

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

Appearances:

Jack Joseph, with whom was
L. L. Rochmes, Attorneys
for Petitioners.

W. Braxton Miller, with whom
was Mr. Assistant Attorney
General, Ramsey Clark, Attorneys
for Defendant.

OPINION OF THE COMMISSION

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

On April 18, 1961, this Commission issued its findings of fact,
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opinion, and an order in this case, and among other things determined that
the defendant was entitled to setoff as a gratuity against the award made
to the Wea Tribe or Nation the fair market value of the Wea's undivided
one-half interest in the 250 section grant made jointly to the Piankashaw
and Wea Indians by the Treaty of October 29, 1832 (7 Stat. 410).

The trial on the issue of the fair market value of the 1832 joint
grant has been completed, and both sides have submitted their proposed

* 9 Ind. Cl. Comm. 274.

findings of fact and have briefed the issue. While the valuation evidence is meager, the Commission has been able to estimate the fair market value of the joint grant as of February 9, 1833, the date on which the Senate formally ratified the 1832 Piankashaw-Wea Treaty. For the sake of convenience we shall refer to the lands in question as the subject tract or subject lands, having in mind that we are concerned only with the Wea interest therein.

The subject tract, together with the 150 sections of land adjoining on the west that belonged to the Peorias and Kaskaskias by virtue of the Treaty of October 27, 1832 (7 Stat. 403), makes up a single tract which is readily identified on Royce's Map of Kansas 2 as Areas 326, 327, and 328.

To be more specific, the subject tract is south of the Kansas River in eastern Kansas, and extends some 15 miles along the Kansas-Missouri line. It is 16-2/3 miles wide, and its northeast corner is roughly 30 miles south of Kansas City, Missouri, and the confluence of the Kansas and Missouri Rivers. The entire area is confined entirely within the northeastern part of present day Miami County, Kansas.

At the time of the 1832 grant, the subject tract was part and parcel of what was exclusively Indian country. Apart from the military encampment at Fort Leavenworth, there were no known settlements existing west of the Missouri state line. The nearest settlements of consequence at this time were located in and about the Kansas City area along both sides of the Missouri River.

There was no actual market for the subject lands as of the date of the grant, for they were then the property of the Indians, and, as subsequent events showed, they would remain so at least until the late 1850's.

Nevertheless they were worth something, and in the absence of any such actual market, and for the limited purpose in this case, the Commission believes that there is sufficient evidence upon which to give an estimated fair market value as of February 9, 1833.

The Commission has found that in 1832 the potential settler in this general area was primarily a farmer and preferred land that provided him with sufficient timber and water. Thus we would look for sites near and about the rivers and streams, for there he would find timber. An examination of the survey notes covering the subject tract indicates that in about half of the townships therein there was useable timber, comprising for the most part oak in its several varieties as well as hickory, elm, and walnut. Apparently there was sufficient water available. Although the streams were few, the survey notes indicate the presence of natural springs in several of the townships. The soil content was generally rated good throughout the area. The annual rainfall in this part of the country averages 30 to 34 inches.

We have found that, with the exception of the choice lands close to the Missouri River, the subject tract compared favorably with the Missouri lands immediately to the east with respect to climate, soil content, timber and water. We have also concluded that the subject tract was best adapted at the time of the grant for subsistence homestead farming.

While the subject tract was only 30 miles south of Kansas City, Missouri, and the confluence of the Kansas and Missouri Rivers, its

accessibility by water was limited. The Marais de Cygnes, or Osage River, flows through the southwest corner of the tract, but its navigability to any extent is questionable beyond the small boat stage.

As of the date of the 1832 grant, western settlement along both sides of the Missouri River had stopped at the Missouri state line, and was beginning to extend itself some distance north and south of the river. By 1830 a considerable population had built up around the Kansas City area. Clay County, Missouri, just north of the Missouri River, showed an 1830 population of 5,330, while on the south side in Jackson County, Missouri, there was a recorded population of 2,823.

Jackson County, Missouri, had been organized in 1826, and by 1828 there had been offered for public sale in the county some 160,371 acres of government land. By 1832 some 31,344 acres had been purchased at \$1.25 per acre with some of these sales south of the Missouri River occurring within 9 to 12 miles of the subject tract. Sales of government lands north of the Missouri River in western Missouri had been taking place since 1821.

The Commission heard testimony from Dr. William G. Murray, a qualified appraiser, who appeared as an expert witness for the Government, and who has testified in a similar capacity in other cases before this Commission.

In conjunction with his testimony, Dr. Murray produced written evaluation evidence covering the subject land, which material had been gleaned from his earlier evaluation report in Dockets 11-A and 138. Dr. Murray's testimony touched upon many of the matters we have just discussed, and his written material contained much useful information which

aided the Commission in reaching its independent conclusion on the fair market value of the subject tract. Dr. Murray's use of the comparable sales approach was restricted to the government sales program in nearby Missouri. He concluded from the evidence in his report that, as of the effective date of the 1832 Piankashaw-Wea grant, the subject tract had a fair market value of \$0.30 per acre.

The Commission, in considering all the pertinent factors in the record that would affect valuation, agrees with Dr. Murray's conclusion that, if the subject lands had been offered for sale as of February 9, 1833, they would have been worth \$0.30 per acre.

Since the Weas enjoyed an undivided one-half interest in the 1832 250 section grant, we find that the defendant is entitled to setoff as a gratuity against the award made herein \$24,000 being the value of 125 sections, or 80,000 acres at \$0.30 per acre. In all, the Commission has concluded that defendant is entitled to setoff against the award of \$937,250.00 as payments on the claim and gratuities a total of \$60,772.70. The petitioners, on behalf of the Wea Tribe or Nation, are therefore entitled to a net judgment of \$876,477.30, for which amount the Commission will enter its final order.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

Associate Commissioner Scott concurs in a separate opinion

Scott, Commissioner concurring:

In view of the special circumstances of this case, involving the claim of the defendant to offsets, and in which the valuation evidence in the record was submitted solely by the defendant, I concur in the result. Each of these matters must stand on its own bottom. In the event there are future valuation proceedings in other cases involving this land or land in this general area, I herewith reserve further consideration of the question of fair market value thereof in the light of the record of evidence received therein.

T. Harold Scott
Associate Commissioner