

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE PEORIA TRIBE OF INDIANS |) | |
| OF OKLAHOMA, ET AL., |) | Docket No. 99 |
| |) | |
| Petitioners, |) | |
| |) | |
| THE KICKAPOO TRIBE OF KANSAS |) | |
| ET AL., |) | Docket No. 315 |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: April 4, 1966

FINDINGS OF FACT

Preliminary Statement

This case involves the alleged title of the Piankeshaw Tribe to that part of southeastern Illinois designated as Royce Area 63. Docket No. 315, The Kickapoo Tribe and Nation v. United States, was consolidated with Docket No. 99 for trial of the title question because of the Kickapoo overlap claim, based on the contention that the northern boundary of Royce Area 63 was erroneously drawn so as to include an overlap triangle which should have been placed within Royce Area 110, claimed by the Kickapoo Tribe and Nation, in Docket No. 315.

The Commission makes the following findings of fact:

1. The Peoria Tribe of Indians of Oklahoma (Docket No. 99) and the Kickapoo Tribe of Kansas (Docket No. 315) are both identifiable groups of Indians within the territorial limits of the United States, and both

have the capacity and authority to bring and maintain the instant action under Section 2 of the Indian Claims Commission Act (25 U.S.C.A. 70a). Although the Peoria Tribe of Indians of Oklahoma has such capacity and authority, as stated above, the discussion in the following findings will center, so far as Docket No. 99 is concerned, on the Piankeshaw Tribe, because all the procedures and events to be discussed here took place prior to the Treaty of May 30, 1854, 10 Stat. 1082, wherein the Piankeshaw, Kaskaskia, Wea, and Peoria Tribes of Indians, with the approval of the defendant, formally consolidated, and later became the Peoria Tribe of Oklahoma. Peoria Tribe, et al., 4 Ind. Cl. Comm. 223.

As concluded in the order of March 14, 1957, which was concerned with several pending cases, including the case at bar, there were living members, or descendants of members, of the Piankeshaw tribe at the date of filing the petition in the instant case, and also at the date of the said order.

Greenville Treaty - Legal precedents

2. On August 3, 1795, at Greenville, Ohio, in the Northwest Territory, a treaty of peace was entered into (7 Stat. 49, 2 Kapp. 39) between the United States, represented by General Anthony Wayne, and twelve tribes of Indians, called the Wyandots, Delawares, Shawnoes, Ottawas, Chipewas, Putawatimes, Miamis, Eel-river, Weea's, Kickapoos, Piankeshaws, and Kaskaskias (Miami Tribe of Oklahoma, et al. v. United States, 2 Ind. Cl. Comm. 617, 620; aff'd 146 C. Cls. 421, 428). The designation of the twelve tribes listed above, and the individuals signing for them, appear

at the customary signature area in the treaty, at the end of the document, after the attestation clause.

3. The preamble to the Greenville treaty recites that General Wayne met with the agents of the "said tribes of Indians," referring to the same twelve tribes listed in Finding No. 2 (Sac and Fox Tribe v. United States, 7 Ind. Cl. Comm. 675, 681; aff'd 161 C. Cls. 189, 195). The identical twelve tribes are listed as eligible for annuities in Article IV of the Treaty of Greenville (7 Stat. 49, 51-52).

Greenville Treaty - Congressional intent

4. The Greenville Treaty, listing as parties the United States and the twelve tribes referred to in Findings Nos. 2 and 3, was ratified by the Senate and proclaimed by President Washington on December 22, 1795 (7 Stat. 49, 54).

5. In its final form, as ratified by the Senate and proclaimed by President Washington, the Greenville Treaty bears an engrossed caption listing the tribes which entered into the treaty with General Wayne,^{1/} which are listed with individual signatories following the attestation clause of the treaty,^{1/} which are referred to in the preamble to the treaty,^{2/} and which are listed as annuity eligibles in Article IV of the text of the treaty.^{2/} Ratification and proclamation of the Treaty of Greenville with the tribal listings mentioned above evidenced the intent of Congress to include the Piankeshaw Tribe as a signatory to the Treaty of Greenville.

^{1/} Finding No. 2

^{2/} Finding No. 3

6. Congress pledged and appropriated money for expenses in carrying into effect the Greenville Treaty to continue so pledged and appropriated so long as the treaty should be in force, the expenses to include annuities "to the Eel river, Weea, Kickapoo, Piankeshaw and Kaskaskia tribes, each five hundred dollars" (Act of May 6, 1796; 1 Stat. 460).

Greenville Treaty - Physical Characteristics

Explanatory Statement

The following five findings are to some extent repetitive of Findings Nos. 2 through 5, with an important distinction: Findings Nos. 7 through 11 will be directed in part to the physical characteristics of certain parts of the document itself which were studied selectively in the defendant's behalf by Joseph M. English, Jr., document examiner at the Washington FBI Laboratory. His study evidently was confined to the signature box containing "Wea's for themselves and the Piankeshaws," and that part of the treaty caption containing "Piankeshaws and Kaskaskias." His study was also confined to abrasions in the parchment and ink pigmentation, so far as these matters could be determined by his examination, mostly by microphotography, and in the particular areas set forth above.

7. With respect to the third signature box from the bottom of the third page of the Greenville Treaty, the phrase "for themselves and the Piankeshaws" in the vertical section of the box is lighter in pigmentation than the word "Weea's", and the phrase was written later than "Weea's" as a correction to show that the horizontal individual signatures, presumably of members of the Weea tribe, were those of agents for the

Piankeshaw tribe as well; and the phrase "for themselves and the Piankeshaws" was an integral part of the general signature procedure in the execution of the treaty. No clear contradiction of this finding was offered by the defendant's expert on documents, Joseph M. English, Jr. The Piankeshaw Tribe of Indians was a signatory to the Greenville Treaty.

8. The preamble to the Greenville Treaty recites the meeting of General Wayne and the agents of the "said tribes of Indians," referring to the twelve tribes, including the Piankeshaw, which are named in the signature area of the treaty, and which are listed in Finding No. 2. No contradiction to this finding was offered by Mr. English, the defendant's expert on documents.

9. The third paragraph from the end of Article IV of the Greenville Treaty was amended by carets as follows: (1) total annuities provided were changed from nine thousand dollars to nine thousand five hundred dollars; and (2) the name "Piankeshaw" was added as an annuitant. The Commission notes that defendant's expert, Mr. English, had not noticed these corrections at the time of trial. The Commission finds that the words "five hundred" and "Piankeshaw" were added by the United States somewhat later than the engrossment of the rest of Article IV of the Greenville Treaty as an integral part of the general execution of the treaty, and the words were part of the treaty as executed by the Indian signatories and the United States, and as ratified by the United States Senate, and proclaimed by the President.

10. The Piankeshaw and Kaskaskia tribes were apparently added to the caption after the other ten signatory tribes. If so, the Commission finds that the addition was proper, in conformity with the listing of the Piankeshaw and Kaskaskia among the 12 signatory tribes, referred to in the preamble, and (as to the Piankeshaw) obviously and openly added to the annuity provision of Article IV.

11. The Greenville Treaty has been studied closely by experts: notably by Charles J. Kappler, who lists the Piankeshaw as a party to the Greenville Treaty in his monumental Indian Affairs, Volume II, beginning at page 39; and by Charles C. Royce in his equally monumental compilation of Indian Land Cessions in the United States, also listing the Piankeshaw as a party to the Greenville treaty at page 656 of that work.

The defendant, through its expert on documents, Mr. English, has gone to great lengths to note such physical characteristics as abrasion of parchment and inks of different pigments, to point out that the Piankeshaw were included as a signatory after some other participants. In his discussion of the treaty caption, Mr. English was logically bound to consider the Kaskaskia (as well as the Piankeshaw) as an addition, though the Kaskaskia were duly listed in the engrossed text of Article IV, presumably before the Piankeshaw were added by carets to that text, and apparently not noticed by Mr. English.

This Commission has dealt with the interpretation of many Indian treaties and is well aware that early treaties on parchment were often, as was the Greenville Treaty, drafted, engrossed, written, amended,

corrected, and signed (except for an x, a picture of an animal, or other sign) by employees of the United States. The reason for this procedure was that many of the Indian signatories were illiterate, could not read English, and could not write, even to the extent of signing their names. As to difference in ink pigmentation, Mr. English himself testified at page 260 of the transcript: "There is a difference in concentration in various parts of this document, yes, sir. Within the writing of a given caption this seems to be pertinent to this investigation. If we were to extend this examination throughout the document we will find many areas in which things of this nature would be observed."

The implication of the quoted statement by Mr. English is that he was engaged to investigate the signature and caption parts of the treaty by microphotography and expertise, and that even that limited purpose was confined to the Piankeshaws, although he did turn up a correction in the caption with reference to the Kaskaskia. This implication is strengthened by testimony of Mr. English on Article IV, wherein he said he didn't believe he observed the Piankeshaw insertion. Dr. Dorothy Libby, defendant's expert anthropologist, stated that "three Wea Indians signed the (Greenville) treaty" on behalf of the Piankeshaw.

The Commission finds that the Treaty of Greenville, with the corrections or amendments made as an integral part of its execution, appeared to and was understood by the signatories as it now appears in the Statutes at Large (7 Stat. 49).

12. Prior to and in anticipation of the Greenville Treaty, General Wayne was instructed to be sure that all northwestern Indian participants

to the treaty were duly represented, and thus to avoid Indian acrimony such as that which grew out of the Fort Harmer Treaty in 1789. The political purpose of the instructions to General Wayne were to provide an atmosphere of tranquillity which would enhance the growth of the new nation; and, in aid of that tranquillity, to bring about the greatest possible measure of peace and friendship between the white settlers of the new nation and the former aboriginal occupants of the land.

The Commission finds that General Wayne carried out his instructions energetically and faithfully, and in doing so caused the Piankeshaw Tribe to be interlineated in Article IV of the text in conformity with their participation in the treaty through the agency of the Wea's.

The amendment of the text of Article IV of the treaty was made after the original engrossment. Further, the Commission accepts the opinion of Mr. English that the caption and Wea signature box were amended after the original engrossment. The amendment in the caption, and presumably those in Article IV, and those in the signature box, may have been made almost simultaneously with engrossment, allowing only a few moments for the ink to dry, as Mr. English testified. There is no evidence whatever that any change in the treaty was made after it was signed. We find that the amendments were made or understood prior to and as an integral part of the signing and execution of the treaty.

13. The United States, by Article IV of the Greenville Treaty, relinquished its claims to all lands on the Indian side of the general boundary line between the lands of the United States and the lands of the signatory Indian tribes. There were certain exceptions to this

general relinquishment by the United States, one of which, as stated in the first paragraph of Article IV, was: "The post of St. Vincennes on the river Wabash, and the lands adjacent * * *; the Vincennes tract."

On January 23, 1802, the Secretary of War wrote William Henry Harrison, Governor of the Indiana Territory, requesting in the name of President Jefferson, that Governor Harrison ascertain boundaries of certain tracts ceded by the Indians (or reserved by the United States), which were necessarily vague in the language of the Greenville Treaty, particularly the boundaries of the Vincennes tract.

Pursuant to this request, Governor Harrison met with representatives of Indian tribes having rights, acknowledged in the Greenville Treaty, in lands adjoining or in the neighborhood of the Vincennes tract. In due course, a formal treaty was executed at Fort Wayne between the United States, represented by Governor Harrison, and the representatives of nine tribes, including the Piankeshaw, all of which had been signatories to the Greenville Treaty. The Treaty of Fort Wayne, fixing the precise boundaries of the Vincennes tract, was executed June 7, 1803 (7 Stat. 74). The boundaries are set forth in Article I, expressly determining the limits of the tract "to which the Indian titles had been extinguished" as what is known as Royce Area 26 in Indiana and eastern Illinois.

The United States, in Article II of the Treaty of June 7, 1803, (7 Stat. 74), again relinquished all claim to "any lands adjoining to or in the neighbourhood of" Royce Area 26. Thus, the United States reaffirmed its recognition of title in the signatory tribes, including the Piankeshaw, to the lands adjoining or in the neighborhood of the Vincennes tract.

14. Governor Harrison continued with his duty of clarification of the vagueness and ambiguity which were necessarily inherent in the Greenville Treaty. As the Court of Claims pointed out in affirming this Commission's holding of recognized title in the Miami tribe:

General Wayne had found it impossible in 1795 to define the boundaries enclosing the various areas used and occupied by the signatory tribes. But these boundaries were established by subsequent treaties . . . Miami Tribe of Oklahoma, et al. v. U. S. 146 C. Cls. 421, 442.

Governor Harrison's first success, chronologically, in determining inter-tribal boundaries of the Indian lands demarked by the Greenville Treaty, came on August 13, 1803. On that date, as the representative of the United States, he concluded at Vincennes a treaty with the Kaskaskia (7 Stat. 78) by which the latter ceded to the United States the Kaskaskia lands described as follows:

Art. 5. And to the end that the United States may be enabled to fix with the other Indian tribes a boundary between their respective claims, the chiefs and head warriors of the said Kaskaskia tribe do hereby declare that their rightfull claim is as follows, viz -- Beginning at the confluence of the Ohio and the Mississippi, thence up the Ohio to the mouth of the Saline creek; about twelve miles below the mouth of the Wabash, thence along the dividing ridge between the said creek and the Wabash until it comes to the general dividing ridge between the waters which fall into the Wabash, and those which fall into the Kaskaskia river; and thence along the said ridge untill it reaches the waters which fall into the Illinois river, thence in a direct course to the mouth of the Illinois river, and thence down the Mississippi to the beginning.

Part of the eastern boundary of the above Kaskaskia cession (Royce Area 48) fixes the western and southern boundaries of the tract (Royce Area 63) to which the United States recognized title in the Piankeshaw Tribe by the Greenville Treaty.

15. On August 18, 1804, General Harrison, as the representative of the United States, executed a treaty at Vincennes (7 Stat. 81) with the Delaware tribe, by which the latter ceded to the United States the tract known as Royce Area 49, described in Article I as the tract of country which lies between the Ohio and Wabash rivers, and below (south of) the Vincennes tract and the road leading from Vincennes to the falls of Ohio. Article 4 of the treaty reads as follows:

Art. 4. The said tribe having exhibited to the above named commissioner of the United States sufficient proof of their right to all the country which lies between the Ohio and White river, and the Miami tribe who were the original proprietors of the upper part of that country having explicitly acknowledged the title of the Delawares at the general council held at Fort Wayne in the month of June, 1803, the said United States will in future consider the Delawares as the rightful owners of all the country which is bounded by the white river on the north, the Ohio on the south, the general boundary line running from the mouth of the Kentucky river on the east, and the tract ceded by this treaty, and that ceded by the treaty of Fort Wayne, on the west and south west.

Article 5 of the treaty notes that the Piankeshaw had always persisted in refusing to recognize the Delaware title to the ceded tract, and contemplates negotiation with the Piankeshaw to resolve the dispute.

16. On August 27, 1804, Governor Harrison, representing the United States, executed a treaty with the Piankeshaw Tribe (7 Stat. 83), Articles 1 and 2 of which state:

ARTICLE 1. The Piankeshaw tribe relinquishes, and cedes to the United States for ever, all that tract of country which lies between the Ohio and Wabash rivers, and below Clark's grant; and the tract called the Vincennes tract, which was ceded by the treaty of Fort Wayne, and a line

connecting the said tract and grant, to be drawn parallel to the general course of the road leading from Vincennes to the falls of the Ohio, so as not to pass more than half a mile to the northward of the most northerly bend of said road.

ARTICLE 2. The Piankeshaw tribe acknowledges explicitly the right of the Kaskaskia tribe to sell the country which they have lately ceded to the United States, and which is separated from the lands of the Piankeshaws by the ridge or high land which divides the waters of the Wabash from the waters of the Saline creek; and by that which divides the waters of the said Wabash from those which flow into the Au-vase and other branches of the Mississippi.

By this treaty, the United States added the Piankeshaw cession of Royce Area 49 to the Delaware cession of the same area by the Treaty of August 18, 1804 (7 Stat. 81). Governor Harrison rejected the Miami-Potawatomi claim to the area in his letter to the Secretary of War dated March 3, 1803 (1805), as follows:

* * *

Capt. William Wells has certainly not exerted himself to pacify the Indians who have taken offence at the late Treaties Vincennes, Sept. 17, 1802 with the Delawares and Piankeshaws. It is equally certain that the disaffected are not as numerous as he has stated them to be and that those who have expressed discontent have been instigated thereto entirely by the Turtle. Whether the idea of opposition to those Treaties originated with himself or with Mr. Wells I cannot determine but that the opinions of the one are always the opinions of the other. I have long known The Turtle has considerable influence over the Five Medals and some others of the Potawatomi chiefs and I believe that Captain Wells and himself control entirely the small band of Eel River Indians. But when Wells speaks of the Miami Nation being of this or that opinion he must be understood as meaning no more than the Turtle and himself. Nine tenths of that Tribe who acknowledge Richardville and Peccan for their chiefs (but who are really governed by an artful fellow called the Owl and Long Beard whom you once saw at the seat of government) utterly abhor both Wells and the Turtle. On this occasion however they may have been induced to join in the clamor from the expectation of deriving some advantage from it.

* * *

The Commission found in Miami Tribe of Oklahoma v. United States, Docket No. 67, that the correct date of Governor Harrison's letter was March 3, 1805, and so finds in the instant case.

By the Treaty of August 27, 1804 (7 Stat. 83), the Piankeshaw Tribe, besides joining the Delawares in the cession of Royce Area 49, also acknowledged the title of the Kaskaskia Tribe to Royce Area 48, which had been ceded by the Kaskaskia by the Treaty of August 13, 1803 (7 Stat. 78).

The Commission finds that by the Treaty of Fort Wayne (7 Stat. 74; June 7, 1803), that of August 13, 1803 (7 Stat. 78), and that of August 27, 1804 (7 Stat. 83), all of which were negotiated by the United States, the United States defined precisely the southern, western, and eastern boundaries of Royce Area 63, and to the extent of those boundaries indicated exactly the lands to which the United States recognized Piankeshaw title in the Greenville Treaty.

17. On August 21, 1805, Governor Harrison, representing the United States, executed the Treaty of Grouseland (7 Stat. 91) with the Miamies, Potawatomes, Eel Rivers and Weas, with the participation of the Delawares, but not of the Piankeshaws. By the Treaty of Grouseland, the participating tribes, other than the Delaware tribe, acknowledged the right of the Delawares to cede Royce Area 49 (by the Treaty of August 18, 1804). Articles 3 and 4 read as follows:

Art. III. In consideration of the cession made in the preceding article, the United States will give an additional permanent annuity to said Miamis, Eel River, and Wea tribes, in the following proportions viz: to the Miamis, six hundred dollars; to the Eel River tribe, two hundred and fifty dollars; to the Weas, two hundred and fifty dollars; and also to the Putawatemies, an additional annuity of five hundred dollars, for ten years, and no longer; which, together with the sum of four thousand dollars which is now delivered, the receipt whereof they do hereby acknowledge, is to be considered as a full compensation for the land now ceded.

Art. IV. As the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still consider themselves as one nation, and as they have determined that neither of these tribes shall dispose of any part of the country which they hold in common; in order to quiet their minds on that head, the United States do hereby engage to consider them as joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty; and they do farther engage that they will not purchase any part of the said country without the consent of each of the said tribes. Provided always, That nothing in this section contained, shall in any manner weaken or destroy any claim which the Kickapoos, who are not represented at this treaty, may have to the country they now occupy on the Vermillion river.

Thus, the United States acknowledged the participating tribes other than the Delaware tribe to be the owners of the "country on the Wabash and its waters, above (north of) the Vincennes tract, and which has not been ceded by the United States, by this or any former treaty." This acknowledgment was subject to any valid conflicting claim by the Kickapoos, who were not represented in the Treaty of Grouseland. The United States also impliedly acknowledged the extension of the northern boundary of the Vincennes tract to be the northern boundary of the Piankeshaw lands, the southern, western and eastern boundaries of which had previously been determined and acknowledged, as set forth in Finding No. 16 and others.

18. Eight days after the Treaty of Grouseland, on August 29, 1805, Governor Harrison, then at Vincennes, wrote President Jefferson. The letter informed the President of the successful issue of the Treaty of Grouseland; and Governor Harrison also wrote that the remaining Piankeshaw claim could now be easily purchased, and that he was waiting for instructions in the matter.

On October 11, 1805, the Secretary of War wrote Harrison congratulating him for the successful end of the Miami claims of the Treaty of Grouseland. The Secretary requested the Governor, at the direction of the President, to close a bargain with the Piankeshaw for their claim to the lands between the eastern boundary of the Kaskaskia cession and the Wabash. Governor Harrison wrote President Jefferson from Vincennes on November 12, 1805, expressing the hope that he would soon be able to close a bargain with the Piankeshaw for the country between the Wabash and the Kaskaskia purchase: that is, Royce area 63.

On December 30, 1805, Governor Harrison, representing the United States, executed a treaty at Vincennes with the Piankeshaw tribe (7 Stat. 100), Article 1 of which reads as follows:

Art. 1. The Piankishaw tribe cedes and relinquishes to the United States for ever, all that tract of country (with the exception of the reservation hereinafter made) which lies between the Wabash and the tract ceded by the Kaskaskia tribe, in the year one thousand eight hundred and three, and south of a line to be drawn from the north west corner of the Vincennes tract, north seventy eight degrees west, until it intersects the boundary line which has heretofore separated the lands of the Piankeshaws from the said tract ceded by the Kaskaskia tribe.

All the boundaries fixed by Article 1 except the northern one had been fixed by treaties prior to that of December 30, 1805. The northern boundary of the Piankeshaw lands, known as Royce Area 63, had been impliedly acknowledged as the extension of the northern boundary of the Vincennes tract. By the Treaty of December 30, 1805, however, we have the clear language "a line to be drawn from the northwest corner of the Vincennes tract, north seventy-eight degrees west" to the Kaskaskia boundary (Royce Area 48).

Docket No. 315 - Overlap Claim

19. As mentioned in the Preliminary Statement, counsel for the Kickapoo Tribe of Kansas, et al., petitioner in Docket No. 315, claim a pie-shaped wedge in the northern part of Royce Area 63. The claim in essence is that the northern boundary of Royce Area 63 was mistakenly drawn as a continuation of the northern boundary of the Vincennes tract and that the northern boundary should have been due west: that is, a latitudinal parallel. The wedge is in Royce Area 110 (Docket 315) in Royce map Illinois 2, and in Royce Area 63 in Royce map Illinois 1.

Royce Area 110, as it appears on Royce map Illinois 2 with its southern boundary a latitudinal parallel running due west from the northwest corner of the Vincennes tract, follows the language of the Kickapoo treaty of cession of July 30, 1819 (7 Stat. 200). However, just a month later, the United States and the Kickapoos executed a somewhat changed, presumably amended, version in the treaty of August 30, 1819 (7 Stat. 202). This later treaty of cession by the Kickapoos

describes its southern boundary as "beginning at the northwest corner of the Vincennes tract: Thence, westerly, by the boundary established by treaty with the Piankeshaws, on the thirtieth day of December, eighteen hundred and five * * *."

The Commission finds that the northern boundary of Royce Area 63 was correctly drawn, in accordance with the Treaty of December 30, 1805, affirmed as correct in the treaty of August 30, 1819 (7 Stat. 202) by the Kickapoo Tribe.

20. The defendant has collected and entered a large number of exhibits directed to the controversial issue of exclusive use and occupancy, aboriginal title. The petitioner has relied on recognized title.

We find that the United States, acting through the Congress, intended to and did recognize title in the twelve signatory tribes to the Greenville Treaty (one of which was the Piankeshaw) to all the lands relinquished by the United States, as described in Article IV, which included Royce Area 63.

The inter-tribal boundaries of the lands relinquished by the United States in the Greenville Treaty were impossible to determine at the time of the treaty, but recognition of title in the Indian participants is plain in the agreement by the United States to permit the Indian signatories to occupy the relinquished lands as long as they pleased until they were disposed to sell the lands to the United States. The recognition of title, implicit in Article IV is emphasized in Article V, which reads:

Art. V. To prevent any misunderstanding about the Indian lands relinquished by the United States in the fourth article, it is now explicitly declared, that the meaning of that relinquishment is this: The Indian tribes who have a right to those lands, are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; but when those tribes, or any of them, shall be disposed to sell their lands, or any part of them, they are to be sold only to the United States; and untill such sale, the United States will protect all the said Indian tribes in the quiet enjoyment of their lands against all citizens of the United States, and against all other white persons who intrude upon the same. And the said Indian tribes again acknowledge themselves to be under the protection of the said United States and no other power whatever. (7 Stat. 49, pp. 51-52)

It is also plain that the United States, while recognizing title in the twelve tribes signatory to the Greenville Treaty, contemplated fixing with precision the inter-tribal boundaries within the relinquished lands when the signatories or any of them should cede back to the United States the land to which the future grantor or grantors had recognized title.

Dr. Libby, the defendant's expert on anthropology, in a study of the Piankeshaw in the 1783-1795 period notes that William Henry Harrison, Governor of the Indiana Territory (and later President of the United States), had the responsibility of defining the inter-tribal boundaries, and of extinguishing Piankeshaw claims in southeastern Illinois, where Royce Area 63 is located. Dr. Libby testified that she found no references to any Indians other than Piankeshaw

living in Royce Area 63. In the case at bar the precise boundaries of the lands to which the Piankeshaw had a right, and therefore recognized title, are set forth in Article I of the Treaty of December 30, 1805.

In the light of the procedures and facts set forth above, the right and recognized title of the Piankeshaw to Royce Area 63 are so clear that any controversy with regard to exclusive use and occupancy of Royce Area 63 is irrelevant. Miami Tribe of Oklahoma, et al v. United States, 146 C. Cls. 421, 446 (1959). In other words, the petitioner "held the land ceded to the United States (on December 30, 1805) by recognized Indian title and did not therefore have to prove aboriginal use and occupancy of the area so ceded * * *" (Ibid, p. 474).

The Commission finds that the Piankeshaw Tribe had such a right to the tract known as Royce Area 63 in 1795 as to leave no doubt that the United States through the Congress recognized Piankeshaw title to that area by the Greenville Treaty, and such recognition was confirmed when the exact boundaries of the area were precisely defined at the time of the cession of the area from the Piankeshaw Tribe to the United States by the Treaty of December 30, 1805.

21. The Commission finds that the Piankeshaw Tribe held recognized title to all of the lands ceded under Article I of the Treaty of December 30, 1805, shown on Royce's map of Illinois No. 1 as Area 63.

/s/ Arthur V. Watkins
Chief Commissioner

/s/ Wm. M. Holt
Associate Commissioner

/s/ T. Harold Scott
Associate Commissioner