

-2-

officially designated as Royce Area 49. This area is described in the 1804 Delaware treaty of cession as,

"... the tract of country which lies between the Ohio and Wabash rivers, and below the tract ceded by the treaty of Fort Wayne, and the road leading from Vincennes to the falls of the Ohio." (Art. 2, 7 Stat. 81)

In the 1804 Piankeshaw treaty of cession this same general area is identified in the following manner:

"... 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 at 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." (Art. 1, 7 Stat. 83)

Royce Area 49 is bounded on the north by Royce Area 26, a tract reserved to the United States under the Treaty of June 7, 1803 (7 Stat. 74), and Royce Area 56, a tract ceded to the United States under the Grouseland Treaty of August 21, 1805 (7 Stat. 91). The southern and eastern limits of Royce Area 49 are the Ohio River, and on the west it is bounded by Royce Area 63, which was ceded by the Piankeshaw tribe under the Treaty of December 30, 1805 (7 Stat. 100).

4. Following the successful termination of the American Revolutionary War, Congress became greatly concerned with the status of the numerous Indian tribes that lived east of the Mississippi River. Now the sovereign owner of a vast area ceded by Great Britain, it was of prime importance to the Government that peaceful relations with the Indian occupants be the first order of business. Thus, as a matter of policy, the United States undertook a program of negotiating separate peace treaties with as many of these Indian tribes as possible, while at the same time seeking to identify

-3-

and establish a general boundary line between the lands occupied by the Indians and those accommodating the new white settlements, as well as fixing the intertribal boundaries between the competing tribes.

In pursuit of this agreed policy, General Anthony Wayne received a Presidential Commission to treat with the hostile tribes of the Northwest Territory. His main objective was to establish the needed general boundary line, and to facilitate his efforts he was authorized to guarantee to the negotiating Indians the rights to their tribal lands against the claims or incursions of the citizens or inhabitants of the United States.

5. The end product of General Wayne's labors was the conclusion of the Greenville Treaty of August 3, 1795 (7 Stat. 49), wherein the United States and the chiefs, sachems, and warriors of the assembled tribes agreed, among other things, to put an end to destructive warfare, to settle all controversies, and to restore friendly intercourse and harmony between the assembled tribes and the United States. Under Article III of the Greenville Treaty there was established a general boundary line.

"... between the lands of the United States, and the lands of said Indian tribes ..." (Art. III, 7 Stat. 49)

This boundary line, more readily identified as the Greenville Line of 1795, began at a point where Cleveland, Ohio is now located, ran south about 70 miles, then almost due west across central Ohio to a point midway on the Ohio-Indiana border near Fort Recovery, and then south-southwest in Indiana to the Ohio River.

By Article III of the Greenville Treaty the Indian tribes ceded

-4-

and relinquished all claims east and south of the Greenville line, and in consideration of these tribal cessions, the United States, under Article IV of the treaty relinquished, with certain exceptions, claims to all the Indian lands situated generally west and north of the Greenville line.

The effect of the "relinquishment" by the United States is more precisely defined under Article V of the Greenville Treaty wherein it reads:

"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 until 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."

6. Representatives of both the Delaware and Piankeshaw tribes of Indians were signatories to the 1795 Greenville Treaty, and the subject land within Royce Area 49 was situated west of the 1795 Greenville Line in that area over which the United States had relinquished all claims under Article IV of said treaty.

7. While the 1795 Greenville Treaty did not fix the intertribal boundaries, nevertheless, the tribal representatives were led to believe that the United States was in fact dealing with each tribe independently, and that through future negotiations their individual tribal boundaries would be established. General Wayne had told the Indians in

-5-

response to a request that he demarcate the boundaries between them, "You Indians, best know your respective boundaries." President Jefferson, speaking of the position of the United States at Greenville, stated that:

"... the first thing necessary was to fix a firm boundary between [our Indian neighbors] and us that there might be no trespasses across that by either party. Not knowing what parts of our border belong to each Indian nation particularly we thought it safest to get all those in the North to join in one treaty and to settle a general boundary between them and us. We did not intermeddle as to the lines dividing them one from another because this was their concern not ours."

8. Following the conclusion of the 1795 Treaty of Greenville, the United States embarked upon a program of defining the intertribal boundaries between the tribes as well as the boundaries of tracts to be ceded to the United States. This task was entrusted to William Henry Harrison, Governor of the Indian Territory.

In the case of the Peoria Tribe of Indians of Oklahoma, et al., v. United States, 16 Ind. Cl. Comm. 574, the Commission had occasion to describe Governor Harrison's initial steps in this direction:

"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

-6-

executed on June 7, 1803 (7 Stat. 74). The boundaries are set forth in Article 1, expressly determining the limits of the tract 'to which Indian titles had been extinguished' as what is known as Royce Area 26 in Indiana and eastern Illinois."

The Delaware tribe of Indians also participated in the 1803 Treaty at Fort Wayne, and as previously noted, the "Vincennes Tract" adjoins Royce Area 49, the subject land, on the north.

9. The second phase in Governor Harrison's boundary demarcation process was the negotiation of the 1804 Delaware and Piankeshaw treaties, wherein he defined and took cessions of Royce Area 49.

In Article 4 of the August 18, 1804 Delaware Treaty, it was stated that the Delaware Tribe had exhibited sufficient proof to Governor Harrison of its right to all the country between the Ohio and the White River. However, in Article V of the same treaty it was noted that the Piankeshaws refused to acknowledge the title to this area to be in the Delaware Tribe, and that the United States would have to negotiate with the Piankeshaws at some future date in order to settle this question in an amicable way.

Thereafter, on August 27, 1804, Governor Harrison concluded a treaty of cession with the Piankeshaw Tribe for Royce Area 49. In so doing the Piankeshaw confirmed the Delaware cession of the same area under the 1804 Delaware Treaty.

10. Piankeshaw obstinacy to acknowledgment of the clear Delaware title to the subject lands, as evidenced by the language in Article V of the 1804 Delaware Treaty, stems from the fact that, when white men

-7-

first came into Indian territory, the presence of the Piankeshaw was noted in the general area between the Wabash and White River areas, and as far south as the Ohio River. As stated by Governor Harrison:

"When the French first descended the Wabash the Piankeshaws were found in possession of the country on either side of that River from its mouth at least as high up as the Vermillion and the possession of it has never been disputed excepting by the Delawares who claimed under the Piankeshaws and the Weas who have occupied the country above Point Coupee since their towns at Ouiatenon were destroyed by Generals Scott and Wilkinson in the year 1791."

"Point Coupee" is located about twelve leagues above the post at Vincennes. In reporting on his efforts to define the boundaries of the Vincennes Tract, Governor Harrison addressed a letter to the Secretary of War dated February 26, 1802, in which he stated in part:

"At a council which was held here last summer, the subject of the boundary line was mentioned by the Piankeshaw chiefs, and they expressed great uneasiness that the boundary line had not been ascertained, and at the reports which had been circulated amongst them, that the Americans meant to take from them all their country. They also said, that the settlements which had been formed on the south side of the White river, were an encroachment upon them.

"I took this opportunity to explain to them that part of Greenville which relates to this place [the Vincennes tract], and assured them that an investigation would take place, in order to ascertain the extent of the country which had been actually conceded to the French. That from what I can learn, our claim [to Vincennes, as successor to the French] on the Wabash was contained between Point Coupee and the White river, but I could not determine how far it might extend on each side of the river,--nor in what direction the lines would run from these two points; but if it should appear on investigation, that it was the intention of their forefathers, that

-8-

the line should run from the mouth of White river up the channel of that river, instead of at right angles to the Wabash, that they would be paid for all the land on the south side of the White river which had been included in our settlements and surveys. This explanation seemed satisfactory. ***"
[Bracketed material supplied]

The White River, beginning on the Illinois border, runs generally eastward across south central Indiana, through the Vincennes Tract (Royce Area 26) to the Ohio border. The tenor of Governor Harrison's 1802 letter, supra, evidences a concern on the part of the Piankeshaw as to their interest in that area of land south of the Vincennes Tract. Thus, we find in the letter Governor Harrison's assurance to the Piankeshaw that he would attempt to determine the actual boundary line between the Vincennes Tract and the lands to the south.

Further evidence indicating official acknowledgment of the Piankeshaw interest in the lands within the subject tract is found in the suggestion made by the Secretary of War to Governor Harrison just before he negotiated the 1804 Piankeshaw treaty of cession. The Secretary asked Governor Harrison to be sure to include in the Piankeshaw cession, "the tract between the southern line of the Vincennes territory and the Ohio."

10. Shortly before he undertook the negotiations that led up to the conclusion of the Treaty of Grouseland on August 21, 1805 (7 Stat. 91) Governor Harrison addressed a letter, dated March 3, 1805 to the Secretary of War in which he rejected the claims of the Miami and Pottawatomi Indians to Royce Area 49, and reaffirmed that it was the Delaware and the Piankeshaw from whom he rightfully took the cessions. In the letter it is stated in part:

- 9 -

"After a careful and dispassionate consideration of the subject, I can see no reason to alter the opinion I had formed that neither the Miamis nor the Pottawatomies have any just claim either in common or otherwise to any part of the Tracts ceded to the United States by the Delawares and Piankeshaws. The Delaware claim to that particular tract was derived from Present occupancy and from a grant said to have been made to them upwards of thirty years ago by the Piankeshaws. When the French first descended the Wabash the Piankeshaws were found in the possession of the country on either side of that River (the Wabash) from its mouth at least as high as the Vermillion and the possession of it has never been disputed except by the Delawares who claimed under the Piankeshaws and the Weas who have occupied the country above Point Coupee since their Towns at Ouiatenon were destroyed by General Scott and Wilkinson in the year 1791."

11. The Grouseland Treaty of August 21, 1805 (7 Stat. 91) concluded between the United States and the Miamis, Delawares, Pottawatomies, Eel River, and Wea Indians, compromised the claims of the Miami Tribe to several areas around the Wabash River above the Vincennes Tract and to the Delaware lands south to the Ohio River.

At Grouseland the Miami were still insisting that they retained an interest in the subject lands and that they should receive compensation for this interest. In his letter of August 22, 1805, transmitting the proceedings of the Grouseland Treaty, Governor Harrison, in rejecting the Miami claim, stated in part to the Secretary of War:

"...At the commencement of the council, the Miami and Pottawatomy chiefs had hinted at the necessity of increasing their annuities, so as to put them on a footing with the Delawares. But I soon put an end to their hopes, by assuring them, in the most positive terms, that, as the United States had made a fair

-10-

bargain with the Delawares and Piankeshaws, who were the owners of the land that had been ceded, not a six pence would be given to any other tribe, in consideration of that purchase, but, that they might obtain a further annuity, by a further cession of land; and this brought on the negotiations for the tract ceded by the enclosed treaty. ..." (American State Papers, Class A, Indian Affairs, p. 701)

Under the 1805 Grouseland Treaty, the Miami Tribe relinquished its claims to the subject lands. In addition, the Miami, along with the Eel River, and Wea tribes ceded Royce Area 56 in Indiana, the southern boundary of which forms a part of the northern boundary of Royce Area 49, the subject tract. In consideration for the cession of Royce Area 56, the United States agreed to an increase in their tribal annuities. The United States further agreed to consider the Miami, Eel River and Wea Tribes of Indians to be the owners of the lands on the Wabash River above the Vincennes tract.

12. Royce Area 49 involves lands that were included within that vast area relinquished by the United States under Article IV of the 1795 Greenville Treaty to the Indian tribes signatory to that treaty. Both the Piankeshaw and Delaware tribes of Indians participated in the 1795 Greenville Treaty. As previously held by this Commission and the Court of Claims, the effect of the "relinquishment" was to accord to those tribes, signatory to the 1795 Greenville Treaty, more than a temporary or permissive right of occupancy; that is, they were given the right to occupy said lands permanently. The legal rights thus accorded to these tribes under the 1795 Greenville Treaty were in the nature of a grant or recognition of their title to the lands thus relinquished by the Government. The Miami Tribe of Oklahoma et al., v. United States, (1959) 146 Ct. Clms. 421.

