

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 169
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 17, 1977

ADDITIONAL FINDINGS OF FACT

By the findings of fact numbered 1 to 33, inclusive, and the opinion and order entered herein on December 14, 1970, 24 Ind. Cl. Comm. 238, the Commission determined that the defendant acted unfairly and dishonorably toward the Creek Nation in refusing to provide the Nation with copies of the approved Creek rolls during the enrollment period, and in not taking reasonable precautions to prevent erroneous enrollments (24 Ind. Cl. Comm., at 269). It was ordered that this case proceed to a determination of damages, if any, suffered by the Creeks as a result of defendant's failure to act fairly and honorably toward them.

On June 26 and 27, 1975, hearings were held before the Commission, during which plaintiff and defendant presented both documentary evidence and expert witness testimony on the value of the 142 separate and non-contiguous tracts of land in the former Creek domain in Oklahoma, which constitute the subject matter of this case.

The Commission makes the following findings of fact which are supplemental to those previously entered herein.

34. Erroneous Enrollments and Taking Date. The parties stipulated on June 26, 1975, that the lands which are the subject of this case are 142 erroneous allotments of approximately 160 acres each totalling 22,737.21 acres and consisting of some 212 separate and non-contiguous tracts within the Creek Nation in what is now east-central Oklahoma. The parties further stipulated that the correct valuation date is March 4, 1907, the date the Creek tribal rolls were closed.

35. Counties and Townsites. The counties within which the subject lands are located, are Creek, Hughes, McIntosh, Muskogee, Okfuskee, Okmulgee, Rogers, Tulsa and Wagoner. A portion of the subject lands are located within the townsites of Broken Arrow and Sand Springs.

36. Land Classification. Prior to allotment, the Creek lands were classified under the direction of the Dawes Commission. (See 24 Ind. Cl. Comm. 238, Findings 12-14, at 256-258, where the Commission described the functions of the Dawes Commission.) Only the surface of the land was examined and was graded in 40-acre tracts for its fertility, topography, timber, etc. The schedule for grading the land contained 10 classifications, within which were 8 further subclassifications, beginning with the best land and ending with the least desirable. Such classification was without regard to the land's location, proximity to markets or other factors affecting value. Classification began on December 1, 1900, and was completed about April 15, 1901. In a little over four months, 3,072,813.16 acres were classified.

37. Method of Appraisal for Allotment Purposes. Appraisal of the lands was made by a committee appointed by and under the direction of the Dawes Commission. The committee worked from the classifications

of the lands thus made without examining the lands. The statutory price of \$6.50 per acre was applied to the best lands, and the lands in the lesser classifications were valued downward from that price, the lowest classification being appraised at 50 cents per acre. Adjustments were made for proximity to certain railroads and towns. However, when these appraisals were made not all the railroads had been constructed through the Creek Nation, and not all the towns had been established that were in existence on the valuation date of March 4, 1907.

38. Minerals not Valued. Only the surface of the Creek lands were valued. Minerals were not valued because the land would not have been allotted had it been known that there were minerals beneath the surface. It was, in theory, the policy of the Department of the Interior to hold mineral lands for the benefit of all members of the tribe.

39. Surface Condition of the Land. Because these 142 allotments were located within a broad area of the Creek Nation, there is no one characteristic which can be applied to all of the tracts. However, the evidence indicates that the various tracts were suitable for several different uses, those most prevalent being agriculture and grazing.

40. Early Use of Surface Land. The Creek Indians and early settlers on Creek lands settled along the streams and grew small patches of corn and raised livestock, but depended mainly on hunting and fishing for subsistence.

41. Development of Surface Land. With a white population in 1904 of 650,000 in the Indian Territory, the removal of restrictions on lands

of the freedmen by the Act of April 21, 1904, 33 Stat. 204, 205; and the right to lease Creek lands under the regulations of the Department of the Interior promulgated on July 10, 1903, agricultural development of these lands proceeded quickly. As a general proposition, lands not subject to allotment were either purchased or leased in 1904 by white settlers.

42. Topography and Elevation. The Creek lands were within the Sandstone Hills Region. They were generally level to undulating or rolling prairie lands, and were located in the east-central portion of what is presently Oklahoma. The topography consisted of alternating sandstone hills and broad shale valleys. The tops of hills were usually flat and broad. The sandstone areas in some places supported a thick growth of timber, and were used for the stock raising. The shale areas were used in most instances for agriculture. The elevation of the lands ranged generally from 430 to 1100 feet above sea level.

43. Drainage. The Creek Nation was drained by the Cimarron, Arkansas, Canadian, Little, Verdigris and Grand (Neosho) rivers and numerous tributaries and lesser streams. The majority of tracts in this case were drained by the Cimarron River and its tributaries.

44. Rainfall. The average annual rainfall in the Creek Nation ranges from 35.53 inches in the western part of the Creek Nation (Creek County), to 41.44 inches in the eastern portion (McIntosh County). The rainfall is

greatest during the growing season. There was plenty of water for domestic use. Wells found good water from 20 to 60 feet, and were drilled at little expense. On the prairie, water was found in sand or limestone, and was free of alkali. Ridge lands were generally supplied with water from springs. The quality of water in general was excellent. Water for stock was plentiful and unfailing.

45. Climate. The climate was continental, with long and warm summers, tempered with cool night breezes. The winters were moderate, with little snowfall. The average January temperature ranged from 36.2° F. to 40.6° F. The average July temperature ranged from 80.2° F. to 82.9° F.

46. Growing Season. The growing season was generally long, ranging from 210 to 225 days. The latest killing frost was in April, and the first killing frost was around the end of October.

47. Soils. The soils on these 142 tracts varied. They ranged from black loam with high fertility to rocky and mountainous with no fertility. An analysis of the evidence of surface condition as presented by the plaintiff in its expert's report, involving 1897 U. S. Geological Survey maps, and the defendant's use of the Dawes Commission survey, indicate that approximately half the total acreage in this case consisted of moderately fertile to very fertile land and the other half consisted of less fertile soils.

48. Native Vegetation. The majority of these tracts were timbered with a large variety of different type trees. There were also numerous types of native grasses. The woodlands were used for cattle grazing.

The evidence does not show that there were commercial timber operations nor that the grasslands were used for large-scale cattle grazing.

49. Crops. Crops commonly grown in the Creek Nation were corn, cotton, peanuts, grain and forage sorghums, oats, alfalfa, bermudagrass, wheat, sweet and Irish potatoes, Timothy and Clover, Wild hay, Broom corn, kaffir corn, barley, cowpeas, flax, rye, fruits and vegetables. Corn and cotton were the principal cash crops.

50. Railroads. In 1907 there were 14 railroads operating within the Creek Nation including the Sand Springs Interurban Railway, predecessor in title to the Sand Springs Railway.

51. Roads. Given the non-contiguous nature of these tracts, the quality of the road system is of relative unimportance. It appears that there was a substantial network of dirt roads which traversed the Creek Nation. A large number of the 142 tracts had some kind of road crossing them.

52. Markets. Besides the local markets, other markets for products of the area were Kansas City, St. Louis, Chicago, Minneapolis, Dallas, and points east.

53. Plaintiff's Surface Appraisal. Samuel L. Stokes of Muskogee, Oklahoma, was selected by the plaintiff to give his opinion of the surface value of the 22,737.21 acres at issue. He determined that a fair value for the surface of this land as of March 4, 1907, was \$2,500,000.00, which is approximately \$110.00 per acre. Stokes valued each tract individually. His report first indicates the description given the land in an 1897 U.S. Geological Survey map of the area. It then cites soil survey data which was prepared, in almost

every instance, from forty to fifty years after the taking date. A showing is then made of the condition of the soil and terrain based on the 1897 maps and the more current soil surveys. This work was done by George Stokes, who is a soil expert and agronomist. A judgment is then made as to the highest and best use of the tracts as of March 4, 1907, and as of March 4, 1975. Finally, a dollar value is assigned for land which was suitable for crops in 1907 and land which was not suitable for crops at that time. Mr. Samuel Stokes makes an ample recitation that the facts on which he based his conclusions evolved more from his general experience in appraising lands than they did from concrete evidence, which he indicates is not available in this case.

54. Defendant's Surface Appraisal. Dr. William G. Murray of Ames, Iowa, was selected by the defendant to provide a complete appraisal in this case. A sample of thirty sales within the Creek Nation covering the period from November 1906 to September 11, 1907 was provided. These were sales which required the approval of the U.S. Department of the Interior. These sales indicated a per acre value of \$18.42, which was calculated by dividing the acreage sold (generally 80 to 160 acre tracts) into the sale price. Also provided were a group of thirty-nine appraisals made by appraisers under the supervision of the U.S. Indian Agent at Muskogee. These appraisals did not extend beyond February 1906. However, the thirty-nine appraisals used constituted every known appraisal from December 1905 to February 1906. The per acre value given these tracts was \$13.67. The sale price, the price bid and the appraisal of a further group of tracts covering the period from March 29, 1906, to November 20, 1906, were

also submitted. This group of 50 sales with bids and appraisals indicated an appraisal value average of \$15.52 per acre and a sale price of \$18.58 per acre.

In 1910, the first Federal Census available for the Creek lands was made. A per acre valuation of farm real estate was made on a county by county basis. Of the nine counties involved in this case, the average price per acre for such land was \$23.00. On a state-wide basis, the average price per acre was \$26.00. Using a weighted average based on the location of the tracts within these nine counties Dr. Murray calculated a per acre value of \$17.83. Using the information from the 1910 census he then assigned an average surface value of \$15.00 per acre to the 140 tracts he valued. ^{*/}

Dr. Murray then provided a tract by tract breakdown, but used as his starting point the \$6.50 figure that the Dawes Commission provided for purposes of appraisal. This breakdown included among other things a topographical and soil description for each tract. In the survey made by the Dawes Commission, the surveyors only walked up two sides of each tract, thereby rendering it impossible to determine the condition of the interior of the tracts. However, this appraisal is the closest thing available to the Commission in providing some indication as to the condition of the land as of March 4, 1907.

55. Highest and Best Use. After analyzing and weighing all the evidence, the Commission has determined that the highest and best use of the 22,737.21 acres under consideration is as follows: 14,681.27

^{*/} Dr. Murray overlooked two tracts. This is explained in note 2, supra, of our opinion.

acres were best suited for agricultural purposes; 7,095.94 acres were best suited for non-agricultural purposes, and 960 acres were best suited for townsites. The agricultural land was used for the planting of crops. The non-agricultural land was principally uncleared forest land and soil not suitable for the planting of crops but suitable for the grazing of cattle. The townsite lands were tracts adjacent to or in known towns located within the Creek Nation.

56. Commission Valuation of the Surface Lands. The Commission has reviewed all the evidence and weighed the relative merits of the parties' appraisal reports. It is the Commission's decision that 14,681.27 acres of agricultural land had a fair market value as of March 4, 1907, of \$293,625.40; that 7,095.94 acres of non-agricultural land had a fair market value of \$88,699.25, and the townsite land totalling 960 acres had a fair market value of \$48,000.00. The aggregate value of these 22,737.21 acres is \$430,324.65, or \$18.92 per acre.

57. Location and History of Coal in the Creek Nation. The region of Pennsylvanian rocks south of the Arkansas River in Indian Territory was distinctly marked off from the northern area by the absence of limestone, and the increased presence of sandstone and coal. These rocks contain all of the principal coal beds in the present State of Oklahoma. This region covered a substantial portion of the Creek Nation. The first record of the presence of coal in what is now eastern Oklahoma was made by French explorers in 1719. Coal was first mined on a commercial scale near McAlester in the Choctaw Nation in 1872. Between 1872 and 1879, companies mining coal in the Choctaw and Chickasaw Nations paid these

Indian governments over \$1,200,000 in royalties, and to individual Indians from whom the coal mines were leased over \$800,000, or a total of over \$2,000,000 in royalties.

58. Creek Knowledge of Coal Deposits. The Creeks had known quite early of the existence of coal deposits within their nation. Ward Coachman, Principal Chief of the Creek Nation in 1876, was first to recommend development of the lands as a revenue measure, and under his influence a law was passed by the Creek Nation in 1878 requiring citizens to pay royalties on all coal offered for sale. In 1881, provision was made for the admission of non-citizen developers in the formation of mining corporations. The most important mining laws were passed in 1885 and 1887 through the influence of J. M. Perryman. Under these acts, leases covering most of the Nation were given corporations formed by Creeks and outside developers.

59. Background to Mining Leases Under U. S. Department of the Interior. The Creek Agreement, ratified by Act of March 1, 1901, 31 Stat. 681, contained no provision for leasing lands in the Creek Nation for mineral purposes. However, prior to the adoption of the Creek Agreement the Interior Department had granted temporary permission for several parties to mine and ship coal in the Creek Nation. The Kansas and Texas Coal Company, since September 1899, had mined coal on Creek land under such temporary permission. In September 1901, this company made application for a renewal of the temporary permit to mine coal on land of a Creek citizen who claimed the lands as an allotment. The department

approved the application of this company to continue mining coal on this Creek land, under a contract between the allottee and the mining company, the department construing the contract as the consent of the allottee. The royalty derived from the coal mined was directed to be paid to the United States Indian Agent for the Union Agency, Muskogee, Indian Territory, and placed to the credit of the land, and held for the allottee until the final distribution of the Creek lands should be made.

60. Restriction on Leasing by the United States. No valid mineral leases could be secured in the Creek Nation until July 19, 1903, when the Secretary of the Interior promulgated regulations governing the leasing of minerals, i.e., oil, gas and coal. These regulations required the lessees to pay the lessors a royalty of 8 cents for each ton of coal mined. In 1904, 36 leases were approved by the Interior Department under the regulations authorizing twelve companies to mine coal in the Creek Nation. In 1905, 51 such leases were approved and in 1906, 60 leases were approved.

61. Development of Coal. The July 14, 1906 report of the Indian Agent for the Union Agency at Muskogee, stated:

Mention shall also be made of the coal deposits in the Creek Nation, particularly at Henryetta, where there is a considerable quantity of good coal which is sufficiently deep to be mined by shaft. Other small coal deposits are found at different points, but are near the surface and are mined only by the 'stripping' process. (Pl. Ex. 26, at 226)

Although coal continued to be mined in the Creek Nation after 1906, the coal business depended for its market on home consumption, railroads and generating plants. The development of oil and gas in the Creek Nation in

the 1906-1907 period slowed further development of the coal industry in the Creek Nation.

62. Indications of Coal Value. On June 5, 1905, 21 bids were received for cash bonus payments on coal leases in the contiguous Choctaw and Chickasaw Nations. The highest bid was \$16.91 per acre and the lowest bid was \$5.00 per acre. The average of the 21 bids was \$7.75. All bids were rejected as being too low. All of the 142 erroneous allotments involved in this case potentially had coal beneath the surface that was of definite commercial value as of March 4, 1907. The mine inspector for the Indian Territory estimated that "4,000 tons per acre is a fair average for the amount of coal that can be secured," and at the going rate of 10 cents per ton, the royalty value alone would amount to \$400.00. In 1907, the average price of coal in the Indian Territory was \$3.00 to \$3.50 per ton. A prospective purchaser of these 142 tracts would have known the above facts relative to the value of these coal reserves at that time.

63. Determination of Coal Value. The defendant has contended that since there was no evidence introduced regarding the existence of coal on these 142 tracts, no value can be attributed to the presence of coal in the subsurface of these lands. The plaintiff asserts that the evidence supports a valuation of \$7.50 per acre for coal. It is our opinion that a well-informed purchaser would have been justified in concluding that it was very likely that there were coal deposits in the subsurface of the subject tracts. Upon consideration of all the evidence relating to the potential presence of coal beneath the subject tracts, we believe

that a reasonable increment of \$110,000 should be added to the fair market value of these tracts to reflect the value of potential and proven coal deposits.

64. Oil Development in the Creek Nation. As early as 1865, it was common knowledge that the Pennsylvanian formation, which subsequent to 1865 and before 1907, produced substantial quantities of oil and gas in Kansas, also extended south into Indian Territory, and included the Cherokee and Creek Nations. The Pennsylvanian formation was considered the most probable of areas for the production of oil and gas. In 1889, oil was discovered in the Creek Nation in what is now McIntosh County. The next oil development in the Creek Nation came when Michael Cudahy of Omaha, Nebraska, secured a blanket lease for oil and gas on more than 200,000 acres in the Creek Nation, and employed McBride and Bloom of Independence, Kansas, to drill the wells. The first well was drilled in 1894 on what is now the townsite of Muskogee. Further oil development in the Muskogee area was delayed until 1904 when it became possible to obtain good title to the lands.

65. Federal Attitude on Oil. Federal officials and Indians alike believed that there was oil in Oklahoma. The Muskogee Weekly Phoenix, of November 2, 1899, had stated that there were great deposits of oil in Indian Territory. There were producing wells at Muskogee, Chelsea, and Bartletttsville, and vast potential oil fields stretched across the Cherokee and Creek Nations.

66. Leasing in 1899. In 1899, three oil companies made applications to lease some 183,000 acres of land in the Creek and Cherokee Nations. However, the Interior Department decided that it would not permit the wholesale leasing of the Indian land in the manner attempted, but would restrict each company to a tract improved by it, and would grant leases for such tracts only. On May 22, 1899, the Department rejected another application for such a lease. The oil companies were thus unable to secure oil leases for further development in these lands at that time.

67. Action by the Oil Companies. In defiance of the Department of the Interior, the oil companies resumed drilling in May 1901, in the Creek Nation. This action was regarded by the Department "as a brazen, presumptuous and unwarranted proceeding." In June 1901, a producing well was drilled at Red Fork, just west of Tulsa, in the Creek Nation, in what is now Tulsa County. The 1901 Report of the Commission to the Five Civilized Tribes, stated:

Unusual activities in the matter of selecting allotments was (sic) displayed during the month of June, when the discovery of petroleum was made near the town of Red Fork, in the Creek Nation. For the most part, these applications for allotments in the vicinity were stimulated by the action of speculators, who desired to secure leases from the citizens who might secure the lands in that vicinity in allotment. The Commission exercised all possible care to see that the best interests of the Creek citizens were subserved. (Pl. Ex. 26, at 31)

The Red Fork development was during the allotment period in the Creek Nation. Under the provisions of the Creek Agreement, the lands of the individual Creek allottees were restricted against alienation, and the Interior Department was required to supervise the leasing of these lands.

68. Number of Leases. The Department of the Interior, on July 10, 1903, promulgated regulations for mining leases covering lands in the Creek Nation. In his report for the fiscal year ended June 30, 1904, dated October 17, 1904, the Commissioner of Indian Affairs stated that a total of 53 oil and gas leases of lands in the Creek Nation had been approved by the department.

69. Removal of Restrictions. As a result of the Act of April 21, 1904, 33 Stat. 189, the restrictions on the sale of lands were removed. One result of this action was that a great many freedmen of the Five Civilized Tribes gave up their lands for often inadequate consideration.

70. Continuation of Leasing. The Interior Department continued to approve oil and gas leases of lands in the Creek Nation subject to restrictions on leasing. In his 1905 report, the Commissioner of Indian Affairs stated that 94 oil and gas leases of Creek lands had been approved by the department. In his 1906 report, the Commissioner stated that the department had approved 126 oil and gas leases on Creek lands. Under approved leases, oil development in the Creek Nation progressed rapidly. In his report of July 14, 1906, to the Commissioner of Indian Affairs, the United States Agent for the Union Agency at Muskogee, stated:

In the rapid development of the resources of the Indian Territory, the rich oil deposits have attracted, from every part of the United States, those interested in the oil industry. This development has been especially active in the Creek and Cherokee nations, and these oil fields, in connection with those adjacent in Kansas and Oklahoma comprise what is known as the 'mid-continent field,' and it has made most remarkable strides in the past year. The larger percentage of the leases have

been taken and the greatest development has been in the Cherokee Nation, but of late the fields have moved southward in the Creek Nation very rapidly. (Pl. Ex. 26, at 225-26)

In 1904, further development of oil and gas wells was begun in the Muskogee area, in the eastern portion of the Creek Nation. At this time there were 35 or more producing wells in this area and 50 at Red Fork. Operators from all over the mid-continent region flocked to the new development at Muskogee, and many large companies were represented. The oilmen believed the new development was a forerunner of the opening of another large field in the Creek Nation.

71. Glenn Pool Strike. In November 1904, the first oil well was completed about 14 miles south of Tulsa, in the western portion of the Creek Nation, in what is now Creek County. On November 22, 1904, when this 800-barrel well was developed, "this was the signal for tremendous excitement and from that moment there was one of the greatest struggles for oil leases in the vicinity ever known in the history of the oil business." This discovery opened up the Glenn Pool which yielded substantial production and which was "the greatest strike up to that time in Oklahoma." Glenn Pool attracted oilmen from all over the United States. Its depth was reasonably shallow, the cost of drilling moderate, the oil output was by gas pressure, and the quality of oil was excellent.

72. Quality of Glenn Pool. The Oil Investor's Journal, August 3, 1906, stated with respect to increased oil production in the Mid-Continent region:

. . . This large augmentation in the gross output is due to the pushing of productive territory steadily southward into Indian Territory where the sands are more prolific than in Kansas. The farther south operations move the greater becomes the capacity of wells. The Glenn Pool, about fifteen miles southeast of Tulsa, I.T., in the frontier development, is the most remarkable pool yet discovered in the Mid-Continent region. Development is trending to the south and southeast and operators are looking for pools all the way to Texas. . .

* * * * *

. . . The showing of the Glenn Pool has convinced operators to a greater degree than ever before of the possibilities of ultimate extension of proven territory to Texas. . . (Def. Ex. V-12, at 12)

73. Bonus Payments. Large bonuses were paid for oil and gas leases in the Glenn Pool area. The Oil Investors' Journal, August 3, 1906, reported:

. . . Leases have brought from a few dollars to \$16,000 a tract. One company early in the game paid \$12,000 for a 160-acre farm and fee. It is fine land for farming purposes if it had no oil, but with the present showing it would probably be appraised at pretty near \$300,000. (Def. Ex. V-12, at 14)

The Commissioner of Indian Affairs in 1907 reported:

Many Indians who have allotments in the productive fields receive each month royalties in very large amounts, many from \$300 to \$400 per month, several more than \$2,000 and one more than \$3,000 per month. In addition to the royalties, lessees offer large bonuses for leases on tracts within the developed oil fields, the largest cash bonus being \$43,000, paid for a lease on 20 acres within what is known as the Glenn Pool; a bonus of \$25,000, in addition to a royalty of 12 1/2 percent, was paid for a 160-acre lease on the allotment, also in the Glenn Pool, of Ernest Clayton, a deceased Creek Indian. (Pl. Ex. 26, at 99)

74. Potential Productivity. The Pennsylvanian formation in the Creek Nation had been proven to be a prolific producer of oil and gas. In the May 19, 1907 issue of the Oil Investors' Journal, it is stated:

Professor Charles N. Gould, the geologist at the state university of Oklahoma, Norman, Oklahoma, gives it as his opinion that at the present time not one-third of the future oil field of Oklahoma has been prospected, and not one-tenth of it has been fully developed. He bases his conclusion on the geological structure of the rocks and the conditions under which oil and gas have been found in other parts of the country. Professor Gould has spent several years studying conditions in the oil regions, and has come to the conclusion that the center of future development lies in the region south of the Canadian river. The southern part of the Cherokee and much of the Creek Nations will also probably develop into good territory. There is also a region in west central Arkansas that should prove prolific, according to Professor Gould. 'If these predictions are correct,' Professor Gould states, 'it seems probable that the Mid-Continent field is still in its infancy, and that it will shortly become the most important field in the continent.' (Def. Ex. V-12, at 3)

75. Morris Pool Development. The next development in the Creek Nation was at the town of Morris, in what is now Okmulgee County, located in the center of the Creek Nation. The Oil Investors' Journal of June 19, 1907, reported:

There is rich oil territory north of the big pool-- and south of it. The Glenn field may come and go as a flowing proposition, but there will still be a world of oil awaiting the drill. The first part of this month a big well was brought in at Morris, forty miles south of Tulsa, giving evidence of the presence of another pool, those dimensions, however, are yet to be defined. Fifty miles southeast of Tulsa, at Muskogee, a well is flowing 250 barrels of high grade oil. Another year may see a half dozen new fields developed in Indian Territory. (Def. Ex. V-12, at 12)

The Morris pool was near the town of Okmulgee. The Oil Investors' Journal of July 5, 1907, reported:

. . . All agree on one point: an oil field was never opened in a prettier country than that in which Morris is situated. It is a high, gently rolling prairie, with a number of knobs to the south like those at the south end of the Glenn field. The soil is rich, and most of it is in cultivation, there being many fields of corn, cotton and oats in the neighborhood. The roads are good and it will be easy to move freight from Morris out to the field. . . (Def. Ex. V-12, at 3)

76. Lease Bonuses. At a sale on May 11, 1907, bonuses were paid for oil and gas leases in the Morris field on Creek minor lands for eight 40-acre tracts as follows: \$4,500; \$3,375; \$3,100; \$2,700; \$2,525; \$3,025; \$2,500; and \$2,000; or total bonuses for 320 acres of \$23,225 or \$72.50 an acre. In July 1907, oil and gas leases on two 80-acre tracts were purchased in the Morris field, one for \$20,000 and the other for \$2,500 cash and part of the oil.

77. Opinion of the Commissioner. In his 1907 report to the Secretary of the Interior, the Commissioner of Indian Affairs, stated:

. . . The experience since the opening of this territory to white settlement shows most clearly that it is not safe to remove all restrictions. The dealings of the white man in the Indian Territory, in the acquisition of valuable agriculture and oil lands, have shown too many instances of unconscionable greed and dishonesty. The agricultural lands in the Indian Territory are wonderfully fertile, having increased many-fold in value during the past ten years. But, in addition to this, the discovery of the deposits of oil and coal had made certain sections of the country very much more valuable and has tremendously increased the desire of white men to obtain control of those sections. Thus far these oil and coal lands have been handled under a system of leasing controlled by the Interior Department. (Pl. Ex. 27, at 23-24)

With many Indians thereafter able to lease or sell their lands without restrictions, oil development continued to progress rapidly in the Creek Nation.

78. Further Drilling Activities. Preliminary figures published in The Oil Investors' Journal of January 18, 1907 (Def. Ex. V-12, at 11) indicate that during the year 1906 there were 2,770 wells drilled in Oklahoma and the Indian Territory of which 2,266 (77%) produced oil and 513 (23%) were either dry or produced gas. Several years later the Oklahoma Geological Survey in its Bulletin No. 19 (1917) (Pl. Ex. 6) published figures showing the incidence of drilling in Oklahoma. Composite figures for the nine counties which had formerly comprised the Creek Nation are as follows:

<u>Year</u>	<u>Total Wells Drilled</u>	<u>Dry</u>	<u>Gas</u>	<u>Oil</u>
1906	4,819	296(6%)	222(5%)	4,301(89%)
1907	no figures	no figures	no figures	no figures
1908	" "	" "	" "	" "
1909	609	74(12%)	21(4%)	514(84%)
1910	681	98(14%)	19(3%)	564(83%)
1911	511	115(23%)	11(2%)	385(76%)
1912	995	228(23%)	113(11%)	654(66%)
1913	<u>2,227</u>	<u>390(16%)</u>	<u>144(7%)</u>	<u>1,693(77%)</u>
Totals	9,842	1,201(12%)	530(6%)	8,111(82%)

During the year 1912, the Cushing oil field, located in the western part of Creek County, came into production. By 1914, more than 750 wells were completed in this field, thus comprising about nine percent of the total number of wells in Oklahoma. Eighteen of the tracts in this case were located within the Cushing oil field. Over the course of many years after the valuation date, approximately one-half of the tracts involved in this case had producing oil wells on them.

79. Oil Leases on the Subject Tracts. Interest in oil exploration was so high in Oklahoma during the early years of the twentieth century that it was common practice for owners of tracts to lease the oil exploration rights. Of the 142 tracts involved in this case, ten had leases on them by the year 1907; thirty-one more were leased between 1908 and 1910; and sixty-one others were leased by the year 1915. The amounts for which the tracts were leased is not known but evidence in the record indicate that \$25.00 per acre was considered to be a fair estimate of the value of an oil lease in the area of the subject tracts at approximately the date of taking (Pl. Ex. 23, at 27).

80. Mineral Values. After analyzing and weighing all the evidence, the Commission has determined that a separate value should be given to the subsurface area of these 142 tracts based upon oil and gas development. The evidence indicates that oil development in the Indian Territory and the Creek Nation began substantially before the valuation date in this case. Furthermore, this development was so widespread that a reasonable purchaser having access to all the information then currently available could reasonably conclude that the opportunity of finding oil and gas within these 142 tracts was more than speculative.

81. Plaintiff's Oil and Gas Appraisal. Josef Faust and John J. Hassler of Oklahoma City, Oklahoma, were selected by the plaintiff to determine the mineral value of these 142 tracts. Dr. Faust valued the oil in these tracts in three ways. The first was the "true value", the second was the "discounted value" as of 1907 and the third was the

"present worth" as of January 1, 1975. In reaching each of these values, a lease bonus and rental was established based on a fixed value of \$10.00 per acre. This figure was the same for each of the valuations. The second factor was the royalty value, and this was fixed at \$25.00 per acre and was also the same for each of the three valuations. The third factor was the only varying one, and this was based on production value. The "true value" production value was based on actual production, while the "discounted value" and "present worth" values were made by using computer values based on actual yearly production and government bond interest rates.

On the basis of their research, Faust and Hassler determined that a figure of \$10.00 per acre was a fair lease bonus and rental. They likewise concluded that \$25.00 was a fair figure to determine royalty value. These figures were based on their determination of fair average value of these lands with regard to each type of valuation being determined. The royalty figure of \$25.00 per acre takes into consideration those tracts which had a dry hole drilled, on which no wells had been drilled or on which wells had been drilled but production had ceased. This figure is predicated on their evaluation of the evidence and their experience in the oil business over the years.

The Commission finds that lease bonuses and rentals, with a possible rare exception, were based on leases made after March 4, 1907. The Commission makes the same determination with regard to royalty payments, which are based on production and the production value be it contemporaneous or in the future. In all instances plaintiff's experts' values are based on events which occurred after the taking date of March 4, 1907.

82. Defendant's Oil and Gas Appraisal. Defendant's appraiser, Dr. Murray, determined that the average per acre value of the lands was \$15.00 not including any special value attached to specific tracts based on mineral presence. His final average per acre value for all tracts was \$21.95. Although not stated, it follows that he determined that the per acre enhancement for all minerals was \$6.95 per acre.

In his tract-by-tract valuation, he valued three tracts at more than \$50.00 per acre because these tracts had oil and gas production very near the taking date. All other tracts were valued a few dollars above or below the \$15.00 per acre average. Presumably, valuations above \$15.00 reflect enhancement for minerals, although the objective basis for such enhancement is not explained.

83. Valuation of the Oil. The Commission has reviewed all the evidence and weighed the relative merits of the parties' appraisal reports. The Commission finds that the evidence in this case establishes that in 1907 it was common knowledge that oil was present under a significant portion of the Creek Nation but that, at that time, the exact location of the oil was impossible to determine. A knowledgeable purchaser, having full access to the information then available, would have been willing to pay a substantial incremental amount for lands within the Creek Nation based upon the known and potential presence of oil. Based upon the evidence of record we find that a reasonable increment to the value of the subject tracts to reflect the known and potential presence of oil and gas is \$550,000.

84. Equalization Money Paid to Erroneous Enrollees. Equalization money was that money paid to enrollees when they were allotted lands and the value of the allotments (as determined by the Dawes Commission valuation procedures) did not reach \$1,040.00. These sums were invariably very small amounts. The defendant paid equalization of allotment money from Creek tribal funds to persons erroneously placed upon the tribal rolls of the Creek Nation. The total amount so paid by the defendant was \$25,381.55.


85. Total Surface and Mineral Value. The Commission finds that the total fair market value as of March 4, 1907, of the 142 tracts in this case is \$1,090,324.65.

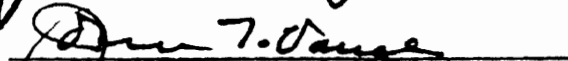
CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that:

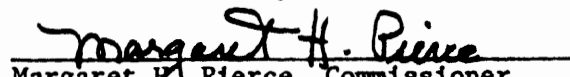
1. The agricultural, grazing and townsite lands, totalling 22,737.21 acres, had a fair market value as of March 4, 1907, of \$430,324.65.
2. Known and potential coal deposits under these lands increased the fair market value thereof by the amount of \$110,000.00.
3. Known and potential oil and gas deposits under these lands increased the fair market value thereof by the amount of \$550,000.00.
4. The amount of Creek Tribal funds paid to erroneous allottees was \$25,381.55.

5. Plaintiff is entitled to recover from defendant damages in the amount of \$1,115,706.20, less allowable offsets, if any.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner