

## BEFORE THE INDIAN CLAIMS COMMISSION

SENECA-CAYUGA TRIBE OF OKLAHOMA	)	
AND PETER BUCK, STEWART JAMISON,	)	
RUBY CHARLOE, DAVID CHARLOE AND	)	
LEWIS WHITEWING, MEMBERS AND	)	
REPRESENTATIVES THEREOF,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket Nos. 341-A and 341-B
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: April 4, 1974

ADDITIONAL FINDINGS OF FACT

This phase of these claims is concerned with the fair market value of lands in Ohio, subjects of the Treaty of February 28, 1831, 7 Stat. 348, and the Treaty of July 20, 1831, 7 Stat. 351; and the damages, if any, sustained by plaintiffs as a result of defendant's breach of said treaties. In our previous findings 1 through 13, entered on December 29, 1971, we set forth the terms of these treaties, the extent of the defendant's breach, and other matters relating to the subject lands. 26 Ind. Cl. Comm. 625, 635. Additional findings numbered 14 through 24 were entered on December 7, 1972, on the accounting phase of these claims. 29 Ind. Cl. Comm. 262, 275. The following findings of fact are in addition thereto.

25. Location of Tracts

(a) The lands under consideration are those described in finding number 2 previously entered herein, and subject to sale and disposal under the provisions of the Treaty of February 28, 1831. 7 Stat. 348, in



the case of Docket 341-A, and the Treaty of July 20, 1831, 7 Stat. 351, in the case of Docket No. 341-B. Docket 341-A concerns Royce Area 163, also designated the Sandusky Reservation. Docket 341-B concerns Royce Area 164, designated the Lewistown Reservation.

(b) Both tracts are situated in northwesterly Ohio. Royce Area 163 is located on the east side of the Sandusky River about 85 miles due north of Columbus, Ohio, and 20 miles from the Lake Erie shore. Approximately four-fifths of this tract is located in Seneca County, with the remainder in southern Sandusky County. Royce Area 164 is located on the headwaters of the Miami River in the middle of the northwestern half of Ohio, about 55 miles northwest of Columbus. The greater part of the tract is in Logan County. The tracts are approximately 50 miles apart. The parties have stipulated that the lands which were to be sold for the benefit of the plaintiffs under the 1831 treaties consisted of 41,528 acres in Royce Area 163, and 38,184 acres in Royce Area 164.

#### 26. Valuation Date

The Commission finds that the dates of valuation for both tracts are the dates on which the defendant's breach of treaties occurred. We consider that the breach occurred on the respective dates immediately following the dates the auction sales were improperly concluded contrary to existing law. (See Findings 9 thru 12, supra.) Accordingly, the Commission finds that the valuation date in these claims is December 21, 1832, for Royce Area 163, and December 30, 1832, for



Royce Area 164.

27. Historical Background

Prior to 1795, Ohio was sparsely settled, and the main concentration of settlements was located west of the Ohio River in southeastern Ohio. The signing of the Greenville Treaty of August 3, 1795, whereby southern and eastern Ohio, or about two-thirds of the state, was ceded by Indians, cleared the way for further white settlements in Ohio. Ohio was admitted to the Union in 1803. By the end of 1820, the few remaining tribes scattered in northwestern Ohio, including the plaintiffs, were assigned by treaties to specific reservations, in order to open up additional lands for settlement. The lands herein were located in the last part of Ohio to be opened for settlement. Ohio's rank in population by 1830 rose to fourth place in the nation, reaching 937,903. The most populous areas and settlements were south and east of the subject area. The several counties adjacent to the subject areas were among the 25 least populated counties of the total 73 in the state in the 1830's.

The opening of the Erie Canal in 1825 did not have any direct impact on the settlement of northwestern Ohio during the early 1830's. Both parties agree that the primary migration flow was from the east and south. Migration from the northeastern states was part of a secondary movement into the northeastern and northcentral part of the state, of which Cleveland was the principal center.

28. Economy of the Area

The economy in the United States in general was expanding in the



1830's, with particularly significant increases in farm output and income. Evidence in the record shows that parts of Ohio were making advancements in economic development. This is particularly true in the case of the more populous areas of the state, which include large communities such as Dayton, Cleveland, Columbus, and Cincinnati, located some distance east and south of the subject areas. Small industries located in the state near abundant water power sources were also operating with some success on the valuation dates. Canals being built during this period contributed to the economy of the regions surrounding them, but none of them would ever cross the subject areas.

Dayton, which was at the headwaters of a major canal to Cincinnati to the south, was the nearest shipping center to Area 164 for surplus farm goods and manufacturers. Yet Dayton was approximately 50 miles from the area. The nearest shipping center to Area 163 was Lower Sandusky (Fremont), just north of that area, with access to Lake Erie. There is no indication, however, that Area 163 was the source of surplus products for entry into the Lake Erie-Erie Canal system. In general, the subject tracts were too remotely situated from the population, commercial, and industrial centers of Ohio to have been directly influenced by the economic growth of these areas. As a result of this isolation, Areas 163 and 164 were largely ignored or by-passed by immigrant settlers and canal laborers.



### 29. Transportation Relating to Subject Areas

As noted above in finding number 28, the canals, already built or under construction on the valuation date, had no direct influence on the economy of the subject areas. Although the so-called canal counties, none of which were located in the subject tracts, did prosper, the canals did not influence general access in or out of the subject areas at the time of valuation. Rivers in and around said areas were not large enough to permit navigation by larger vessels. There were no railroads of any significance anywhere in the United States on the valuation dates. As of the valuation dates, Area 163 was crossed by several overland routes of various grades, quality, and accessibility. They included several Indian trails, a military road, and an Indian route running between Area 163 and 164. In general, these roads were poorly constructed and located in marshy areas, and were often unusable during the wet seasons. No roads crossed or intersected Area 164. The nearest road of any degree of quality was the National Road some 35 miles south of the area. This road was completed to Columbus in 1833.

### 30. Land Characteristics of Subject Areas

The parties are in substantial agreement as to the description of the ceded lands in terms of soil characteristics. Plaintiffs, however, have reported only generally on the soil characteristics for the whole of the state of Ohio, with no specific references to the subject areas. The best evidence available respecting the soil condition and



quality of the subject areas is that contained in a surveyor's field notes made during an August-November 1832 survey of the subject areas. These notes are referred to in some degree by plaintiffs in their briefs.

In Area 163, the Commission finds that about one-third of the land was "poor" or third rate farm lands. The remaining two-thirds of the area, including most of the river frontage, was "rich" or first-rate lands with some "good" or second-rate lands.

For Area 164, the Commission finds that the lands therein were inferior to Royce Area 163. One quarter of the area was poorly drained or swamp, and was considered poor, or third-rate. About one-half the lands were considered good, or second rate. Only about one-quarter of the acreage consisted of mixed rich to good lands.

As a whole, the subject lands were generally fertile, and the climate in the area was suited for agriculture.

### 31. Land Use in Subject Areas

On the basis of all the evidence of record, the Commission finds that the highest and best use of the subject lands on the dates of valuation was for agricultural purposes at the subsistence level.

### 32. Acreage Subject to Valuation

The Commission has previously determined that the actual conduct of and advertising for the auction sales held under the provisions of the 1831 treaties was proper. (26 Ind. Cl. Comm. 625, 629). The breach complained of herein, therefore, relates to those lands which



were sold after the auctions. Accordingly, the Commission finds that the lands to be valued in these claims consist of 23,079 acres located in Royce Area 163 and 34,631 acres located in Royce Area 164, hereinafter referred to as the valuation lands. The Commission further finds, on the basis of all the evidence of record, that said lands were located throughout both areas and did not represent a contiguous whole.

33. Related Land Market in 1832

As of April 1832, there were an estimated 5,242,221 acres of public lands in Ohio available for sale at the minimum price of \$1.25 per acre.

At the time (December, 1832) that the subject reservations were made available for sale at public auction, three additional reservations were opened for the same purpose. The Wyandot Reservation (Royce Area 171) containing 25 square miles and located near Area 163 was offered at public sale at the same time and place as Area 163. The Shawnee Reservations (Royce Areas 165 and 166) containing 145 square miles and located near Area 164 were offered at public sale at the same time and place as Area 164.

34. Plaintiffs' Appraisal of Royce Areas 163 and 164

(a) Dr. Roger K. Chisholm, an agricultural economist and plaintiffs' expert witness, used conventional market data appraisal procedures to determine the fair market value of all the subject lands as of the valuation date. In his valuation, Dr. Chisholm used the year 1831 as the valuation date.



Plaintiffs' expert abstracted the deed records of Seneca County for land sales in and near Royce Area 163, and Logan County records for sales in and near Royce Area 164. For Area 163, he submitted the records of some 1200 transactions in Seneca County for the period 1831-1836. From this large group, he selected 275 sales representing 46,246 acres which sold for a total of \$117,025. Except for his statement that no transactions were used where any level of Government was a party, or intrafamily transactions were indicated, or there was some element of duress as in an estate or tax sale, Dr. Chisholm has not shown any other criteria upon which his selection of the 275 sales was based. In the case of Area 164, Dr. Chisholm selected the 30 sales which took place in or around that area during the 1831-1836 period. These sales disposed of 3639 acres for a consideration of \$8,714.

This data, in large part, comes from plaintiffs' Exhibit 37 which consists of photocopies of file cards prepared by the Seneca County Records Office, and contains the names of the grantees and grantors, dates of the transactions, size and location of the lands involved and the prices paid. However, plaintiffs did not include any analysis of the sales data as to improvements, soil quality, or tract location. A large part of plaintiffs' sales data represents resales of lands within the subject tracts. Dr. Chisholm concluded that the average price, before any adjustments were made, for the Area 163 comparable sales was \$2.53 per acre, and for the Area 164 comparable sales was \$2.39 per acre.



(b) Because of the change in the general price levels in the 1831-1836 period, plaintiffs' expert found it necessary to apply an adjustment factor to later sales to arrive at an equivalent 1831 value. This was done by dividing the consideration received for each transaction recorded by an adjustment factor which was arrived at by dividing a general price index for each year (1832 through 1836) by the price index for 1831. By this method, plaintiffs' expert arrived at an adjusted fair market value of \$2.35 per acre for Area 163, and \$2.34 for Area 164. These figures were then applied to the acreage of the two tracts to arrive at a total fair market value of \$186,690. Plaintiffs subtract from the foregoing figure the \$115,454.29 received from the land sales (see findings 9 and 10, supra), to arrive at the sum of \$71,235.71 which they claim in damages.

(c) The Commission makes the following additional analysis of plaintiffs' sales data for Royce Area 163:

<u>Year</u>	<u>No. of Sales</u>	<u>Acreage*</u>	<u>Consideration</u>	<u>Per Acre Average</u>
1831	30	4720	\$ 7,180	\$ 1.52
1832	37	5780	8,440	1.46
1833	50	8520	21,860	2.56
1834	59	9960	22,100	2.22
1835	47	8560	24,150	2.83
1836	51	8920	31,770	3.56

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\* From Plaintiffs' Table 10, Ex. V-41, rounded off to nearest 10 acres.



35. Defendant's Appraisal of Royce Areas 163 and 164

Mr. Richard B. Hall, a real estate appraiser and defendant's expert witness, valued each tract separately due to their distinctive characteristics in terms of land quality and location. As the best evidence respecting the fair market value of the entire tracts, defendant's expert considered only the average price per acre the land was originally sold for when offered to individual purchasers both at auction and at subsequent private sale. The average sale price for Area 163 was \$1.66 per acre and for Area 164 was \$1.31 per acre. No sales data were taken outside of the two reservations for the reason that defendant's expert judged that such sales may have involved lands with improvements, or have been subject to plus factors such as access routes, favorable soil quality or desirable location in relation to settled communities.

Upon the overall sales averages indicated above, defendant's expert applied what he described as an accepted real estate formula to arrive at a percentage of expected resale value a purchaser would pay for the lands if offered in their entirety. The formula, expressed as  $1/3 - 1/3 - 1/3$ , is explained on the basis of the anticipated dollar gross to be realized from retail sales. One-third would be paid for the raw land, one-third would represent development costs, and one-third would be profit. In the case of Area 163, where there was a better market for the available acreage, defendant's expert considered that the promotion, development and survey cost would be nominal, and



therefore adjusted the formula upward to 75% for land and 25% for overhead. Accordingly, defendant arrived at a fair market value of \$1.245 per acre (75% of \$1.66). Because of the poorer quality of Area 164 and defendant's assumption that it would take a purchaser longer to dispose of these lands, defendant's expert estimated that a seller would require a 50% overhead margin. Accordingly, defendant arrived at a fair market value figure of \$0.655 (50 percent of \$1.31) per acre for Area 164.

On the basis of the foregoing determinations, defendant concluded that the fair market value of Area 163 was \$51,702, and that the fair market value of Area 164 was \$25,010. Defendant noted that in findings 9 and 10, supra, the Commission determined that the proceeds from the sale of Area 163 lands was \$65,546.04, and that the proceeds from the sale of Area 164 lands was \$49,908.25. Defendant concluded that the sale of the reservations by defendant did not result in any damage to plaintiffs.

### 36. Auction Sales

(a) Area 163. An examination of the sales abstract indicates that at the auction of Area 163 lands there were approximately 250 transactions involving 18,449 acres. The average price realized from the public sale of these lands was \$2.09 per acre. The sales were made generally in 80-acre units. About 60 of the 250 sales were for less than 80 acres, and 15 of these were under 40 acres. Prices of over \$5.00 per acre were paid for 14 parcels totalling 670 acres. Ten



of these sales were river frontage. Thirty-two parcels (about 2200 acres) sold between \$3.00 and \$4.50 per acre. All 32 parcels were variously located on the Sandusky River, several roads, and on other smaller streams. Some 9000 acres sold between \$1.26 and \$2.96 per acre, and they also included river frontage and some improved and cleared lands. Nearly 70% of the lands sold involved the best lands in the reservation as to location and soil quality. Approximately 6000 acres sold at the statutory minimum of \$1.25 per acre. All of the purchasers at the auction were from relatively nearby areas.

Altogether there were 174 sales at prices of over \$1.25 per acre. The quantity of sales at prices in excess of \$1.25 peaked on December 12, the second day of the auction, when there were 41 such sales, and declined on December 19 to eight such sales, and on the final day, December 20, to five such sales (two at prices under \$1.35 an acre).

(b) Area 164. An examination of the auction sale abstract for Area 164 discloses that approximately 38 transactions took place during the auction, involving some 3500 acres. Of this total, 2180 acres sold at the \$1.25 per acre statutory minimum. Approximately one-third of the lands, or about 1360 acres brought prices in excess of \$1.25 per acre. There were no sales in excess of \$3.50 per acre, and on the second and final day of the auction there were only eight sales, none of which exceeded \$1.25 per acre.

Location and personal preference rather than soil quality appeared to influence buyers, since about four-fifths of the land sold was of



varying soil quality, but close to Bellefontaine, near the southeast corner of the tract. Although most of the higher prices were paid for bottom and prairie land, much of these lands did not attract bids. The Commission believes that the lack of reliable transportation facilities in Area 164, its general remoteness and isolation, and the overall poor quality of the land, constituted the principal factors influencing the low rate of sales and low prices paid at the public auction of the said tract.

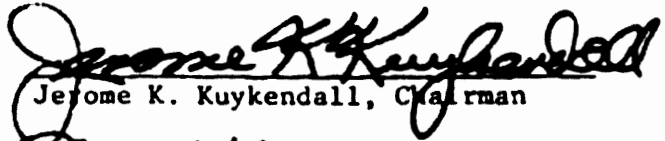
37. Commission's Conclusion on Fair Market Value

The Commission concludes that the auction sales are the best evidence of fair market value of the valuation lands. The Commission finds that the auction sales disposed, for the most part, of the best lands in Areas 163 and 164. Therefore, for purposes of comparability, the Commission has eliminated from consideration all auction sales indicating river frontage, bottom lands, road frontage, and first rate farm lands. A few sales indicating the existence of improvements were also removed from consideration, as well as transactions that involved less than 80 acres.

Upon consideration of the entire record, and for reasons set forth in the opinion, the Commission concludes that the lands which were not sold at auction, totaling 23,079 acres in Area 163 and 34,631 acres in Area 164, in neither case had a fair market value in excess of \$1.25 per acre on the respective valuation dates. These lands were subsequently




sold by defendant for the benefit of plaintiffs at prices no less than \$1.25 per acre.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner