

BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE BAND, et al., including)	
BAY MILLS INDIAN COMMUNITY,)	Docket No. 18-E
)	
OTTAWA AND CHIPPEWA INDIANS OF)	
MICHIGAN, et al.,)	Docket No. 58
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 23, 1968
Appearances:

James R. Fitzharris, with whom
were Jay H. Hoag and Rodney J.
Edwards, Attorneys for Plaintiffs.

David M. Marshall, with whom was Mr.
Assistant Attorney General Clyde O.
Martz, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Commissioner, delivered the opinion of the Commission.

During the title phase of this case the Commission determined that petitioners had aboriginal title to 12,044,934 acres of land located in the northern part of the present State of Michigan and ceded this acreage to the United States under the treaty of March 28, 1836. (7 Stat. 491; 7 Ind. Cl. Comm. 576 (1959)) The instant case involves the valuation of this large tract of land as of the treaty date.

In the findings of fact numbered 27 through 50 filed herein, the Commission has included the usual elements that lead to the ultimate finding of fair market value.

Based on the same general facts, but with different emphasis, the parties to this action are far apart on the prices each proposed as the

fair market value of these lands as of the treaty date. Petitioners valued the lands at \$2.50 per acre largely based on the use of the land for timbering operations. Defendant, on the other hand, proposed an \$0.11 per acre valuation of the land for farming purposes. In concluding that the highest and best use for the tract as a whole was for both subsistence farming and timber resources, we have agreed to some extent with both parties. However, we cannot agree with either party as to the per acre value proposed.

We believe that petitioner's appraisal of the subject tract as a whole at \$2.50 per acre is much too high for the following reasons. The stumpage value of the merchantable timber on the subject lands has been urged by petitioners as a basis for their \$2.50 per acre valuation. In valuing the subject lands the Commission has taken into consideration the timber hereon which would enhance the value of the land used for timbering operations. However, the Commission has continuously rejected the consideration of stumpage value as a separate item in arriving at the fair market value. Emigrant New York Indians v. United States, 11 Ind. Cl. Comm. 336, 374; Nooksack Tribe of Indians v. United States, 6 Ind. Cl. Comm. 578; Minnesota Chippewa Tribe v. United States, 14 Ind. Cl. Comm. 226.

It appears to us that Mr. Trygg (petitioners' appraiser) used a highly speculative method in arriving at his board feet estimate of merchantable timber on the subject lands in 1836. He did not take into account the inevitable wastage which always accompanies the harvesting of timber, particularly at that early date. Trees which would not have been considered merchantable in 1836 were included in his estimate. He did not distinguish between the amount of white pine and other species of pine which were less valuable.

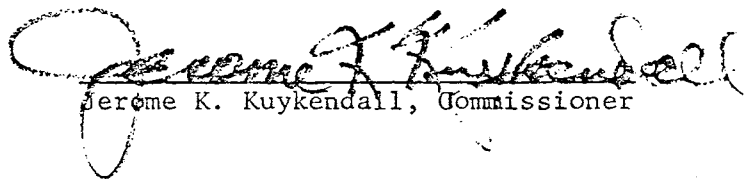
The commercial value of the timber in the subject area was more of a potential than a reality in 1836. Much of the subject area was not very suitable for farming because of the poor quality of the soil and its wetness. Millions of acres of public lands nearby were still available at \$1.25 per acre to the settlers to whom any buyer of such a large tract of land would have to look for most of his potential customers. With the competition of other available unimproved lands closer to the mainstream of western immigration, it would be evident to a well informed buyer that even under the booming economic conditions of 1836, many years would be required to dispose of such a large tract of land.

We also reject the ultimate conclusion of Mr. Luedders, defendant's expert appraiser, as to the value of the subject lands. We believe he was unduly pessimistic about the future possibilities of the subject tract as an investment, judged by the conditions prevailing in 1836. The economic outlook in March of 1836 was conducive to speculation in land. Many immigrants and settlers who needed and were looking for land were pouring into the areas south of the subject area. Money was abundant and comparatively cheap. The commercial potential of white pine timber was clearly known. Under the conditions prevailing at the time of the valuation date, a willing and well informed buyer would have been justified in paying much more than the approximate \$0.11 per acre estimated by Mr. Luedders as being the fair market value of the subject tract as of the valuation date in 1836.

Though rejecting the specific conclusions as to value of the expert witnesses of both the petitioners and the defendant, the Commission

acknowledges the very helpful assistance of these experts in arriving at its own conclusion as to the fair market value of the subject lands on the valuation date. The Commission gave careful consideration to the testimony of the expert witnesses, the hundreds of exhibits received in evidence, and to the arguments of counsel for both parties.

Based on the findings of fact herein and the record as a whole, we conclude that the subject tract, as a unit, had a fair market value of \$10,800,000 as of March 28, 1836. Because the issue of the amount of consideration received by petitioners for the subject lands under the above treaty was not presented to the Commission for determination during the hearing on value, and because it appears that there may be some dispute as to the amount of this consideration, this case will now proceed to determination of the consideration received by petitioners under the above treaty, whether or not such consideration was unconscionable under Section 2 of the Indian Claims Commission Act, and if so, what offsets, if any, defendant is entitled to under the provisions of the Act. An order will be entered accordingly.


Jerome K. Kuykendall, Commissioner

Concurring:


John T. Vance, Chairman

(Concurring signatures continued next page)