

BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION OR TRIBE OF INDIANS,)
)
 Plaintiff,)
)
 v.) Docket No. 105
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: 6-18-69

ADDITIONAL FINDINGS OF FACT ON VALUE

The boundaries of the lands to which The Osage Nation was decreed to have held aboriginal title are described in our Finding No. 112 issued previously in this matter (11 Ind. Cl. Comm. 733, 808-809). Date of taking was decreed to be April 28, 1810, the date of ratification by the United States of the Treaty of November 10, 1808 (7 Stat. 107) by which the Great and Little Osage Tribes ceded subject lands to the United States.

The Commission makes the following findings of fact that are supplemental to findings of fact Nos. 1 through 115 previously entered herein:

116. The subject tract contains 12,113,000 acres of which 10,302,000 acres are located in the southwestern portion of the State of Missouri and 1,811,000 acres in the northwestern part of the State of Arkansas. It includes all or part of present Barry, Barton, Bates, Benton, Camden, Cass, Cedar, Christian, Cole, Cooper, Dade, Dallas, Douglas, Green, Henry, Hickory, Jackson, Jasper, Johnson, Laclede, Lawrence, McDonald, Miller, Moniteau, Morgan, Newton, Ozark, Pettis, Polk, Pulaski, St. Clair,

Stone, Taney, Texas, Vernon, Webster and Wright Counties in Missouri; and all or part of Benton, Boone, Carroll, Crawford, Franklin, Madison, Newton and Washington Counties in Arkansas.

117. A great deal of the value data in the record was contained or cited in the appraisal reports and testimony of two expert witnesses, Mr. M. J. Williamson for the Osage plaintiff and Dr. William G. Murray for the defendant. As part of their value presentations both witnesses considered in varying degrees such value criteria as the topographical and environmental features of the subject tract, its soils and natural resources, the ease of access into Osage land in light of the contemporary means of transportation, pertinent population figures and settlement patterns, relevant economic and political facts, the prevailing government land policy as well as information and tabulations with respect to public land sales extending for the most part well beyond the 1810 evaluation date, observations made by government surveyors in Missouri as reflected in their notes, and finally the highest and best use for the subject lands.

Mr. Williamson in the process of arriving at his 1810 evaluation of the Osage lands, accepted the \$2.00 per acre 1810 government price of land as the basic per acre value of subject lands. From this figure he subtracted survey costs and then applied a 7% discount to cover both the size of the area and the fact that in his judgment it would take a minimum of 20 years to market the entire tract. He concluded that as of April 28, 1810 the Osage lands were worth \$1.02 per acre.

In marked contrast Dr. Murray affixed a nominal \$0.15 per acre valuation to the same lands. In our judgment his low figure is directly the result of his almost unqualified acceptance of Alexander Hamilton's 1795 estimate that the lands north of the Ohio River were worth between fifteen and twenty cents per acre. Dr. Murray admitted that this 1795 Hamilton estimate played an important role in his 1810 valuation of the Osage tract. Apart from the question of comparability, these Ohio lands are a considerable distance from the subject area, and in 1795 they were largely unexplored and occupied by numerous Indian tribes.

118. The Missouri portion of the subject area can be divided into four topographical soil regions:

(1). Southwestern Prairie Region. This region contains approximately 3,096,334 acres and represents the smoothest portion of the state. This region is characterized by level to rolling topography.

(2). Ozark Region. This region contains approximately 4,229,440 acres in the eastern part of the subject tract. It is slightly higher and more dissected than the adjoining prairies to the north and to the west. The stream valleys are usually deep and narrow and are bordered by belts of rough dissected country. Only a small part of the area can be called smooth. In that area along the Osage and Niangua Rivers in Camden and the northern part of Dallas and Laclede counties it is almost an uninterupted series of narrow branching valleys and sharp ridges. Such a topography, together with the large amount of stone in the soil, makes cultivation practically impossible. Further south in that area drained by the White River near the Arkansas state line is another hilly region of

similar topography.

3. West Ozark Border Region. This area adjoins the Ozark Region on the west and contains approximately 2,776,269 acres in central part of the subject tract. It is not as rough as the main body of the Ozark Region and its soils are less stony.

4. East Ozark Border Region. This relatively small area in the extreme northeastern part of the subject tract embracing approximately 143,304 acres thereof is principally river country that is intersected by numerous streams of irregular course.

Generally speaking the elevation within the Missouri portion of the subject tract ranges from 900 to 1500 feet above sea level with the rise and fall of the contour lines following a gentle sloping change.

The topography in that part of the Osage tract in northwestern Arkansas can be characterized as simply an extension of the hilly area found in that region drained by the White River along the Missouri-Arkansas line. The soils vary with the topography, and the area is well drained and well supplied with water.

119. There are four main soil groups in the Osage tract - - the Summit and Grundy groups in the northwest, the Clarksville-Lebanon group in the northeast and east, and the Baxter-Lebanon group in the southwest. The Clarksville and Baxter groups comprise nearly 85% of the entire Osage tract.

In the Summit and Grundy areas, the dark brown surface soils permit both general farming as well as livestock and dairy farming. Trees grow along the stream valleys and the soils are productive for hay grasses and

small grains. In the Clarksville-Lebanon soil area there ~~are~~ hardwood trees on rolling areas, and some shortleaf pine in the southern part. The soils are comparatively unproductive but some small areas do very well for field crops, hay grasses and tobacco. The Baxter-Lebanon region is mostly in the southwestern part of the Ozark mountains where there are large areas of rough valley land with intervening smooth divides. Less than half of this area is subject to cultivation and the rough portions are mostly timberland and used for wood pasture.

120. The climate of Missouri is essentially like that of the corn belt. The annual mean temperature ranges from 50 degrees in the northwest to 58 degrees in the southeast, the average for the state being 54 degrees.

Periods of extreme cold are of short duration, and the temperature seldom falls lower than 5 to 10 degrees below zero. During the summer months the temperature frequently reached 90 degrees or more.

The average date of the last killing frost in spring varies from April 12 in the southern section to April 22 in the northern. The first killing frost varies from October 18 in the southern section to October 12 in the northern. The average length of the growing season is 180 days.

The seasonal distribution of precipitation is heaviest in the spring and early summer and lightest in late fall and winter; this is true for the entire state, although there is some variation in different regions. The average growing season rainfall, March to September, inclusive, is approximately 27-1/2 inches. There are, however, occasional periods of drought that usually occur in the month of July.

The State of Arkansas is situated between the parallels of 33 degrees and 36 degrees 30 minutes north latitude and has a climate that is unmarked by extremes of either heat or cold.

In the northwestern highlands the date of the last killing frost in the spring, occurs sometime in April. In the southern lowlands no killing frosts have occurred later than March 14. The growing season ranges from 180 days in the northwestern part of the state to 240 days near the central portion.

In the northern part of the state the heaviest rainfall takes place generally in April with the lightest in December.

Looking at the overall picture, the climate in the Osage tract is favorable to both crop production and livestock farming. The rainfall averages from 36 to 44 inches per year and the temperatures are in the moderate range.

121. The Osage lands are in the transition area between timber and prairie. The timbered area is made up primarily of oak and hickory forest, but other available species include ash, cedar, cottonwood, pine, elm, and maple to name a few. The only pine forest worth noting is located in southeast Missouri. The prairie non-timbered regions are to the west and north in the Missouri portion of the subject tract. It appears then that in 1810 a prospective settler in the subject tract would find a more than adequate supply of timber for the construction of buildings, fences, and for heating purposes.

122. As to mineral content, the evidence is clear that no extensive lead or zinc or iron deposits of commercial value were known to exist in the Osage tract in 1810. The nearest lead mines of any value lay at least 70 miles to the east of the tract about 40 miles inland from St. Genevieve on the Mississippi River. Coal deposits were known to exist in parts of the subject tract but were of no commercial value as of 1810. The early settler would have found coal valuable as a wood substitute for fuel.

123. According to the accounts of early explorers who ranged over this general area during the period from almost 1804 to 1819, there was a plentiful supply of game and wildlife. Prior to the 1808 Osage treaty of cession fur was the prevailing trade item among both Indians and whites. Fur traders had ascended the Missouri River for many years prior to the Lewis and Clark expeditions in 1804. The presence of fur bearing animals in the Osage tract as of 1810 added additional value to those areas not conducive to general farming; namely, the higher and relatively inaccessible mountain areas where it was too steep and stony to follow ordinary agricultural pursuits.

124. In 1810 the Missouri River was not only the main artery through the western country but also the major waterway to the Osage tract. Indeed, waterways were prime avenues of access into the vast unexplored regions west of the Mississippi River.

Early navigation up the Missouri River and the other principal waterways was by hand propelled craft, canoes, bateaus, etc. While steamboat travel down the Mississippi was first accomplished in 1812, no attempt to

navigate the Missouri was made until 1819.

The navigable tributaries that entered into the Missouri River from the south were the Osage and Gasconade Rivers. The Osage River flowed in an easterly direction across the northern third of the subject tract, and in 1807 Lt. Zebulon Pike proved that at times a small boat could navigate the river almost to the western boundary of the State of Missouri. The Gasconade River is situated further south of the Osage River near the eastern border of the subject tract. It is not as long as the Osage, but was a considerable stream of water that could be navigated by canoe upwards of one hundred miles.

Other principal rivers that service the Osage tract were the White River in the southern part of the subject area near the Missouri-Arkansas line, and the Arkansas River further to the south at the extreme tip of the Osage tract. The White River flows southeast and joins the Arkansas River near its entrance into the Mississippi River. One of the tributaries of the White River, the James River, lies completely within the Osage tract. It rises east of present day Springfield in the southwest part of the tract and flows south to join the White River near the Missouri-Arkansas line.

Overland travel in the subject area was accomplished simply by following the rough Indian trails and the white men's traces. One wagon road of note during the 1810 period did service the lead mine region along the Mississippi River but this road lies a considerable distance east of the Osage tract.

125. Since rivers were the principal means of transportation in the early 1800's, the preferred locations of principal settlements in the Missouri-Arkansas area were along the Mississippi River with the exception of the settlements at the Missouri lead mines in eastern Missouri. In 1810 there were no settlements of consequence near the Osage tract.

The earliest settlement along the west bank of the Mississippi River in eastern Missouri was at St. Genevieve which was established in 1735. This location is not far from the lead mines that were an early center of French activity.

Thereafter, St. Louis was founded in 1764, Carondelet in 1767, and St. Charles in 1796. Several small settlements were established between 1770 and 1804 along the rivers west of the Mississippi. These included Portage des Sioux in 1779, Florissant in 1786, New Madrid in 1789, New Bourbon in 1793, Cape Girardeau in 1793 and St. Michaels in 1800. St. Louis eventually emerged as the largest settlement on the Mississippi north of New Orleans. In 1811 the population of St. Louis had grown to 1400. The most prominent settlement soon to emerge west of the Mississippi was at Booneslick, an area located on both sides of the Missouri River north of the mouth of the Osage River.

In 1804 the population of the Missouri-Arkansas region was estimated at 10,350. In the six years 1804-1810 the population doubled but settlement was still mainly along the Mississippi River with most of the new immigration going north of as well as up the Missouri River, the only

exception being the lead mines situated 40 to 50 miles west and southwest of St. Genevieve. Early Federal census data along with population density maps show the constant westward expansion of population from east of the Mississippi between 1790 and 1810 and the importance of major rivers in determining settlement.

A prospective purchaser of the Osage tract in 1810 could reasonably expect that the more attractive and accessible areas in and around the tract would be substantially settled within 20 years or so. Settlement would initiate along the north boundary of the tract near the Missouri River, on both sides of the Osage River, and in the south on the Arkansas and White Rivers. However, the rough interior areas, because of limited accessibility would take considerably longer.

126. By far the greater proportion of new settlers that came into the Missouri-Arkansas area in the early 1800's were farmers, and the most desirable farm locations at this time were the timber, river, or creek bottoms situated near a large navigable river. The new settlers had to have timber for their houses and other buildings, and for their fences and fuel during the winter. They preferred a river or creek-bottom because the soil was rich, and because it was usually here that the timber was best and the water supply the most reliable.

In the Osage tract the desirable timber-river bottom locations made up only a small part of the area, the main ones being on the Osage and White Rivers and their tributaries. In the western and northern part of the Osage tract timber was relatively scarce, this particular region being for the most part prairie land and not immediately favored by

settlers of this period.

In light of the overall topographical features of the Osage tract including its accessibility, the Commission finds that in 1810 small scale subsistence farming was the highest and best use for more than one-half of the Osage tract. The remainder being either too rough and steep, too inaccessible, or of poor soil content and without adequate timber, could be best adapted for hunting, fishing, and grazing purposes.

127. On June 4, 1812, Congress officially changed the name of the Territory of Louisiana to the Territory of Missouri. In the same year Governor Howard, the first territorial governor of Missouri, issued a proclamation that divided the new territory into the five counties of St. Charles, St. Louis, St. Genevieve, Cape Girardeau and New Madrid and gave them their boundaries. Thereafter the territorial legislature continued to subdivide and add new counties and districts and establish local governments and a judicial system. In 1821 Missouri finally obtained statehood.

128. As of 1810 there were no public lands available for sale west of the Mississippi River. Only in Illinois and Indiana was there an active land market at this time. The prevailing price for government land in 1810 was \$2.00 per acre in minimum tracts of 160 acres. However the \$2.00 per acre price was not the actual cash price since public lands could be purchased under a credit arrangement. Thus, a purchaser could pay 1/20 of the purchase price as a minimum down payment with 1/4 of the balance due in 40 days. The remaining balance of the purchase price would be paid

1/4 in two years, 1/4 in three years and the final 1/4 within four years. The actual cash price as established in 1800 was \$1.84 per acre, and in 1804 it had been reduced to \$1.64 per acre. By 1820, the credit system for purchasing lands had failed to produce the anticipated revenue and much of the land that had been sold had been relinquished by defaulting purchasers. Numerous relief acts had been enacted to enable purchasers to defer payments and escape relinquishments. Congress finally abolished the credit system for purchasing public lands with the passage of the Act of August 24, 1820 (3 Stat. 566). Under the 1820 act the cash price for Government land was fixed at \$1.25 per acre and minimum tract subject to sale was reduced to 80 acres.

129. Congress established the first public land office in the Missouri Territory at St. Louis in 1811. Because the land surveys were not sufficiently advanced, actual sales did not begin until 1818. In this same year Congress established two other land offices, one at Franklin in Howard County and the other at Jackson in Cape Girardeau County. In 1823 a fourth land district was located at Lexington, and in 1825 a fifth land district at Palmyra.

The first annual report from the St. Louis land office showed that from October 1, 1818 through September 30, 1819 some 470,990 acres of land valued at 1.1 million dollars had been sold with actual payments into the Treasury amounting to \$270,000.

In the period 1818 through 1826, a total of 15,887,931 acres of public

land were put on the market and some 1,061,667 acres were sold, with the vast majority being sold at \$1.25 per acre cash.

In the Territory of Arkansas, the land districts at Little Rock and Batesville reported total sales of 54,304 acres of land for the years 1821 through 1826 out of a total offering of 6,616,512 acres.

The only public land sales occurring in 1810 were those in Southern Ohio and Southern Indiana not far from the Ohio River and its tributaries, but a considerable distance from the Osage tract. Public land sales in Illinois did not begin until 1814.

130. At the time of the 1808 Osage treaty of cession and for at least the next 12 to 14 years there was no actual market for the lands within the subject tract. Private sales data in the record involving sales prior to 1810 in Missouri consists of 54 transactions that were recorded in St. Genevieve County for the period 1802 to 1809. In all, some 53,252.45 acres more or less were conveyed for a total price of \$30,059. This represents an average per acre price slightly in excess of \$0.56 per acre. These sales do not qualify as comparable sales since they involved unsurveyed land for which no valid legal title could be transferred, the fee title at this time being in the United States.

Post 1810 private sales data in Missouri consists of: (1) Fourteen transfers in Boone County between 1817 and 1838 involving a total 2,234.88 acres for a consideration of \$5,776.50 or \$2.58 per acre; and, (2) Forty five transactions in Cooper County, Missouri between 1817 and 1839, in which

there was conveyed a total of 34,804 acres for a consideration of \$66,862.57, or slightly in excess of \$1.92 per acre.

It was impossible to determine from the above sales information the amount of improved land that might have been involved, or any other specific factors that could have influenced the actual prices paid. In addition there was no evidence in the record dealing with private land sales in Arkansas.

131. On the general economic level the year 1810 was a period of revival following the depression years 1807-1809. Before 1807 this country's economy had been sustained chiefly by European demand for American exports and ships. This demand for American goods was the direct result of the many European conflicts that had broken out following the close of the French Revolution in 1792. Thus, the United States, in the role of a neutral, was able to capitalize on the pressing economic needs of the European nations. While most of the populace was engaged in some form of agricultural or rural activity, shipping and foreign trade was still responsible for nearly one-third this nation's income. The passage of the 1807 Embargo Act curtailed any further upsurge in foreign commerce. The depressing effect of the embargo was immediately felt with the fall of wholesale prices for the next few years, and most notably the prices paid for farm products.

Following the War of 1812, Missouri entered into a period of rising prosperity particularly in the period 1815-1818 when land values around the older settlements rapidly appreciated and speculation became widespread

even though land titles were uncertain and surveys incomplete.

Legal interest rates in the 1810 period fluctuated at the 6% level at the eastern money centers. In the Louisiana Territory a maximum of 10% could be realized if the parties were in agreement. However, brokers discounts on good notes ranged between 9% to 12% in 1810 and had been even higher a few years earlier. A prospective purchaser of the subject tract in 1810 could expect under even the most favorable conditions to pay in the neighborhood of 8% on purchase money.

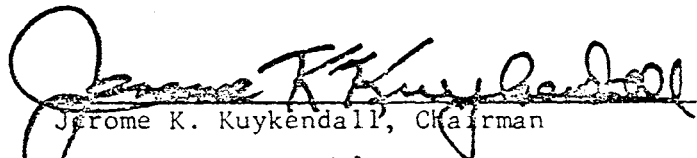
132. The average immigrant or settler moving into Missouri in the post 1810 period usually came from an agricultural area. He intended to purchase a minimum amount of land upon which he could raise and cultivate those crops with which he was familiar, and for his own subsistence. He would have little, if any money, and he would have expected to make his initial purchase of land on as liberal terms as possible. Barter would be the common denominator of exchange on goods and services between settlers and merchants.

Farming was then in its crudest form. Farm machinery was non-existent, and the simple wooden hoe and iron point would break the soil powered either by horse or cattle. Those farmers in the more remote regions combined farming and animal husbandry with hunting. Typical farm prices quoted in 1820 at Franklin, Missouri showed corn and wheat averaging between \$0.75 to \$1.00 per bushel and pork and beef at \$5.00 per hundred pounds. Common labor earned a man \$0.75 per day.

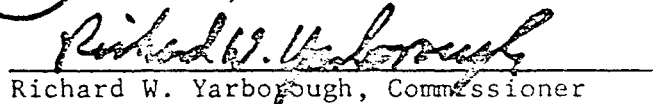
133. In consideration of all those factors as set forth in the preceding

findings of fact that would have influenced and controlled the 1810 fair market value of the Osage lands in the eyes of a prospective purchaser thereof, and, realizing further, that the very size of the subject tract would necessitate its being marketed, consistent with its highest and best use, over a period of at least twenty years, the Commission is of the opinion that on April 28, 1810, the effective date of the 1808 Osage treaty cession, the 12,113,000 acres in the subject tract as a whole had a fair market value of \$7,000,000.

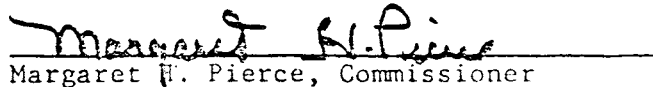
134. The parties are in agreement and the Commission so finds that under the provisions of the 1808 Osage treaty of cession the United States paid \$56,833.79 for the subject tract. We further find that this payment in 1810 of \$56,833.79 for lands having a then fair market value of \$7,000,000 is payment of an unconscionable consideration under the provisions of the Indian Claims Commission Act. The plaintiff is therefore entitled to recover from and of the defendant the sum of \$6,943,166.21, less allowable offsets, the determination of which shall be subject of further proceedings before this Commission.


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Brantley Blue, Commissioner


 Margaret H. Pierce, Commissioner