

## BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS	)	
OF OKLAHOMA, ET AL.,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 314 Amended
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: July 29, 1963

ADDITIONAL FINDINGS OF FACT

17. The joint grant to the Piankashaw and Wea Tribes of Indians, that was made under Article 2 of the aforementioned Treaty of October 29, 1832 (4 Stat. 710), is described as follows:

" . . . bounded on the east by the western boundary line of the State of Missouri for fifteen miles; north by the southern boundary of the lands assigned to the Shawanoes; west by lands assigned to the Peorias and Kaskaskias, and south by the southern line of the original tract surveyed for the Piankeshaws, Weas, and Peorias - said tract being intended to include the present villages of the said Piankeshaws and Weas."

These lands, plus the adjoining 150 sections to the west which were granted to the Peoria and Kaskaskia tribes under Article 4 of the Treaty of October 27, 1832 (7 Stat. 403), make up a single tract of 400 sections, which area is more readily identified on Royce's Map of Kansas 2 as Areas 326, 327, and 328.

The 1832 Piankashaw-Wea Treaty was proclaimed by President Andrew Jackson on February 12, 1833, pursuant to the Senate resolution ratifying said treaty on February 9, 1833. The latter date, the date of ratification, is the effective date of said treaty and the valuation date of the joint grant.

18. The joint Piankashaw-Wea grant (hereinafter referred to as the subject tract or subject lands) extends some 15 miles north and south along the Kansas-Missouri state line on the east, and along the Kaskaskia-Peoria line on the west. From east to west the subject tract is 16.67 miles wide. It is bounded on the north by Royce Area 319 (the Shawnee eastern lands), and on the south by Royce Areas 329 and 330 (the Miami lands).

The Marais de Cygnes, or Osage River, flows through the southwest corner of the subject tract, and, as of the date of the grant, afforded but limited access by small boat into the area. The northwest corner of the subject tract is located south of Kansas City, approximately 30 miles from the confluence of the Kansas and Missouri Rivers. The entire grant is situated within the northeastern part of present day Miami County, Kansas.

19. Besides good accessibility to ready markets, the average 1832 settler, who was primarily a farmer, preferred land upon which could be found adequate timber and water. While the official surveys of the Piankashaw-Wea lands were not conducted until 1856, the recorded survey notes indicate conditions as to soil content, timber, and water, which certainly existed as of the date of the joint grant of these lands. For the most part, the soil content seemed to be good throughout the area. Undoubtedly the most important item to a potential 1832 settler in the subject tract was the availability of timber for building, fencing, and fuel. Except for those prairie lands that were considerably removed from the few streams that flowed through the area, there was an adequate supply of useable timber in half of the townships. This timber consisted chiefly of oak in several

varities as well as hickory, elm, and walnut.

The annual rainfall in this general area averaged approximately 30 to 34 inches. Apparently water was plentiful as the survey notes indicate the presence of natural springs in several of the townships.

20. With respect to its climate, soil, water, and timber, the subject tract in 1832 compared favorably to those adjacent lands to the east in Missouri, both north and south of the Missouri River, except for the rich bottom lands next to the river. Considering all these factors, the subject tract in 1832 was best adapted to small scale subsistence homestead farming upon the best lands, that is, the timbered areas adjacent to the small rivers and streams.

21. In 1832 the subject tract was part of the Indian Territory and, apart from the military encampment at Fort Leavenworth, there were no regular settlements west of the Missouri state line. As of 1832 the closest settlements were being made in and about the Kansas City, Missouri, area at the junction of the Kansas and Missouri Rivers.

While the subject tract was best adapted for subsistence homestead farming in 1832, there was only a limited market for the sale of surplus farm products, chiefly at the military establishment at Fort Leavenworth and to immigrants and travelers using the Oregon and Santa Fe trails.

Public land sales were being made in Jackson County, Missouri, which county had been organized in 1826 with its northern boundary located on the Missouri River, and its western boundary extending southward along and past the eastern boundary of the subject tract to the Osage River.

In 1828 an area of 160,371 acres of public lands south of the Missouri River in Jackson County were placed on the market at \$1.25 per acre. Some 31,344 acres were sold through 1832, with the sales extending south of the Missouri River to within 9 miles of the north-east corner of the subject tract. However, most of the sales that did take place were concentrated within the first two tiers of townships south of the Missouri River and near Kansas City.

North of the Missouri River and along the western boundary of the State of Missouri, public land had been offered for sale at \$1.25 per acre as early as 1821. In the years that followed, a considerable population built up along both sides of the Missouri River, so that by 1830 the area encircling present Kansas City, Missouri, could show a population density from 6 to 18 persons per square mile. The 1830 census figures show Clay County, Missouri, north of the Missouri River, with a population of 5,338, and Jackson County, Missouri, south of the Missouri River, with a population of 2,823.

22. Dr. William G. Murray, a qualified land appraiser, testified for the defendant as an expert witness for the purpose of fixing an 1832 fair market value to the subject tract. Dr. Murray has testified in other cases in a similar capacity. In conjunction with his testimony in this case, there was presented and received in evidence selected pages from the evaluation report prepared by Dr. Murray and used in Dockets 11-A and 138 (Otoe and Missouri Tribe et al., v. United States).

In computing an 1832 fair market value of the subject tract, Dr. Murray compared the area in question with the adjacent lands in Missouri, situated both north and south of the Missouri River. His comparable sales consisted only of the public sales of land in this Missouri area up to and including the year 1832. In addition he took cognizance of agricultural and general economic conditions of 1832, and the comparative physical and topographical features of the subject area and the adjoining lands, and being of the opinion that the subject tract could be best utilized for general farming, Dr. Murray estimated the 1832 fair market value of this Piankashaw-Wea grant to be on the average of \$0.30 per acre.

23. The Commission, upon consideration of all the evidence in this record and based upon the findings of fact entered herein, finds that, consistent with its highest and best use, the Piankashaw-Wea lands had a fair market value of February 9, 1833, of \$0.30 per acre.

24. Since the Wea Tribe had an undivided interest in the 250 section grant, the value of their interest as of February 9, 1833, was \$24,000, which amount the defendant is entitled to setoff as a gratuity against the award of \$937,250.00 entered in favor of the Wea Tribe of Indians. The Commission has previously determined that the defendant is also entitled to setoff other gratuitous expenditures of \$2,294.54, plus the sum of \$34,478.16 which was the consideration received by the Wea Tribe of Indians for the cession of all its right, title, and

interest to Royce Area 99 under the Treaty of October 2, 1818 (7 Stat. 410; Commission's Finding 16 supra). It is concluded, therefore, that the petitioners herein are entitled to a net judgment of \$876,477.30.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner