

BEFORE THE INDIAN CLAIMS COMMISSION

THE THREE AFFILIATED TRIBES OF THE)	
FORT BERTHOLD RESERVATION, ET AL.,)	
)	
Plaintiff,)	Docket No. 350-F
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 2, 1972

SUPPLEMENTAL FINDINGS OF FACT

This case is now before the Commission upon remand from the United States Court of Claims. On February 16, 1968, the determination of the Commission (16 Ind. Cl. Comm. 341) was affirmed in part, reversed or vacated in part, and remanded for further proceedings in certain specific matters. (182 Ct. Cl. 543.) In compliance with the court's mandate, further hearings were held on December 8 and 9, 1969.

The following findings of fact are, therefore, supplemental to the findings of fact numbered 1 through 29 heretofore entered in the case at bar (16 Ind. Cl. Comm. 341 (1965)), as otherwise amended or vacated this date by appropriate order in accordance with the opinion of the Court of Claims.

30. Size of Subject Lands. The lands under consideration are those which were subject to sale and disposal under the provisions of the Act of June 1, 1910, 36 Stat. 455, and include 326,540 acres of land sold to homesteaders and 29,482 acres of school lands granted to the State of North Dakota. Two small tracts of 160 acres (St. Edward Mission) and 253 acres (Verendrye National Monument) were also taken for public purposes under separate governmental action.^{1/} The total acreage subject to appraisal and valuation is 356,435 acres.

31. Location. The subject lands, including Royce Area 716, are located north and east of the Missouri River in Townships 147 through 152 North, Ranges 87 through 93 West, in North Dakota. These lands are situated in the southern portion of Mountrail, the northwesterly corner of McLean and a small strip of the southwesterly corner of Ward Counties, North Dakota. These counties, as they now exist, were established prior to 1911.

32. Valuation Dates. The valuation dates for the subject homestead and school lands are as follows:

^{1/} A claim for a third reserve, the 490 acre Shell Creek Reservoir tract, considered by the Court of Claims, has been withdrawn by plaintiff.

(a) Homestead Lands: The average date of entry for each of the four separate blocks in which they were opened, namely:

Block 1 - October 1912 - 208,715 acres

Block 2 - June 1916 - 105,501 acres

Block 3 - January 1917 - 3,438 acres

Block 4 - May 1917 - 8,886 acres

(b) School Lands:

Place Lands - September 29, 1911 - 12,023 acres

Lieu Lands - April 4, 1912 - 17,459 acres

(c) With respect to the small reserves, the Commission previously determined that the valuation date for the Verendrye National Monument lands is June 29, 1917 (Finding No. 28(d)). For the St. Edward Mission lands, the valuation date is September 16, 1916, the date on which the United States issued a patent in fee simple to the Bureau of Catholic Indian Missions.

33. Soils and Climate. The parties are in substantial agreement as to the landforms, topography, soils and climate of the subject area. The topography of the area is generally that of the characteristic smooth prairie cut by the Missouri River, and contains almost all productive agricultural lands. The average frost-free growing season (120 to 130 days), and the mean average rainfall and its general distribution are considered ample for the specialized agricultural demands of the

subject area. In short, the soils, rainfall and climate in the subject area are generally favorable for the raising of grasses and small grains, especially wheat.

34. Historical Background. There were few settlers in this area in the early 1800's. Substantial migrations across the Dakotas followed the gold discoveries of 1849 in California and of 1860 in Montana. The creation of the Dakota Territory occurred thereafter in 1861. Although some retardation of the western population movements occurred as a result of the Civil War, most of the eastern Dakotas along the Red River had already been settled by 1870.

After the gold rush to the Black Hills in 1875, 1876, and 1877, the Dakotas began to attract farmers and other permanent settlers. From 1878 to 1890, the population in North Dakota alone increased from 16,000 to 191,000. North Dakota entered the Union in 1889. By 1910, the population of that state had reached 577,000.

35. General Economic History of Region. The economic history of North Dakota was essentially the history of the development of wheat farming and railroad construction, both of which influenced the pattern of settlement in the area. The railroads expanded rapidly into the wheat lands of the prairie states keeping pace with practically every new opening to cultivation. From 1898 to 1915, railroad mileage in North Dakota almost doubled, increasing from 2,662 to 5,226 miles and making that state first in the United States with respect to the ratio of railroad

mileage to population. In the same period, acreage planted to wheat doubled from 4.3 million to 9.3 million acres, with production rising from 69 million bushels to 159 million bushels. Wheat accounted for over 60 percent of the value of all farm crops and livestock in North Dakota.

By 1912 there already existed adequate railroad service within practical reach of the subject area at Plaza in Mountrail County. The Soo Line (Minneapolis, St. Paul, and Sault Ste. Marie Railway Co.) operated a branch line to Plaza from their main line at Drake, a distance of some 83 miles. By 1916, a railroad had been extended within subject area to the Missouri River, across the north side of the Fort Berthold Reservation. These rail lines enabled farmers to move their wheat and other crops to the markets, the Mountrail areas being within 7 miles of the railroad, and the McLean County areas within about 25 miles. These distances in 1912 were considered highly practical, making the hauling factor an important contributor in land values in the subject area.

36. Agricultural Significance of Region. About 1878 the first agricultural land boom began in the Dakotas. With flour milling centered in Minneapolis, a city with comparatively good railroad connections, wheat farming became established in the Dakotas at an early date after the 1878 land boom. The second and most important agricultural land boom in North Dakota commenced around 1898. Settlement and population patterns in North Dakota were typical of land booms elsewhere with the usual priorities given to soil quality, accessibility, water, and established

settlements. Between 1898 and 1915, some 250,000 settlers entered the state. The largest population increases occurred in the Missouri Plateau region in the counties adjacent to the subject area east and north of the Missouri River where the lands were particularly desired for their productivity. This general area increased over 250 percent in population between 1900 and 1910. The land boom of this period was partially stimulated by the rise in prices of agricultural products and in the price of farm lands themselves. By the end of 1898, farmers had taken up the larger part of the railroad lands east of the Missouri River. Many of the early land purchasers were speculators or non-farmers who eventually sold out to larger and more successful farmers. The years after 1898 were generally good ones for the American farmer because of the rapid growth in the population of the nation, the demand for farm produce, and the resultant disappearance of farm surpluses. Between 1910 and 1920, the most rapid conversion in North Dakota of raw land into farms occurred in the western part of the state in the vicinity of the subject area.

37. Land Uses in Subject Area. Before settlement, North Dakota was probably 95 percent grass lands. In the western portion of the state, the prairie grasses were considered drought resistant, and the soils in which these grasses flourished were well suited to small grains. North Dakota, as a result, became basically a one-crop state, devoting the highest percentage of farm lands to wheat. Overall, there was a considerable similarity in the quality and class of lands in the subject area (which, with relatively stable climatic conditions, result in a comparatively

constant cropping pattern, at least since 1910). On the basis of all the evidence of record, the Commission finds that approximately 90 percent of the subject lands had a highest and best use for agricultural purposes on the respective dates of valuation, while the remaining area had a highest and best use for grazing.

38. Classification of Subject Lands. The 90 percent of the subject lands having the highest and best use for agriculture were classified by both parties into two principal groups as of the valuation dates. Prosperous crop lands having a comparatively high wheat yield per acre were classified as Class I Agricultural, and lands of a somewhat lesser yield were classified Class II Agricultural. Those lands having inadequate top soil or which were too rough for cultivation were classified as Class III Grazing. One apparent difference in the conclusions reached by the parties in suit rests in the total acreage allocated to one or the other classes of lands. Mr. Mont Saunderson, plaintiff's appraiser, classified the subject lands on the basis of soil survey maps, aerial photographs, and personal field observations. Mr. Saunderson's methods produced the following results for homestead lands only:

Class I:	235,800 acres
Class II:	47,950 acres
Class III:	39,800 acres
Other:	2,308 acres

Mr. Saunderson supports his approach to land classification on the grounds that (1) there was no certainty as to the criteria used by the original 1910 appraisal commission; (2) he preferred an independent appraisal; (3) the 1910 commission did not value all of the subject lands so that a part would still require an independent appraisal; and (4) the comparable sales used in the valuation process had to be classified in the same manner as lands within the subject tract.

Mr. Harry Fenton, appraiser for the defendant, on the other hand, utilized, in effect, the classifications adopted by the 1910 appraisal commission and arrived at the following results for the homestead lands:

Class I:	194,749.34 acres
Class II:	100,589.89 acres
Class III:	30,567.28 acres

On the record we find that defendant's land classifications more reasonably reflect the quality of subject lands as of the respective valuation dates in both the homestead and school land groupings.

39. Methodology of Appraisal of Subject Lands. Conventional market data appraisal procedures have been used by both parties to determine the fair market value of the subject lands as of the valuation dates. Both parties abstracted the deed records of adjoining Mountrail, McLean and Ward Counties for sales that took place in and near the subject area during the 1910-1920 period. The comparable sales data utilized by the defendant involved approximately 1,421 sales and those used by the plaintiff totalled 341 sales. The area encompassed by the comparable

sales contained very little grazing lands so that the bulk of the sales fell into the Class I and Class II land groupings. Basically each expert computed from sales the average price per acre of farms for each of the three land classifications. The number of acres determined in each class of the subject lands was multiplied by the average sales index price per acre determined for each class. Mr. Saunderson found his averages on the basis of yearly valuations of the subject lands rather than by groupings in average dates for each of the four different land offerings in the case of the homestead lands. Although both experts reach substantially the same over-all result in terms of prices from their sales data, whether using a yearly or a four date method, we find, nevertheless, that Mr. Fenton's method was approved on appeal and the Commission accordingly adopts that method.

40. Plaintiff's Sales Index for Homestead Lands. Plaintiff's ultimate index values for improved lands between 1910 and 1920 in the three land classes ranged as follows:

Class I:	\$20.00 to \$31.25 per acre
Class II:	\$15.60 to \$25.00 per acre
Class III:	\$ 3.50 to \$ 5.00 per acre

The above values are unadjusted values (prior to discount for improvements and land subjugation). For a small residue of homestead lands approximating 2,300 acres, Mr. Saunderson's valuation is based on an average-quality, average-price basis adjusted to a U.S. Department of Agriculture index of North Dakota farm land values. We find, however, that said lands should

be valued according to their appropriate land classification and at the valuation dates previously determined. For all the homestead lands, plaintiff arrives at a total unadjusted sales index of approximately \$6,240,000.00.

41. Defendant's Sales Index for Homestead Lands. Defendant's index values of the subject homestead lands in the three land classifications and as of the four valuation dates ranged as follows:

Class I:	\$18.00 to \$21.50 per acre
Class II:	\$14.50 to \$20.00 per acre
Class III:	\$13.00 to \$16.00 per acre

The above values are all unadjusted gross values (before discount for improvements and land subjugation). Defendant's total unadjusted value for all the homestead lands in each of the three land classes and on the four valuation dates is approximately \$6,000,000.00.

42. Application of Discount Factors (Homestead Lands). While the parties sharply disagree as to the amount, both agree that the comparable sales index figures must necessarily be reduced or adjusted downward to eliminate the element of improvements and land subjugation costs involved in the comparable sales used. Both parties limit the application of the discount factor to their estimated costs of improvements and land subjugation, since the tracts used are comparable in size, remoteness and accessibility.

