

BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS OF)	
OKLAHOMA AND MABEL STATON PARKER)	
on behalf of the Piankeshaw Nation)	
and)	
THE ABSENTEE DELAWARE TRIBE OF)	
OKLAHOMA AND THE DELAWARE NATION,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 289
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 11, 1970

FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings of fact numbered 1 through 12 entered herein on March 27, 1968, 19 Ind. Cl. Comm. 107.

13. The Commission has determined that the Delaware and Piankeshaw Tribes held recognized title to an area of land identified as Royce Area 49, Indiana. Each of the tribes had an undivided 1/2 interest in the area. The Delaware Tribe ceded its interest in the land to the United States by the Treaty of August 18, 1804 (7 Stat. 81). The Piankeshaw Tribe ceded its interest to the United States by the Treaty of August 27, 1804 (7 Stat. 83). Both treaties became effective on their ratification on January 21, 1805, which is the valuation date of the lands involved. Royce Area 49 contains 2,007,000 acres.

14. Royce Area 49 was within the boundaries of the Northwest Territory which was organized by the Ordinance of 1787 (1 Stat. 50). Royce Area 49 was included in Indiana Territory when that territory was formed in 1800. Indiana was admitted to statehood in 1816, and Royce Area 49 currently is part of 12 counties in the southernmost part of Indiana.

The white population of Indiana grew from near zero at the end of the 18th century to 24,520 in 1810. Early French settlers established trading posts in central and southern Indiana.

At the beginning of the 19th century, the rich farmland of southern Indiana attracted settlers from Kentucky and Ohio, many of whom were veterans of the Revolutionary War. Those settlers entered Indiana and squatted upon the land before it was ceded to the United States, causing the army to enter Indiana and destroy their settlements. However, such actions created pressure on the United States to secure the land from the Indians. On January 1, 1800, two hundred residents of Vincennes, in what is now nearby Knox County, Indiana, petitioned Congress to purchase the subject lands.

15. The southern boundary of Royce Area 49 and the southern boundary of the State of Indiana is the Ohio River. The western boundary of Royce Area 49 and the State of Indiana is the Wabash River. These rivers played a dual role in the development of the land. Settlers used the rivers to transport themselves and their belongings

to their new homes. After planting crops, the rivers were used for marketing their goods and securing supplies for the further development of their land.

The Ohio River was the chief artery for western traffic, serving as the transportation link between the Northwest Territory and the southern and eastern States. Boats floated westward on the Ohio River to the Wabash River, then southerly to the Mississippi River to New Orleans. Royce Area 49 also was served by the White and Blue Rivers, both navigable rivers, and by certain other streams.

Land routes, generally following river beds, were in abundance in the area. The most important of the overland trails were the Redbanks Trace, the Yellowbanks Trace, the Salt Trace, the Blue River Trace, the Rome Trace and the Buffalo Trace. The Redbanks Trace ran almost due north from Evansville, the most populated community in Royce Area 49, through Princeton to Vincennes, the trading community founded in the early 1700s by French traders and trappers. These trails and the availability of water routes made travel to trading and market centers relatively easy.

16. Royce Area 49 was surveyed between 1804 and 1807. During the course of the survey, written commentary about the land, including a description of it, was made.

The surveyors' notes indicate that the following percentages of general types of land were found in the tract:

Royce Area 49 - 2,007,000 acres

Bottomland	11.5% (does not include terraces)
Level to Undulating to Rolling Upland	51.7% (includes terraces)
Hilly, Ridges with Level Tops, Streambreaks, Rough, Steep, Broken	32.4%
Marshes, Swamps, Ponds, Bayous	1.9%
Barrens/Prairies	2.5%

An analysis of modern surveys indicates the following percentage of various general types of land, showing substantial agreement with the original surveyors' observations:

Bottomland	19.5% (includes terraces)
Level to Undulating to Rolling Upland	53.9% (includes some moderately low hills)
Hilly, Ridges with Level Tops, Streambreaks, Rough, Steep, Broken	23.3%
Marshes, Swamps, Ponds, Bayous	3.3%
Barrens/Prairies	- (not extensive enough to be mapped as a soil)

A comparison of the percentage statistics derived from the original surveyors' comments and the approximate percentage statistics acquired from the 20th century soil surveys reveal a relatively consistent pattern of land types in Royce Area 49.

The highest and best use of the tract was for agriculture. Nearly three-fourths of the land was well suited for this purpose, while the remaining one-fourth was of marginal quality.

17. The general climate and weather conditions of Royce Area 49, similar to that of the entire Northwest Territory, are characterized by distinct seasons. The winters are relatively severe, and the length of the growing season ranges from 211 days in the southwest part of Royce Area 49 to 170 days in the northwest section of Royce Area 49. The mean annual precipitation ranges from 43.16 inches in the southwestern part of the area to 44.24 inches in the northwestern section of Royce Area 49.

18. Royce Area 49 contained salt, coal, limestone, copper, clay, silver and iron, all of which were of value to the early settlers. While the presence of these minerals constituted an attractive feature to encourage settlement, they had no commercial value at the valuation date. Additionally, the presence of timber in a virgin state provided settlers with materials for building cabins and fencing land. Timber was a readily marketable product because logs could be floated on the nearby rivers. Further, the available timber could be used to build rafts to aid in marketing agricultural products grown by the settlers.

19. At the time of the cession of the subject area, the general economic level of the United States was rising. The general price level for all commodities was at 141 in 1805, one of the highest peacetime levels in history. Although prices had drastically fallen around 1801, the price level began to rise in 1803, and the country experienced prosperity. One way to measure the economy is to study the growth of income. During the period 1800 to 1809, income

rose at the rate of 3.5% per year. Exports, much of which were agricultural products, doubled from 1799 to 1809. The first Bank of the United States was chartered in 1791 with capital of ten million dollars.

20. Pursuant to the Trade and Intercourse Act (2 Stat. 139) and the Greeneville Treaty of 1795 (7 Stat. 49), Indian tribes of the Northwest Territory were permitted to sell their lands only to the United States or subject to the approval of the United States. Further, the United States adopted a policy of selling land directly to settlers. Indian lands were put on the market or otherwise disposed of by the federal government itself pursuant to statutory procedures at a governmentally prescribed price.

Between 1800 and 1820 the minimum price prescribed by statute was \$2.00 per acre payable in four yearly installments. Cash sales were discounted and a cash buyer had to pay \$1.64 per acre. After 1820, public pressure secured a reduction in price to \$1.25 per acre payable in cash.

21. There were many attempts by private companies to dispose of large holdings of land on the frontier during the 1790s. These ventures were unsuccessful because of inadequate capital. The failure of large southern land companies and the general distrust of speculators retarded land speculation in the Northwest Territory.

However, some individual speculators made large amounts of money by purchasing land in the Northwest Territory at government prices and reselling the land to settlers. The speculators were often government officials and not infrequently officials of the land office where they had become familiar with the most desirable lands. Mill sites, town sites, and other areas planned for improvements which were acquired by speculators became immensely valuable.

22. The plaintiffs submitted the reports of two expert witnesses. Dr. John S. Long, Assistant Dean, College of Arts and Sciences, Southern Methodist University, who has a Ph.D. degree in history, prepared a study analyzing the geographical and historical condition of Royce Area 49. Dr. Roger K. Chisholm, Assistant Professor of Managerial Economics at the Graduate School of Management, Northwestern University, prepared a study of the fair market value of Royce Area 49 as of the valuation date. Dr. Chisholm concluded that the fair market value of Royce Area 49 as of the valuation date was between \$4,315,050 and \$4,515,750, or between \$2.15 and \$2.25 per acre.

The defendant introduced the appraisal report of Richard B. Hall, a real estate appraiser possessing over 40 years of experience in the real estate business. Mr. Hall concluded that the fair market value of Royce Area 49 as of the valuation date was \$1,003,500, or approximately \$0.50 per acre.

23. No reliable sales data have been presented to permit an analysis of the market value of Royce Area 49 by comparing land sales

of nearby land. The federal government established a minimum price for land in the Northwest Territory, and this action tended to establish the price for which undeveloped land could be sold. (See Finding of Fact 20, supra.)

The plaintiffs have relied in part on sales of land in the Vincennes area to support their contentions on the value of the subject tract. Vincennes was the trading center for Indiana and had been established by the French in the early 1700's. The sales occurred in a highly developed area and included improved property. Plaintiffs also have relied on sales of land to the Swiss settlers near Vivay for \$2.00 per acre. The Swiss settlers purchased their land from the federal government pursuant to a special act of Congress. The \$2.00 price per acre was on a twelve years' credit at six per cent.

The defendant has presented extremely low sales data. The sales, however, are not comparable because the land sold was in Kentucky and Ohio, some distance from the subject area.

24. Based upon the foregoing findings of fact and the record as a whole, the Indian Claims Commission finds that the fair market value of Royce Area 49 on January 21, 1805, was \$3,010,500.00, or approximately \$1.50 per acre. Accordingly, the respective interests of the Delaware and Piankeshaw Tribes were \$1,505,250.00 each.

25. The consideration provided for the Delaware Tribe's cession, pursuant to the Treaty of August 18, 1804, supra, was as follows:

Article:

Annuity of \$300.00 for 10 years	\$3,000.00
Instructions valued at \$300.00 for 5 years	1,500.00
Horses, cattle, hogs and implements of husbandry	400.00
Goods including payment for horses taken	800.00
Total	<u>\$5,700.00</u>

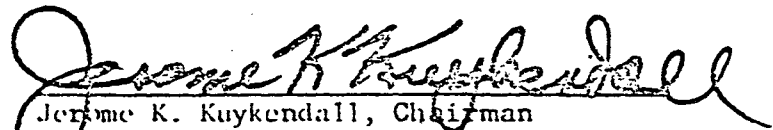
The consideration provided for the Piankeshaw Tribe's cession, pursuant to the Treaty of August 27, 1804, supra, was as follows:

Article 3:

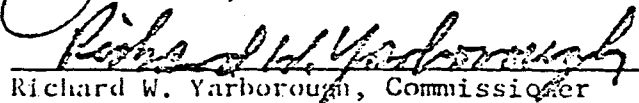
Annuity of \$200.00 for 10 years	\$2,000.00
Goods	<u>700.00</u>
Total	\$2,700.00

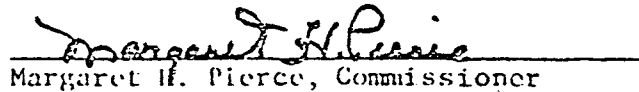
26. Consideration of \$5,700.00 and \$2,700.00 provided for the Delaware and Piankeshaw Tribes for the cessions of their undivided 1/2 interests in lands having a fair market value of \$3,010,500.00 was so grossly inadequate as to be unconscionable within the contemplation of clause 3 of section 2 of the Indian Claims Commission Act.

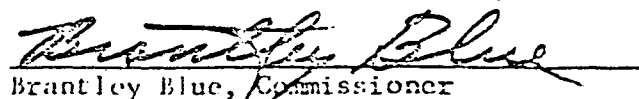
Each of the plaintiffs is entitled to recover \$1,505,250.00, being one-half of the fair market value of the total tract, less the consideration which each respectively received and less gratuitous offsets, if any, which may be allowable under the provisions of section 2 of the Indian Claims Commission Act.


Jerome K. Kuykendall, Chairman


John F. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner