

BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS OF	)	
OKLAHOMA AND MABEL STATON PARKER	)	
on behalf of the Piankeshaw Nation	)	Docket No. 289
and	)	
THE ABSENTEE DELAWARE TRIBE OF	)	
OKLAHOMA AND THE DELAWARE NATION,	)	
et al.	)	
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 27, 1968

Appearances:

Jack Joseph, Attorney of Record for the Peoria Tribe of Indians of Oklahoma; Stanford Clinton Attorney of Record for the Absentee Delaware Tribe of Oklahoma and Louis L. Rochmes, of Counsel for the Absentee Delaware Tribe of Oklahoma, Attorneys for Petitioners,

A. Willard Carlson, with whom was Mr. Assistant Attorney General Clyde O. Martz, Attorneys for the Defendant.

OPINION OF THE COMMISSION

PER CURIAM

The tribal petitioners herein are the Peoria Tribe of Indians of Oklahoma and the Absentee Delaware Tribe of Oklahoma. Each petitioner has the right and capacity under the Indian Claims Commission Act to bring and maintain its suit in the manner stated in the petition.

The tribal claimants are seeking additional compensation for their respective interests in Royce Area 49, which area was ceded by the Delaware tribe of Indians under the Treaty of August 18, 1804 (7 Stat. 71) and the Piankeshaw tribe of Indians under the Treaty of August 27, 1804 (7 Stat. 83).

The tribal petitioners claim a joint compensable undivided interest in the subject tract by virtue of the provisions of the 1795 Treaty of Greenville (7 Stat. 49), wherein the title to lands then owned and occupied by them were recognized by the United States. In addition, they claim confirmation of their title to Royce Area 49 by virtue of certain treaties subsequent to the 1795 Greenville Treaty, including the two 1804 treaties of cession.

On the other hand the defendant contends that the facts do not support the position taken by the tribal petitioners in this case. As the defendant puts it:

"The question is whether Area 49 can be identified as being within the boundaries of lands to which either the Delawares or Piankeshaws or both had a right, as petitioners contend." (Defendant's Requested Fdgs. of Fact, Objections to Petitioners' Proposed Fdgs. of Fact and Brief, p. 2)

We think both the facts and the law governing this suit are in the petitioners' favor, and that these petitioners had recognized title jointly to Royce Area 49 at the time said area was ceded to the United States under the 1804 Delaware and Piankeshaw treaties of cession.

The tract of land in question, Royce Area 49, is located in the southern portion of the State of Indiana. It is bounded on the north by

the "Vincennes Tract", officially identified as Royce Area 26, and also by Royce Area 56. The eastern and southern boundary is the Ohio River, and the Wabash River encloses the area on the west, as does Royce Area 63 in Illinois.

The "Vincennes Tract" was originally reserved by the United States under the provisions of the famous Greenville Treaty of August 3, 1795 (7 Stat. 49). Later the boundaries of the "Vincennes Tract" were precisely fixed by the Fort Wayne Treaty of June 7, 1803 (7 Stat. 73).

The 1795 Greenville Treaty, which is the source of the petitioners' claim of "recognized title" to Royce Area 49, was the first serious attempt by the United States in the post Revolutionary War period to establish peace and harmony with the important Indian tribes situated northwest of the Ohio River. General Anthony Wayne was commissioned by the President of the United States to treat with the tribes indigenous to this area. In order to secure peace and friendship between the Indians and newly developing white settlements to the east, as well as settling the intertribal disputes, a common boundary line was established between the Indian lands and the white settlements. Under Article III of the 1795 Greenville Treaty, such a common boundary line was strategically negotiated. To give the new line real meaning, the Indians relinquished all tribal claims to those lands situated generally east and south of the Greenville line, while the United States, with few exceptions such as the "Vincennes Tract", relinquished all claims they might have to the Indian tribal lands situated west and north of the 1795 Greenville line.

By this relinquishment the United States guaranteed to the Indian tribes negotiating the 1795 Greenville Treaty, more than mere temporary or permissive use and possession of the lands upon which they then were living. As the Commission concluded on a prior occasion, this "relinquishment" was indeed recognition by the United States that permanent ownership of these lands shall be in the occupying tribes. Thus these Indians were accorded legal rights to their homelands, the deprivation of which through governmental action would command just compensation. In that particular case, the Miami Tribe of Oklahoma et al., v. United States, Docket No. 67 consolidated, the Court of Claims in disposing of an appeal from the Commission's final order therein, clearly and without equivocation, found that the 1795 Greenville Treaty was a treaty of recognition, and that the participating Indian tribes were therefore permanent and original owners of the lands they occupied.

While the 1795 Greenville Treaty made no effort to define intertribal boundaries, this fact did not negate the overall intention of Congress to recognize individual tribal ownership of those lands relinquished by the United States. The integral follow-up treaties, that is, the post 1795 treaties of cession negotiated with the Greenville Treaty Indians, not only defined with particularity the intertribal boundaries, but also confirmed the previously recognized title. (See The Miami Tribe of Indians of Oklahoma, et al., v. United States, 146 Ct. Clms. 421.)

The Commission therefore finds that both the Delaware and the Pinakeshaw tribes duly participated in the 1795 Greenville Treaty, the consequence being that tribal ownership of lands then used and occupied by them was recognized by the United States. We find and conclude further that

the Fort Wayne Treaty of June 7, 1803 (7 Stat. 73) the Delaware and Piankeshaw treaties of cession of August 8, 1804 (7 Stat. 81) and August 27, 1804 (7 Stat. 83), and the Grousland Treaty of August 21, 1805, determined and confirmed the boundaries and ownership of the lands previously recognized as belonging to the Delaware and Piankeshaw tribes under the 1795 Greenville Treaty.

Clear acknowledgment of early and long continued association of both the Delaware and Piankeshaw Indians with the lands encompassed within Royce Area 49 can be found in the official correspondence of those Government officials who played vital roles in negotiating Indian treaties during the period in question. Worthy of the highest consideration are the observations and remarks of Governor Henry Harrison, the principal architect on the Government side of the pertinent treaties of cession that followed the 1795 Greenville Treaty. The Commission has already quoted in its findings of fact some of Governor Harrison's more cogent statements that revealed an early and continuous Delaware and Piankeshaw identification with southern Indiana and the land within Royce Area 49. Indeed, this identification predates the 1795 Greenville Treaty negotiations. In our considered judgment, the views of Governor Harrison as well as the statements of the other Government officials that appear in the record supports the Commission's ultimate conclusion that the Delaware and Piankeshaw had an equal and undivided compensable interest in Royce Area 49 based upon ownership rights originally recognized under the 1795 Greenville Treaty.

In so finding we reject the Government's position that the apparent disparity in the consideration paid to the Delaware and the Piankeshaw

tribes for the cession of their respective interests in Royce Area 49 (the Delaware tribe apparently receiving a greater monetary consideration), shows conclusively that their interests in the subject tract were not joint or equal, and therefore, "The petition should be dismissed or additional evidence presented clarifying the situation."\* The Commission, of course, has not been aware that there exists any such definitive evidence as suggested by the defendant. In any event, we do not attach such fatalistic consequences to the petition as defendant would allow in the absence of such evidence.

Where the Commission has been confronted with making an equitable apportionment or division of the tribal interests of the joint owners of tribal lands, it has either done so on a basis of the predominant use of the area involved by one tribe over the other as determined by the evidence in the record (See The Sac and Fox Tribe of Indians of Oklahoma, et al., v. The United States, Docket No. 158, 5 Ind. Cl. Comm. 367), or, when such evidence is lacking, and if the tribal owners so request, the Commission has determined their respective interests to be equal.\*\*

In the instant case the petitioners have requested that,

"... the Commission entered an interlocutory judgment that each of the petitioners is entitled to a one-half undivided interest in Royce Area 49 as of the time of cession thereof."\*\*\*

On the record before us, the Commission believes that the petitioners' solution is the most equitable. Therefore, as a matter of law, we find and

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\* P. 14, Def. Req. Fdgs. of Fact, Objections to Pet. Proposed Fdgs. of fact and Brief.

\*\* See Commission's Order of March 10, 1964 in Dkts. 317 & 314 consolidated, The Kickapoo Tribe of Indians, et al. v. United States, 174 Ct. of Clms 550

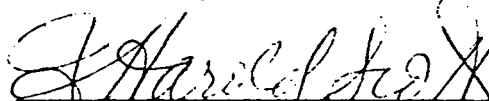
\*\*\* P. 16, Proposed Findings of Fact and Brief of Petitioners in Dkt. 289.

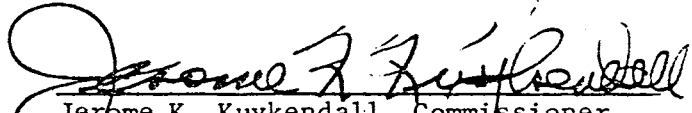
conclude that the Delaware Tribe of Indians and the Piankeshaw Tribe of Indians had recognized title to, and an equal and undivided interest in, Royce Area 49, as of the effective dates of the respective Delaware and Piankeshaw treaties of cessions of August 18, 1804 (7 Stat. 81), and August 27, 1804 (7 Stat. 83).

Having determined the question of title and ownership of Royce Area 49, this case shall proceed for a determination of the value of the subject area, as of the effective dates of the treaties of cession, and all other matters bearing upon the question of defendant's liability to the petitioners herein.

  
John T. Vance, Chairman

  
Wm. M. Holt, Commissioner

  
T. Harold Scott, Commissioner

  
Jerome K. Kuykendall, Commissioner

  
Richard W. Yarborough, Commissioner