

BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS	)	
OF OKLAHOMA, ET AL.,	)	
	)	
Petitioners,	)	Docket No. 146
	)	
THE PRAIRIE BAND OF THE POTAWATOMI	)	
TRIBE OF INDIANS, ET AL.,	)	
	)	
Petitioners,	)	Docket No. 15-M
	)	
ROBERT DOMINIC, ET AL., as the	)	
Representatives and on behalf of all	)	
members by blood of the OTTAWA TRIBE	)	
OF INDIANS,	)	
	)	
Plaintiffs,	)	Docket No. 40-K
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: December 23, 1964

Appearances:

Howard D. Moses, Louis L. Rochmes and Giddings Howd, Attorneys for Petitioners in Docket No. 146

Robert Stone Johnson, Attorney of Record for Petitioners in Docket No. 15-M

O.C.R. McGuire, of Counsel

James R. Fitzharris, Attorney of Record for Plaintiffs in Docket No. 40-K

Jay H. Hoag, of Counsel

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

OPINION OF THE COMMISSION

Scott, Associate Commissioner, delivered the opinion of the Commission.

This case is now before the Commission for the determination of the acreage and value of the respective lands held by the Grand River Band of Ottawa Indians and the St. Joseph Band of Potawatomie Indians on August 29, 1821, when the treaty of cession of that date was signed (7 Stat. 203). The date of valuation for these lands is agreed to be the date of ratification of the treaty which was March 25, 1822.

The areas of land to be valued herein are described as follows:

The Ottawa Tract

This tract is bounded on the south by the Kalamazoo River from its mouth on Lake Michigan to a point six miles south of the Michigan Base Line where it intersects the south line of the territory ceded by the treaty of September 24, 1819, 7 Stat. 203; thence west along said boundary line to a point sixty miles west of the Michigan Meridian, which point is the southwest corner of the territory ceded by said treaty of 1819; thence northeasterly along the western line of the 1819 cession to where such line crosses the main branch of the Grand River about two miles west of Saranac, Michigan; thence along the north bank of the Grand River to its mouth on Lake Michigan; thence following the shore of Lake Michigan southerly to the point of beginning; and to a tract of land bounded by a line beginning at the source of the Kalamazoo River in Section 30, Township 4 South, Range 1 West of the Michigan Meridian, and running thence due east to its intersection with the west line of the treaty cession of November 17, 1807, 7 Stat. 105; thence north on such west line to a point six miles south of the Michigan Base line; thence west from that point on a line which is the south line of the Territory ceded by the Treaty of September 24, 1819,

7 Stat. 203, to the Kalamazoo River; thence up said river to its source, which is the place of beginning, and containing 1,140,740 acres after deducting reserves and grants to Indians in the amount of 2,193 acres.

The Potawatomi Tract

This tract is bounded by a line commencing at a point on the St. Joseph River of Lake Michigan, near the Parc aux Vaches, due north of Rum's Village, and running thence south to a line drawn due east from the southern extreme of Lake Michigan; thence with said line east to the west line of the tract ceded by the Potawatomi to the United States by the Treaty of Fort Meigs in 1817, 7 Stat. 160; thence north on said line to the northwest corner of said tract; thence east along the northern line thereof to the northeast corner where it intersects the west line of the treaty cession of November 17, 1807, 7 Stat. 105; thence north on such west line to a point due east of the source of the Kalamazoo River in Section 30, Township 4 South, Range 1 West of the Michigan Meridian; and thence west on a straight line to the source of the Kalamazoo River; thence down said Kalamazoo River to the point of intersection with a line running east and west parallel to and six miles south of the Michigan Base Line; thence west along said east and west line to its intersection with the Kalamazoo River; thence down said Kalamazoo River to its mouth; thence southerly along the east shore of Lake Michigan to the mouth of the St. Joseph River; thence up the St. Joseph River, along the south bank thereof, to the place of beginning, and containing 2,857,494 acres after deducting reserves and grants to Indians in the amount of 80,999 acres.

The subject lands are bounded by present-day landmarks as follows:

Beginning at the mouth and along the north bank of the Grand River, the boundary follows the river upstream to a point just east of the Kent County-Ionia County line. It then follows a straight line in a southwesterly direction to a point approximately five miles northwest of the present City of Kalamazoo. The boundary line then follows the south boundary of the northern tier of townships in Kalamazoo County, Calhoun County, and Jackson County to a point approximately six miles northeast of the present City of Jackson where the before-mentioned township lines intersect the Michigan Meridian. It then follows straight south

along the meridian to a point about three miles north of the present City of Hudson, then straight west parallel to the township line to the Branch County-Hillsdale County line, thence south along that county line to a point straight east of the southern tip of Lake Michigan. This point is now in Indiana. It then goes directly west to the St. Joseph River, following that river to the Michigan Lake shore. The Lake shore constitutes the west boundary to the point of origin at the mouth of the Grand River.

The above described areas are known as a unit as Royce Area 117, Michigan 1, Indiana. The Commission in its findings of fact and opinion on the title phase of this case determined that the area was separately occupied by the Ottawas of Grand River and the St. Joseph Band of Potawatomi. For this reason the areas will be valued separately. However, since the areas are contiguous and any differences are minor, they will be valued based upon the same findings of fact.

As detailed in the findings of fact made herewith, the situation which determined the settlement and development of Michigan Territory was rather unique in the history of the settlement of this country. The subject lands were among the best to be had for the purpose of subsistence farming which was the primary aim of the settler of this period. However, due to a combination of circumstances, these lands were not well known by the general public in 1822. These same circumstances prepared the way for the great Michigan land boom of the mid-1830's and perhaps, in the long run, contributed to a more advantageous settlement of the Territory and of the subject lands. The circumstances referred to consisted of remoteness due to transportation difficulties and the promulgation of a false report concerning the desirability of lands in the subject areas.

The three main routes to Michigan Territory in 1822 were the Great Lakes, through Canada, and through Ohio. The Canadian route evidently was not used very much because of its length and the oftentimes severe winter weather. The Great Lakes route had not yet reached the position which it was to occupy after the completion of the Erie Canal in 1825.

The route through Ohio was hampered for many years by the Black Swamp which lay south of the present City of Toledo, Ohio. This was the most direct route from the settled portions of Ohio but it was almost impassable. There was a military road constructed by General Hull as a result of the difficulties experienced during the War of 1812 in supplying the military establishment at Detroit. This road was useless as early as 1815. It was not until 1829 that a usable road was completed through the Swamp.

In addition to the above conditions the Ohio River was still the great route west because of its comparative ease of use. As a result the main stream of emigration had ignored Michigan Territory for Ohio, Indiana, and Illinois.

Another factor combining to slow the progress of settlement in Michigan Territory was the location of 2,000,000 acres of Military Bounty lands in the Territory and their relocation to the State of Illinois and Missouri. This came about through an erroneous impression created by the surveyors who were sent in the fall of 1815 to survey these bounty lands. They spent only a few weeks in the field and because of weather or hostile Indians, or both, returned with a completely

derogatory report of the land. This report was forwarded by Edward Tiffin, the Surveyor General of the United States for Lands Northwest of the Ohio River, to Josiah Meigs, Commissioner of the General Land Office. Meigs then recommended the relocation of these lands which was done by Congress. The attendant publicity created a bad impression of Michigan lands in the mind of the public. It wasn't until some four or five years later that better reports began to be heard concerning these lands which lay east of the subject area towards Detroit.

After the Tiffin report surveying in southeastern Michigan stopped for a time. Governor Cass and the Receiver of the Detroit Land Office succeeded in getting it started again in 1816. By 1817 some of the surveys were completed in the area around Lake Erie, the Detroit River, and Lake St. Clair. These lands were in Area 66, Michigan 1, and had been ceded in 1807. The surveys in the subject area were begun in 1824 and almost entirely completed in 1839 with only a few townships which were not finally finished until 1848.

With the situation as briefly outlined above it is obvious that there existed no actual market for either the lands of the Ottawas or the St. Joseph Band in 1822. In the absence of this actual market there are no sales of land in the subject areas during the time in question. In this case the Commission will use the criteria set forth in the case of Otoe and Missouri Tribe v. The United States, 131 C. Cls. 593, 633, and last approved by that Court in Pawnee Indian Tribe of Oklahoma v. The United States, 301 F. 2d 667, Cert. den., 82 S. Ct. 1556.

As stated in the Otoe case:

\* \* \* In the absence of a market at the time in question, and therefore the absence of evidence of "market value" in the conventional sense, this court and the Commission have taken into consideration numerous other factors in determining the value of lands ceded by the Indians. \* \* \* It considers the natural resources of the land ceded, including its climate, vegetation, including timber, game and wildlife, mineral resources and whether they are of economic value at the time of cession, or merely of potential value, water power, its then or potential use, markets and transportation -- considering the ready markets at that time and the potential market. \* \* \*

On the basis of the above factors it is possible to arrive at "an estimated or imputed fair market value" as referred to by the Court of Claims in The Miami Tribe of Oklahoma, et al v. The United States, 175 Fed. Supp. 926.

The definition of market value which has been adopted by this Commission and cited with approval by the Court of Claims in the Miami case, supra, is the following:

Market price is the highest price estimated in terms of money which land will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all the uses and purposes to which it is best adapted and for which it is capable of being used.

The Commission will apply the factors referred to in the Otoe case, supra, to the framework of the above definition to arrive at the "estimated or imputed fair market value" of the two areas of Royce Area 117 on March 25, 1822.

The findings regarding the physical characteristics of the areas show them to have been desirable for subsistence farming. They were well drained insofar as rivers were concerned. The Grand, Kalamazoo, and St. Joseph Rivers are located in the areas, while to the east in

Area 66 are the Raisin, Huron, and Clinton Rivers. It was possible to cross the southern part of Michigan from Detroit to Lake Michigan on these rivers by using the light river craft of the day and by portaging relatively short distances between the two drainage basins. The three streams in Area 117 were navigable by steamboats of the day for some distance from their mouths but would have required the expenditure of time and money to bring them to a position of real importance commercially.

The soils are of the grey-brown podzolic type which were created in a cool-temperate climate under a deciduous forest. The lands are dominantly loams and silt loams, developed on calcareous glacial drift left by the Wisconsin glaciation and were highly productive with suitable crops.

The annual average rainfall varies within the areas because of the location of the lakes on each side. The highest annual average precipitation within the areas is 38 inches in St. Joseph County near the Indiana border. The west side of the areas near Lake Michigan shows 30 inches or better.

The lakes bordering Michigan tend to moderate temperatures over the state. Because of this spring is delayed and so is autumn. The mean annual temperature within Area 117 is from 46° to 49° F. The average January temperatures range from 24° to 26° F. and the average July temperatures range from 66° to 72° F.

The growing season within Area 117 varies from 150 to 160 days. The northern part may have a somewhat shorter season while the southern



part may be slightly higher to a possible maximum of 180 days.

The original covering of the area was deciduous forest with a mixture of pine in the northwesterly part of Area 117. Interspersed throughout the area were prairies, some large enough to have names and some small enough to be called "oak openings." These "oak openings" were much sought after by settlers in every section of the country because they relieved the necessity of clearing before plowing and planting and yet there was sufficient wood nearby for building, fuel, and furniture. The prairies and oak openings also furnished hay for livestock.

The classification of the land as taken from the original surveyors' field notes shows the following results for the Ottawa area expressed in acres and percentages. These figures exclude lands reserved to individual Indians under the Treaty.

<u>Prairie</u>	<u>Swamp</u>	<u>Marsh</u>	<u>Upland Timber</u>
15,369	75,175	17,047	1,033,148
1.3%	6.6%	1.5%	90.6%
<u>Potawatomi Area</u>			
128,461	190,024	58,195	2,480,813
4.5%	6.7%	2.0%	86.8%

The soil ratings taken from the original surveyors' field notes show the following results for the Ottawa area expressed in acres and percentages. These figures exclude lands reserved to individual Indians under the Treaty.

<u>1st Rate Soil</u>	<u>2d Rate Soil</u>	<u>3d Rate Soil</u>
272,271 23.9%	734,419 64.4%	134,049 11.7%
<u>Potawatomi Area</u>		
984,289 34.5%	1,655,542 57.9%	217,662 7.6%

The above figures show the Ottawa area to have had approximately 88% of first and second class soil and the Potawatomi area to have had approximately 92% of first and second rate soil.

Communications within the two areas in 1822 were by Indian trails and the streams. These trails would support the fur trade and foot or horseback travellers, but not wagons. The streams, as stated previously, would handle the light water craft of the day and steamboats to some distance above the mouths. The problem of accessibility to the area as a whole was mentioned above and will not be gone into here.

The population of the subject area in 1822 consisted of a few scattered "squatters" along the streams. In the Territory as a whole in 1820 there were some 8,896 people. Some 6,630 of these were in the Detroit-Lake Erie area and the remainder of 2,263 were throughout all of northern Michigan and what is now the State of Wisconsin. This population represented an increase of 4,134 people since 1810 and shows an average annual growth of 413 people during the period from 1810-1820.

By contrast, the State of Indiana had increased in population from 24,520 in 1810 to 147,178 in 1820, and average annual increase of 12,266. Illinois increased from 12,282 to 55,221, an average annual increase of

4,293. Ohio grew from 230,760 to 581,434, an average annual increase of 35,067.

The biggest single item of commerce in Michigan Territory in 1822 was the fur trade which employed some 1,000 people and was valued at about \$300,000 during the summer of 1821. The fur trade continued to be dominated by the American Fur Company which had twenty trading posts in the Grand River Valley by 1827, with their headquarters at Grand Haven at the mouth of the Grand River.

There was no agriculture in the subject area in 1822 because there was no population and no markets. The settlement at Chicago was of no importance as a market in 1822 even if there had been products to sell.

There were no minerals of commercial importance in 1822. The trappers and traders were aware of some salt springs, but they were not commercially valuable in 1822. The gypsum beds in the area were not known at this date and it wasn't until 1838 that they became known to have a potential commercial importance.

There were numerous saw and grist mill sites mentioned by the surveyors in their field notes. These became valuable with settlement and consequent local demand.

The fur trade was a valuable asset in the area in 1822. It could operate economically with the transportation because of the size and value of the cargoes.

The public land policy of the government had gone through several changes by 1822. The most important change was that of 1820 whereby the credit sales were changed to cash sales at \$1.25 per acre with

a minimum purchase of 80 acres. This change was the result of experience during the period from the first legislation in 1796 to 1820. It had become evident that the sales of the large tracts as originally provided for needed to be changed to allow the average person of modest means to procure sufficient land to support himself and his family. This change in the act of 1820 was an impetus to land sales and consequent settlement.

The Treasury Department sent to the Senate in November, 1820, a statement of the western lands purchased from the Indians, the amount surveyed, and the amount sold to September 1819. This report showed a remainder of 54,203,162 acres to be sold as of 1819.

Through 1822 some 28,861,087 acres of public land had been offered for sale, of which 1,885,913 acres had been sold. This left for private entry at \$1.25 per acre 26,975,174 acres in 1822-1823.

The average cash price of lands sold during 1820, 1821 and 1822 in Ohio was \$1.24, \$1.30, and \$1.27 respectively. For the same period in Indiana it was \$1.32, \$1.37, and \$1.30, and in Illinois it was \$1.30, \$1.26, and \$1.25 for the respective years.

The sales of public lands in the United States grew to a high of 5,475,648 acres in 1819 and in 1820 dropped off to 821,904, in 1821 to 781,213, and in 1822 to 801,226 acres.

Land sales in Michigan had begun in 1818. The first land office was established at Detroit in 1804, but there had been insufficient demand to warrant a sale until July 7, 1818. 349,500 acres in Wayne and Monroe Counties were offered at this time with a total of 24,124



















