BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION, )
    )
Plaintiff, )
    )
v. )
) Docket No. 276
THE UNITED STATES OF AMERICA, )
    )
Defendant. )

Decided: December 15, 1965

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiff, the Creek Nation of Indians of Oklahoma, is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act, and as such is authorized to bring this cause of action under Section 2 of said Act. Plaintiff, as an organized tribe, has a duly elected principal chief and a Creek Indian council representative of the Creek Nation, and so recognized by the Bureau of Indian Affairs of the Department of the Interior.

2. By virtue of the Treaty of March 24, 1832 (7 Stat. 366; 2 Kapp. 341) the Creek Tribe of Indians ceded to the United States all of its lands east of the Mississippi River and agreed to remove to lands set apart for it by the United States government west of the Mississippi River. Article XIV of the Treaty provided as follows:

    The Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws
3. The Treaty of February 14, 1833 (7 Stat. 417) described the area set aside for the Creek Nation within the then Indian Territory, now the State of Oklahoma, and provided in part as follows:

   Art. II. The United States hereby agree, by and with the consent of the Creek and Cherokee delegates, this day obtained, that the Muskogee or Creek country west of the Mississippi, shall be embraced within the following boundaries, viz:--Beginning at the mouth of the north fork of the Canadian river, and run northerly four miles--thence running a straight line so as to meet a line drawn from the south bank of the Arkansas river opposite to the east or lower bank of Grand river, at its junction with the Arkansas, and which runs a course south, 44 deg. west, one mile, to a post placed in the ground--thence along said line to the Arkansas, and up the same and the Verdigris river, to where the old territorial line crosses it--thence along said line north to a point twenty-five miles from the Arkansas river where the old territorial line crosses the same--thence running a line at right angles with the territorial line aforesaid, or west to the Mexico line--thence along the said line southerly to the Canadian river or to the boundary of the Choctaw country--thence down said river to the place of beginning. The lines, hereby defining the country of the Muskogee Indians on the north and east, bound the country of the Cherokees along these courses, as settled by the treaty concluded this day between the United States and that tribe.
Art. III. The United States will grant a patent, in fee simple, to the Creek nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States—and the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned them.

Art. IV. It is hereby mutually understood and agreed between the parties to this treaty, that the land assigned to the Muskogee Indians, by the second article thereof, shall be taken and considered the property of the whole Muskogee or Creek Nation, as well of those now residing upon the land, as the great body of said nation who still remain on the east side of the Mississippi; and it is also understood and agreed that the Seminole Indians of Florida, whose removal to this country is provided for by their treaty with the U. S. dated May 9th, 1832, shall also have a permanent and comfortable home on the lands hereby set apart as the country of the Creek nation: and they (the Seminoles) will hereafter be considered a constituent part of said nation, but are to be located on some part of the Creek country by themselves—which location will be selected for them by the commissioners who have signed these articles of agreement or convention.

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Art. VIII. It is agreed by the parties to this convention, that the country hereby provided for the Creek Indians, shall be taken in lieu of and considered to be the country provided or intended to be provided, by the treaty made between the United States and the Creek nation on the 24th day of January, 1826, under which they removed to this country.

Art. IX. This agreement shall be binding and obligatory upon the contracting parties, as soon as the same shall be ratified and confirmed by the President and Senate of the United States.

Pursuant to the provisions of the treaty, letters patent were issued to the Creek Tribe on August 11, 1852, to the tract of land so described.

4. Under the provisions of Article IV of the Treaty of February 14, 1833, proclaimed April 12, 1834 (7 Stat. 417; 2 Kapp. 388), specific
provision was made that the Seminole Indians should have "a permanent and comfortable home on the lands hereby set apart as the country of the Creek Nation; and they (the Seminoles) will hereafter be a constituent part of said nation, but are to be located on some part of the Creek Country by themselves * * *". However, difficulties arose between the Creeks and Seminoles, the Seminoles wishing to be separate and apart from the Creeks, and with their own lands and Council. These difficulties gave rise to the Treaty of January 4, 1845 (9 Stat. 821), which provided as follows:

Whereas it was stipulated, in the fourth article of the Creek treaty of 1833, that the Seminoles should thenceforward be considered a constituent part of the Creek nation, and that a permanent and comfortable home should be secured for them on the lands set apart in said treaty as the country of the Creeks; and whereas many of the Seminoles have settled and are now living in the Creek country, while others, constituting a large portion of the tribe, have refused to make their homes in any part thereof, assigning as a reason that they are unwilling to submit to Creek laws and government, and that they are apprehensive of being deprived, by the Creek authorities, of their property; and whereas repeated complaints have been made to the United States government, that those of the Seminoles who refused to go into the Creek country have, without authority or right, settled upon lands secured to other tribes, and that they have committed numerous and extensive depredations upon the property of those upon whose lands they have intruded:

Now, therefore, in order to reconcile all difficulties respecting location and jurisdiction, to settle all disputed questions which have arisen, or may hereafter arise, in regard to rights of property, and especially to preserve the peace of the frontier, seriously endangered by the restless and warlike spirit of the intruding Seminoles, the parties to this treaty have agreed to the following stipulations:

Article 1.

The Creeks agree that the Seminoles shall be entitled to settle in a body or separately, as they please, in any part of the Creek country; that they shall make their own
town regulations, subject, however, to the general control of the Creek council, in which they shall be represented; and, in short, that no distinctions shall be made between the two tribes in any respect, except in the management of their pecuniary affairs, in which neither shall interfere with the other.

Article 2.

The Seminoles agree that those of their tribe who have not done so before the ratification of this treaty, shall, immediately thereafter, remove to and permanently settle in the Creek country.

Article 3.

It is mutually agreed by the Creeks and Seminoles, that all contested cases between the two tribes, concerning the right of property, growing out of sales or transactions that may have occurred previous to the ratification of this treaty, shall be subject to the decision of the President of the United States.

Article 4.

The Creeks being greatly dissatisfied with the manner in which their boundaries were adjusted by the treaty of 1833, which they say they did not understand until after its execution, and it appearing that in said treaty no addition was made to their country for the use of the Seminoles, but that, on the contrary, they were deprived, without adequate compensation, of a considerable extent of valuable territory: And, moreover, the Seminoles, since the Creeks first agreed to receive them, having been engaged in a protracted and bloody contest, which has naturally engendered feelings and habits calculated to make them troublesome neighbors: The United States in consideration of these circumstances, agree that an additional annuity of three thousand dollars for purposes of education shall be allowed for the term of twenty years; that the annuity of three thousand dollars provided in the treaty of 1832 for like purposes shall be continued until the determination of the additional annuity above mentioned. It is further agreed that all the education funds of the Creeks, including the annuities above named, the annual allowance of one thousand dollars, provided in the treaty of 1833, and also all balances of appropriations for education annuities that may be due from the United States, shall be expended under the direction of President of the United States, for the purpose of education aforesaid.
Article 5.

The Seminoles having expressed a desire to settle in a body on Little River, some distance westward of the present residence of the greater portion of them, it is agreed that rations shall be issued to such as may remove while on their way to their new homes; and that, after their emigration is completed, the whole tribe shall be subsisted for six months, due notice to be given that those who do not come into the Creek country before the issues commence shall be excluded. And it is distinctly understood that all those Seminoles who refuse to remove to, and settle in, the Creek Country, within six months after this treaty is ratified, shall not participate in any of the benefits it provides: Except those now in Florida, who shall be allowed twelve months from the date of the ratification of this treaty for their removal.

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Article 8.

To avoid all danger of encroachment, on the part of either Creeks or Seminoles, upon the territory of other nations, the northern and western boundary lines of the Creek country shall be plainly and distinctly marked.

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5. Difficulties between the Creeks and Seminoles continued, and in December, 1855, the Commissioner of Indian Affairs requested that both Nations send delegations to Washington to confer as to the emancipation of the Seminoles from the Creeks, and to obtain cession of a portion of Creeks' lands for the Seminoles.

Delegates from both Nations arrived in Washington in May, 1856, and presented their claims against the United States, the Creeks' claim amounting to approximately $4,000,000, including the Fort Jackson treaty claim and other claims not having to do with the Seminoles.

The Commissioner of Indian Affairs at first refused to consider any except those claims dealing with the Seminole controversy. However,
the Creek delegation advised the Commissioner that the tribe would insist upon treaty settlement of all of their claims. When the Creeks submitted their demands in response to the Commissioner's inquiry as to how much they would require to settle their claims, he maintained the claims were wholly without merit and challenged their validity. However, he finally offered them $700,000 as settlement of all their claims and in payment for the land to be set aside for the Seminoles. This offer was rejected by the Creeks as unfair and unjust. Subsequently the Commissioner of Indian Affairs asked for and secured an opinion from the Secretary of the Interior, stating that the offer was a liberal one and he could not offer more. However, the Commissioner of Indian Affairs ultimately raised his offer to $800,000.

The Creek Nation finally, under protest, accepted $1,000,000 for the cession of 2,037,414.62 acres of the subject land for benefit of the Seminole Indians.

6. The Treaty of August 7, 1856 (11 Stat. 699), ratified on August 16, 1856, and proclaimed on August 28, 1856, provided as follows:

Whereas the convention heretofore existing between the Creek and Seminole tribes of Indians west of the Mississippi River, has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States; and

Whereas, the United States desire, by providing the Seminoles remaining in Florida with a comfortable home west of the Mississippi River, and by making a liberal and generous provision for their welfare, to induce them
to emigrate and become one people with their brethren already west, and also to afford to all the Seminoles the means of education and civilization, and the blessings of a regular civil government; and

Whereas, the Creek Nation and individuals thereof, have, by their delegation, brought forward and persistently urged various claims against the United States, which it is desirable shall be finally adjusted and settled; and

Whereas, it is necessary for the simplification and better understanding of the relations between the United States and said Creek and Seminole tribes of Indians, that all their subsisting treaty stipulations shall, as far as practicable, be embodied in one comprehensive instrument;

Now, therefore, the United States, by their commissioner, George W. Manypenny, the Creek tribe of Indians, by their commissioners, Tuck-a-batchee-Micco, Echo-Marjo, Chilly McIntosh, Benjamin Marshall, Geroge W. Stidham, and Daniel N. McIntosh; and the Seminole tribe of Indians, by their commissioners, John Jumper, Tuste-nuc-o-chee, Pars-co-far, and James Factor, do hereby agree and stipulate as follows, viz:

Article 1. The Creek Nation doth hereby grant, cede, and convey to the Seminole Indians, the tract of country included within the following boundaries, viz: beginning on the Canadian River, a few miles east of the ninety-seventh parallel of west longitude, where Ock-hi-appo, or Pond Creek, empties into the same; thence, due north to the north fork of the Canadian; thence up said north fork of the Canadian to the southern line of the Cherokee country; thence, with that line, west, to the one hundredth parallel of west longitude; thence, south along said parallel of longitude to the Canadian River, and thence down and with that river to the place of beginning.

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Article 3. The United States do hereby solemnly guarantee to the Seminole Indians the tract of country ceded to them by the first article of this convention; and to the Creek Indians, the lands included within the boundaries defined in the second article hereof; and likewise that the same shall respectively be secured to and held by said Indians by the same title and tenure by which they were guaranteed and secured to the Creek Nation by the fourteenth article of the
treaty of March twenty-fourth, eighteen hundred and thirty-two, the third article of the treaty of February fourteenth, eighteen hundred and thirty-three, and by the letters-patent issued to the said Creek Nation, on the eleventh day of August, eighteen hundred and fifty-two, and recorded in volume four of records of Indian deeds in the Office of Indian Affairs, pages 446 and 447. Provided, however, That no part of the tract of country so ceded to the Seminole Indians, shall ever be sold, or otherwise disposed of without the consent of both tribes legally given.

Article 4. The United States do hereby, solemnly agree and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within, or annexed to, any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same.

Article 5. The Creek Indians do hereby absolutely and forever quit-claim and relinquish to the United States all their right, title and interest in and to any lands heretofore owned or claimed by them, whether east or west of the Mississippi River, and any and all claim for or on account of any such lands, except those embraced within the boundaries described in the second article of this agreement; and it doth also, in like manner, release and fully discharge the United States from all other claims and demands whatsoever, which the Creek Nation or any individual thereof may now have against the United States, excepting only such as are particularly or in terms provided for and secured to them by the provisions of existing treaties and laws; * * *

Article 6. In consideration of the foregoing quit-claim, relinquishment, release, and discharge, and of the cession of a country for the Seminole Indians contained in the first article of this agreement, the United States do hereby agree and stipulate to allow and pay the Creek Nation the sum of one million dollars, * * *

* * *

Article 15. So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian
Article 17. All persons licensed by the United States to trade with the Creeks or Seminoles shall be required to pay to the tribe within whose country they trade, a moderate annual compensation for the land and timber used by them, the amount of such compensation, in each case, to be assessed by the proper authorities of said tribe, subject to the approval of the United States agent therefor; (assisted, if necessary, by the military;)

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Article 18. The United States shall protect the Creeks and Seminoles from domestic strife, from hostile invasion, and from aggression by other Indians and white persons, not subject to their jurisdiction and laws; and for all injuries resulting from such invasion or aggression, full indemnity is hereby guaranteed to the party or parties injured out of the Treasury of the United States, upon the same principle and according to the same rules upon which white persons are entitled to indemnity for injuries or aggression upon them, committed by Indians.

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Article 26. This convention shall supersede and take the place of all former treaties, between the United States and the Creeks, between the United States and the Florida Indians and Seminoles, and between the Creeks and Seminoles, inconsistent herewith; and shall take effect and be obligatory on the contracting parties from the date hereof, whenever it shall be ratified by the Senate and President of the United States.

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The territory ceded by the Creeks to the Seminoles in Article 1 of the Treaty is designated as Nos. 404 and 480 on Royce's Map No. 2 of Indian Territory and Oklahoma.
7. Under Article 1 of the Treaty of 1856, the Creek Nation ceded to the Seminoles an area consisting of 2,169,080 acres, but it was later determined by official survey to consist of 2,037,414.62 acres, as set forth in the Seminole Agreement of March 2, 1889 (25 Stat. 980). This tract is the subject of this claim.

8. Under Article 3 of the Treaty of June 14, 1866 (14 Stat. 785; 2 Kapp. 931), the Creek Nation ceded to the United States the western one-half of the lands then held by it as of that date in Indian Territory "to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon." This tract, according to the treaty, was estimated to contain 3,250,560 acres for which the United States agreed to pay 30 cents per acre, or $975,168.00 in the manner set out in said Article 3 of the Treaty.

The United States settled on these lands so purchased, the Seminoles, the Sac and Fox, the Iowa and the Kickapoo, and portions of the Pottawatomie, Shawnee, Cheyenne, Arapahoe, and Pawnee tribes.

9. Under Article 3 of the Treaty of March 21, 1866 (14 Stat. 755; 2 Kapp. 910) the Seminoles ceded and conveyed to the United States all the lands ceded to them by the Creek Indians under the Treaty of 1856, which tract is the subject of this claim. The United States agreed to pay to the Seminoles 15 cents per acre for 2,169,080 acres, or $325,362.00.

The United States, in turn, agreed to convey to the Seminoles a portion of the lands which it had obtained from the Creeks under the Treaty of February 6, 1866, consisting of 200,000 acres, for which
the Seminoles agreed to pay 50 cents per acre, or $100,000, which
sum should be deducted from the price paid by the United States for
the Seminole lands obtained by them under the Treaty of 1856.

The Seminoles registered their protests both as to the inadequacy
of the 15 cents per acre paid for their lands, and as to the excessive
purchase price of new lands in comparison.

10. Under Section 8 of the Act of March 3, 1885 (23 Stat. 362,
384), the President was authorized to open negotiations with the
Creeks, Seminoles and Cherokees for the purpose of opening to settlement
under the homestead laws the unassigned lands in Indian territory ceded
by them to the United States by the Treaties of March 21, 1866, June 19,
1866, and August 11, 1866.

11. An agreement was negotiated by the Secretary of the Interior
under direction of the President, confirmed by the Act of March 1, 1889
(25 Stat. 757), which provided that since only a portion of the lands
ceded by the Creeks to the United States to be used as homes for other
Indian tribes had been sold or assigned to such Indians, and since
the United States desired that the remaining lands be freed from any
and all limitations as to use, that the Creeks ceded and granted to the
United States "without reservation or condition, full and complete title
to the entire western half of the domain of the said Muscogee (or Creek)
Nation lying west of the division line surveyed and established under
the said treaty of eighteen hundred and sixty-six . . ." The con-
sideration for this cession was $2,280,857.10. The Presidential
message to Congress transmitting the Agreement to Congress specifically
referred to the "lands in the western half of the Creek domain ceded in the Creek Treaty of June 14, 1866," and to no other lands.

No part of the $2,280,857.10 paid under the provisions of the Agreement of 1889 was paid, or intended to be paid, for lands ceded to the Seminoles under the Treaty of August 7, 1856, the subject tract. This Commission has so held in *Creek Nation v. United States*, 2 Ind. Cl. Comm. 66, 97.

Pursuant to Article III of the Treaty concluded April 28, 1866, proclaimed August 10, 1866 (14 Stat. 769, 770), the Choctaws and Chickasaws ceded to the United States the territory west of the 98 degrees, known as the leased district for the sum of $300,000. The United States settled the Cheyenne and Arapahoe Nations on a portion of this land. Under the provisions of the Act of March 3, 1891 (26 Stat. 989, 1025), the United States agreed to pay to the Choctaw and Chickasaw Nations for "all the right, title, interest and claim which said Nations may have in, and to certain lands now occupied by, the Cheyenne and Arapahoe Indians under executive order . . . ", the sum of $2,991,450 for 2,393,160 acres. Later, on January 11, 1893 (27 Stat. 753), Congress by Joint Resolution authorized deduction of $48,800 from the principal sum to correct an overpayment after re-count of allotments. Accordingly, the United States paid to the Choctaw and Chickasaw Nations about $1.23 per acre for such lands.

12. The Agreement of March 1, 1889 (25 Stat. 757) with the Creek Nation adjusted the price paid by the United States for the cession of
its lands in the Treaty of June 14, 1866 (14 Stat. 785) at $1.25 per acre. This cession was conditional and restrictive in nature.

The tract affected was similar to the subject tract, and contiguous on the north and east.

In recommending this adjustment to Congress, President Cleveland advised:

For the lands which are not only unoccupied and which have been in no way appropriated, it appears clearly just and right that a price of at least $1.25 should be allowed to the Creeks. They held more than the ordinary Indian title, for they held a patent in fee from the Government. ** Without regard to the present enhanced value of this land, and if reference be only had to the conditions when the cession was made, no less price ought to be paid for it than the ordinary government price **.

By the Agreement of March 2, 1889 (25 Stat. 980, 1004) the price paid the Seminoles of 15 cents per acre for the subject tract under the Treaty of March 21, 1866 (14 Stat. 755) was adjusted to $1.03 per acre.

13. The parties involved in this claim have agreed that the date of taking as well as the date of evaluation should be considered to be August 7, 1856.

14. The original survey of the lands contained in the subject tract was made by U. S. government surveyors between 1871 and 1874. The defendant's experts, Roscoe H. Sears and H. J. Garrett, included in their appraisal of the Creek cession as of August 7, 1856, what they described as "** verbatim copies of the township summaries compiled on the land ** including as main subjects descriptions of soils, topography, timber and water." The physical features of the
subject property are generally well described in the notes, and have the added value of having been made by unbiased individuals near to the date of sale. However, not all the survey notes on the lands were included in the study, the omissions consisting of partial townships. These omissions are not of sufficient importance to materially affect our considerations.

A study of the notes has indicated that lands in the eastern one-third of the tract were generally superior for agriculture to the other lands; that the middle one-third were generally rolling prairie lands suited for agriculture and grazing; and that the western one-third were best suited for grazing.

Numerous references were made to timber along the streams and in areas where overflow regularly occurred. In the eastern portion the timber was of sufficient quality for construction of houses and outbuildings.

15. The claimant introduced into evidence U. S. Department of Agriculture Soil Survey of Cleveland County, Oklahoma, issued October, 1954, which disclosed that Cleveland County is in central Oklahoma in the Osage Plains section of the central lowland physiographic province; that its surface is an undulating to gently rolling southeastward sloping plain, the western and northwestern parts of the county being prairie and the eastern half forested; that elevations vary from 1320 feet in the northwestern part of the county to about 975 feet on the eastern border; that the western two-fifths of the county is drained by the Canadian River and its tributaries, while the eastern part is drained
by the Little River which rises in the county and flows eastwardly; that the county is underlain by Permian Red beds of the Paleozoic era with three distinct formations of red calcareous sandstone, red clay shale and red sandstone; that the land has good supply of underground water in sandy forested areas at 40 to 100 feet, and at depths of 300 feet and more under Hennessey shale in the prairie areas; that native vegetation of the western part of the county is predominantly little bluestem, big bluestem, side-oats, gramma, and buffalo grass; that the native forestation in the eastern part consists of blackjack oak and post oak, with hickory, persimmon and red oak with undergrowth of little bluestem; that the native vegetation in the alluvial bottoms include, together with the above-named trees, bur oak, hackberry, elm, black walnut, pecan, cottonwood, willow, sycamore and wild grape, with undergrowth of bluestem, Johnson grass, Bermuda grass, and wild rye; that the climate is generally characterized by hot dry summers and short mild winters, with several cold spells, and a frost-free season of about 209 days; that the mean annual rainfall is 33.31 inches, the greatest part falling in May, June, April and October; that corn, hay, cotton, oats and wheat have been the principal crops in the county since settlement; that 74.8% of the land was in farms of 140 to 179 acres.

U. S. Department of Agriculture soil surveys of Canadian County, located more nearly the center of the subject tract, and of Dewey County, located near the western boundary of the tract, were introduced into evidence by this Commission (Commission Exs. A and B).
The soil survey covering Canadian County, issued in 1919, disclosed that the surface of the county is generally undulating to gently rolling, with some strongly rolling area; that it is drained by the Canadian River, the North Fork of the Canadian River, and tributaries of the Washita and Cimarron Rivers; that it varies in elevation from 1,160 to 1,590 feet above sea level; that the mean annual rainfall is about 32 inches with precipitation favorably distributed and a growing season of about 212 days with some hot dry periods in late summer; that general farming, raising and fattening of hogs and cattle predominates, with principal crops of corn, oats, wheat, grain sorghums, alfalfa, hay and cotton being principal crops; that the farms range from 160 to 320 acres; that the soils, in addition to dunesand and rough stony land are 26 in number, in 9 series, divided into upland (loessial and residual) and alluvial soils; that prairie grasses, consisting of bluestem, buffalo grass, gramma grass, bunch grass and mesquite, still cover a good portion of the land; that peaches, apples and grapes, together with truck crops of melon and cantaloupes are grown on small commercial scale in the eastern part of the country; and that the more rolling areas of the counties are used for grazing.

The soil survey issued in December 1963 covering Dewey County, located in the western portion of the area, disclosed that it is identified as a red-bed plain, dissected by numerous streams with topography ranging from level uplands, flood plains and terraces to
rough broken canyons and dunes; that agriculture is the principal
source of income, with much of its acreage used for range, with wheat
and cotton as main cash crops and small grains, alfalfa and sorghums
raised for livestock feed; that about 60,000 acres are in native
grasses; that the county consists of about 24% loamy uplands (St. Paul-
Carey Holdrege Association), 30% red-bed hills (Quirlan-Woodward Associ-
ation), 10% rolling and hummocky sands (Nobscot-Pratt Association), 5%
sandy upland flats (Miles-Pratt-Carwile Association), 18% benches and
flood plains (Tipton-Enterprise-Lincoln Association), 10% dunes and
breaks, 3% sandy uplands and red-bed hills; that the climate is temperate
with gradual seasonal changes; that the average annual rainfall is about
25 inches; that the average frost-free growing season is about 193 days;
that the average size of farms is 629.5 acres; that the main crops are
wheat, sorghums and cotton, with barley, winter oats, rye and spring oats
grown for feed and winter pasture, along with alfalfa; that some berries
and fruits are grown in small areas; that cattle ranching is one of the
most important enterprises in the county with more than half the agricultural
land used as range.

16. The lands in question form a long and relatively narrow tract
located in the middle of the western half of Oklahoma, extending from the
97th to the 100th degrees of west longitude, including the western half
of present-day Pottawatomie County, all of Cleveland County, and portions
of Oklahoma, Canadian, Caddo, Blaine, Dewey and Ellis Counties. The
tract extends approximately 175 to 190 miles in a northwesterly direction
from a line a few miles east of the 97th parallel to the 100th parallel of west longitude, which also marks the eastern boundary of the Texas Panhandle. It runs in width from seven miles at its narrowest point to about forty-three miles at its widest point, and includes townships and portions of townships from Range 3 East of the Indian meridian to and including Range 26 West of the Indian meridian.

At the time of the signing of the Treaty of 1856 the tract was bounded by the Creek lands on the east, the Chickasaw land and "Leased District" on the south, the State of Texas on the west, and the Cherokee Outlet and Creek lands on the north. The greater part of the tract is in its eastern part, between the 97th and 98th meridians.

17. The subject area was located between the North Canadian and Canadian Rivers, both of which had many tributaries, the majority of them subject to great fluctuations in flow. Many of them, as well as the main rivers themselves, became practically dry beds in drier summer seasons. According to the survey notes made in 1871-74 there were numerous springs and the water table remained sufficiently high to make-digging of wells generally successful although the presence of alkali and gypsum in some areas made the water somewhat less than potable.

The area was fairly well watered in the middle one-third, quite well watered in the eastern area, with the least well watered areas lying in the extreme western sections.

18. The average annual rainfall varies from one part of the subject tract to another - as well as from year to year. It usually varies from about 23 inches in the western portion to about 36 inches on the eastern boundary.
The natural water supply is derived from the North Fork of the Canadian River and the main Canadian River, the former being the more reliable of the two. The waters in the main Canadian River "disappear" into the river beds and the river ceases to run in the summer months.

19. The topography of the subject tract is varied, and since it runs about half way across the State of Oklahoma it includes many varieties of terrain and soils, and the lands vary from level to rough. However, the greater part should be classified as level to undulating and gently rolling. While there are no mountains within the area, there are some rough and broken lands in the western area.

The elevation of the tract varies from about 900 feet above sea level in the eastern part to about 2000 feet in the western part.

20. The climate of the areas was at the time of the Treaty of 1856, and still is, generally mild throughout most of the year. The winters are generally open except for a few cold waves and blizzards which usually are of short duration. The summers are usually pleasant except for extremely hot and dry weather, mainly in July and August. Its effect on crops and the water supply sometimes results in great loss of crops. The annual mean temperature is about 63°, while the mean temperature for winter months is about 34°, with a normal frost free period from April to October.

21. As of the date of the Treaty of 1856 there were no known minerals in the subject tract. It was not until 1901 that oil was drilled in Oklahoma Territory.
22. Timber was found along all the rivers and their tributaries, but very little was of the quality or quantity for commercial use, although some was of sufficient size for use in constructing log and frame houses. The eastern area contained the best timber and it became poorer in quality, type and size toward the western part of the tract. The sandy lands to the west are still covered to some extent by scrub oak and similar shrubs. The timber found along the river bottoms was mainly cottonwood, elm, pecan, walnut and sycamore while that found in the uplands was mainly post oak, blackjack, shinnery, hickory, blue oak, ash and hackberry.

The presence of timber made the lands more valuable to settlers who were desirous of a supply for buildings, fences and fuel.

23. The natural vegetation of the eastern part of the area included Big and Little Bluestem grasses, Indian grass, Switch grass, Side-oat gramma, Blue gramma, and Buffalo grass. Taller grasses were found in the eastern area because of heavier rainfall and more productive soil, while the short grasses were found in the western part of the area, with some tall grasses found growing in the lighter soils.

24. The soils of the area were generally the same as those within the balance of the central and western parts of the State of Oklahoma. The creek and river bottom soils were generally productive except in drought periods. They were also subject to flooding, especially in the spring. The upland soils in the more westerly part of the area were derived from sandstone, shale and limestone with some gypsum present in the western part of that area of the tract.
The alluvial plains and better uplands were well adapted to general farming while the shallow clay soils and sandy soils were more adaptable to pasturage.

We find that the western third (lengthwise) of the tract which comprises the portion of the tract within the present-day counties of Ellis and Dewey were characterized in its western portion by hills, some of which were gentle and some rough, which were mixed with more gentle rolling and fairly flat areas; that this area (Ellis County) was best suited to stock raising, and to a limited extent for the raising of cattle feed; that its soils were of a sandy nature in which sagebrush, mesquite and buffalo grass grew; and that at present it is principally used for the grazing of cattle with some dry farming for the production of cattle feed.

We find that Dewey County to the east of Ellis was a red-bed plain, dissected by numerous streams with topography ranging from level uplands, flood plains and terraces to rough broken canyons and dunes; that about 24% was of loamy uplands of the St. Paul Holdrege Association, 30% red-bed hills of the Quinlan-Woodward Association, 10% rolling and hummocky sands of the Nobscot-Pratt Association, 5% sandy upland flats of the Miles-Pratt-Carwile Association, 18% benches and flood plains, 10% dunes and breaks, and 3% sandy uplands; that the land is suited for agriculture and stock raising; and that at present agriculture is the principal source of income, with wheat and cotton as the main cash crops and corn and the small grains, alfalfa and sorghum raised for livestock feed.
We find that Blaine County to the east of Dewey County to have a larger percentage of gentle rolling uplands than Dewey, with some hills and lowland areas near the streams; that its soil varies, but is more predominantly of the loamy uplands than Dewey; it presently grows wheat and cotton as the main cash crops with corn and the small grains for livestock feed, and that also castor beans and peaches are presently grown.

We find that Canadian and Cleveland Counties in the eastern portion of the tract were as represented in the original surveyors' notes and the soil survey studies set out in our findings 14 and 15 principally suited for agriculture, although limited stock raising of cattle, sheep and hogs is engaged in at the present time, with a predominant percentage of loamy upland soil, gentle rolling lands, with some alluvial lowlands; and that presently the principal agricultural crops are corn, wheat, cotton, and fruits (peaches, grapes and apples).

25. The nature and physical aspects of this area were known for some years prior to the Treaty of 1856. Spanish explorers are reported to have traveled in the 1500's near to the present Oklahoma City, having crossed both the Canadian and the North Canadian Rivers, as well as having traveled across the western portion of Oklahoma and through the Antelope Hills. Spain claimed title to the area by virtue of recorded visits of Coronado, Onate and De Soto.
French explorers visited northeastern Oklahoma in the early 1700's and Pierre Chouteau established a trading post in 1802 at the junction of the Arkansas, Grand and Verdigris rivers.

American explorers, including Wilkinson and Pike, traveled through eastern Oklahoma in the early 1800's.

Trading licenses were issued in 1817 to Colonel Auguste Pierre Chouteau, son of the earliest trader Pierre Chouteau, to Joseph Revoir, and to Hugh Glen, who set up a trading post at the mouth of the Verdigris River.

Fort Smith was established in 1817 and in 1820 Major S. H. Long and Captain J. R. Bell explored central Oklahoma by way of the Canadian River, giving an accurate description of the area.

Others who explored the area in the early 1800's included Thomas Nuttall, an English naturalist, in 1819, and Washington Irving with Charles Joseph Latrobe. By the 1830's almost all of the area now included in the State of Oklahoma had been traversed by trappers or traders or the Army of the United States. By the early 1850's all the larger rivers except the Red River had been explored, and that river had been explored in part.

Chouteau's trading post was located on the north bank of the Canadian River in the eastern part of the subject tract in present-day Cleveland County. It was reported that considerable trade was carried on through that trading post with the plains Indians until 1838 when Chouteau died.
26. There were no overland routes running through the subject area as of 1856, but there is evidence that there were some trails and primitive roads in the eastern area. The surveyors' notes indicate that in 1871 the Shawnee wagon road from Shawnee Town to Fort Arbuckle passed through Township 9N, Range 3 East. The Fort Sill Road was recorded as passing through Township 8N, Range 2 East.

In the middle of the tract, in Township 17 North, Range 13W there is a notation that "an old wagon trail passes through the township from Section 36 to Section 3."

In the notes covering Township 18 North, Range 13 West "Fractional", the surveyors stated "Two wagon roads from Cheyenne Agency to Camp Supply pass through the township, one on either side of the river. The one West of the North Fork has ceased to be travelled."

Again, with respect to Township 19 North, Range 13 West "Fractional" the surveyors noted "A road from Cheyenne Agency to Camp Supply enters in Section 35 and leaves in Section 6. In Section 35 is a stretch from 2 to 5 chains wide."

From these observations, it is apparent that the subject area was accessible to a very limited degree by roads and the few roads were along the periphery rather than penetrating into the interior of the area. The absence of settlers within the area, even Indians, made construction of roads of even the most primitive nature unnecessary.

The subject tract was located in the center of an area surrounded by military installations, all of which were connected by wagon roads
but with the exception of those set out above, none of them passed through or very close to subject territory. Numerous cattle trails crossed the area in later years, but as of the date of the Treaty of 1856 these routes were not in existence.

27. In 1856 there were no railroads running through or near the subject tract. However, in 1853-54 explorations were made to determine the best route for a railroad to the West Coast, and one of the routes proposed followed the Canadian River. In 1855 a map of a proposed cross-country route indicated a right-of-way across the subject tract from East to West, and the present right-of-way of the Rock Island Railroad generally follows the suggested route. However, construction of that railroad was not begun until after the Treaty of 1856.

28. The demand for land in Indian Territory was temporarily checked by the Treaties of the Five Civilized Tribes and the Intercourse Act which entirely restricted white settlement beyond Fort Smith and the establishment of a Territory or State without consent of the occupying tribes. With the passage of the Kansas-Nebraska Act in 1854 (Act of May 30, 1854 (10 Stat. 277)) the white migration to the west became concentrated in the areas to the north of subject tract. Despite this there were repeated attempts in Congress to organize the lands of the Creeks, Cherokees and Choctaws into a Territory of the United States, and these attempts continued throughout the Civil War period. From prior to the date of the Treaty of 1856 until the opening of the Territory to settlement
there was constant pressure by surrounding states, and recommendations by governmental agencies, including the Bureau of Indian Affairs, that the lands be opened to white settlement as an economic and political necessity.

29. The general release contained in the Creek Agreement of March 1, 1889, set out in Finding No. 11 supra, has been held by this Commission to not be a bar to an action by the Creek Nation for additional compensation for the lands ceded by them.

Likewise, in this claim it cannot be considered as a bar since none of the subject lands were covered by the general release, the lands ceded by the Treaty of August 7, 1856 no longer being Creek lands.

The President's Message to Congress transmitting an Agreement made with the Creek Indians dated February 5, 1889, makes no references to the lands conveyed by the 1856 Treaty, but specifically refers to the Treaty of June 14, 1866, and the lands ceded thereunder.

30. The period immediately prior to the date of valuation, August 7, 1856, was one of high prices, rapid expansion and what appeared to be prosperity. After 1848, the year of discovery of gold in California, there was rapid expansion of banks and bank credit, and accordingly agriculture and trade were beneficially affected. Expanding markets in Europe increased demands for American products, and the extensive railroad construction in the north-central states caused an advance in land prices. However, interest rates were high and banks
were quoted as charging interest at as high as 33 to 37 percent per annum. Banks were non-existent in the Indian Territory as well as in the area of the present day State of Oklahoma in 1856.

During the period of the Civil War, 1861-1865, the wholesale commodity index reportedly increased over 100%, but this was not reflected in the price of virgin land.

31. The population of the United States increased markedly prior to 1860 due to a great degree to immigration. Between 1854 and 1857 Census Bureau statistics recorded a growth of about 2-1/2 million people. The density of population increased accordingly in all areas of the United States, especially those in the path of western migration. By 1860 the area contiguous to Indian Territory, including eastern Kansas, part of Missouri, Arkansas and eastern Texas, had a population of 6 to 18 persons per square mile, reflecting a tripling of density of population between 1850 and 1860.

32. There was a demand for land both before and after 1856 with the minimum cash price of public land having been established at $1.25 per acre by the Act of April 24, 1820 (3 Stat. 566), and the Pre-emption Act of September 4, 1841 (5 Stat. 453).

The provisions of the Graduation Act of August 4, 1854 (10 Stat. 574) permitted sale of public lands which had been subject to sale for from 10 to 30 years or more at gradually reduced prices ranging from $1.00 per acre for those on the market 10 years or more to 12½ cents per acre for those on the market for 30 years or more. However, since
the lands in question were not public lands as of 1856, nor had they ever been public lands, this law would not apply to them.

Under the provisions of the Graduation Act, there was a great increase in the sale of public lands of lesser quality at reduced prices, as well as the better lands at $1.25 per acre and more. The year 1855 reflected the highest acreage of government land sold in the period from 1854 through 1866, bringing an average price of 73 cents per acre. In 1856 a total of 9,227,879 acres were sold at an average price of 96 cents per acre.

The Homestead Act of May 20, 1862 (12 Stat. 392) permitted free entry of 160 acres of $1.25 public land or 80 acres for $2.50 land, with title vesting in the settler after five years continuous occupancy and certain prescribed cultivation and improvement. Also the settler could by paying $1.25 per acre, obtain title almost immediately.

33. It is the opinion of this Commission that the highest and best use of the subject tract as of August 7, 1856, the agreed date of valuation, would have been division into smaller units for combined subsistence-type agriculture and grazing units in the eastern one-third (between the 97th and 98th parallels) somewhat larger units for combined subsistence-type agriculture and grazing units in the middle one-third (between the 98th and 99th parallels) and larger grazing units with very limited agriculture in the western one-third (between the 99th and 100th parallels) with emphasis in this western area upon grazing primarily and cultivation only for feed crops.
34. This Commission, based on the findings of fact set out herein, and the record as a whole, finds that the subject tract consisting of 2,037,414.62 acres of land, had a fair value as of August 7, 1856, of $2,037,414.62, or an average of $1.00 per acre. This Commission further finds that the payment to the Creek Nation of $1,000,000 for the subject tract was unconscionable. The Creek Nation is therefore entitled to recover from the defendant the sum of $1,037,414.62, less such credits as the defendant may be entitled to under the provisions of the Indian Claims Commission Act (60 Stat. 1049).

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner