

The defendant's expert witness, anthropologist David A. Baerries, has conceded that control of the United Nations over Area 148-A was complete and exclusive from approximately 1780 on and further stated there might be a leeway of approximately 10 years in the establishment of such use and occupancy. (Tr. pp. 89-92. Def. Ex. 15, p. 116)

After considering all the evidence introduced by both petitioner and defendant, this Commission is of the opinion that from a time prior to the

United States' acquisition of Area 148, which included July 4, 1776, until ceded by the Treaty of July 29, 1829, the United Nations exclusively used, occupied and had Indian title to the tract of land described herein as Area 148-A. In view of this opinion as to Indian title as to Area 148-A no opinion is given as to petitioners' claim of recognized title as to the land described as Area 148-A.

III THE RESERVATIONS IN FAVOR OF INDIVIDUALS IN THE TREATY OF  
JULY 29, 1829.

Articles III and IV of the Treaty of July 29, 1829, provided for grants of 16,640 acres to certain individuals. These grants lay within the boundaries of Royce Areas 147 and 148. Defendant alleges that the said 16,640 acres were a valid reservation under the treaty and therefore this acreage should be deducted in totaling the acreage ceded to the United States by the United Nations et al., under the Treaty of July 29, 1829. Petitioners allege that the Treaty of July 29, 1829, provided for grants to 13 named individuals totaling 9,600 acres (Pet. Finding 45). Petitioners do not specify the article or articles of the treaty under which the grants were made. The Commission is of the opinion that the figure as offered by the defendant is a correct one.

Petitioners further allege that the grants to individuals under the 1829 Treaty were made in order to induce them and persons over whom they had influence to subscribe their marks to the treaty (Pet. Finding 48) and therefore were not made for the benefit of the United Nations et al., but to its detriment and that said grants should be charged to the United States for whose benefit they were allegedly made. The Commission can find no proof that said grants were made to the said individuals in order to induce the individuals and persons over whom they allegedly had influence

to so subscribe their marks to the Treaty of 1829, nor can the Commission find any proof of fraud in regard to the said grants to the individuals. All persons for whom the United Nations et al., Indians saw fit to reserve tracts of land from cession contained in the Treaty of July 29, 1829, were tribal members. (Treaty of July 29, 1829, 7 Stat. 320, Articles 2, 3 and 4).

It has been held by this Commission and upheld by the Court of Claims that such grants to individual Indians were tribal matters and such grants therefore have been upheld by this Commission and by the Court of Claims. Prairie Band, et al., v. United States, 125 C. Cls. 60, 66 (1953), affirming 2 Ind. Cl. Comm. 207; Saginaw Chippewa Indian Tribe v. United States, 2 Ind. Cl. Comm. 404, 413 (Fdg. 13 (3)); Otoe and Missouri Tribe v. United States, 2 Ind. Cl. Comm. 335, 358-359, aff'd in part, rev'd in part, 131 C. Cls. 593 (1955), Cert. Den., U.S. 848 (1955); Citizen Band of Potawatomi Indians et al., v. United States, 6 Ind. Cl. Comm. 414, 425-426 (Fdg. No. 11); Red Lake and Pembina Bands, et al., v. United States, 6 Ind. Cl. Comm. 247, 334-335. Therefore there is no reason why the reservation of 16,640 acres should not be held to be valid, which acreage was reserved under Articles 2 and 4 of the 1829 Treaty.

IV - THE VALIDITY OF PETITIONERS' CLAIMS OF TITLE TO LEAD LANDS  
LYING WITHIN ROYCE AREA 147

The Treaty of August 24, 1816, (7 Stat. 146) between the United States and the Chiefs and warriors of the United Tribes of the Ottawas, Chippewas, and Potawatomies provided that the United States relinquish to the Ottawas, Chippewas and Potawatomies all of Royce Acre 147 and that part of Royce Area 148 lying west of the Fox River. Said relinquishment contained the following language:

. . . except three leagues square at the mouth of the Ouisconsing river, including both banks, and such other tracts, on or near to the Ouisconsing and Mississippi rivers as the president of the United States may think proper to reserve: Provided, That such other tracts shall not in the whole exceed the quantity that would be contained in five leagues square.

Petitioners state that the reservation of 5 leagues square in the 1816 Treaty gave the President a right to reserve a maximum of 144,000 acres out of the area relinquished to the United Nations under Article 2 of the 1816 Treaty; that this reservation in order to be effective had to be exercised; that it was exercised only with respect to the townsite of Galena, said townsite consisting of 640 acres. Petitioners therefore state that as of July 29, 1829, the United Nations et al., still held all the area then ceded except for the 640 acres reserved for the townsite.

Petitioners also take an alternative position to the one stated in the preceding paragraph alleging that as of July 29, 1829, the United Nations et al., Indians still held the same area subject to an unexercised right of the Government to acquire in addition to the section reserved for its townsite a further 143,360 acres taken from the area as a whole. (Pet. Brief p. 6)

The defendant contends that Article 2 of the Treaty of 1816 provided that lands to the extent of 144,000 acres were excepted from the relinquishment in the Treaty of 1816 and were retained by the United States. Defendant further states that the retained 144,000 acres were lead lands and were within Royce Area 147 and that said right to reserve said lead lands was not terminated by lapse of time nor failure to select them before the Treaty of July 29, 1829. In support of their position Defendant submits the following argument and evidence:

The report of the Treaty Commission for the Treaty of August 24, 1816 states in part,

Within the boundary which we were directed to recede are contained those immensely valuable lead lands which for some time past had attracted and occupied much public attention; \* \* \* knowing the universal clamour that would have been excited by the entire relinquishment of those objects; and not being certain that it was contemplated or intended by our instructions, we thought it advisable to endeavor to introduce into the Treaty a stipulation which would authorize the President to make such reservations as would include all those mines, and we fortunately succeeded in it.

Correspondence from Lt. Martin Thomas on September 30, 1827, who at that time was the Agent of the President for the selection of the United States lead reserves and Superintendent of the Upper Mississippi Valley Lead Mines, directed to his superior officer, Lt. Col. George Bomford, at Washington, D. C., clearly indicates it was Lt. Thomas' opinion that the United States had retained 144,000 acres of lead land within Royce Area 147 and that the U.S. Government location of the reservations in detached parcels was at the discretion of the Government. (Def. Ex. 275, p. 523) This opinion of Lt. Thomas is substantiated by a letter from Lt. Col. Bomford dated May 18, 1829, which date was just 2 months prior to the treaty of cession on July 29, 1829. This letter was directed to Captain T. C. Legate, the newly appointed superintendent of the Fever (Galena or Bean) River lead mines within Area 147.

It should be pointed out that at the time of said letter Lt. Col. Bomford held the title of Supervisor of the Lead Mines of the Upper Mississippi Valley.

This letter stated that by the Treaty of 1816 a right to a portion

of the lands described was retained by the United States. The letter then continued with the following language:

. . . a portion of the described lands was retained by the U.S. - namely, three leagues square at the mouth of the Ouisconsin, and five leagues square in such other tracts as the President might think proper to reserve. The location and bounding of the reservation of the three leagues square first mentioned was determined upon and settled at the time of the making of the treaty, (of 1816); but as to the location of the other reservation, of five leagues square, that question was left open by the treaty to be settled in the future by the President of the U.S.; and the chief object of all the present measures is, to enable the Government to determine what particular tracts or sections of land it will be most to the advantage of the Government to take possession of under the right retained (by the 1816 treaty). The selection is left without instruction as to time or situation within those limits, and may be taken, either in one body or in as many detachments or parcels, as was thought proper.

Up to and including the date of this opinion no portion of the 5 leagues square retained in the Treaty of 1816 has been retained in fee by the United States other than the townsite of Galena, referred to above, which reservation for said townsite contains 1 section or 640 acres.

Defendant further states that in the Treaty of August 18, 1825, (7 Stat. 272), in which the parties were the United States and the United Nations et al., together with other Indian tribes, said Indians in Article 10 of the Treaty confirmed their lack of interest in the retention contained in the treaty of 1816. Said Article 10 provided that:

It being, however, well understood that the reservations at Fever River, at the Ouisconsin, and St. Peters, and the ancient settlements at Prairie Des Chiens and Green Bay, and the land property thereto belonging, and the reservations made upon the Mississippi, for the use of the half-breeds, in the treaty concluded with the Sacs and Foxes, August 24, 1824, are not claimed by either of said tribes.

The reservation not to exceed 5 leagues square provided for in the Treaty of 1816 was more than sufficient to cover all lead lands known in 1829 or since discovered within Royce Area 147. Petitioners through their witness Charles A. Behre, Jr., testified that the total lead bearing lands within Royce Area 147 which have produced lead would not exceed 40 to 50 thousand acres (Tr. pp. 488-489; Def. Findings 15 to 19) or approximately 1/3 of the area provided for in the reservation of 5 leagues square in Article 2 of the Treaty of 1816.

The defendant through evidence contained in its Exhibit 275 showed that as of August 1, 1827, estimates made by Lt. M. Thomas, the duly appointed and acting agent of the President of the United States, declared that the total mining permits issued for the 320 acre leases granted to miners amounted in 1827 to about 20,000 acres. Further, defendant's exhibit 216 showed that as of July 29, 1829, there had been issued by the President or his agents a total of only 63 bonded and 320 approved lead mining and smelter leases within the entire Upper Mississippi Valley Lead Region, which region included all of Royce Area 147 and other lands also.

It is the opinion of the Commission after considering the pertinent evidence, that it was the intention of the defendant to reserve unto itself all the lead lands contained in Royce Area 147; and that said lead lands were effectively reserved by the Treaty of 1816 hereinbefore referred to. The Commission further finds that the object of the reservation was to enable the Government to determine what particular tracts it wished to take possession of under the right retained by the 1816 treaty, and further that said reservation in the treaty was left without instruction

as to time or location and that said tract or tracts could be taken in as many parcels as the defendant should think proper. The Commission further finds that the defendant exercised this right with a reservation of 640 acres at the townsite of Galena and that the defendant further partially exercised this right by issuing 63,320 mining leases by July 29, 1829.

As stated above, these leases included lands within the entire upper Mississippi Valley lead region, which region included all of Royce Area 147 and other lands also. (Def. Ex. 217) This Commission finally finds on this point that the defendant did not exercise its right of reservation as to the complete 144,000 acres retained in the treaty of 1816, but that this right was not lost by reason of the fact that no further specific reservations were or have been made.

V - THE ACREAGE OF THE TRACTS REFERRED TO: THE VALUE OF SAID  
ACREAGE AS OF JULY 29, 1829, AND THE CONSIDERATION PAID  
THEREFOR

The net acreage of Royce Areas 147 and 148 to be evaluated as of July 29, 1829, is shown in Finding of Fact No. 29 herein and is as follows:

Royce Area 147	1,381,786 Acres
Royce Area 148	<u>2,147,163 Acres</u>
Total	3,528,949 Acres

In arriving at the total net acreage the following matters were considered and determined: The total acreage of the two tracts was found to be 3,689,589 acres (Def. Ex. 185, p. 9). This figure is exclusive of the 3 league square reservation (51,840 acres), the location of said reserve being fixed by the treaty of 1816 at the mouth of the Wisconsin River. From this total acreage of 3,689,589 is deducted the reservation

of 144,000 acres retained by the United States under Article II of the 1816 treaty and the reservation contained in Articles III and IV of the treaty of July 29, 1829 which reservation set aside 16,640 acres to certain individuals.

It appears that defendant's Finding No. 16 contains an error in that it shows a total of 1,647,949 net acres of land in Area 148-B; but we are of the opinion that page 9, Def. Ex. 185 contains the correct figure of 1,647,390 net acres.

This net figure of 1,647,390 acres added to the figure of 499,773 net acres contained in Area 148-A will result in the correct figure of 2,147,163 net acres contained in Royce Area 148. This opinion is supported by the incorrect addition shown in Defendant's Finding 16 wherein the table shown in said finding contains the following figures:

<u>Tracts</u>	<u>Acres</u>
Area 147	1,381,786
Area 148-A (portion of Area 148 east of Fox River)	499,773
Area 148-B (portion of Area 148 west of Fox River)	<u>1,647,949</u>

Total net acreage of 1829 cessions . . . . 3,528,949

The table shows the correct total net acreage of the 1829 cession but obviously the addition is incorrect; however, if the correct net acreage of 1,647,390 had been used for Area 148-B in said table the answer of 3,528,949 would have legitimately resulted.

Based upon all the evidence of record, as well as an examination of pertinent documents, the Commission has entered detailed findings of fact

concerning the various factors considered in arriving at an ultimate determination of value of the subject area. As detailed in those findings of fact, the Commission has found that Royce Area 147 and 148 were located primarily in northern Illinois with a portion located in the extreme southwestern part of Wisconsin, with the Mississippi River forming the western boundary of Royce Area 147, and the eastern boundary of Royce Area 148, being located adjacent or near to Lake Michigan. Royce Area 148 is roughly in the shape of a parallelogram lying wholly within the northern portion of the State of Illinois. Royce Area 147 is a strip of land approximately 25 to 35 miles wide east to west and approximately 105 miles in length, from south to north. It lies in the extreme corners of northwestern Illinois and southwestern Wisconsin with the Mississippi River being its western boundary.

As of July 29, 1829 Royce Areas 147 and 148 were largely unsettled and unchartered though there were a few populated places in or near the subject areas such as the settlements of Green Bay and Prairie de Chien in Wisconsin and Galena in Illinois. Galena was the center of lead mining in the upper Mississippi Valley (Def. Ex. 185, p. 3). There was also a system of Forts lying within or near to the subject areas (Pet. Ex. L-92, Finding of Fact 57). These forts afforded protection for the settlers and provided a limited market for the settlers' produce (Abstract of Army contracts, 1829, House Doc. 86, 21st Cong. 1st Session, pp. 6-9). There was no doubt as of July 29, 1829,

that population in the midwest was rapidly increasing and that population was moving westward; for example, the population of Illinois for the period from 1810 to 1820 nearly tripled (Pet. Ex. L-99). The majority of the migration into Illinois settled first in southern Illinois and then gradually moved northward into the northern part of the State. (Bogges, 1908 Settlement in Illinois, pp. 124-27). Foreign immigration into the United States was contributing to the settlement of the west. (Pet. Ex. L-97 and L-127, p. 47)

The majority of the subject area was prairie land, particularly in Royce Area 148. However, in both Royce Areas 147 and 148 some of the prairie lands were interspersed with forests. Some sections were wholly timbered, some partially timbered, and some sections were prairie land that were close to timber (Pet. Ex. L-127, pp. 9-10, plates 4 and 5; Pet. Ex. L-13 and L-17; Def. Ex. 185, pp. 11 and 12, and table 1-A, p. 13)

The land in the subject areas was flat to gently rolling; the acreage in Illinois which was too steep for safe tillage was less than 5%. However, there was some rough and hilly country near the Mississippi river. This acreage lies within Royce Area 147, primarily in Jo Daviess and Carrol Counties in Illinois. (E. M. Pogge, The Prairie Province of Illinois, Vol. XIX, maps at pp. 37 & 38)

A portion of the acreage in Wisconsin in Royce Area 147 was likewise broken and hilly, particularly that land near the Mississippi River.

An estimate of 50% broken and hilly, for this Wisconsin acreage in Royce Area 147 would seem to be a fair estimate. (Pet. Ex. L-127, p. 8)

There was a small portion of the acreage in this area that could be called wet land. The best evidence presented concerning this wet land acreage is indicated by the Swamp Land Act of 1850, 9 Stat. 1850. While this Act is, of course, some 21 years subsequent to the treaty of July 29, 1829, it shows that as of 1850 a total of 173,850 acres of swamp land within Royce Areas 147 and 148 were patented to the State of Illinois. (Both pet. and defendant have quoted the Act as evidence of swamp land in Illinois.) The acreage of swamp lands within Royce Area 147 in Wisconsin is not given, nor is there any disclosure of record of how many acres of swamp land, if any, there were within Royce Areas 147 and 148 which had been previously disposed of under the public land laws prior to the Swamp Act of 1850. In spite of the fact that the swamp lands would have to be drained in order to be tilled, the area was not a total loss since during the dry seasons said land could be used for pasturing (M. B. Boggess, Swamp Land Act and Wet Land Utilization in Illinois 1850-1890, Pet. Ex. L-8).

There was abundant power for grist mills and other small water power sites in the subject areas (B. H. Schockel, Settlement and Development of the Lead and Zinc Mining Region, with Special Emphasis on Jo Daviess County, 4 Miss. Valley History Review, p. 184, Pet. Ex. L-6 and L-7, p. 5).

The climate of the subject area was very conducive to diversified farming and the raising of livestock. Moreover, there was abundant rainfall to produce, in addition to the staple crops, lush growths of pasture and meadow grass (Pet. Ex. L-3, L-79 and L-80). However, the areas would have been difficult to farm, particularly the first breaking of sod since proper implements for plowing such areas had not been invented as of July 29, 1829 (Fdg. of Fact 54).

The years just prior to the Treaty of July 29, 1829 were somewhat uneven in economic outlook. The years of 1827 and 1828 showed moderate prosperity with some recession that led to many business failures during the first half of 1829, however, during the latter half of 1829 there was a business revival in the United States (Thorpe, Willard Long, 1926 Business Annals, National Bureau of Economic Research, Inc. pp. 119, 120). This favorable economic picture led to an increased activity in the purchase of public lands; the income from public land sales being the second most important source of revenue to the United States Government. (U. S. Dept. of Commerce, Historical Statistics of the United States, 1789-1945 series pp. 98, 297).

One of the greatest problems of the western settlers, both before and immediately after 1829, was to find markets for their produce. In 1829 the productivity of the subject areas was limited due to the almost exclusive use of manual labor, some crude equipment and the

problem of hauling grain to dependable river outlets and mills. These factors tended to keep the land uses largely on a basis of self sufficiency. (Stuart Charles L., 1957, Land Opportunities for and Limits on Pioneer Farming in Central and Northern Illinois in the 1820's and 1830's, Dept. of Agr. Economics, Univ. of Illinois, Def. Ex. 185, p. 30) Another factor bearing on commodity costs was the question of the cost of labor. On the whole it would seem that in relation to the costs of commodities, labor costs were moderate (Pet. Ex. L-127, p. 37).

The cost of transportation in getting the settlers' produce to market was still another problem facing the settlers in Illinois as of 1829 (Bogges, Arthur Clinton, 1908, Settlement in Illinois 1778-1830, Chicago Historical Society, Chicago, Ill., p. 163-F).

There was some market for produce in Royce Areas 147 and 148 due to the number of miners in or near Galena in Royce Area 147 (Pet. Ex. L-87).

The steamboats that plied the Mississippi and its tributaries offered another market for meat and other products. However, this was certainly a limited market (Louis C. Hunter, Steamboats on the Western Rivers, p. 45). Another existing market resulted from the needs of the nearby army posts mentioned in Finding 56 herein (Pet. Ex. L-92), however, the market for the settlers; produce, particularly crops, was limited and transportation within the area posed a serious problem as well as the cost of transportation to the larger centers of

population, particularly along the Atlantic seaboard being distant and costly to reach. There were, of course, as of 1829 many plans to ease this burden of transportation, such as by the use of canals and improved roadways, but improved transportation was not then in existence. In regard to the methods of transportation it should be stated that the facts show that southern Illinois had a road system by 1829, but only Indians crossed the subject area (Def. Exs. 23, pp. 118-127, 153-164) with the exception of one trunk road from Galena to Peoria via Ogles Ferry across the Rock River. This ferry was located at a point near what is known as the town of Dixon, Illinois; said town being located on the extreme western boundary of Royce Area 148.

While it was true that the topography of the subject areas would lead to what proved to be relatively easy road construction (Pl. Ex. L-127), as of 1829 there were no bridges crossing the various rivers and creeks within the subject area. The great majority of routes and trails led to Galena in the lead area but even to this lead area the most important approach was the Mississippi River (Def. Ex. 185, p. 142). Additional transportation for the region was anticipated for the future but as of 1829 it was not yet a reality. (Def. Ex. 185, pp. 37-44, 101-108; Pet. Ex. L-217, L-37, L-39, L-43 and L-44)

An example of such proposed transportation facilities was the Illinois River-Lake Michigan canal. In 1822 the State of Illinois was authorized to construct the canal but due to numerous delays, mostly financial, the canal was not completed until 1848. The location of said canal was some 15 to 20 miles south of the southern boundaries of the subject areas. (Pet. Ex. L-127 pp. 17 and 18; Def. Ex. 185, p. 37)

As of 1829 there were no concrete railroad projects for the subject areas within the foreseeable future.

In 1829 there were some navigational problems within and adjacent to Royce Areas 147 and 148, such as ice in the winter, water level fluctuations due to changing seasons, natural obstructions such as logs and sand bars on the Rock, Fox, Mississippi and other streams within the area (Def. Ex. 185, p. 38). However, the subject area did on the whole enjoy favorable facilities for water transportation to provide relatively easy access to and from the subject areas. (Pet. Ex. 127, pp. 13-18) Also, said streams provided water power for various mill sites (Finding 55).

In this regard two other factors should be noted: first, 90% of the subject area was within 25 miles of waterways existing or authorized; and secondly, in addition to the river transportation noted above there was access to the Great Lake-Erie Canal system through the extreme eastern portion of Royce Area 148 and through river portages.

A prudent, prospective purchaser of 1829, in considering transportation factors would have realized that there was woeful lack of roads in the subject areas and that it would be some time before an adequate road system could be built and maintained to haul goods to market or even to provide good transportation between the farms and markets yet to be found. He would have realized that roads, canals, and railroads would be built to serve the areas but that it would be a long time before they would be operational, particularly the railroads. He would have realized that the river and lake systems to the area were good in spite of some difficulties mostly due to seasonal changes. In regard to these water

systems he would have recognized them as a positive factor in adding to the value of the land within Royce Areas 147 and 148 as of 1829.

The price charged for money as of 1829 would have been another important factor bearing on the value of Royce Areas 147 and 148 and would certainly have a bearing on the cash price a prudent, prospective purchaser would have paid for land lying within the subject areas.

Interest rates in Illinois and Wisconsin ranged from 10% to 35% in the 1820's (Pease Theodore Colvin, 1916, *The Frontier State*, p. 182; Buck, 1912, *Pioneer Letters of Gershom Flagg* p. 42; Def. Ex. 185, pp. 49-50)

Since we are here concerned with the value of lands as of 1829, it seems in order to outline briefly the policy the defendant pursued in its sale of its public lands during the early 19th century, particularly in regard to Royce Areas 147 and 148.

Under the Act of May 10, 1800, (2 Stat. 73) the United States Congress set the minimum price of public land at \$2.00 per acre. These land sales were conducted on a credit basis. The credit sales under this act resulted in a situation wherein most settlers obligated themselves to pay for too much land as compared to the resources they had. Consequently, many of the settlers were unable to make the payments called for by their contracts and therefore much land was returned to government possession through the default in payments (*American State Papers*, Vol. 5, Doc. 678, p. 528). To correct this situation the United States Congress passed the act of April 24, 1820, abolishing credit sales and fixing a minimum price of \$1.25 per acre for United States public lands including the subject lands (Def. Ex. 185, p. 60).

It is the public land sold under the act of April 24, 1820 that has been extremely helpful in aiding the Commission in its decision in determining the value of the subject lands. In reference to these public land sales Findings of Fact have been made by the Commission on the sale of lands near the subject areas and at periods of time near to or during the year of the cession date of July 29, 1829. In addition to the sales referred to above, the Commission has made findings in regard to the amount of acreage for sale in or near the subject areas as of 1829 and during periods of time near thereto; the length of time said lands had been on the market and finally the type of land that was sold and the price the defendant received for said land.

The matters referred to in the paragraph next above have been covered in detail in Commission's Findings of Fact Nos. 60 through 67. However, for purposes of condensation and further documentation said findings are now summarized with the particular purpose in mind as to what a prudent prospective purchaser as of July 29, 1829, would have considered before buying land in the subject areas.

Such a purchaser would have first realized this outstanding fact, that for years the availability of public land in Illinois had been exceeding demand therefor at the Government established minimum price of \$1.25 per acre (American State Papers, Vol. 5, Doc. 685, p. 538 and 678 C-1 to C-6 inc., pp. 550-57). Such a purchaser would have also realized that the acreage offered for sale fell into three broad classifications (a) acreage with heavy growth of timber on it, (b) acreage with some timber on the land or near thereto, (c) acreage with no timber

on it or close by. This last category would have been known as so-called prairie land. A prospective purchaser of Royce Areas 147 and 148 could have informed himself of land sales during the period of November 1823 through November 1829 in the Springfield Land Office. A summary of these sales, together with pertinent tables and a description of the areas involved is set forth in our Finding No. 66. Reference is also had to Defendant's exhibit 185, p. 77.

By means of such information a potential purchaser in 1829, could reasonably have assumed that when Royce Area 147 and 148 were offered for resale, settlers would exercise the same preferences and aversions for specific classes of land as had been generally reflected in actual purchases of public land in Illinois, said purchases being very near in time to July 29, 1829, and said lands being located adjacent or very near to Royce Areas 147 and 148, and also being similar in types to the lands contained in Royce Areas 147 and 148. Such a purchaser would have recognized a definite pattern in said sales, namely, that the timbered sections and timbered-prairie combination sections were by far the most in demand and that the average price for said lands could be fairly estimated not to exceed \$1.25 per acre (American State Papers, Public Lands, Vol. 5, pp. 550-557). Such lands would of course also have had desirable soil characteristics, not being wet lands referred to herein. To substantiate such a belief, a prudent purchaser would have realized that during the year 1829 (the specific year of the treaty in question) total sales of 196,245 acres of public land brought approximately \$245,000, or an approximate average price of \$1.25 per acre (American State Papers,

Public Lands, Vol. 7, p. 532). He would have further realized that the land sold at such public sales was the so-called No. 1, or first class, lands on which there was timber or timber nearby, and that the lands so sold were in small parcels and that the best prices were realized for parcels approximately one-half to one section in area. However, he would have further realized that the acreage which was but a very small percentage of approximately 29,000,000 acres of public land in Illinois unsold as of 1828 (Def. Ex. 185, p. 73, Table 7-B; Def. Ex. 244, pp. 538-557), and that much of the remaining land, particularly in Royce Area 148, was open prairie for which land there seemed to be little or no market as of July 29, 1829, and he would have been well aware that the bigger parcel to be sold the less price per acre said parcel would bring.

On this question of value the Commission wishes to refer to our Finding 65 wherein the Register and Receiver of the Springfield Land Office prepared a report pursuant to a resolution of the Senate of the United States, said resolution being dated April 25, 1828. The Springfield Land Office in 1828 was authorized to deal with a portion of the subject area. Said office also dealt with other lands immediately south of Royce Areas 147 and 148 and these lands were comparable in quality and type to the lands in the subject areas.

The pertinent part of the report of the Register and Receiver reads as follows:

The undersigned have bestowed on the subject all the attention of which they are capable, and have endeavored to make this report as correct as possible, from a careful examination of the plats, surveyors' reports, and our personal knowledge; but yet we may not represent the true situation and character of the district, from our limited means of information.

We find there remains unsold after having been offered at the minimum price, one million nine hundred and forty-seven thousand three hundred and twenty-four and sixty one-hundredths acres of land, of which two hundred and twelve thousand six hundred and twenty acres of land, as nearly as can be estimated, is of good quality; what is generally considered first and second rate, suitable for cultivation, and will, in all probability, be sold at the present price, should no alteration be made. Most of this land is represented as being timbered, with a competent proportion of prairie. The residue, one million seven hundred and thirty-four thousand seven hundred and four acres and sixty one-hundredths, is represented as prairie, and low wet lands, unfit for cultivation. Although this land is represented as unfit for cultivation, it is so from the circumstance of there being no timber. The quality of much of this land, indeed the larger proportion, is excellent, and equal to any in the district; but its remoteness from timber and water will prevent any immediate sale. We feel much at a loss to say what is the average value of the whole, per acre. To say that the first and second quality of land is worth one dollar and twenty-five cents; the residue is of but little value, and cannot estimate it worth more than twelve and a half cents per acre.

The land in this district was offered for sale at four different periods, and in about equal quantities. The first sale was in November, 1823, the second sale was in November, 1824; the third sale was in October 1826, and the last sale was in October 1827.

We are not appraised that any land in this district was given away or other wise disposed of by foreign sovereigns, before they came under the dominion of the United States. All of this is respectfully submitted.

George Graham, Esq.  
Commissioner of the General  
Land Office.

John Todd, Register  
Pascal P. Enos, Receiver

(American State Papers, Public Lands, Vol. 5, 1827-29, p. 557)

The Commission is of the opinion that the estimated figure in the report suggesting 12½¢ per acre for the less desirable lands is somewhat low in view of the fact that the estimate was made in 1828 and in further view of the other factors enumerated in our opinion and findings

of fact, particularly on the points that population in Illinois was increasing and that improvements were being made in transportation that would lead to increased markets, however, the estimate in the report is certainly of some value in showing that the figure of \$1.25 per acre for the No. 1 lands which were comparable to the No. 1 lands in the subject area, seemed to be an average figure for the choice lands covered by the report.

It should also be mentioned that in addition to the foregoing there were two other types of public land sales in adjacent territories that would have been of interest to a prudent prospective purchaser of Royce Areas 147 and 148 as of July 29, 1829, and would bear out the theory that \$1.25 per acre was a top price for the choice lands in the subject area.

The first of these types of sales were the public land sales involving land in the Illinois River-Lake Michigan Canal area. This land lay south of Royce Area 148; the area was approximately 20 miles wide and belonged to the United States, excepting approximately 284,000 acres that the United States had granted to the State of Illinois by the Act of March 22, 1827, 4 Stat. 234.

The construction of a canal to cross these lands and other lands which would connect the Great Lakes and the Mississippi River and thus afford a waterway between these areas, had long been a dream of the early settlers. It is historically recorded that the idea for such a canal originated with M. Louis Joliet in 1673 (Relations of Father Dablon, Historical Magazine, p. 237). The first practical step toward realization of such a canal came in 1816 when the Potawatomies relinquished

sufficient land to build such a canal (7 Stat. 146). Then by various acts, culminating in an act in 1829 which provided for the sale of lots and land parcels along the canal for the appointment of a Board of Land Commissioners and commencement of work on the canal, (Andreas' History of Chicago, Vol. 1, p. 167) which canal was completed in 1848.

On December 22, 1829, the Illinois River-Lake Michigan Canal Commission offered for sale approximately 100,000 acres of canal lands to the highest bidders for the minimum cash price of \$1.25 per acre. With a very few exceptions, sales held under this offer resulted in bids of \$1.25 per acre for a limited number of acres. The exceptions that brought larger bids were on lands located near the vicinity of Chicago. Approximately 9,600 total acres were sold in 1829 and 1830. (Andreas' History of Chicago, Vol. 1, p. 172).

Again, as shown throughout the history of all types of sales during this period in lands near by, Royce Area 147-148, the lands that were considered choice were those containing timber, excluding the sites near Chicago. Of the 9,600 acres sold, only 480 acres did not contain timber (Def. Ex. 185, p. 100, Table 9-A), and the price realized from the 9,600 acres was approximately \$1.25 per acre.

The second type of public land sold during this period was a portion of those lands lying within the Illinois Military Land Tract, those lands lay south of and adjacent to Royce Area 147 and were also adjacent to the southern boundary of Royce Area 148. (For a more complete description of the Military Tract see Finding 69) This land had been given to soldiers of the War of 1812 in order to aid and induce said

soldiers to enlist. This bounty land in the Illinois Military Tract contained approximately 3,500,000 acres; said acres being contained in 207 complete townships and 61 fractional townships (3 Stat. 327).

Some of this land fell into the hands of land speculators who were intent on buying and selling immediately in order to obtain a quick profit. These speculators had no intention of becoming settlers on the land. (The Illinois Military Tract, Theodore Carlson 1951, pp. 8, 40, 41)

A study of private land sales in the Illinois Military Tract involving small parcels of land, said land containing timber and record of sales being recorded between January 1, 1829, and May 31, 1833, reveals the fact that approximately 51 sections were sold at a price of 67¢ an acre. (Def. Ex. 185, p. 120, Table 10-E; Def. Ex. 185, p. 117, Table 10-B)

The sales in the Military tract tended to prove once again that the settlers first choice was timbered lands or a combination of timber and prairie land, and that this type of land sold more quickly and at a higher price per acre than land sold in larger parcels. (Pooley Settlement of Illinois, Chapter 1; Def. Ex. 185, p. 120) The average price per acre for lands sold in the Illinois Military Tract was in fact below the minimum price of \$1.25 per acre (Def. Ex. 185, p. 117, Table 10-B), however, this lower price may be somewhat explained by the part the speculators played in the development of the Military Tract, and further by some of the same problems which existed in regard to sales in the subject areas.

One of these problems was the delay in obtaining surveys of the cession of 1829. Such a survey was authorized by the Act of March 3, 1831 (4 Stat. 494), but none of the Illinois land appears to have been surveyed prior to 1837 (Pet. Ex. L-123). The Wisconsin land in the subject area was surveyed somewhat earlier, however (Pet. Ex. L-127, p. 23).

There was also some difficulty encountered with squatters in regard to the sale of public lands at the time of the Treaty of July 29, 1829, and for that matter, the period of time prior thereto and thereafter.

The so-called squatters may be identified for purposes of this opinion as people who settled on public land without title and attempted to remain on such land by bidding in the land at subsequent sale or under protection of pre-emption rights (Pet. Ex. L-57, L-10).

However, in regard to these squatters and land speculators the Commission is of the opinion that while said squatters and land speculators may have had a nuisance value, they did not seriously affect the price of land in the subject areas of 1829 in view of the fact that not all of the very choice land was sold at the minimum price of \$1.25 per acre and most importantly, that so much public land near the subject areas was still available for sale as of July 29, 1829.

The figures for the public land sales cited herein have dealt with relatively small parcels of land as far as acreage is concerned. The reason for this lies in the fact that there is no record of any dealings

involving large scale transactions which are comparable as to time and location.

While a substantial portion of Royce Area 147 was located in the upper Mississippi Valley Lead Region, this opinion has not concerned itself with placing any value on the lead deposits within the lead areas because of the retention of title of 144,000 acres of land as described in Findings of Fact 26 and 76, and the Commission's opinion as to the effect of this retention of title of 144,000 acres, is that said reservation provided that all lead lands were to be reserved to the Defendant herein.

The petitioners through their appraiser valued Royce Areas 147 and 148 at \$2.00 per acre as of July 29, 1829. This figure of \$2.00 did not place any value on petitioners' mineral claim on the lead deposits in Royce Area 147. However, through a separate appraisal by Behre, Dolbear, and Company, an evaluation of \$2,623,312 was placed on the mineral resources in Royce Area 147.

On page 49 of his appraisal, appraiser Thomas La Duc, stated in part that for the period we are considering, comparative sales are scant (Pet. Ex. L-127, p. 49). With this statement the Commission cannot agree. As set forth in our Findings of Fact and Opinion herein, there was a voluminous record of sales near the subject areas and at periods of time close to the treaty date of July 29, 1829. In fact, many public land sales occurred during the year 1829. These sales are documented herein.

The petitioners in 29-J placed an acreage value of \$2.408, as of

July 29, 1829, on the land in the subject areas. This figure includes the surface value and mineral value of the lands. Petitioners offered no expert evidence to substantiate their figure of \$2.408 per acre.

The Defendant through its appraiser Walter R. Kuehnle, appraised 3,528,949 acres in Royce Areas 147 and 148 at \$820,000. (For a breakdown of Mr. Kuehnle's appraisal, see Finding 79)

This appraisal did not evaluate petitioners' claim as to mineral value in Royce Area 147.

All appraisals given here placed the valuation date as of July 29, 1829, the date of the treaty. However, said treaty provided that it was to be effective when ratified; the treaty was ratified on December 30, 1829. However, the Commission will accept the valuation date of July 29, 1829 used by all parties since there appears to be no appreciable difference as to the value of the subject areas on July 29, 1829 as compared to December 30, 1829.

Petitioners allege in their Proposed Finding of Fact No. 54 that the total promised consideration for the land cession in the Treaty of July 29, 1829 was as follows:

Permanent annuity \$16,000	Capital Value	\$320,000
" " 50 bbls. of salt	Capital Value	2,500
Establish and maintain Blacksmith Shop	" "	18,800
Presents		12,000
Payment of Indian Claims		<u>11,601</u>
		\$364,901

Defendant agreed with this total consideration figure in his original Proposed Finding of Fact No. 86. However, on March 16, 1962, the defendant moved to substitute its Finding of Fact No. 86, stating therein that the total consideration for the cession should be \$434,433.78.

Defendant itemized and accounted for these payments in Defendant's Motion for Leave to File Substitute Findings, pages 2 and 3 thereof; however, for purposes of this opinion, it is sufficient to point out that the larger figure of \$434,433.78 offered by defendant in its Motion to File Proposed Substitute Findings lies in its argument that the value of the annual costs of five barrels of salt and the value of the annual cost of maintenance of a blacksmith shop, permanent, were not subject to commutation as of July 29, 1829. In support of its motion, defendant states that its proposed substitute Finding No. 86 is supported by the evidence of record, and is consistent with the law as recently reaffirmed by the recent decision of the Court of Claims in appeal Docket No. 7-61, Pawnee Tribe of Oklahoma, et al., v. United States, 301 Fed. 2nd, p. 367.

Petitioner answered by stating that both the value of 50 barrels of salt and the blacksmith shop were subject to commutation, that defendant has misconstrued the Pawnee case and seeks to have credited as consideration the total payments made under these provisions for permanent annuities in goods and services including the commuted values of such permanent annuities, and that this is directly contrary to the holding of the Court in the Pawnee case and is wholly unjustified. Petitioner then states that defendant's Substituted Findings should be rejected and that defendant's Original Findings in regard to the value of the 50 barrels of salt and blacksmith's shop provided for in the Treaty of July 29, 1829 should be approved.

Defendant then replied to petitioners' answer by alleging that

neither the value of the salt nor the value of the blacksmith's shop was subject to commutation since neither item could be considered as a definite and fixed item that would render them or either of them capable of being capitalized and commuted.

The Commission notes that the defendant in its original Proposed Finding of Fact No. 86 has made the following statement:

As disclosed in the Acts of March 25, 1830, 4 Stat. 390, and April 20, 1832, 4 Stat. 505, the annual cost to the United States of 50 barrels of salt for the United Nations, et al., was \$125.00.

As disclosed in the Act of March 3, 1835, 4 Stat. 780, 783, the annual cost to the United States for the Maintenance of a blacksmith shop for the United Nations, et al., was \$720.00 for the salary of the blacksmith and \$220.00 for iron and steel, or a total annual cost of \$940.00.

Moreover, defendant outlines in his substituted finding certain sums as to the commuted value of 50 barrels of salt and also sets out a certain sum as to the value of the blacksmith shop. (Defendant's Proposed Substituted Finding No. 86, p. 3) The Commission further notes that on pages 20 and 34 of Defendant's Exhibit No. 267, both the value of the salt and the value of the blacksmith shop were capitalized and commuted. Page 20 shows capitalization and commutation as to the Citizen Band (petitioners in Docket No. 217) and page 34 shows capitalization and commutation as to the Prairie Band (petitioners in Docket No. 15-K).

The Commission therefore finds that there is ample evidence to show that the salt and blacksmith items described herein were capitalized and paid and that defendant is entitled to consider said payments as part of the payment herein. The Commission further finds that a fair value of the annual worth was set forth in the Congressional Acts of

March 25, 1830, 40 Stat. at p. 390, and April 20, 1832, 40 Stat. at p. 505, (as to the salt); and the Act of March 3, 1835, 40 Stat., pages 780, 783 (as to the blacksmith shop). The Commission therefore finds the total consideration paid for the cession of the 1829 treaty to be:

Permanent annuity	\$16,000	Capital Value	\$320,000
"	"	50 bbls. of salt Capital Value	2,500
Establish and maintain Blacksmith shop	"	"	18,800
Presents			12,000
Payment of Indian Claims			<u>11,601</u>
Total			\$364,901

The Commission therefore finds that the sum of \$364,901 was the treaty date value of the consideration and this amount constituted payment by the United States on the claim on the cession and that the said payment of \$364,901 to the petitioners herein by the United States under the terms of the treaty of July 29, 1829 for the lands described in said treaty, less the acreage reservation contained in said treaty and less the retention of 144,000 acres heretofore discussed was so grossly inadequate an amount for 3,528,949 acres of the subject land having a fair market value of \$2,470,264.30 or an average price of \$0.70 per acre as to make the consideration unconscionable.

Arthur V. Watking  
Chief Commissioner

I concur:

Wm. M. Holt  
Associate Commissioner

Commissioner Scott did not participate in this decision.