

BEFORE THE INDIAN CLAIMS COMMISSION

THE JICARILLA APACHE TRIBE OF THE)
 JICARILLA APACHE RESERVATION,)
 NEW MEXICO,)
)
 Plaintiffs,)
)
 v.) Docket No. 22-A
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: December 2, 1970

Appearances:

Guy Martin, Attorney for Plaintiffs
Robert J. Nordhaus, James L. Kunen, Richard M. Davis, Robert H. Harry, James E. Culhane and Ray T. Mobley were on the briefs.

Bernard M. Newburg, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Commissioner Yarborough delivered the Opinion of the Commission.

In the prior decisions of August 26, 1963 (12 Ind. Cl. Comm. 439) and November 9, 1966 (17 Ind. Cl. Comm. 338), this Commission found that the Jicarilla Apache Tribe held Indian title to 9,218,532.77 acres of land in northeastern New Mexico and southern Colorado.^{1/}

The Commission also found that on August 20, 1883 the United States extinguished the Indian title of the Jicarilla Tribe to the

^{1/} For a detailed description of the area, see Finding 60. The acreage is net, after exclusion of a number of Spanish-Mexican land grants within the area's perimeter.

subject land without payment of any compensation when the United States military removed the Jicarilla Apache Tribe to Fort Stanton, New Mexico. As a result, plaintiffs are entitled to compensation under Section 2(4) of the Indian Claims Commission Act (60 Stat. 1049).

The hearing before the Commission to determine the fair market value of the subject tract was held in Albuquerque, New Mexico on May 14, 15 and 16, 1969.^{2/}

The tract consists mostly of semi-arid grasslands of the High Plains, with some timbered mountains. The parties are in agreement that the highest and best use of the land in the subject tract, as of August 20, 1883, was for cattle grazing and stock raising.

At the hearing plaintiffs' principal appraiser, Mr. Allan L. McMullen, valued the subject tract as of August 20, 1883 at \$12,691,130. Defendant's principal appraiser, Mr. Harley McDowell, contended that the fair market value of the land was \$3,690,900. In its brief, defendant concedes that the fair market value may be as high as \$4,930,386.40.

Since there clearly was no open market for acreage as large as that of the subject area at the time of the valuation date, both parties have placed in evidence sales transactions involving Spanish and Mexican land grants, cattle company lands and railroad lands. Some

^{2/} The Report of the Commissioner on his preliminary determination of value was issued on May 29, 1969, and the issue was argued before the full Commission on November 14, 1969.

of these private sales the Commission regards as comparable enough to be reasonably relevant to the issue of value, but many have such differences of size, time and place as to have only marginal probative force. Enough large transactions remain that occurred near the valuation date and involved land in and near the subject area to give market data from which a proper valuation can be made. Miami Tribe of Oklahoma v. United States, 146 Ct. Cl. 421, 450-1 (1959).

Both parties rely on substantially the same comparative land sales, but they disagree as to the relative weight to be attached to these sales in view of the rapidly changing conditions existing in and near the subject tract from the Civil War through the 1880's and the effect of the changing conditions upon the demand for land in New Mexico and Colorado in 1883.

In the early days of the Western cattle industry, ranchers sought fee ownership of just enough land with surface water to water their cattle. For grazing purposes the rancher grazed his cattle on the adjoining public domain which he could use without ownership as free range. Ownership of large tracts was unnecessary in the absence of competition for free use of the public domain from homesteaders and other cattlemen.

After the Civil War there was a marked shortage of livestock in the Eastern United States and there were shortages of economic grazing lands in the Midwest. By 1880 the vast grasslands of New Mexico

and Colorado were available for cattle grazing and the cattle industry and cattle moved into that area. As packing plants were built in St. Louis, Kansas City and Chicago, the market for western cattle increased.

The construction of the Santa Fe Railroad from the East and its operation in the subject tract by 1883 made the rapid shipment of cattle possible. It linked the Great Plains cattle industry with the markets in the east and west. As a result the western cattle industry grew rapidly and was so promising that foreign capital, English, Scotch, and German, invested large amounts in cattle and land. A cattle boom developed in the West which reached its peak in 1883. The economic pressure brought about by the booming cattle industry caused a substantial demand for land.

In addition, by 1880 the rancher had to change his method of grazing on free land. The period of the open range was ending. In order to assure undisturbed operations cattlemen were buying or leasing grazing lands. The cattle companies which were in the strongest financial position in 1883 purchased land outright and did not rely on free range rights for grazing.

The use of the drilled well and windmill available in the 1880's made possible the conversion of the open range into controlled cattle grazing operations and ranches. These innovations made upland grazing land located away from streams useful and valuable.

In light of the above-described conditions which we believe existed in New Mexico and Colorado in 1883, some sales of ranches and other lands were comparable to the subject area. In general, only the largest sales are likely to represent both good land and poor land in the approximate proportions as the subject tract; many of the sales of tracts under 100,000 acres appear to be sales of selected "control" acreage.

The Maxwell Grant was located within the perimeter of the subject tract. The Maxwell lands like the lands here were substantially all grazing lands. In 1870 the Maxwell Land Grant and Railroad Company, an English company, acquired 1,679,764 acres for \$1,350,000. This sale excluded the Maxwell home ranch and some claims to gold land, gold mines or placer areas, and certain town lots in Elizabethtown. The 1870 sale of the Maxwell Grant was a market transaction and is a valid comparison for use in valuing tribal lands. Cheyenne-Arapaho Tribes of Indians of Oklahoma v. United States, 10 Ind. Cl. Comm. 1, 76 (1961). Defendant discounts the Maxwell 1870 sale on the ground that the Maxwell lands were better and more improved than the subject lands; plaintiffs' expert witness testified that a proper comparison of the Maxwell Grant and the subject tract indicated a value for the latter of \$1.21 per acre.

The southern half of the Sangre de Cristo land grant, the 500,000-acre Costilla Estate, was sold in 1871 to the United States Freehold Land and Emigration Company for \$500,000. It was located in

the perimeter of the subject area in the northwestern part on the Colorado-New Mexico border. The northern half of the same grant, the Trinchera Estate, located in Colorado and New Mexico and also of 500,000 acres, was sold in 1869 for \$1,000,000 to the Colorado Freehold Land and Emigration Company. Although tending to rely more on the 1869 sale of the Sangre de Cristo lands than on the 1871 sale, defendant believes that both sales were unreliable because they were part of "a promotional scheme to sell land in small tracts to immigrants." Even if the sales were "promotional" such a reason would not necessarily invalidate the sales as an indicator of market values.

The Matador Land and Cattle Company in West Texas near the subject tract consisted of 100,000 acres and sold in 1882 for \$1,250,000, including over 40,000 head of cattle and improvements. Defendant computes the net price of the fee at \$1.95 per acre, but urges that the sale of 100,000 acres of land in fee simple included range rights over 1,500,000 acres of land and concludes that the sale price should be averaged over 1,600,000 acres of land. However, during the 1880's the Matador Company continued purchasing hundreds of thousands of acres, presumably within their control area, at an average \$1.50 per acre.

The Spur Ranch in Texas containing 242,560 acres was sold in 1883 for \$515,440. Defendant contends that the ranch, as finally fenced in with over 300,000 acres of free range, contained almost 550,000 acres. ~~But~~ the evidence indicates that so-called "free range"

of over 300,000 acres was actually under lease to the Spur Ranch.

The XIT Ranch, 3,000,000 acres in the Texas Panhandle adjacent to the subject area, was similar in character and use to the subject tract, and the parties have extensively argued the use of its sale as comparable. The Capitol Company acquired the 3,000,000 acre XIT Ranch from the State of Texas as consideration for the construction of the Texas Capitol Building. The contract was executed in 1882 and title to the land was acquired upon completion of the construction in 1888. The original estimate of the construction cost was \$1,500,000. The completed construction cost was \$3,224,593.45. Realistically viewed, the arrangement between the State of Texas and The Capitol Company was a contract to build for an estimated cost. The purchase of the XIT Ranch was done by trading and the ultimate cost of the land far exceeded the initially agreed price. The transaction has been held not to represent a bona fide sale. The Blackfeet and Gros Ventre Tribes of Indians v. United States, 18 Ind. Cl. Comm. 241, 336 (1967).

The Atlantic and Pacific Railroad lands, 1,000,000 acres located in the northwestern part of Arizona and to the west of the subject lands, were sold in 1884 to the Aztec Land and Cattle Company for \$500,000. Other later Atlantic and Pacific sales were also cited. The 1884 sale was made under distress conditions because the Railroad needed funds to repay loans to its parent company. The lands originally granted to railroads involved alternate sections in a checkerboard

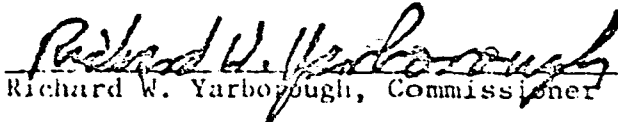
pattern rather than a contiguous and solid tract of land. Defendant believes that railroad lands sold at a premium because they were not contiguous on the theory that alternate railroad lands usually carried control of large areas of public lands. The Blackfeet and Gros Ventre Tribes of Indians v. United States, *supra* at p. 337. Although it was not a universal circumstance that checkerboard lands commanded a premium, we have previously found that the Atlantic and Pacific lands which were sold still carried grazing control over public domain areas. The Hualapai Tribe v. United States, 17 Ind. Cl. Comm. 456, 528 (1966). Because of their distance from the subject tract, as well as the uncertain consequences of their checkerboard pattern, these sales are of limited comparability.

The defendant insists that the sale prices of land during the boom period of the 1880's were inflated and should be disregarded. For example, defendant's brief (pp. 8-9) states that the London Economist, in retrospect in 1888, considered that the "purchase price paid by the foreign companies for ranches was about four times actual value." By definition, fair market value embraces inflated sales prices of a boom period. Undoubtedly some canny buyers were acquiring land at prices below those paid by the Scotch and English cattle companies, but all sales must be considered, and have been, in our determination of the market in 1883.

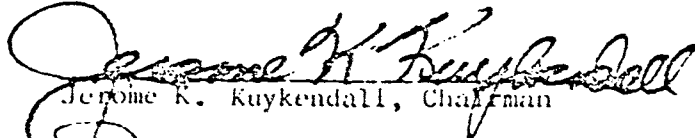
The plaintiffs claim a total enhancement to the tract of \$701,755 from timber, coal lands and metallic mines. The defendant concedes a

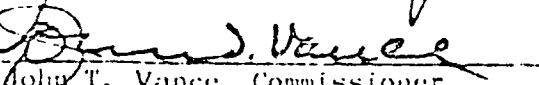
value of \$321,120 for timber and coal lands only. We shall here value the property as a whole, not separately appraising the individual elements of timber, coal and metallic mines. Citizen Band of Potawatomi Indians v. United States, 179 Ct. Cl. 473, 491 (1967), cert. denied 389 U.S. 1046 (1968); Yakima Tribe v. United States, 158 Ct. Cl. 672, 696 (1962). We feel the purchaser of a tract of this size would look on these relatively minor elements as enhancements to his purchase, not as separate increments. Their presence would enhance the land's value, but not above a value otherwise within the market range for grazing land. Our study of the comparable sales data indicates that the fair market value of the whole tract as grazing land was approximately \$1.08 per acre.

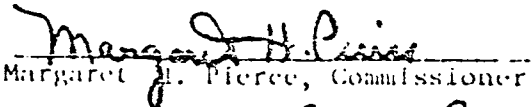
Taking into consideration all of the evidence of the record and based upon the findings herein entered and for the reasons set forth above we have concluded that as of August 20, 1883, the fair market value of the award area of 9,218,532.77 acres was \$9,950,000.

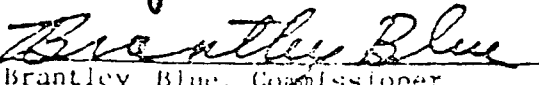

Richard W. Yarborough, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner