

## BEFORE THE INDIAN CLAIMS COMMISSION

THE CITIZEN BAND OF POTAWATOMI	)	
INDIANS OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 96
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

Decided: December 30, 1964

SUPPLEMENTAL FINDINGS OF FACT

The Commission makes the following Findings of Fact which are supplemental to the Findings numbered 1 to 17, inclusive heretofore made herein:

18. The total acreage to be valued, 362,832.22 acres in all, was located within the confines of the Potawatomi reservation in the Indian Territory. The date of valuation is June 25, 1890. The land to be valued was neither in one compact mass nor uniformly contiguous. The land to be valued consisted of the Potawatomi "surplus lands", i.e., those acres left over after the Potawatomi Indians had selected their allotments in severalty. The allotments selected by the Absentee Shawnee Indians within the Potawatomi reservation are a part of the land to be valued.

19. The Potawatomi reservation, in the approximate center of what is now the State of Oklahoma and was then the Indian Territory, was bordered irregularly on the north and south by the North and South Forks,

respectively, of the Canadian River. The western border of the reservation was a vertical line approximately fourteen miles west of and parallel to the 97th meridian of west longitude. The eastern border of the reservation was a vertical line approximately thirteen miles east of and parallel to the 97th meridian of west longitude.

The Potawatomi reservation ranged in length from a maximum of about 43 miles on the western boundary to a minimum of about 24 miles east of the center of the reservation at Tecumseh, Oklahoma, due to the irregularities of the waters comprising the northern and southern boundaries. The Potawatomi reservation was bounded on the east by Seminole land, on the northeast by Sac and Fox land, on the north by Kickapoo land, and on the west by Creek land.

20. The Potawatomi reservation was well watered by the forks of the Canadian River, by the Little River and Salt Creek, by the numerous tributaries of these waters, and by springs. No area to be valued was as much as a mile away from water.

The Potawatomi lands constituted a gently rolling area sloping down to the numerous large and small rivers and streams. Traces of former watercourses remained in the form of high alluvial terraces. The predominant land type was classifiable as "central cross timbers", making up 76.7% of the total acreage to be valued, and consisting of 278,292 acres, all told. The alluvial flood prairies, popularly referred to as "bottom lands", embraced a total of 43,903 acres for 12.1% of the lands to be valued. The high alluvial terraces, 10% of the lands to be valued, accounted for another 36,283 acres. The remaining land consisted of 4,354 acres of reddish prairie making up the remaining 1.2%.

The "central cross timbers" areas consisted of lands with a climax covering of timber, mostly oaks, plus some areas where small clearings supported grasses. The reddish prairie soil, mostly in Range 5 East, Township 10 North, was good grassland. The alluvial bottom lands and terraces, together comprising slightly over one-fifth of the lands to be valued, were rolling tillable lands, varying from gentle to comparatively steep with the maximum high-point-to-low-point variation being about one hundred feet over a span of 160 acres. This variation was not so great as to inhibit cultivation or grazing. In recent years, severe erosion and deficient drainage limited the uses of the land, but this Commission could only speculate that erosion and drainage were problems as of the valuation date.

21. The best agricultural lands in the Potawatomi reservation were the bottom lands in the southernmost and easternmost areas of the North Fork of the Canadian River, and the bottom lands bordering the Little River. Most of these bottom lands were selected by Indians for their allotments, and most of these allotments were held by Absentee Shawnee Indians. Less than a tenth of the best bottom land allotments were held by Potawatomi Indians, largely because the best bottom land in the Potawatomi reservation was in the northern half of the reservation and that northern half was set aside for Absentee Shawnee allotments.

22. The Potawatomi lands enjoyed mild temperatures with few extremes. The average minimum temperature was about 49<sup>o</sup>, with an average frost-free growing season of 216 days between March and October. Rainfall averaged about 34 inches per year, with the heaviest precipitation in the spring.

The year 1890 was described by the then Governor of the Territory of Oklahoma as "an unusually dry year", but it was also an unusually dry year for other nearby states. The next year, 1891, was a bountiful year for the Potawatomi reservation.

23. Contemporary weather conditions in the area under consideration are representative of those as of the valuation date, but contemporary drainage, erosion, and flooding conditions are not. How much of the contemporary drainage, erosion, and flooding problems are attributable to poor farming conditions and failure of conservation practices is not determinable, but there is evidence that concentrated farming did contribute to the stark character of the land in more recent years.

24. The end of the Civil War saw increasing numbers of western-moving settlers, augmented by many Europeans encouraged by the then immigration policies of the Nation. Four of the states experiencing population explosions in the second half of the 19th Century were Arkansas (150%), Kansas (1,200%), Missouri (125%), and Texas (250%). All of these states share borders in common with the now State of Oklahoma.

As populations swelled, there were increased demands for making more public land available. There was strong agitation by various interests to open up the Indian Territory for white settlement. The most persistent agitators were found in that group known as the "boomers", who enjoyed peak popularity around 1880 among the agricultural communities in southern Kansas. The immediate objective of the boomers was that area in the central part of the Indian Territory known as the "Unassigned Lands."

The "Unassigned Lands" were originally a part of a larger tract which had been ceded to the United States in 1866 by the Creek and Seminole Nations of Indians for the purpose of locating thereon other Indian tribes. It comprised about 1,877,800 acres, and was situated in the center of the Oklahoma Territory east of the 98th meridian of west longitude and north of the Canadian River. The persistent clamor of the boomers, aided and abetted by Kansas speculators, banking and railroad interests, and other groups, led to the opening of the "Unassigned Lands."

25. On March 23, 1889, the President issued a proclamation declaring the "Unassigned Lands" to be open for settlement under the homestead laws, at twelve o'clock noon on April 22, 1889. Between the middle of March and the middle of April, 1889, a flood of several thousands of persons gathered to make the race for homesteads or town lots. They came, principally from neighboring Kansas and Missouri, on horseback, by covered wagon, and on buckboards. The Santa Fe Railroad had constructed a line through the district, from north to south a little east of the district's center, in 1887, and a stage line ran parallel to the railroad about thirty miles to the west.

Before the day set for the opening, the prospective settlers were allowed to pass through the intervening Indian country and form on the borders of the district to be opened. Additional soldiers were placed on guard as a precautionary measure. On the opening day, a force equal to two regiments was in the field. The cavalry, nearly half of the total force, was stationed along the border to hold the would-be settlers

back until noon. The infantry was stationed at important places in the district, such as the two where land offices had been established. These were Guthrie, where the Santa Fe Railroad crossed the Cimarron River, and Kingfisher, a stage station about thirty miles west of Guthrie.

26. The run began officially at noon on April 22, 1889. Men raced on horseback, in carriages, and in wagons. Five trains which had entered from the north carried their quotas of prospective settlers. When the first of these trains reached Guthrie at half past one in the afternoon of the 22nd, they found settlers who had managed to slip by the border patrol before the run began -- the so-called "Sooners" -- and who had already staked out a town site. All the available acreage, some 11,000 claims, had been staked out by nightfall, and many homesteads had more than one claimant.

In short order, the towns of Guthrie and Oklahoma City came into being, and with the creation of the territorial government on May 2, 1890, the Territory of Oklahoma was officially established with Guthrie the provisional capitol. When the first census was taken in 1890, the Territory had a population of 60,417. Cleveland and Oklahoma Counties, bordering on the Potawatomi reservation on the west, contained 6,605 and 11,742 persons, respectively, while Guthrie had almost 8,200 people and Oklahoma City, 5000. Nearly all the settlers being men, they represented a prospective population much larger than the twelve to fifty thousand persons who arrived during the run or just after it. All in all, the run met the expectations forecast in the Harper's Weekly of April 13, 1889:

. . . It is estimated that fully twenty thousand persons are now camped outside of /the Territory of/ Oklahoma waiting for the day on which they may legally enter into possession of their new homes. Thousands of others are on their way there from Kansas, Nebraska, Missouri, and Arkansas, and many others are expected. It is possible that from fifty to one hundred thousand persons will rush into the new country before the 1st of June. Enthusiastic prophets place the estimate much higher . . .

27. Numerous persons taking part in the first run for the "Unassigned Lands" were disappointed, due in part to the "Sooners" who had secured a head start on the persons waiting until the noon starting gun to begin the run. Many of the unsuccessful prospective settlers, plus many other persons lured by the prospect of the opening of more Indian surplus lands to homesteaders, congregated in Oklahoma.

The Norman Transcript, published at Norman, Oklahoma, west of the Potawatomi reservation in Cleveland County, kept the prospective opening of Potawatomi surplus lands in the forefront of community interest. On November 9, 1889, that publication announced:

. . . The opening up to settlement of the Oklahoma lands was the entering wedge and the day is near at hand now when tens of thousands of acres of the beautiful and fertile lands of the Indian Territory, will be declared public domain and subject to settlement . . .

By spring of 1891, that publication complained:

The new Indian country does not seem to be opening up to settlement at a very rapid rate and it is very probable that it will at least be midsummer before the anxious people will be allowed to take possession, and unless we mistake all the signs, the Pottawattomie lands will be the first available.

By September 12, 1891, the Norman Transcript was able to announce:

Along the eastern line of Oklahoma country thousands of people are camped awaiting the opening up to settlement of the Potawatomi lands. It is to be hoped their wait will be of short duration and that each and all may find the home they now desire.

28. The homesteading of the "Unallotted Lands" -- in this instance the surplus Potawatomi lands left over after both the Potawatomi and the Absentee Shawnee Indians had selected and received their allotments in severalty -- was authorized by an Act of March 3, 1891 (26 Stat. 989, p. 1026). Section 16 of that Act restricted selections to "actual settlers" and added, as a condition precedent to issuance of certificates of entry, that one dollar and fifty cents per acre be paid to the United States within five years from the date of the first original entry. This sum was in addition to the nominal fees specified under the homestead laws then in effect.

29. Only four days before the Potawatomi and other lands were to be opened, the President issued a proclamation that the Potawatomi lands were declared "open to settlement at and after twelve o'clock noon on September 22, 1891" (27 Stat. 989, p. 992).

Excitement was intense as more and more persons augmented the ranks of those seeking land at bargain-basement prices. The Norman Transcript reported on September 21:

. . . The old citizens here, two years resident, have prepared themselves to relieve the settlers, as they term those comprising this rush, of all their money, and they will succeed. Not more than half of those already here can find teams, and each train brings in from 1,000 to 1,500 more, while tomorrow, from dispatches received, will add fully one-third to the number of homeseekers.

Sooners jumping the noon gun risked lives and reputations in evading the border patrol and preempting many of the best claims. On the day before the first run, the Norman Transcript reported:

Yesterday Frank Gammon, President of the Guthrie Board of Trade, T. J. Hart of the City Council, W. J. Hilton, an Easter/n/ capitalist, and J. Croseier, bank President, representing an organized company, entered the Territory near Tohee for the purpose of securing first pick of choice lands. They were arrested and will be held at Tohee until noon of the day after the opening.

An estimated 20,000 people gathered on the borders, awaiting the "go ahead" gun. By sunset on the day of the run, all the available quarter-sections and town lots had been claimed.

30. The nearest rail center was Oklahoma City, less than twenty miles west of the Potawatomi reservation. Four other rail lines crisscrossed the Oklahoma Territory but none penetrated the Potawatomi reservation as of the valuation date. A stage line brought the homesteaders within striking distance of the lands to be opened. Bulk transportation was by freight wagon, and the land was passable by wagon and buckboard, as well as by horse and on foot.

The West Shawnee cattle Trail traversed the eastern and northern portions of the Potawatomi reservation. There were no public roads or bridges in the reservation, in the sense of facilities maintained by a governmental organization.

31. Except for a few primitive Indian improvements of little or no value to the settler, the land was virgin country. The homesteaders invested time, labor, materials, and money in improving their holdings,

installing such items as dwellings, outbuildings, wells, and fencing, as well as clearing, planting, and cultivating the land. At no time during the decade following the run could more than a nominal value be attributed to existing improvements.

The varied timber cover of the Potawatomi tract was useful to the homesteader. The Jack, Post, and scrub oaks provided fences, fuel, and furnishings. The native nuts, hickory, pecan, and walnut, added building materials and food. The remaining timber, principally elm, cottonwood, black oak, ash, and willow, were useful for building and lesser purposes. The entire reservation was located in what was principally rated as the "cross timbers" area and over three-quarters of the land was so classifiable.

32. Upon payment of nominal fees after entry, the homesteader faced three possible choices for the future. If he did not elect to stay on the land, for whatever reason, he might relinquish sell his interest for any monetary or nonmonetary consideration and for a variety of reasons. If the homesteader did elect to stay on the land, then his claim might proceed to patent, either as a commuted homestead entry or by satisfaction of the payment and residency requirements. The date of issuance of the patent was not necessarily determinative of the date of satisfaction of the statutory requirements.

The money pressure on the Potawatomi reservation homesteaders was successively relieved by Congress by Acts of October 20, 1893 (28 Stat. 3), and March 2, 1895 (28 Stat. 876, p. 901), in each of which the

homesteaders on the Absentee Shawnee, Potawatomi, and Cheyenne and Arapahoe Indian lands were "granted an extension of one year within which to make the first payment provided for in Section 16 of the act of Congress approved March 3, 1891." Finally, the homesteaders on the Potawatomi surplus lands shared in the benevolence of the Free Homestead Act of May 17, 1900 (31 Stat. 179), which provided in part for the cancellation of all payments then due on homestead entries and the issuance of patents to homesteaders upon completion of the statutory requirements relating to duration of residence. The Act did not apply to commuted entries.

33. That there was a substantial demand for the Potawatomi lands at some price is evident; all available land was snapped up by the close of the first day of the run. Prior to passage of the Free Homestead Act, 74 of the Potawatomi surplus lands homesteaders were able to meet all of the statutory requirements including payment. In the first decade immediately following the run, approximately ten per centum of the surplus lands were paid for. About half of the entries were relinquished or cancelled, and there was a brisk trade in Potawatomi reservation tracts at prices well above those initially established by the Government. To 1895, prices ranged from a low of less than a dollar per acre for grazing land to a high of fifteen dollars per acre for the best farming land.

Prices which Indian allottees could receive from white buyers were appreciably higher than prices commanded by whites selling to whites. Sales by the Indian allottees of half their allotments if they lived within the Territory and of all their allotments if they lived without

the Territory were authorized by an Act of August 15, 1894 (28 Stat. 295), subject to the approval of each sale by the Secretary of the Interior. A list of 121 sales from Indians to whites reflected prices ranging from less than \$1.25 per acre for grazing lands to more than \$16.00 for agricultural lands, with an average price of about \$3.55 per acre.

In 1894, the Commissioner of Indian Affairs appointed a Special Indian Agent to determine whether the Indian grantors had received a "full and fair price" for their lands transferred in those 121 sales. The transactions involved tracts ranging from 320 down to 40 acres, with an over-all average of 135 acres per transaction. The Special Indian Agent made a careful, thorough, and competent study of the tracts. The study included a physical inspection of the lands and a determination of market values based upon current private sales. The Agent reported to the Commissioner of Indian Affairs a series of appraisals averaging \$8.97 per acre for lands all within the Potawatomi reservation.

34. In 1896, the Commissioner of Indian Affairs reported that to the mid-point of that year, the Department of the Interior had approved sales by Indians in the subject tract aggregating over fourteen thousand acres at an average price of \$5.98 per acre. He also observed that the Department had in each case fully satisfied itself of the adequacy and payment of consideration. A year later, there were additional Potawatomi sales at an average price of \$5.55 per acre and Absentee Shawnee sales at an average of \$6.85 per acre. The year 1897 saw further Indian sales

to whites averaging \$4.71 per acre for Potawatomi allotments and \$6.98 per acre for Absentee Shawnee allotments. In 1898, average prices secured by the Potawatomi and Absentee Shawnee Indians, respectively, were \$4.60 and \$6.71.

The consistent disparity between prices secured by the Potawatomi Indians and those secured by the Absentee Shawnee Indians reflects the fact that the bulk of the latter's allotments were located on the rich bottom lands of the North Fork of the Canadian River and the Little River. Comparatively few Potawatomi Indians had managed to select such desirable allotments.

35. In addition to the substantially contemporaneous valuation by the Special Indian Agent, one post hac valuation has been filed in this case. It is the defendant's expert witnesses' appraisal, predicated generally upon the market data and income approaches. These expert witnesses postulated the existence of one buyer of all available acreage within the Potawatomi reservation and concluded that he might anticipate receiving, at some future date, a gross of two dollars per acre on the average. The appraisers on behalf of the defendant then considered some known facts and added some hypothetical ones to make up the formula for determining the price which the buyer of the whole available acreage might be willing to pay. These witnesses concluded that the buyer would pay \$0.65 per acre, which figure represents the recommended value, on the average, as of June 25, 1890.

36. The plaintiff's recommended value, on the average and as of the same date, of about \$5.44 per acre is predicated upon the appraisals

of the Special Indian Agent. In 1894, the Agent appraised tracts in the cross timbers area, without bottom lands, at about \$3.50 per acre; tracts in the cross timbers area with bottom lands at about \$6.00 per acre; prairie lands also at about \$6.00 per acre; and alluvium at \$8.00 to \$15.00 per acre (Pl. Ex. 100). Applying these prices to the subject lands in the classifications and proportions heretofore found [Finding No. 20, supra], the plaintiff reached an average of \$5.44 per acre in 1894 and contended that the values were not substantially different on the valuation date.

37. The post hac valuation by the defendant's expert witnesses requires appreciable upward adjustment to allow for the weight accorded factors which, although unsupported by the evidence of record, are given strong consideration in the witnesses' appraisal report. The Special Indian Agent's appraisals which are substantially contemporaneous, within the subject area, and demonstrably complete, are entitled to considerable weight in determining the value of the subject lands. However, the quality of the lands which he appraised vis-a-vis the average grade of land in the area and the movement or fluctuation of prices from the valuation date to the time of his appraisal are factors which argue for a substantial reduction from the average \$8.97 per acre set by the Agent, or the \$5.44 per acre average drawn from a weighted average of the Agent's appraisals.

38. The Potawatomi tract when opened had no animal resources useful for more than subsistence by homesteaders. There were no known mineral resources. Indigenous timber was useful enough to the homesteader, but would not support any lumbering or related industry.

39. The highest and best use of approximately 75% of the lands was for grazing and the highest and best use of the remaining 25% of the lands, representing the alluvial land along former and existing rivers and streams, was for farming.

40. Considering the location, physical characteristics, historical elements, markets, contemporary and post hac valuations, demands and sales within the area, and the highest and best use, this Commission concludes that the Potawatomi surplus lands, taken as a whole and including the allotments of the Absentee Shawnee Indians within the Potawatomi reservation, had an over-all value of \$1,090,000.00 or approximately \$3.00 per acre as of June 25, 1890.

41. The defendant paid the plaintiff consideration in the total amount of \$160,000.00. Other benefits not susceptible of reduction to a dollar value and unfulfilled promises to pay other sums predicated upon eventualities which did not take place do not constitute consideration in the instant case.

The \$160,000.00 paid by the defendant for the cession of the Potawatomi surplus lands amounted to a little over 44¢ per acre, for lands worth \$1,090,000.00 or about \$3.00 per acre. The consideration paid was unconscionable within the contemplation of Section 2 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70a).

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner