

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

Appearances:

Howard D. Moses, with whom were Giddings Howd and Louis L. Rochmes, Attorneys for Plaintiff.

Keith Browne, with whom was Mr. Assistant Attorney General, Ramsey Clark, Attorneys for Defendant.

OPINION OF THE COMMISSION

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

The first trial of this suit was had before this Commission on November 21, 1957. Pursuant to a stipulation between the parties dated October 30, 1957, the issues were limited to a determination of the compensable interest of the plaintiff to lands in Oklahoma. In an opinion with concurrent findings, issued on September 18, 1958, this Commission determined that the plaintiff had a compensable interest in certain Oklahoma acreage. The Citizen Band of Potawatomi Indians of Oklahoma v. United States, 6 Ind. Cl. Comm. 646, 658 (1958).

The Commission heretofore found that 362,833.22 acres are to be valued (Fdg. No. 17, 6 Ind. Cl. Comm. 646, p. 656). Pursuant to the stipulation mentioned above, the valuation date is set at June 25, 1890, instead of the date of ratification of the Treaty.

A second trial of this suit was had before this Commission on October 18, 1962, on the issues of valuation and consideration. At the last hearing, expert testimony was adduced and additional exhibits were introduced. The parties' briefs and proposed findings have been filed. This suit is ready for determination of the issues of value and consideration.

The particular acreage now to be valued was not located with particularity in the first opinion and findings. The acreage is all within Royce Area No. 506, Royce Map of the Indian Territory and Oklahoma No. 3, known as "The Potawatomi Indian Reservation" (Fdg. No. 16, Citizen Band, etc., 6 Ind. Cl. Comm. 646, p. 656). The gross area of this reservation amounted to 575,877 acres. There were 213,044.78 acres selected by Potawatomi Indian allottees in severalty. The remainder constituted the "surplus lands" now to be valued. In this connection, it may be noted that the gross acreage of the "surplus lands" was determined by this Commission (Fdg. No. 17, 6 Ind. Cl. Comm. 646, p. 656) and agreed upon by the parties to be 362,833.22 acres. This figure includes a minor mathematical error. The correct gross acreage figure for the "surplus lands" is 362,832.22 acres, and that is the quantity to be valued. The order issued this day herein reflects this correction.

The acreage allotted to the Potawatomi Indians was not in one compact mass, nor were the allotments uniformly contiguous. The allotments

were scattered throughout Royce Area No. 506. Likewise, the acreage to be valued includes lands in nearly every portion of Royce Area No. 506.

Subject to the minor correction noted above, there is no dispute between the parties as to either the quantity or the location of the acreage to be valued.

The end of the Civil War propagated increasing numbers of western-moving settlers, augmented by numerous Europeans encouraged by the then immigration policies of the Nation. Four of the states experiencing virtual population explosions in the second half of the 19th Century were Arkansas, Kansas, Missouri, and Texas, all of which share borders in common with the now State of Oklahoma. In the decades spanning the Civil War and the valuation date (1860, 1870, 1880, and 1890), Arkansas population increased by more than 150%. During the same span, Kansas population increased by more than 1,200%, Missouri population increased by more than 125%, and Texas population increased by more than 250%.

As populations swelled, the demands for land increased. An author writing in 1887 on The Disposition of Our Public Lands stated, in part:

. . . The real significance of the present alarm about the disappearance of the public lands, lies in the fact that the greater part of the unsold lands are either reserved for the Indians or are unfit for ordinary tillage. Upon the best vacant lands, -- amounting to about a hundred and fifty millions of acres, -- the Indians are now seated.

* * *

. . . The golden time is past; our agricultural land is gone; our timber lands are fast going; our coal and mineral lands will be snapped up as fast as they prove valuable . . .

The quoted material is but one evidence of the strong agitation among 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 identified 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 Parallel 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."

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 (26 Stat. 1544, at 1546). Between the middle of March and the middle of April, 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 AT&SF 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 settlers back until noon. The infantry was stationed at important places within the district, such as the two where land offices had been established. These were Guthrie, where the Santa Fe Railroad crossed the Cimarron, and Kingfisher, a stage station about thirty miles west of Guthrie.

The run began officially at noon on April 22, 1889. The hopefuls raced on horseback, in carriages, and in wagons. Five trains which had entered from the north carried their quota 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 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 its 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, contained 6,605 and 11,742 persons, respectively, while Guthrie had almost 8,200 people and Oklahoma

