

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF INDIANS)	
OF OKLAHOMA, ET AL.,)	
)	
Plaintiffs,)	
)	Docket No. 83
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 16, 1971

Appearances:

Lawrence C. Mills of Mills & Garrett,
Attorney for the Sac and Fox Tribe of
the Mississippi in Iowa.

George B. Pletsch, Attorney for the
Sac and Fox Tribe of Indians of Oklahoma.
Aaron J. Kramer and Guenther M. Philipp
of Schiff, Hardin, Waite, Dorschel &
Britton were on the briefs.

Stanford Clinton, Attorney for the Sac
and Fox Tribe of Missouri. Louis L.
Rochmes was on the briefs.

David M. Marshall with whom was Mr. Assistant
Attorney General Shiro Kashiwa, Attorneys
for the Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

This suit was brought under Clause 3 of Section 2 of the Indian Claims Commission Act of 1946, 60 Stat. 1049, 1050, to recover additional compensation for approximately 15 million acres of land located in Illinois, Wisconsin and Missouri. The entire claimed tract

is collectively designated as Cession 50 on Royce's maps of Illinois (plate I), Wisconsin (plate II), and Missouri (plate I), in the 18th Annual Report of the Bureau of American Ethnology, Part II.

After overruling a defense based on forfeiture and conquest (3 Ind. Cl. Comm. 395 (1954)), this Commission determined that the plaintiffs had aboriginal title to "those areas contained within" boundaries set out with particularity in Finding No. 21. Sac and Fox Tribe of Indians v. The United States, 7 Ind Cl. Comm. 675 (1959), aff'd, 161 Ct. Cl. 189, 315 F.2d 896 (1963), cert. denied, 375 U.S. 921 (1964).

This Commission is now deciding two issues. The first involves the proper manner in which to measure the northern boundary of the awarded lands. On this point, the Commission agrees with the plaintiffs. The second is whether all confirmed foreign land grants must be excluded from the computations of acreage to be valued. On this point, the Commission agrees with the defendant.

A trial on the issue of value was conducted intermittently during June and July of 1968. In the course of that trial, it became apparent that the parties were not considering identical lands in the west-of-the-Mississippi portion of the award (Finding No. 21(b)), and that the defendant's valuation expert, Mr. Kuehnle, had deducted thousands of acres of foreign land grants and had excluded thousands of acres by his placement of the northern, western, and southern boundaries of the Finding No. 21(b) tract in Missouri.

In view of the substantial variations between the parties' concepts of what lands are to be valued, this Commission, on May 16, 1968, entered an order that ". . . evidence concerning the amount of acreage to be excluded under confirmed Spanish and French land grants shall be presented to this Commission at a future hearing to be set for that purpose." 19 Ind. Cl. Comm. 159. Another order entered on June 4, 1969, formalized the issue of the location of the westernmost point of the northern boundary of the Finding 21(b) award. Establishment of the extent of the northern boundary will help determine the western and southern boundaries. Finally, in an order, filed on October 24, 1969, the Commission postponed consideration of the plaintiffs' motion for judgment on the defendant's motion to exclude confirmed foreign land grants. These are the motions now under consideration.

The description from which the boundaries are derived are two. One is of Royce Area 50 as described in Article 2 of the Sac and Fox cession treaty dated November 3, 1804, 7 Stat. 84. The other is that of Finding 21(b).

The pertinent part of Article 2 is:

* * * Beginning at a point on the Missouri river opposite to the mouth of the Gasconade river, thence in a direct course so as to strike the river Jeffreon at the distance of thirty miles from its mouth, and down the said Jeffreon to the Mississippi * * *.

Finding 21(b) reads:

All lands within the cession north of a line commencing at the mouth of the Cuivre River; thence west to a point where the western boundary line of Cession 50 intersects the Callaway-Montgomery County line.

The defendant contends that since the northern boundary is the Jeffreon River, and since the boundary necessarily follows the meanders of that River, the point at which a direct course opposite the mouth of the Gasconade (located on a modern map at the town of Gasconade, Missouri) would strike the River Jeffreon could be located only by measuring 30 miles up the River Jeffreon by its meanders. All of the defendant's acreage concepts and computations are based on this approach. On the other hand, the plaintiffs draw a distinction between the Jeffreon as a boundary, in which case the meanders are followed, and the Jeffreon as a call point, in which case the plaintiffs ignore the meanders and compute the 30 miles in a straight line from the mouth of the Jeffreon (now known as the North River, which empties into the Mississippi River near Mark, Missouri).

The defendant regards it as of some significance that elsewhere in the treaty there is mention of a point ". . . which shall be 36 miles in a direct line from the mouth of said river" (emphasis supplied). The Commission regards the variance in language between "a direct course" and "in a direct line" as insignificant respecting whether the point on the Jeffreon River 30 miles from its mouth is to be measured with the meanders.

The defendant has cited a number of decisions in which the court measured a line on a river with the meanders (e.g., Brown v. Huger, 62 U.S. 305 (1859)), and concluded that the rule is that the distance from the mouth of a river to a point on that river is measured by the meanders. Examination of those cases disclosed that the applied rules

were limited to the facts of the particular case being considered. The object of all rules for the establishment of boundaries is to ascertain the actual location of the boundary as made at the time. Kelsay v. Koger, 231 Ky. 294, 35 S.W. 2d 301 (1931). If the surveyor projected the lines on the ground, the boundary is to be located where the surveyor ran it. Moore v. Campbell, 254 S.W. 2d 1018 (Tex. Cir. App. 1953). Grants of the government for lands bounded on streams and other waters, without reservation or restriction of terms, are to be construed as to their effect according to the law of the state in which the land lies. Whitaker v. McBride, 197 U.S. 510 (1905). Under Missouri law, an unmarked line is not a natural or artificial monument and does not, when called for in a deed, overcome a call for distance. Dolphin v. Klann, 246 Mo. 477, 151 S.W. 956 (1912), and cases there cited. Where a boundary line is described by measurement, it will govern if there be no monuments by which to test its accuracy, although the distance be described as so many miles more or less. Adkins v. Quest, 79 Mo. App. 36 (1899). In the case at bar, it is apparent that the point on "the river Jeffreon at the distance of thirty miles from its mouth" is a point projected on a map and not a point ascertained physically by a surveyor and marked with a monument prior to drafting terms of the treaty. It follows that the call for distance is controlling, and that the point on the Jeffreon River is to be located by measuring on a map 30 miles in a straight line in a westerly direction so as to strike the Jeffreon [North] River at the

end of that line. Such a line will strike the Jeffreon River in Shelby County, Missouri, in Section 10, Township 58 North, Range 10 West (as depicted on plaintiff's exhibit 569), and that point is the northwest corner of the Finding 21(b) awarded lands. Since the northern boundary of the awarded lands is described in the treaty with the words ". . . and down the said Jeffreon to the Mississippi", that river constitutes the northern boundary.

The same Article 2 of the treaty directs that the western boundary of the Finding 21(b) awarded lands begin "at a point on the Missouri river opposite to the mouth of the Gasconade river; thence in a direct course so as to strike the river Jeffreon at the distance of thirty miles from its mouth . . ." The latter point is established; the beginning point for the western boundary may be located on a modern map at the town of Gasconade, Missouri, in Gasconade County.

The eastern boundary of the Finding 21(b) awarded lands is the Mississippi River. The southern boundary is described in Finding 21(b) as ". . . a line commencing at the mouth of the Cuivre River; thence west to a point where the western boundary line of Cession 50 intersects the Callaway-Montgomery County line." That intersection occurs well to the north of Gasconade, approximately four miles west of the present town of Mineola, Missouri, in Montgomery County, at Section 36, Township 48 North, Range 7 West (as depicted on plaintiffs' exhibit 569).

Thus, the Finding 21(b) awarded lands may be described as beginning at the mouth of the Cuivre River where it joins the Mississippi

River; thence westerly in a straight line to a point on the Montgomery-Callaway County line at Section 36, Township 48 North, Range 7 West just west of Mineola, Missouri; thence northerly in a straight line to a point on the Jeffreon River in Shelby County, Missouri, at Section 10, Township 58 North, Range 10 West; thence down the Jeffreon River to the Mississippi River; thence down the Mississippi River to the point of beginning. These lines together enclose a gross area of 1,850,000 acres.

The acreage to be deducted from the 1,850,000 acres enclosed by the lines found and described above is the aggregate of confirmed foreign land grants, Spanish and French. The defendant contends that there were 109 confirmed grants aggregating 211,275.61 acres. The plaintiffs concede no more than nine such grants aggregating 4,165.50 acres, and even respecting those the plaintiffs' legal argument would preclude exclusion.

Basically, the parties' legal theories are not the affirmative and rebuttal aspects of the same contentions. Rather, the plaintiffs contend that confirmed grants should be excluded only to the extent that they extinguished the plaintiffs' rights in the same land and in so doing conformed to the earliest Congressional enactments respecting land grant claims, while the defendant argues that it should not have to compensate the plaintiffs for land which, being in confirmed private land grants, was never a part of the public domain.

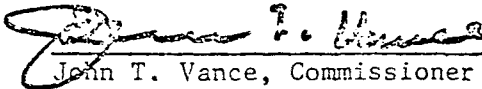
Between 1805 and 1874, Congress passed a number of acts relating to private land grant claims. Each was more liberal than its predecessors and each, excepting the first, was intended to promote confirmation of claims rather than to result in their rejection. However, regardless of the trend toward liberalization of confirmation, each time Congress acted on the topic of confirming foreign land grants, it did so to honor the commitment of the United States contained in the third Article of the Louisiana Purchase treaty of April 30, 1803, 8 Stat. 200, which guaranteed that the inhabitants of the ceded territory would be protected in the free enjoyment of their property. Antoine Soulard's Heirs v. United States, 29 U.S. 511 (1830); Antoine Soulard's Heirs v. United States, 35 U.S. 100 (1836). In considering the nature of the property protected under the treaty, the courts have drawn no distinction between foreign land grants which were perfected under foreign law by the date of the treaty and those which had their inception under foreign law but could be confirmed only after United States sovereignty to the ceded territory had attached. Strother v. Lucas, 37 U.S. 410 (1838). Further, in the view of the courts no significance or infirmity attached by reason of the fact that a foreign land grant claim was rejected by the first Board of Land Commissioners under then strict criteria and was later confirmed by the second Board of Land Commissioners under much more liberal criteria. Massey v. Papin, 65 U.S. 362 (1861). Contrary to the plaintiffs' contentions, the confirmations consummated by successors to the first


Board of Land Commissioners were not invalid merely because those successors were operating under a more liberal Congressional policy. id.

Confirmed foreign land grants to private individuals must be excluded from any computation of acreage for which compensation may be awarded. This is so because upon imposition of a foreign land grant subsequently confirmed by the United States' Board of Land Commissioners, "Indian title" to the same land became null. Pueblo de Cochiti v. United States. 7 Ind. Cl. Comm. 422 (1959). Whether the foreign sovereigns acted lawfully in conferring grants, and whether the first Board of Land Commissioners and its successors were correct in confirming the 109 grants claimed for exclusion, are issues outside of this Commission's jurisdiction (id., at 453).

The supplementary findings of fact this date entered in the case at bar are consistent with the foregoing discussions. This case will now proceed to a determination of the fair market value of the net acreage, that is, 1,638,724.39 acres (1,850,000.00 less 211,275.61). Each of the parties shall have thirty days to modify its position on value to conform to the determinations herein respecting boundaries and excluded foreign land grants.

We Concur:


John T. Vance, Commissioner


Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner