

BEFORE THE INDIAN CLAIMS COMMISSION

THE MINNESOTA CHIPPEWA TRIBE, ET AL.,)
)
 Petitioners,)
)
 v.) Docket No. 18-S
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: August 13, 1968

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The subject claim has been filed by:

(a) the Minnesota Chippewa Tribe, a Wheeler-Howard Act Indian corporation duly organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) under a constitution and by-laws approved by the Secretary of the Interior on July 24, 1936. Included within the Minnesota Chippewa Tribe are the following bands of Chippewas:

1. The Pillager and Lake Winnibogoshish comprising the Pillager, Ottertail Lake, Leech Lake, and Lake Winnibigoshish Bands, as well as the Red Cedar Lake Band and Turtle Portage Bands.

2. The Mississippi Chippewas, comprising the White Oak, Pokegama, Gull Lake, Mille Lac, Rice Lake, Snake River, Crow Wing, Sandy Lake, Swan River, Rabbitt Lake, Trout Lake, and Pelican Lake Bands.

3. Lake Superior Chippewas resident in Minnesota comprising the Bois Forte, Fond du Lac and Grand Portage Bands.

4. White Earth Band comprising Chippewas from other bands in Minnesota who were removed to the White Earth reservation in Minnesota including Pembina Band members, but excluding Red Lake Band members.

(b) Wisconsin petitioners - Lake Superior Chippewas.¹ The Red Cliff, Bad River (LaPointe), Lac Court O'Reilles, St. Croix and Mole Lake Bands located in Wisconsin.

(c) Michigan petitioners - Lake Superior Chippewas. The Lac Vieux Desert, Ontonogan and L'Anse Bands located in Michigan and consolidated in the Keweenaw Bay Indian Community.

(d) Some 38 individual petitioners who are members of various of the bands named as petitioners.

2. The claim presented in the subject matter relates to the lands which were ceded to the United States by the Treaty of October 4, 1842 (7 Stat. 591). Those lands are shown as area 261 by Charles C. Royce on his Michigan Map I and Wisconsin Map I in the 18th Annual Report of the Bureau of American Ethnology (Part II) Indian Land Cessions. The lands will hereinafter be referred to as Royce Area 261.

1. The "Chippewas of Lake Superior" group has ceased to exist as such, and at the present time there is no recognized organization known as the Chippewas of Lake Superior.

3. This case is now before the Commission on petitioners' motion for summary judgment "that the 'Chippewa Indians of the Mississippi and Lake Superior', or other Chippewa bands included as parties plaintiff, or some combination of the same, were owners by recognized title of the land (Area 261) ceded by them to the United States by the Treaty of October 4, 1842." Petitioners contend that the United States recognized title in the Chippewas by the Treaty of Prairie du Chien of August 19, 1825 (7 Stat. 272), and the subsequent course of dealings and series of treaties between the United States and the Chippewas.

4. In the early 1820's hostilities and warfare among the Indian tribes in the vast midwest region of the country were on the rise. The Sioux and Chippewa were in conflict on one frontier as were the Sioux and the Sac and Fox on another and the Sioux and Iowa on yet another. These wars and resulting depredations endangered the lives and property of white settlers, traders, and travelers. The government thought it best to intervene and end the troubled situation. Accordingly, Congress appropriated funds "for defraying the expenses of holding treaties with the Sioux, Chippewas, Menomenees, Sauks, Foxes, ... for the purpose of establishing boundaries and promoting peace, between said tribes,..." Act of March 3, 1825, C. 16, 4 Stat. 92, 93. The President appointed General William Clark, of Lewis and Clark fame, and Lewis Cass, Governor of the Territory of Michigan, as commissioners to conduct the negotiations. They were instructed as to the importance of negotiating a treaty "for the purpose of establishing boundaries, and promoting peace among those tribes...." (Pet. Exs. 1, 3).

Henry R. Schoolcraft, the Chippewa agent who accompanied the Chippewa delegates to the treaty council, wrote in his Personal Memoirs that the purpose of the council was to settle "internal disputes between the tribes, by fixing the boundaries of their respective territories ... The great object was to lay the foundation of a permanent peace by establishing boundaries." (Pet. Ex. 11, pp. 214, 216).

Commissioner Cass, on June 30, 1825, wrote concerning the "arrangements which might be made at Prairie du Chien for the conclusion of a peace and for the establishment of permanent boundaries among the various tribes..." (Pet. Ex. 6).

5. Commencing on August 5, 1825, the commissioners met with seven tribes at Prairie du Chien, Wisconsin, viz., the Chippewas, Sioux, Sac and Fox, Iowa, Menominee, Winnebago, and a portion of the Ottawa, Chippewa and Pottawatomies (of the Illinois). More than 1000 Indians were present, including about 150 Chippewas among whom were principal men of the Lake Superior Chippewa from La Pointe, Fond du Lac, Lac du Flambeau, Lac Court O'Reilles, St. Croix, Sault St. Marie, and Yellow River; representatives of the Chippewas of the Mississippi from Sandy Lake, Mille Lac, Rice Lake and Red Cedar Lake; and representatives of the Pillagers from Leech Lake.

General Clark, after assuring the assembled tribes that the United States was not seeking any of their lands, stated the real purpose of this treaty council as well as the objectives to be accomplished, as taken from the following excerpts of his opening remarks:

"Your Great Father has been informed that war is carried on among his red children. The Sacs, Foxes, and Chippewas on the one side and the Sioux on the other; and that the wars of some of you, began before any of you now

living were born . . .

"... Your Great Father has heard of your war songs and of your war parties. They do not please him. He desires that his red children should bury the Tomahawk and he has sent us here to inform you what are his wishes....

"Your hostilities have resulted in a great measure from your having no defined boundaries established in your country. Your tribes do not know what belongs to them and your people thus follow the game into lands claimed by other tribes.

"This cause will be removed by the establishment of boundaries which shall be known to you and which boundaries we must establish at this council fire.

"We therefore propose to you to make peace together and to agree upon fixed boundaries for your country within which each tribe should hunt and over which others shall not pass without their consent."
(Pet. Ex. 7, pp. 9, 10)

Thereafter the several tribal leaders and representatives outlined their territorial claims. Because of the overlaps there was considerable disagreement over proposed boundaries. After further negotiations, these conflicts were compromised and certain boundaries were finally agreed upon.

On August 19, 1825, following fourteen days of negotiation the treaty was concluded between the United States and the Sioux, Chippewas, Sac and Foxes, Iowas, Winnebago, Menominee, and a portion of the Ottawa, Chippewa and Pottawatomie tribes. Immediately following the signing of the treaty, General Clark told the Indians, "Your Great Father the President of the United States ... intends to be always upon the different lines which separate your different countries to prevent any bad people from crossing over to do mischief. ..." (Pet. Ex. 7, p. 25)

The treaty commissioners reported to the Secretary of War that they had concluded "a Treaty of peace and limits.... The establishment of equitable boundaries among the tribes was the most difficult part of our task. We will not trouble you with the details of it, but merely observe, that a just compromise between former possessions and more recent conquests, was the basis of the arrangement. All parties were well satisfied, and in fact the boundaries were established among themselves."

(Pet. Ex. 8)

The Commissioner of Indian Affairs reported to the Secretary of War that by the 1825 Treaty "their [the treaty tribes] long and bloody wars have been terminated, and boundaries assigned to them, as the surest guaranty against future hostilities." (Pet. Ex. 10)

6. The preamble to the Prairie du Chien Treaty recited its purpose:

"... In order, therefore to promote peace among these tribes, and to establish boundaries among them and the other tribes who live in their vicinity, and thereby to remove all causes of future difficulty, the United States have invited the Chippewa, Sac and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa and Potawatomie Tribes of Indians living upon the Illinois, to assemble together, and in a spirit of mutual conciliation to accomplish these objects; and to aid therein, have appointed William Clark and Lewis Cass, Commissioners on their part, who have met the Chiefs, Warriors, and Representatives of the said tribes, and portion of tribes, at Prairie des Chiens, in the Territory of Michigan, and after full deliberation, the said tribes, and portions of tribes, have agreed with the United States, and with one another upon the following articles."

Article 2 of the Treaty fixed "the Line between [the] respective countries" of the Sac and Foxes and the Sioux. Article 5 commences, "It is agreed between the Sioux and the Chippewa, that the line dividing

their respective countries shall commence...." Article 6 provided that, "It is agreed between the Chippewas and the Winnebagoes, so far as they are mutually interested therein, that the southern boundary line of the Chippewa country" should be as described.

However, Article 8 provided that the boundary would be subject to later agreement by the Menominee as to one segment. Article 8 stated,

"The representatives of the Menominies not being sufficiently acquainted with their proper boundaries, to settle the same definitively, and some uncertainty existing in consequence of the cession made by that tribe upon Fox River and Green Bay, to the New York Indians, it is agreed between the said Menominie tribe, and the Sioux, Chippewas, Winnebagoes, Ottawa, Chippewa and Potawatomie Indians of the Illinois, that the claim of the Menominies to any portion of the land within the boundaries allotted to either of the said tribes, shall not be barred by any stipulation herein; but the same shall remain as valid as if this treaty had not been concluded. It is, however, understood that the general claim of the Menominies is bounded on the north by the Chippewa country, on the east by Green Bay and lake Michigan extending as far south as Millwaukee river, and on the West they claim to Black River."

Article 9 described an area of "country secured to the Ottawa, Chippewa, and Potawatomie tribes of Illinois."

Article 10 then provided that the assembled tribes would acknowledge the general controlling power of the United States, disclaiming any dependence or connection with any other power. "And the United States agree to, and recognize, the preceding boundaries, subject to the limitations and restrictions before provided."

It was understood, by Article 13, "that no tribe shall hunt within the acknowledged limits of any other without their assent...."

