

BEFORE THE INDIAN CLAIMS COMMISSION

THE PONCA TRIBE OF INDIANS OF)	
OKLABOMA, AND WILLIAM OVERLAND,)	
MUTPA COLLINS AND JOHN WILLIAMS,)	
AS REPRESENTATIVES OF THE PONCA)	
TRIBE AND ALL OF THE MEMBERS THEREOF,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 323
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 30, 1970

ADDITIONAL FINDINGS OF FACT

The Commission makes the following Findings of Fact which are supplementary to Findings of Fact numbered 1 to 42, inclusive, previously entered herein and reported at 17 Ind. Cl. Comm. 162 (1966):

43. Geographical Description of the Land. The Ponca Indian Reservation is located in the northeast corner of the present state of Nebraska in the confluence of the Niobrara and Missouri Rivers. The southern and eastern boundary of the Ponca tract is the Niobrara River. The northern boundary follows the Missouri River west from its juncture with the Niobrara River to the division line between Boyd and Knox Counties, then south along the division line to Ponca Creek, then along Ponca Creek to the western boundary of the subject tract which is the division line between Ranges 10 and 11 West. The Ponca Indian Reservation contains 96,000 acres, including the islands in the Niobrara River.

44. Topography. The subject tract consists generally of high flat plains and uplands, and to a lesser degree alluvial bottom lands. The uplands, which are more rolling and rough particularly in the western part of the subject tract, slope gently to the north and east, causing the drainage from the streams and creeks to flow into the Niobrara and Missouri Rivers. The alluvial plains border on the Niobrara River, the Missouri River, and the branches of the larger creeks and streams, and are separated from the uplands by bluffs and terraces.

The streams in the subject area have steep gradients and are actively deepening their channels. That portion of the Niobrara River which borders the subject area is shallow, swift flowing, and contains large areas of quicksand. It is difficult to ford. The islands in the Niobrara River are low, flat and subject to inundation.

45. Climate. The climate in the subject tract is typical of northeastern Nebraska and suitable for grain growing and livestock production. The average annual precipitation is 22 to 24 inches in the immediate area of the subject tract. [Three-fourths of this falls during the period of April through September.] Rain is usually more plentiful during the early summer. Short dry spells are experienced from late July to the end of summer and at times drought conditions prevail.

Temperatures average 20° to 22° above zero in the winter and in the low 70's during the summer. There are normally 30 to 60 days during the summer when the temperature is 90° or above.

The growing season averages 150 days.

46. Soils and Vegetation. The prevailing soils in the Ponca Indian Reservation are generally classified as the Moody-Boyd series, a classification of soil generally associated with and related to general farming, and the raising of corn, spring small grains, and beef cattle. The shale and clay subsurface materials that are found in the subject tract are nearly impervious to water and generally unsuitable for farming. In areas where sandy loam soils predominate, a larger percentage of the land can be cultivated. Good well water is obtainable in the uplands, at depths of from 50 to 150 feet.

Percentage wise, the reservation lands are made up of the following types:

Bottom and terrace land	20.2%
Level and undulating rolling upland	30.7%
Rolling to hilly upland	32.7%
Rough, broken and hilly upland	16.4%
	<u>100.0%</u>

In 1877 there were large expanses of grass cover throughout the subject area.

An examination of the many recorded observations and statements of the surveyors who began to tract the Ponca Indian Reservation as

early as 1858, indicate that the reservation consisted roughly of 60% "first" and "second" rate soil suitable for cropland and 40% "third" and "fourth" rate soil suitable for raising hay or grazing.

Timber stands were generally found in narrow strips along the streams in the larger valleys, and on the slopes of the bluffs that border the bottom land. Ash, box elder, burr oak, cottonwood, and willow were the more common species of timber that grew in the subject area. The timber stands in the reservation area had no significant commercial value in 1877, but were used by individual settlers for local building purposes, for fence posts and for fuel.

47. Minerals. In 1877, there were no known mineral deposits of commercial value in the subject area.

48. Settlement and Population. The first permanent settlement in northeast Nebraska, and the one nearest the subject tract, was established in 1856 at Niobrara at the junction of the Missouri and Niobrara Rivers. By 1857 there were at least 60 people living in and around the village area. Later settlements were established principally in the valleys of the Missouri River and Verdigris Creek, south and east of the subject tract. The communities were essentially rural. Settlement of the rugged hilly areas was retarded somewhat by the lack of water.

The settling of Boyd County lagged behind Knox County. The first settlements west of the subject tract were established along the Keya Paha River about 1880. Before this date, the entire area, including that part of the Ponca tract located within Boyd County, was inhabited mostly by trappers and hunters.

Across the Missouri River and about twenty miles upstream from the Ponca Indian Reservation was the village of Yankton, later to become the Dakota territorial capital. The population of Yankton grew from 2,097 in 1870 to 8,390 in 1880. In 1877 it was the largest town nearest to the Ponca tract.

The population of Nebraska in 1877 was heavily concentrated in the east and southeast. The 1870 census figures show 122,000 people living in Nebraska. By 1880 the population exceeded 452,000.

After crossing the Missouri River, normally at Omaha, the population movement in Nebraska generally followed the railroad lines into the farming regions of the eastern, central and southern parts of the state. For the most part, new settlement was slow to the north and west where the land became progressively more arid and rough.

Knox County, which contains approximately two-thirds of the subject tract, realized its greatest population growth percentage wise in the decade from 1870 to 1880, increasing from 261 to 3,666 inhabitants. During this same period Omaha, Nebraska, south of the subject tract, increased from 16,083 to 30,518 persons.

49. Transportation. The Missouri River has always afforded access to the eastern part of the Ponca Indian Reservation. In the early days of white settlement steamboats plied the Missouri River principally between the railroad terminal at St. Louis, Missouri and Sioux City, Iowa, a major market for surplus farm products. As railroad lines were extended into the northern Missouri River valley in the 1860's and 1870's, the centers of river transportation moved northward. For the most part Missouri River travel above Sioux City, Iowa, was governed by seasonal weather limitations and navigational problems. Riverboats experienced some difficulties in reaching the villages, Niobrara and Yankton; only under favorable conditions could boats of lighter draft navigate the Missouri River as far as the Montana mining fields. River traffic on the Missouri River never attained the proportions of that reached on the Ohio and Mississippi Rivers; due to inherent navigational hazards, the rather exorbitant

freight rates, and the strong competition from the emerging railroads.

The 1860's and early 1870's were periods of westward expansion for railroads. By 1869 the Union Pacific had completed a line that began at Sioux City, Iowa, extended westward across the entire state of Nebraska below the subject tract, and terminated at Ogden, Utah. By 1873 the first railroad near the Ponca Indian Reservation had been completed from Sioux City, Iowa, to Yankton. After 1873 there was a marked decline in new railroad construction because of adverse economic conditions throughout the country. Many railroads fell into bankruptcy in the late 1870's.

Prior to 1877 wagon roads led northward from the Platte River area but provided no direct access into the Ponca Indian Reservation. By December of 1857 a road had been constructed northward from the Platte River via the Omaha Reservation to the Niobrara River. An extension of this road was completed in 1866. This extension traversed the south bank of the Niobrara River, passing just below the subject tract, and eventually terminated at Virginia City, Montana.

50. Highest and Best Use. As early as 1859 cattlemen were grazing their herds on the open ranges of Nebraska. By the 1870's cattle herds were being quartered in Holt County just south of the Ponca Indian Reservation. The Cook and Tower Ranch had been established on Bone Creek near Ainsworth, west of the subject tract. Other ranches that were founded in the reservation area include the

Tunken Ranch in 1877 in Boyd County west of the subject tract, the Livingstone Ranch in 1878 in Keya Paha County west of the subject tract, and the Brinkerhoff Ranch in 1879 northeast of the Cooke and Tower Ranch.

In addition to the local cattle ranches, many herds were driven through the reservation area on their way further north and west. The cattle industry soon moved further north and west, but it had already determined the early economy of Nebraska.

The pioneer settlers in Nebraska soon found it economically expedient to adjust their agricultural efforts to support of the cattle industry. There developed "feeder farms" for growing crops to be used in fattening cattle for market. This resulted in a demand for tracts of land having the right combination of grazing and crop land. The lands in northeastern Nebraska were ideally suited for a cattle based agricultural economy.

The Commission finds from the evidence that in 1877 the highest and best use for the Ponca Indian Reservation was cattle grazing and the growing of feeder crops.

51. Economic Conditions. In the late 1860's and early 1870's, the United States experienced a post Civil War "boom" that was generated in part by (a) the extraordinary growth in railroad construction which helped open up western lands to new settlement; (b) federal policy making land free under the 1862 Homestead Act (12 Stat 392), and similar legislation; and (c) the rapid expansion of bank

credit to finance new business and industry. It was these ingredients, coupled with speculative excesses and a change in the government's fiscal policy to aim at contracting currency, that precipitated the 1873 depression and financial crisis, signaled by the failure of Jay Cooke & Company, the leading American banking house.

Ready cash soon became scarce, not only to the eastern banker, but to the frontier settler in Dakota and Nebraska where money was always in short supply. The shortage of cash in Nebraska is evidenced by the fact that preemption and homestead cash commutations declined from 600,000 acres in 1870 to 7,544 acres in 1877, and original homestead entries from 6,189 representing some 760,000 acres in 1873 to 1,345 entries for 160,000 acres in 1877.

Farm prices also declined during this period along with the production of food and feed crops, and the widespread grasshopper infestations of 1873, 1874 and 1876 only added to the economic hardships of the Nebraska settler.

52. Land Sales. There were no land sales in the Ponca Indian Reservation in 1877 since it was still Indian country. However, white settlement had reached the boundaries of the subject tract and there were some contemporary private land sales in the immediate vicinity. There is in evidence data covering 21 private land sales on the south side of the Niobrara River that were taken off the deed records in Holt and Knox counties which shows that, between January 7, 1875 and August 27, 1890, some 1,788.39 acres were sold at an average per acre price of \$4.02.

These transactions include the sales of tracts ranging in size from 10 acres at \$14.00 per acre to 163 acres at \$.92 per acre. The record does not show whether improved property was involved in any of the sales. Some of the transactions included lot sales, tracts near towns, and sales of oddly shaped parcels that reflected a unique value and were not representative of the average land purchase.

This was also a period of intensive sales activity on the part of the railroads in disposing of their right of way lands. Between 1850 and 1880, the United States had granted the railroads over 6 million acres of Nebraska land to assist them in new railroad construction. Between 1869 and 1880 the Union Pacific Railroad sold over 1.7 million net acres of land at average price of \$4.46 per acre. The lands were usually sold on credit, the terms being one quarter down and the balance in three equal installments at 6% interest which was one-half the legal rate in Nebraska. During this same period the Burlington Railroad sold about 1.8 million net acres of land at an average price of \$5.47 per acre. The Burlington sold its lands on a ten year credit plan with interest at either 6% or 10% on the first two years.

53. Appraisals. Dr. John S. Long, Associate Professor of History and Assistant Dean of the School of Humanities and Science at Southern Methodist University and Dr. Roger K. Chisholm, Assistant Professor of Managerial Economics at Northwestern University, testified as expert witnesses for the plaintiff.

Dr. Long confined his testimony principally to the soil and climate conditions of the subject tract. He gave no opinion on the 1877 fair market value of Ponca Indian Reservation. Dr. Chisholm reviewed and

analyzed the national and local economic conditions and certain market sales data in arriving at his determination of the 1877 fair market value of the subject tract. In the final analysis, Dr. Chickohn's opinion that in 1877 the Ponca Indian Reservation was worth \$4.90 to \$5.00 per acre for that portion lying in Knox County and \$3.40 to \$3.50 per acre for that part lying in Boyd County, is based almost exclusively on the record of the 21 private land sales recorded in Knox and Holt counties in the period 1875-1880 (Finding No. 51, supra). Plaintiffs' conclusion that the Ponca lands were worth \$4.02 in 1877 is predicated on these same private land sales.

Mr. Richard B. Hall, a real estate consultant and appraiser, testified as an expert witness for the defendant. He submitted an appraisal report incorporating his findings as to the topography, soils and the climate of the subject area, as well as his analysis of other value factors, such as location, national and local economic conditions, population growth, transportation facilities and alike. Mr. Hall concluded that the 1877 fair market value of the Ponca Indian Reservation was \$38,400 or \$.40 per acre.

54. Value. Based upon all the foregoing findings of fact and all the evidence of record the Commission finds and concludes that, as of March 16, 1877, the 96,000 acre Ponca Indian Reservation had a fair market value of \$211,200 or \$2.20 per acre.

55. Conclusion. As a result of the uncovers and taking of the Ponca Indian Reservation on March 16, 1877, the plaintiff is entitled to recover as "just compensation" from the defendant the sum of \$211,200 less any

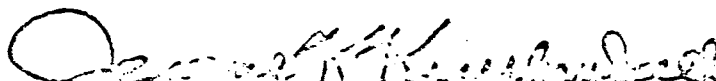
payments on the claim plus a reasonable rate of interest from the date of taking.

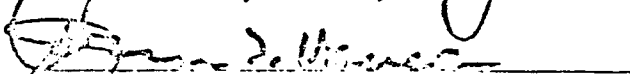
By the Act of March 3, 1881 (21 Stat. 414, 422), Congress sought ". . . to indemnify the Ponca Tribe of Indians for losses sustained by them in consequence of their removal to the Indian Territory . . ." Under the Act, \$50,000 was appropriated for the purchase of 101,894 acres of land in the Indian territory, ". . . where most of these Indians are now located . . ." Thereafter, by an indenture dated June 14, 1883, 101,894.31 acres were acquired by the defendant from the Cherokee Nation for the use and benefit of the plaintiff tribe for which the sum of \$48,389.46 was actually paid from the amount appropriated under the 1881 Act.

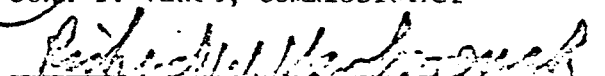
The defendant is therefore entitled to set off the sum of \$48,389.46 as a payment on the claim. However, in setting off the \$48,389.46 "payment on the claim", as of June 14, 1883, interest at 5% had accrued for 6 years, 2 months, and 28 days on the 1377 fair market value of the Ponca Indian Reservation. The \$48,389.46 was sufficient payment on principal and accrued interest to retire only \$36,872.94 of the principal sum of \$211,200, leaving a balance of \$174,327.06 to draw interest at 5% until this balance is paid.

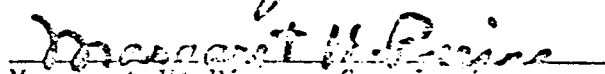
The award in this case, calculated from March 16, 1877 to December 15, 1970, inclusive, is \$991,514.96, plus an additional amount measured by interest at 5% on the principal sum of \$174,327.06 until the date of payment of said principal sum.

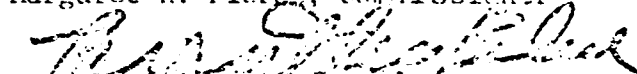
The Department of Justice, by letter dated December 10, 1970, has advised the Commission that all gratuitous offsets against the plaintiff tribe have been presented in Docket No. 322 now pending. Accordingly, the judgment rendered herein is a final award.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yaibough, Commissioner


Margaret H. Picco, Commissioner


Brantley Blue, Commissioner