

Decided: June 4, 1957

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Miami Tribe of Oklahoma and the Eel River Tribe, petitioners in Docket No. 253; the Peoria Tribe of Indians of Oklahoma acting for and on behalf of the Wea Nation of Indians, petitioner in Docket No. 314; and the Miami Tribe of Indiana, petitioner in Docket No. 131, are authorized by the Indian Claims Commission Act of August 13, 1946, to prosecute the claims set forth in their respective petitions which arise out of the cessions to defendant of lands by the petitioners in said dockets by the treaties of August 21, 1805, 7 Stat. 91, known as the Grouseland Treaty, and September 30, 1809, 7 Stat. 113, known as the Fort Wayne Treaty; that the petitioner, the Miami Tribe of Oklahoma, and the petitioner, the Miami Tribe of Indiana, constitute and represent all descendants of members of the Miami Tribe of American Indians. (The above cessions are shown in Royce as tracts 56, 71 and 72).

The Eel River Tribe was originally and at all times herein referred to, a part of the Miami. The Wea Tribe was originally also a part of the Miami Tribe but after 1805 separated from the Miami.

2. (a) The Potawatomie Nation and one of its bands, Prairie Band of the Potawatomie Nation, are petitioners in Docket No. 15-H and are claiming an interest in the lands ceded by the Treaty of September 30, 1809, and described in Finding 11. The Potawatomi was a party to this treaty and is described therein as an ally of the Miami and Eel River tribes (Article 1).

Article 3 of the treaty reads as follows:

The compensation to be given for the cession made in first article shall be as follows, viz: to the Delawares a permanent annuity of five hundred dollars; to the Miamies a like annuity of five hundred dollars; to the Eel river tribe a like annuity of two hundred and fifty dollars; and to the Putawatimies a like annuity of five hundred dollars.

The annuity referred to above was paid to the Potawatomi Tribe or its two bands, the Prairie and the Citizens, until it was commuted about the year 1909.

In the Treaty Journal of the proceedings at Fort Wayne on September 30, 1809 (Pet. Ex. 15, p. 15, Dkt. 253) referring to the compensation for the lands of the Miami and Eel River tribes ceded by that treaty appears this statement:

* * * That even the whole compensation proposed to be given for the land would be given to the Miamies if they insisted upon it but that they knew the offence which this would give to the other Tribes and that it was always Governor's intention so to draw up the Treaty that the Putawatimies & Deliwares would be considered as participating in the advantages of the Treaty as allies of the Miamies not as having any right to the land.

Neither Potawatomie petitioner has offered proof of its use or occupation of any part of the area ceded by the Fort Wayne Treaty of September 30, 1809 (Tracts 71 and 72) although it had full opportunity to do so; nor does the evidence offered by the other parties to this consolidated proceeding show any Potawatomi right or interest in such lands. These petitioners base their claim upon the fact that the "tribe of Indians called the Putawatomies" were parties to said treaty and received the annuities provided for that tribe by Article 3 of that treaty. The only proof offered by the Potawatomi consisted of payments of such annuities

to the Potawatomi Nation or its bands, including the Prairie Band, until the annuities were commuted. (Excs. 1 and 2, Dkt. 15-H).

(b) The Citizen Band of Potawatomi Indians of Oklahoma and the Potawatomi Nation are petitioners in Docket No. 307, which was consolidated for hearing with the other petitioners named in the title, amended their petition on March 7, 1955, and thereby removed their claim for lands ceded by the 1805 and 1809 treaties. They, therefore, are not involved in claims consolidated for hearing and must be dismissed from such consolidation.

(c) The Kickapoo Tribe of Kansas, the Kickapoo Tribe of Oklahoma and the Kickapoo Nation are petitioners in Docket No. 317, which was also consolidated for hearing with the others but claim no rights to Royce tracts 56, 71 and 72, ceded by the 1805 or 1809 treaties and must therefore be dismissed from the consolidation. (See petition as amended March 20, 1956).

(d) The Hannahville Indian Community, Forest County Potawatomi Community and the Potawatomi Tribe are petitioners in Docket No. 29-F. This case was consolidated for trial with the other cases mentioned above, but, although given full opportunity to do so, such petitioners offered no evidence of their capacity to sue or in support of the other allegations of their petition, nor does the proof offered by other parties to the consolidated hearings support the claim of such claimants. Said petition must therefore be dismissed in so far as basing a claim arising out of the Fort Wayne Treaty of September 30, 1809.

3. The lands historically used by the Miami Tribe included Royce Areas 56, 71 and 72, the lands involved in this proceeding. At the treaty council preceding the execution of the Treaty of Greenville (treaty of August 3, 1795, 7 Stat. 49), Little Turtle, the Miami chief, described the ancestral lands of the Miami Tribe as follows:

It is well known by all my brothers present that my forefather kindled the first fire at Detroit; from thence he extended his lines to the head waters of the Scioto; from thence, to its mouth; from thence, down the Ohio, to the mouth of the Wabash, and from thence to Chicago * * * I have now informed you of the boundaries of the Miami Nation where the Great Spirit placed my forefather a long time ago. * * *

Areas 56, 71 and 72 were within these boundaries. (Greenville Treaty Journal, Pet Ex. 8, pp. 570-1; Map, Ex. 4, Dkt. 253).

4. (a) By Section 14, Article III, of the Northwest Territory Ordinance of 1787, reenacted by the Act of August 7, 1789 (1 Stat. 50), the United States made the following pledge to the Miamis and other tribes inhabiting the Northwest Territory:

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

On October 25, 1791, President Washington reported to Congress:

It is sincerely to be desired that all need of coercion in future may cease and that an intimate intercourse may succeed, calculated to advance the happiness of the Indians and to attach them firmly to the United States.

In order to do this it seems necessary--

That they should experience the benefits of an impartial dispensation of justice.

That the mode of alienating their lands, the main source of discontent and war, should be so defined and regulated as to obviate imposition and as far as may be practicable controversy concerning the reality and extent of the alienations which are made. (Pet. Ex. 91, Dkt. 253).

On July 30, 1793, treaty commissioners of the United States made the following statement to the confederated Indian tribes assembled at the rapids of the Miami River:

Brothers: We now concede this great point. We, by the express authority of the President of the United States, acknowledge the property, or right of soil, of the great country above described, to be in the Indian nations, so long as they desire to occupy the same. We only claim particular tracts in it, as before mentioned, and the general right granted by the King, as above stated, and which is well known to the English and Americans, and called the right of preemption, or the right of purchasing of the Indian nations disposed to sell their lands, to the exclusion of all other white people whatever. (Pet. Ex. 83, Dkt. 253).

On April 4, 1794, the Secretary of War submitted his instructions to General Wayne who was appointed to treat with hostile Indians. These instructions included the following:

You will endeavor, to the utmost of your power, to induce the tribes claiming a right to the said lands, to confirm the boundary established by the said treaty of Fort Harmar, with the Six Nations, and Wyandots, Delawares, &c.; for which purpose you will, among other considerations, offer--

1st. The guarantee of the United States of the right of soil, to all of the remaining Indian lands in that quarter, against the citizens or inhabitants of the United States.

* * *

It will be an object worthy of your attention, to endeavor, as far as shall be consistent with the main design of peace, to form separate contracts, or treaties, relatively to boundaries, with the several tribes to whom the lands actually belong, avoiding, as much as possible, to confirm the idea of a union, or general confederacy of all the tribes, or of any patronage of the whole over the lands of any particular tribes, or subdivisions of tribes. But, as the said Indians are much attached

