BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION OF INDIANS, )
 )
Petitioner, )
 ) Docket Nos. 106-107
v. ) (Consolidated)
THE UNITED STATES OF AMERICA, )
 )
Defendant. )

Decided: September 20, 1968

FINDINGS OF FACT

The Commission makes the following findings of fact:

A. Introduction

1. The Osage Nation or Tribe of Indians, petitioner, is the successor to the Great Osage and Little Osage Tribes of American Indians, and is an organized and recognized tribe of American Indians within the meaning of the Indian Claims Commission Act of August 13, 1946, c. 949, 60 Stat. 1049; 25 U.S.C. 70(a), et seq., (Osage Nation v U.S., Dkt. 9, 1 Ind. Cls. Comm. 43, 119 C. Cls. 592; Osage Nation v. U.S. Dkt. 126, 7 Ind. Cls. Comm. 864), and as such is authorized to bring this cause of action under Section 2 of said Act. The petitions herein were timely filed.

2. The claims presented herein are those claims set out by petitioner in Docket 106 and Docket 107, which two dockets have been consolidated by order of this Commission.

The claim presented in Docket 106 is based on alleged title to the country familiarly referred to as "Lovely's Purchase," located in the present States of Arkansas and Oklahoma, ceded by the Osage Nation to the
United States in the treaty concluded on September 25, 1818, and ratified and proclaimed on January 7, 1819 (7 Stat. 183, 2 Kapp. 167).

The claim presented in Docket 107 is based on alleged title to the lands ceded by the Osage Nation to the United States in the Treaty of June 2, 1825, ratified and proclaimed December 30, 1825 (7 Stat. 240; 2 Kapp. 217), and located in the present states of Missouri, Arkansas, Kansas and Oklahoma; and for Osage lands south of the Arkansas and Canadian Rivers, and between said rivers and the Red River.

B. History of Negotiation of Treaties

3. The Osage Nation made a treaty with the United States on November 10, 1808, ratified on April 28, 1810, 7 Stat. 107. The Indian Claims Commission has held that at the date of the Treaty of 1808 petitioner had aboriginal occupancy to an area described as follows:

Beginning in the State of Missouri at the point on the 1808 Osage boundary line where the northern boundary line of Cass County, Missouri, intersects said line; thence northeasterly to the mouth of the Blackwater River where it intersects the Lamine River; thence southeasterly passing through Osage Bend, Town or Village (as it appears on Defendant's Exhibits 14-A and 62) to the Osage River in Cole County, Missouri; thence in a southerly directly to the southeast corner of Laclede County, Missouri, thence southwesterly to the northeast corner of Boone County, Arkansas; thence southwesterly to the southern terminus of the 1808 Osage boundary line on the Arkansas River in the State of Arkansas; thence northerly along said boundary line to the point of beginning.

The interlocutory decree (11 Ind. Cl. Comm. 733, 809) provided for further hearings on the value of the above tract as of April 28, 1810, and on the consideration received for it by the Osage Nation. The parties to the suit have agreed that the above description covered approximately 12,000,000 acres of land. Hearings were held and the evidence closed.
on market value of the above tract and on the consideration received for it.

4. By the Treaty of November 10, 1808, the Osage Nation ceded to the United States a large area of land in the present states of Missouri and Arkansas, between the Missouri and Arkansas Rivers, and from the Mississippi River west to a line--

"beginning at Fort Clark, on the Missouri, five miles above Fire Prairie, and running thence a due south course to the river Arkansas, and down the same to the Mississippi, hereby ceding and relinquishing forever to the United States, all the lands which lie east of the said line, and north of the southwardly bank of the said river Missouri. And we do further cede and relinquish to the United States forever, a tract of two leagues square, to embrace Fort Clark, and to be laid off in such manner as the President of the United States shall think proper." (Article 6)

Article 7 of said treaty provided:

"And it is mutually agreed by the contracting parties, that the boundary lines hereby established, shall be run and marked at the expense of the United States, as soon as circumstances or their convenience will permit; and the Great and Little Osage promise to depute two chiefs from each of their respective nations, to accompany the commissioner, or commissioners who may be appointed on the part of the United States, to settle and adjust the said boundary line."

Article 8 of said treaty provided:

"And the United States agree that such of the Great and Little Osage Indians, as may think proper to put themselves under the protection of Fort Clark, and who observe the stipulations of this treaty with good faith, shall be permitted to live and to hunt, without molestation, on all that tract of country, west of the north and south boundary line, on which they, the said Great and Little Osage, have usually hunted or resided: Provided, The same be not the hunting grounds of any nation or tribe of Indians in amity with the United States; and on any other lands within the territory of Louisiana, without the limits of the white settlements, until the United States may think proper to assign the same as hunting grounds to other friendly Indians."
Article 10 of said treaty provided:

"The United States receive the Great and Little Osage nations into their friendship and under their protection; and the said nations, on their part, declare that they will consider themselves under the protection of no other power whatsoever; disclaiming all right to cede, sell or in any manner transfer their lands to any foreign power, or to citizens of the United States or inhabitants of Louisiana, unless duly authorized by the President of the United States to make the said purchase or accept the said cession on behalf of the government."

Article 11 of said treaty further provided:

"And if any person or persons, for hunting or other purpose, shall pass over the boundary lines, as established by this treaty, into the country reserved for the Great and Little Osage nations, without the license of the superintendent or other proper officer, they, the said Great and Little Osage, or either of them, shall be at liberty to apprehend such unlicensed hunters or other persons, and surrender them together with their property, but without other injury, insult or molestation, to the superintendent of Indian affairs, or to the agent nearest the place of arrest, to be dealt with according to law."

5. On January 15, 1810, President James Madison forwarded the Treaty of November 10, 1808, to the United States Senate for ratification, and the President's communication and the treaty were laid before the Senate on January 16, 1810.

By Senate Resolution of January 22, 1810, the United States Senate requested to be advised by what authority Peter Chouteau, Esq., had made and concluded the treaty with the Great and Little Osage at Fort Clark on November 10, 1808 (Pet. Ex. 128, p. 764; Def. Ex. 65, Dkt. 107, p. 764; Def. Ex. 75, Dkt. 106, p. 764). In compliance with the Senate Resolution, on March 14, 1810, President James Madison transmitted to the United States Senate a report of William Eustis, Secretary of War, dated March 13, 1810, stating in part (Idem.):
"In compliance with a resolution of the honorable Senate, of the 22d January last, the Secretary of War has the honor to state to the President of the United States, that, as the correspondence of this Department did not exhibit the authority under which Peter Chouteau, Esq., made and concluded the treaty with the Great and Little Osage tribes of Indians, General Clark was called upon to furnish such information as he either possessed or could obtain on the subject. A copy of his letter of the 20th ultimo, together with copies of Governor Lewis's instructions to Mr. Chouteau, and of his letter to the Executive of the United States, alluded to by General Clark, are now transmitted."

The President's message and accompanying documents were communicated to the Senate on March 14, 1810.

The letter of William Clark to William Eustis, Secretary of War, then before the United States Senate, stated in part as follows (Idem., p. 765):

"I have the honor to enclose you copies of the late Governor Lewis's instructions to Peter Chouteau, Esq., to carry into effect a treaty of amity and friendship, with the Great and Little Osage bands of Indians; also a copy of the Governor's letter to the Executive Department of the United States, dated at St. Louis, the 15th December, 1808. Those are all the documents which I can find among his papers, relative to the treaty that is now before the Senate of the United States, which tend to throw light on the same. . ."

Governor Lewis' instructions to Peter Chouteau, Esq., then before the United States Senate when the 1808 Osage Treaty was under consideration for ratification, provided in part as follows:

"SIR:

"The faithful services which you have rendered to the United States, in the Indian department, together with your undeviating attachment to the Government, have induced me to enclose you, herewith, a commission for the special purposes therein mentioned.

"It will be your object, in the first place, to restore peace and friendship between our people and the Great and Little Osages, from whom we have of late suffered so many violations of our laws, and depredations on our frontiers. For this object
you are charged with the draught of a treaty, the sanction and confirmation of which, it is expected, you will procure, by an exertion of that extensive influence which you have long possessed over those nations. This draught of a treaty, you will observe, contemplates something more than the restoration of peace: it gives to the Great and Little Osages the most efficient security, in our power to bestow; it assures to them, for their exclusive use, the lands west of the boundary line; (Underscoring supplied) it separates those who sanction it, from the vicious and the profligate, whom no treaties can bind, whom no menaces can intimidate, and by whose ungovernable conduct the peace of both nations is perpetually endangered. It enables us also to reduce to submission, without bloodshed, those who persevere in hostility, by withholding from them the merchandise necessary for their support. By these arrangements we shall also obtain a tract of country, west of our present settlements, and east of the hunting boundary line of the Osages, sufficient for the purpose of our white hunters, and for such Indian nations as have long been on terms of intimate friendship with us. Thus will our frontier be strengthened and secured with the least possible expense to the Government. The establishment of a boundary has long been desirable, and the want of one, settled by treaty, has never ceased to create doubts, and sometimes embarrassments, of the most serious nature, in our courts of justice . . ."

The Treaty of November 10, 1808, executed by the Osage Nation after a full explanation of its provisions, was ratified by the United States Senate on April 28, 1810, and became effective on that date.

6. On February 19, 1806, President Thomas Jefferson had transmitted to Congress the report of the Lewis and Clark Expedition, describing the claims of the Osage Nation as follows:

"S. Claim the country within the following limits, viz: Commencing at the mouth of a south branch of the Osage river, called Neangua, and with the same to its source; thence southwardly, to intersect the Arkansas, about one hundred miles below the three forks of that river; thence up the principal branch of the same, to the confluence of a large northwardly branch of the same, lying a considerable distance west of the Great Saline, and with that stream, nearly to its source; thence northwardly, towards the Kansas river, embracing the waters of the upper portion of the Osage river; and thence obliquely approaching the same, to the beginning. * * * It embraces
within its limits four salines, which are, in point of magnitude and excellence, unequalled by any known in North America. There are also many others of less note. The principal part of the Great Osage have always resided at their villages, on the Osage river, since they have been known to the inhabitants of Louisiana. About three years since, nearly one-half of this nation, headed by their chief, Big Track, emigrated to the three forks of the Arkansas, near which, and on its north side, they established a village, where they now reside. The Little Osage formerly resided on the southwest side of the Missouri, near the mouth of the Grand river; but, being reduced by continual warfare with their neighbors, were compelled to seek the protection of the Great Osage, near whom they now reside. * * *"

A map of the extent of the claimed Osage country, which included the Rock and Grand Salines, accompanied this report (Pet. Exs. 37, 41; Def. Ex. 10).

7. The treaty talks between the Osages and Pierre Chouteau on November 10, 1808, also reflect the western extent of the country claimed by the Osages, west of the boundary line established by the 1808 Osage treaty. At the treaty council White Hair, Great Chief of the Big Osages stated as follows (Osage Case, Dkt. 105, 11 Ind. Cl. Comm. 733, 871-872):

"My Brother Chouteau, I am going to say a word. A young Interpreter has told the Gen'l lies. The Gen'l told him to ask my Warriors for a piece of land, My Father you have asked me for a piece of land the Little Osages owned this land, but other Nations have driven them from it, and I have taken them under my protection, My Father my Brother Chouteau knows all those things as well as me, and I thought you knew them likewise, My Father you must remember that I have told you, that from the mouth of the Gasconade to where the River St. Frances turns (where the Big Tract wintured) from there to where there is a great quantity of Walnut trees, from those to the Grand Salien (Saline), where they break the salt, you have promised me that you would guarantee to me that piece of land. If I give it to you, what shall I find to get me a Brichelant [Breechcloth] or Blanket with. * * *"
(Pet. Ex. 59; underscoring ours)

8. P. Chouteau advised the Secretary of War, in a letter dated May 20, 1813, that he had found the Osage villages and nations in their
usual friendly disposition toward the American Government during the War of 1812 and had agreed to furnish a war party of five hundred men instead of the two hundred they had been asked for, but that he had made a choice of only two hundred sixty, among whom were their principal chiefs and best warriors, to bring support to the fort. Chouteau stated that the Osages were much disappointed after a march of about 360 miles to receive news at the mouth of the Osage River that Ft. Osage had been abandoned. (Pet. Ex. 10, pp. 712-714).

Clark, in a letter of August 20, 1814, to the Secretary of War, described how he had encouraged the Osage, Delaware and Pawnee to war on the Sac and Fox and others allied with the British. (Pet. Ex. 10, pp. 786-787)

Following the victory of the United States in its war against Britain, William Clark, Ninian Edwards and Auguste Chouteau, commissioners pleni-potentia ry of the United States on the one part, and the King, chiefs and warriors of the Great and Little Osage Tribes or Nations, concluded a treaty September 12, 1815, at Portage des Sioux, which was designed to place their relationship on the same footing as it was before the war. Article 1 provided that every injury, or act of hostility, by one or either of the contracting parties against the other, should be mutually forgiven and forgot. Article 3 provided that the contracting parties, in the sincerity of mutual friendship, recognized, re-established and confirmed all and every treaty, contract and agreement, previously concluded between the United States and the Osage Tribes or Nations. (7 Stat. 133).
9. The events leading up to the treaty for Lovely's Purchase are complicated because many other Indian tribes, but particularly the Cherokee Tribe, were involved. From at least 1802 onward, the use of land along the Arkansas and Missouri Rivers by the Osage Nation was contested by many other tribes by reason of (1) the beginning of mass movement into the area west of the Mississippi River by eastern tribes equipped with firearms and (2) the acquisition of firearms by the traditional enemies of the Osage, especially the Ioways, Sacs and Winnebagoes (Def. Ex. 84 (106), p. 19).

After 1811, the Osages were repeatedly attacked by the Ioways, Sacs and Winebagos while on trips from their villages on the Osage River to Fort Osage to collect annuities and presents from the U. S. Government. The Osage were, by this time, considerably weakened by internal dissension and division into geographically separated bands. Also the tribes to the north were avenging the suffering endured at the hands of the once-powerful Osage. The necessity that the Osage journey to Fort Osage to receive annuities and gifts was used to full advantage by their old enemies who lay in wait for them while enroute (Def. Ex. 23 (106), pp. 586-590). Fort Osage was temporarily abandoned in 1813 as it had caused considerable expense and was of no further value to the Government (Def. Ex. 23 (106), pp. 680-681). The Osage expressed great concern regarding the removal of the trading house at Fort Osage (or Clark), and, while trading at Arrow Rock, were not in agreement as to a suitable relocation for trading purposes (Def. Ex. 23 (106)).
Other troubles beset the Osages. Tribes from the east were moving into the Osage hunting territory south of the villages on the upper Osage River and east of those villages on the headwaters of the Arkansas. Hunting into Osage-dominated territory was not restricted to Indians, as white hunters and trappers were also making expeditions into the area (Def. Ex. 2 (106), pp. 22-23).

From about 1800, Osage contacts with the Cherokee, Choctaw, Quapaw, Shawnee and Delaware tribes became more numerous and increasingly unpleasant. Of these, the Cherokee were regarded as the greatest menace to the Osage (Def. Ex. 23 (106)). The Cherokee began movement into the area in 1785. They formed a settlement on the St. Francis, where they were found by William Clark in 1812 (Def. Ex. 12 (106)), and later moved to the White River where they were joined by subsequent groups of migrating Cherokee (Def. Ex. 2 (106)). A series of treaties and cessions culminated in the Treaty of July 8, 1817, wherein the Cherokee agreed to cede a considerable portion of their lands in the east and to trade, proportionally, new lands west of the Mississippi for those left in the east. Cherokee movement to the west became more general.

Sufficient Cherokees were in the area west of the Mississippi in 1813 that an agent, Mr. William L. Lovely, was assigned to them. Lovely found that a few Choctaw, Delaware, Miami, Pawnee and Quapaw were already located among the Cherokee where they settled (Def. Ex. 19 (106)). Lovely, while regarded with suspicion by Clark (Def. Ex. 24 (106)) and others (Def. Ex. 23 (106)), was quite cognizant of the situation regarding possible Indian warfare in his area and requested repeatedly that troops be sent to prevent disturbances (Def. Ex. 24 (106)). The Osages complained regarding Cherokee
intrusions and the Cherokee regarding Osage depredations (Def. Ex. 22 (106)). Whose territory the Cherokees were settling in was not precisely known as the north-south line of the western edge of the Osage Treaty of 1808 had not been run. The suggestion that it be run and some adjustment made in the difficulties between the Osage, Cherokees and Quapaws was made by Clark, Edwards and August Chouteau in 1816 (Def. Ex. 24 (106)).

Lovely, perhaps upon pressure from the Cherokee, made an effort to secure lands between the Verdigris on the west and the Cherokee line on the east, the area thereafter often referred to as "Lovely's Purchase" (Def. Ex. 24 (106), pp. 173-175). The negotiations were made in 1816, apparently without official sanction (Def. Ex. 24 (106)). The need for obtaining cessions was recognized at the time in order to settle disputes of the Osage and Quapaw with the Cherokee, so that the latter nation might peaceably settle west of the Mississippi (Def. Ex. 52 (106)). The land was not needed for white settlement (Def. Ex. 51 (106)), although a number of white settlements and improvements were known to exist on Osage lands, apparently within Area 97 (Def. Ex. 24 (106), pp. 177-182). Cherokee pressure to obtain land was considerable, as evidenced by the speech of Tal-lan-tas-kee (Def. Ex. 22 (106)), who complained bitterly about a lack of space and Osage depredations.

The need for a military post up the Arkansas became increasingly evident upon notification that the Cherokee were about to take retaliatory measures upon the Osages (Def. Ex. 24 (106), pp. 302-305). The Cherokee began organization of a large war party consisting of Quapaw, Delaware, Choctaw, Chickasaw and eastern Cherokees early in 1817. This information
was communicated to the War Department and a company of men was ordered to establish a post on the Arkansas (Def. Ex. 2 (106)). The men, dispatched to the Arkansas and establishing a fort at Fort Smith, were too late to prevent the strike by the Cherokee (Def. Ex. 2 (106)).

The Cherokee made their move during the Osage hunting season while Clermont and his men were away from the village. During the battle, which took place north of the present Claremore, Oklahoma, near the Claremore Mound, 83 men, women and children were killed and over 100 Osage were taken prisoner (Def. Ex. 2 (106)). The village attacked is very likely that located through archeological reconnaissence by Carl H. Chapman and Dale Henning. The stories of local residents indicate consistent belief that the Claremore Mound was the site of the last major battle between the Osage and Cherokee in which the Osage were vanquished (Def. Ex. 84 (106)).

The Cherokee were jubilant after the victory and continued their pressure to obtain the land known as "Lovely's Purchase." As the Osage were beaten in the battle of Claremore Mound, and due to pressure to remove the Cherokee from the east, recommendation was made by the Secretary of War that the territory in question be obtained (Def. Ex. 24 (106)).

Instructions were sent to William Clark and Chouteau to make effort to obtain lands west of the Mississippi (Def. Ex. 60 (106)). Governor Clark complied with the wishes of the government and brought about a peace between the Osage and Cherokee and also obtained cession of the territory included in Royce Area 97 (Def. Ex. 70 (106)), according to terms of the Treaty of September 25, 1818. However, Osage and Cherokee problems were not settled through the Treaty of 1818, and continued well past that time.
In summary, the Lovely Purchase area (Royce Area 97) was restricted to utilization by the Osage as a hunting territory from 1750 until the incoming Cherokee began to hunt there, with resultant conflict. Cherokee inroads in the area began just previous to 1800 with resultant retaliation by the Osage (Def. Ex. 84 (106), p. 25; Pet. Ex. 129 at pp. 114-17).

Troubles beset the Osage from about 1803 with losses to the Potawatomi and later, to the Sac, Ioways, Winnebagoes and Cherokee. The Treaty of 1808, after which all but the Arkansas band moved to the vicinity of Fort Osage for a brief period, temporarily subdued some of the Osage but made them susceptible to attack by other Indians. The Cherokee desired to obtain Royce Area 97 for their use but were blocked by the Osage. An attack was made upon Claremore's village in 1817 with severe losses to the Osage. The Cherokee, exalting their victory, increased their clamor for the "Lovely Purchase" in an effort to obtain more land. The area was obtained from the Cherokee through the Treaty of 1818 in which the territory in question was ceded to the United States (Def. Ex. 84 (106), p. 25; Tr. 262-272).

There was no permanent Osage or other Indian village in the area described by the Treaty of September 25, 1818 (Tr. 272; Def. Ex. 84 (106)). Said Treaty of September 25, 1818, was proclaimed on January 7, 1819, and provided in part as follows:

"Art. 1. WHEREAS the Osage nations have been embarrassed by the frequent demands for property taken from the citizens of the United States, by war parties, and other thoughtless men of their several bands, (both before and since their war with the Cherokees,) and as the exertions of their chiefs have been ineffectual in recovering and delivering such property, conformably with the condition of the ninth article of a treaty, entered into with the United States, at Fort Clark, the tenth of November, one thousand eight hundred and eight; and as
the deductions from their annuities, in conformity to the said article, would deprive them of any for several years, and being destitute of funds to do that justice to the citizens of the United States which is calculated to promote a friendly intercourse, they have agreed, and do hereby agree, to cede to the United States, and forever quit claim to, the tract of country included within the following bounds, to wit: Beginning at the Arkansaw river, at where the present Osage boundary line strikes the river at Frog Bayou; then up the Arkansaw and Verdigris, to the falls of Verdigris river; thence, eastwardly, to the said Osage boundary line, at a point twenty leagues north from the Arkansaw river; and, with that line, to the place of beginning.

"Art. 2. The United States, on their part, and in consideration of the above cession, agree, in addition to the amount which the Osage do now receive in money and goods, to pay their own citizens the full value of such property as they can legally prove to have been stolen or destroyed by the said Osage, since the year one thousand eight hundred and fourteen: provided the same does not exceed the sum of four thousand dollars.

"Art. 3. The articles now stipulated will be considered as permanent additions to the treaties, now in force, between the contracting parties, as soon as they shall have been ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said United States."

10. By an order of December 15, 1818, white settlers were excluded from this so-called "Lovely's Purchase" area in order that it might be available to the Cherokees for hunting and as an outlet to the west, and on July 22, 1819, Secretary Calhoun, in a communication to the Cherokees stated that by concluding the 1818 treaty with the Osages the President had been enabled to carry out his promise as to an outlet. Calhoun's letter said:

"When the President made his speech to Talontusky, he was under the impression that the lands lying on the Arkansas, west of the Cherokee settlement, belonged to the Quapaws. It, however, appears that he was mistaken, and that they belong to the Osages; but, as these lands
have been since acquired, and the President is now enabled to carry into effect his promise to the Arkansas delegation. ** *** (Cherokee Nation v. United States, 2 Ind. Cl. Comm. 7).

11. Both the whites and Osages were under the impression that "Lovely's Purchase" (Cession of September 25, 1818) was for white settlement. Accordingly, a number of white families were ready to take provisionary possession of this land. However, they were disappointed when they learned that the Agent of Indian Affairs recently had received orders to remove the Cherokees from the south side of the Arkansas and to place them on the ceded tract which inevitably would cause a war between the two tribes. (Pet. Ex. 8, pp. 27-28; Pet. Ex. 72, p. 7; Def. Ex. 29, p. 7; R., 267).

12. Hostilities continued between the Osages and Cherokees after "Lovely's Purchase" for many years, and as late as 1823 Acting Governor Robt. Crittenden urged the Secretary of War, John C. Calhoun, to favor white settlement of the purchase in order to stop the Osage-Cherokee War by interposing the whites between the two tribes. (Pet. Ex. 72, Carter, 1953, 19: pp. 548-549).

13. Secretary Calhoun replied to Acting Governor Crittenden, April 28, 1824, and advised him that it would not be possible to decide whether to open "Lovely's Purchase" to white settlement until the government had given the Cherokees full satisfaction for the land they had surrendered east of the Mississippi; that a second survey was under way to determine the western boundary of these lands which would give a greater quantity than had originally been estimated because the precise quantity to which the Cherokees were entitled was still in doubt. The order for the removal of the Cherokees from the south to the north side of the
Arkansas was, therefore, necessarily suspended.

Secretary Calhoun further advised Crittenden that as soon as the western boundary of the Cherokee cession east of the Mississippi had been correctly ascertained, he would then lay before the President the subject of the white settlement of Lovely's purchase, which was of such interest to the Territory. (Ibid., 653-655).

14. A letter, dated at Washington City, 3rd June 1824, from Delegate Conway to "The Honbl. J. C. Calhoun, Secretary of War", enclosed a Memorial of the General Assembly of Arkansas, addressed to the President of the United States, requesting the sanction of the Government for the "people of Arkansas, to form settlements in the tract of Country commonly called 'Lovely's purchase'." Delegate Conway stated that he could see no substantial objection—that the Cherokee Indians had an indefinite claim to Arkansas to satisfy, but that "this objection will vanish, because in no event, can they hope for any part of 'Loveley's purchase'." (Pet. Ex. 13, pp. 18-19, Carter 1953, XIX: pp. 670-671).

15. The Western Cherokees were dissatisfied with Lovely's Purchase, and continued to complain of the continued settlement of white settlers thereon, and the failure of the United States to provide them with the promised outlet to the west, and desired a home for the entire Cherokee Nation west of the Territory of Arkansas (Cherokee Nation v. United States, 2 Ind. Cl. Comm. 7, 11-17; Cherokee Nation v. United States, 2 Ind. Cl. Comm. 37, 42; Cherokee Treaty of May 6, 1828, 7 Stat. 311, 2 Kapp. 288; Pet. Ex. 129, p. 174).
In order to satisfy the desires of the Western Cherokees, and to pave the way for the settlement of the whole Cherokee Nation, and other eastern tribes, on lands west of the Mississippi, in furtherance of its settled policy of removing said tribes to lands west of the Mississippi River, the United States required a cession of the Osage lands west of Lovely's Purchase.

16. The Treaty of June 2, 1825, proclaimed December 30, 1825 (7 Stat. 240, 2 Kapp. 217), was concluded at St. Louis, Missouri, between the United States, acting through William Clark, Superintendent of Indian Affairs, Commissioner on the part of the United States, and the Great and Little Osage Nations, provided in part as follows:

"ARTICLE 1.

"The Great and Little Osage Tribes or Nations do, hereby, cede and relinquish to the United States, all their right, title, interest, and claim, to lands lying within the State of Missouri and Territory of Arkansas, and to all lands lying West of the said State of Missouri and Territory of Arkansas, North and West of the Red River, South of the Kansas River, and East of a line to be drawn from the head sources of the Kansas, Southwardly through the Rock Saline, with such reservations, for such considerations, and upon such terms as are hereinafter specified, expressed, and provided for.

"ARTICLE 2.

"Within the limits of the country, above ceded and relinquished, there shall be reserved, to, and for, the Great and Little Osage Tribes or Nations, aforesaid, so long as they may choose to occupy the same, the following described tract of land: beginning at a point due East of White Hair's Village, and twenty-five miles West of the Western boundary line of the State of Missouri, fronting on a North and South line, so as to leave ten miles North, and forty miles South, of the point of said beginning, and extending West, with the width of fifty miles, to the Western boundary of the lands hereby ceded and relinquished by said Tribes or Nations; which said reservations shall be surveyed and marked, at the expense of the United States, and upon which, the Agent for said Tribes or Nations and all persons attached to said agency,
as, also, such teachers and instructors, as the President may think proper to authorize and permit, shall reside, and shall occupy, and cultivate, without interruption or molestation, such lands as may be necessary for them. And the United States do, hereby, reserve to themselves, forever, the right of navigating, freely, all water courses and navigable streams, within or running through, the tract of country above reserved to said Tribes or Nations.

* * * * *

"ARTICLE 14.

"These articles shall take effect, and become obligatory on the contracting parties, so soon as the same shall be ratified by the President, by and with the advice and consent of the Senate of the United States."

17. The United States moved not only the Cherokees against the Osage lands, but also the Kickapoos and Delawares, which also resulted in conflicts between the Osages and these tribes. The Kickapoos were removed and placed directly against the eastern boundary of the Osage lands, and by Treaty of June 30, 1819 (7 Stat. 200, 2 Kapp. 182), a reservation was established for them in this area. (Royce Indian Land Cessions, Plat 38, Missouri 2, Cession 179, pp. 698,699). The Delawares were given a reservation south of the Kickapoo reservation and against the eastern boundary of the Osage lands by Treaty of October 3, 1818 (7 Stat. 188, 2 Kapp. 170; Royce Indian Land Cessions, Plat 38, Cession 150A, pp. 724-725).

Until the 1830's the Osages continued to hunt in the vicinity of these reservations, the Ozark Plateau area, and the Boston Mountains, as well as hunting the buffalo in the west to provide for their subsistence. (Osage Case, Docket 105, Finding 114, 11 Ind. Cl. Comm. 733, 809, 878-880; Pet Ex. 129, pp. 6-8, 119).
18. As early as June 28, 1820, in his communication to Secretary Calhoun, Governor Clark had recommended the immediate purchase from the Osage and Kansas tribes of a tract of country extending from the Missouri River to the head of the Canadian Fork of the Arkansas, with sufficient depth to enable the Government to move the several tribes of Indians "from whom exchanges have been, and may hereafter be made to a country procured for that express purpose West of the boundary line of the Territory of Missouri, and of the settlements in the Territory of Arkansas **." 

C. Location of Osage Villages

19. As described in the Treaty of November 10, 1808, 7 Stat. 107, a boundary line between the Osage Nation and the United States was established which ran from Fort Osage on the Missouri River due south to the Arkansas River. By the Treaty of 1808 the Osage Nation relinquished to the United States claim to all land lying east of this line. All the regular and permanent villages of the Osage Indians were west of this line in 1808.

Evidence for the location of these villages of the Osage was presented in the case of Docket No. 105 before the Indian Claims Commission. (See particularly Def. Ex. 1 (105), Carl Chapman's doctoral dissertation, The Origin of the Osage Indian Tribe. See also Def. Ex. 61 (105) which was Chapman's compilation on the Osage occupancy east of the Osage line prior to the Treaty of 1808). A brief review of the evidence for the location of Osage Indian villages from time immemorial until November 10, 1808 follows.

Prior to 1706 all known Osage Indian village sites were situated within the present boundaries of the State of Missouri. No evidence of a specific nature could be found that any permanent Osage villages were
located west of the present Missouri State line before 1795. Furthermore, there is some possibility that no permanent villages of the Osage were established west of the Missouri State line until 1802. One band of the Big Osage broke away from the Big Osage Village on the Osage River in Missouri sometime in the period 1796 to 1802 and established a village on the Verdigris River probably near Claremore in the present State of Oklahoma. (Def. Ex. 83 (107), p. 3; Tr. 338, 340-345; also see Def. Ex. 1 (107), pp. 127-131; Def. Ex. 2 (107), pp. 14-25 and map; Def. Ex. 3 (107), pp. 176-183).

The separation of the Big Osage Band into two bands, that under Whitehair on the Osage River in the present State of Missouri and that under Clermont on the Verdigris River in the present State of Oklahoma, continued until after the Treaty of November 10, 1808 was signed at Fort Osage (Def. Ex. 83 (107), p. 4; also, Def. Ex. 4 (107), p. 43).

20. The villages of part of the Osage were established at Fort Osage in accordance with the Treaty of November 10, 1808. These villages were maintained near the Fort a portion of each year until 1810 (Def. Ex. 4 (107), pp. 43-48 and Def. Ex. 20 (107), p. 587). After 1810 the use of the Fort Osage area for village locations by the Osage was doubtful since the Osage had returned to their old village locations on the Osage and Verdigris Rivers by 1811. Thus the location Fort Osage became more or less temporary camp sites for trading purposes only (Def. Ex. 4 (107), pp. 24, 27-30 and Def. Ex. 4-A (107) and Def. Ex. 83 (107), p. 5).
The area through which the Osage roamed extended from Fort Osage south to the Osage River and southwest to the lower reaches of the Verdigris River and then further southwest to the Arkansas River. The western extent is not clear, but the northern limit appears to be approximately south of the Kansas River and its tributaries. There is very definite evidence that most of the Osage lived in Vernon County, Missouri, prior to 1808.

Other maps confirm these conclusions. A recently published map purporting to represent the 1804 period contains much greater detail on it than most of the later maps. (Defendant's Exhibit 7 (107) printed in the bulletin of the Missouri Historical Society in 1961.) The only site of the Osage Indians shown on this map along the Arkansas River drainage is a winter camp between the Verdigris and Neosho Rivers (Def. Ex. 83 (107), p. 5).

Another historical map shows the Osage village on the Verdigris River, the Osage at Fort Osage, and the Great Osage on the Marmaton River. The latter location is the same as the one designated by Dr. Chapman as 23VE1 (Def. Ex. 5 (107), p. 4, Fig. 1). The Clark Map (Def. Ex. 7 (107), thus locates the Osage villages in 1812 at much the same places as those shown on the Lewis and Clark Map of 1804 (Def. Exs. 6, 7 and 9 (107)).

21. Prior to 1796 the Osage Indians had all their villages on the headwaters of the Osage River and the south side of the Missouri River in Saline County, Missouri. The Little Osage on the Missouri River moved
to be near the Big Osage on the Upper Osage River sometime after 1777, thus concentrating all the Osage on the headwaters of the Osage River in Vernon County, Missouri, for at least a short time (see Def. Ex. 5-A (107), Chapman, 1959, "The Little Osage," The Missouri Archaeologist, Vol. 21, No. 1). Sometime between 1796 and 1802 part of the Big Osage broke away from the main village on the Osage River in the northern part of Vernon County, Missouri (23VE1), and established a separate village on the Verdigris River. This latter village was north of the present city of Claremore, Oklahoma, immediately east of Claremore Mound (see Def. Ex. 8 (107), E. Browne Map; and Def. Ex. 85 (107), Claremore U.S.G.S. Quadrangle Map showing the location of the Clermont Village site).

Therefore the Osage villages were on the Osage River in Vernon County, Missouri, between 1802 and 1808. By that time a branch of the Osage had moved into Oklahoma and located on the Verdigris River just east of Claremore Mound, about 6 miles north of Claremore, Oklahoma (Def. Ex. 83 (107), pp. 8-9).

22. The Osage established villages on the Missouri River at Fort Osage (now reconstructed and preserved in a Jackson County park near the present town of Sibley, Missouri) and lived there at least part of each year beginning in 1808. (See Def. Ex. 4 (107), Sibley Diary, Vol. II, p. 33, typescript, p. 8.) Some of the Osage continued to occupy villages near the fort until 1811 according to George Sibley's Diary (Def. Ex. 4 (107), pp. 67, 123-125, typescript, pp. 14, 24-26). Sibley was the
Government factor from 1808 until the factory system was abandoned by the United States. By the fall of 1811 part of the Osage were again on the Osage River and part on the Verdigris River, a branch of the Arkansas River. Sibley estimated that the Arkansas Osage represented fully half of the Big Osages at the time (1811). (See Def. Ex. 4 (107), p. 143, typescript, p. 29.)

The Osage had their permanent villages within a relatively restricted area of the headwaters of the Verdigris, Neosho and Osage (including the Marmaton branch) Rivers and the middle part of the Verdigris River in the period 1811 to 1825. One village was situated approximately 60 miles up the Verdigris River from its junction with the Arkansas. This was the Clermont village which has been found exactly 6 miles north of the city of Claremore, Oklahoma, immediately east of Claremore Mound. The straight-line distance between the Clermont Big Osage village on the Verdigris and that of the White Hair Big Osage village on the upper Osage River or the Marmaton River is approximately 125 miles. The Osage permanent villages were along this line and to the north of it in the period 1811 to 1825. If a line were drawn due north of Claremore, Oklahoma, to Neodesha, Kansas, and thence northeasterly to Burlington, Kansas, thence southeasterly to Rich Hill, Missouri, easterly to Schell City, Missouri, and then southwesterly to Claremore, Oklahoma, it would encompass the entire area containing Osage villages during the period 1808 to 1825, with the exception of the villages at Fort Osage for the short period of 3 years, 1808 to 1811. (Tr. 310, 326-338, 339-348, 355-358.)
D. Population

23. The population estimates of the Osage Tribe as a whole during the time period 1808 to 1825 range from about 4,000 to 11,000. The more considered estimates seem to be those of Pike, Sibley and a Government report of 1825, all of which are around 5,000. Furthermore, a check of the estimates on the basis of the ratio of warriors to others and the number usually occupying a single dwelling indicates that the probable total number of Osage averaged between 5,000 and 6,000 individuals during the 17-year period. At no time was the population ever estimated at more than 11,000 and never less than 4,000. A total of 6,000 would be a generous estimate, as an average population of the entire tribe, though a somewhat more realistic estimate might be 5,500. (Tr. 359; Def. Ex. 83 (107), p. 20; also see Dr. Voget's testimony for petitioner which confirms these population estimates, Tr.165.)

E. Osage Hunting, War and Crop Patterns

24. After the 1808 Treaty, the Osage continued to follow their traditional subsistence cycle which had been well established since 1700 (Pet. Ex. 129, p. 212; Osage Case, Docket 105, 11 Ind. Cl. Comm. 733, 738-743). Hunting was the most important activity. The Osages also supplemented their hunting by planting crops at their permanent and semi-permanent village locations, raising maize, squash and pumpkin, corn, beans, and other miscellaneous crops. They also gathered edible wild fruits, nuts and roots. The principal items gathered were walnuts, hazelnuts, pecans, acorns, plums, pawpaws, persimmons, hog potatoes, water chinkapin, and other edible roots. The principal fruits gathered were
the hackberry, chokeberry, blackhaw, wild grape, and plum. These wild fruits, nuts and edible roots were found in many locations within the boundaries of the Osage domain, east and west of the 1808 treaty boundaries. (Osage Case, Docket 105, 11 Ind. Cl. Comm. 733, 738-744; Pet. Ex. 129, pp. 1-5; R. 129, 184-185, 224).

25. The Osages hunted for subsistence nine months of each year away from their permanent villages, of which seven months were spent in hunting the buffalo (R. 38-39). Two months were spent hunting deer, bear and other small game for subsistence and trade (Pet. Ex. 129, pp. 1-4). While in their permanent villages during about three months of each year, they confined their hunting to areas surrounding their villages, and lived on crops grown in their gardens, and other foods they had gathered and preserved for such use (Chapman, R. 391-392).

The eastern area of the Osage domain provided them with a plentiful supply of bear, deer, beaver, elk and other small game (Pet. Ex. 129, pp. 114, 185, 329-330; R. pp. 206-209, 412, 434-435).

The Lovely's Purchase area supplied them with deer, bear and beaver. (R., Henning, pp. 269, 278).

The western area provided the Osage with deer, elk, antelope, and the buffalo.

The Osages followed the herds of buffalo and other animals sometimes for a distance of 300 miles from their permanent village locations, making a round trip of some 600 miles. They returned to their permanent villages from these hunts "about the time of Planting and gathering corn", usually in August. While at their annual hunting camp in the western part of their
domain the Osage would range for distances of more than 60 or 80 miles

The most important source of subsistence and trade of the Osages was
the buffalo. For seven months of the year the Osages hunted the buffalo
and lived on fat buffalo beef, tongues, and marrow bones (Pet. Ex. 129, p. 4).

The 97th Meridian represented generally the eastern extension of the
buffalo. Buffalo were not generally found in any quantity east of Walnut
River which joins the Arkansas River at present Arkansas City, Kansas.
Small herds could be found east of this area, in isolated villages in
Missouri and Arkansas reported as late as the 1820's. However, buffalo en
masse did not appear east of the 97th Meridian, latitude 37°. The presence
of the tall grass and flies signified the eastern edge of the buffalo range,

26. During the first half of the eighteenth century, the Osage
associated themselves with the Missouri Indians in raiding the "Panis"
situated to the west of them by approximately 3 or 4 days' journey, or
an estimated 40 leagues from the Big Osage village. The Panis raids
furnished the Osage with horses and captives which they traded to the
French in the Illinois country. Panis villages were located on the
Arkansas River near the Kansas-Oklahoma line and probably on the Verdigris
River near present Neodesha, Oklahoma. Authorities identify the "Panis" and
"Panis-Noirs" referred to in the French accounts, together with the later
"Mento" in and about the mouth of the Canadian River, with the historic
Wichita group (Tawehash, Wichita, and associated Tawakoni and Waco).
The Osage drove the Wichita group (Panis, Mento) from their locations on the Verdigris, Arkansas, and Canadian rivers between 1720 and 1742. By the middle of the 18th century the Wichita were situated on Red River in the vicinity of either Spanish Fort or Ringgold, Texas.

Elimination of the Caddoan-speaking villagers along the middle range of the Arkansas opened up the western prairie to the Osage. The Osage had already established a seasonal cycle that included a buffalo hunt. With no one to oppose them, and now fully equipped with horses, the Osage rapidly expanded their range westwards to meet the buffalo before they passed out of range on their migration to the north. In their seasonal movements to and from the buffalo grounds, the Osage developed semi-permanent encampments and garden plots at various crossing points along the Arkansas River from a northerly point near present Hutchinson, Kansas, to the mouth of the Canadian River. These special encampments are not described until U. S. exploration parties and traders take the field in the first quarter of the 19th century. However, encampments of this order are indications of Osage security and control of the Arkansas River between the locations cited.

27. The specific or even general territory traversed by a hunting people is not easily determined. In the period 1808 to 1825 it is particularly difficult to define the hunting area of any one tribe in the prairie-plains area because many Indian tribes were changing positions rapidly in the United States west of the Mississippi River. Indians as well as pioneers were moving west often exchanging old lands for new or seeking new hunting grounds. Indians already established in the prairies and
Plains were feeling the pressure of those coming from the east. The result was conflict and/or joint use of territory for hunting. Hunting parties became armed camps, and it was necessary that precautions be taken by all to guard the hunting camps and even permanent villages against surprise attack by war parties of other tribes hunting in the same general area (Def. Ex. 83 (107), p. 27).

The Osage hunted in the area extending on its northern limits from the Lamine River, in the State of Missouri, westward, following the divide between the Kansas, Osage and Arkansas River drainages, and southwest to the Great Salt Plains, across the Arkansas River, to the Canadian River, thence down the Canadian and Arkansas to Fort Smith and then northeast to include the headwaters of the White River in northwestern Arkansas and then north to the Lamine River. An approximation of the area that the Osage went into on hunting or war parties prior to 1816 is shown and described in Defendant's Exhibits 50 and 50-A (107). The extent of this territory is vast and it was not hunted over exclusively by the Osage, for all the tribes surrounding the area apparently hunted it at least part of the time. (See Def. Ex. 2 (107), Foreman, Indians and Pioneers, map in back; also, Def. Ex. 38 (107), Tr. 398-400).

A map of Missouri Territory notes the Kansas Indians to the north, the Pawnee (Paniassias) to the west, the Caddo Tribes on Red River to the south and southwest, and the Delawares and Arkansas south and east of the area within which the Osage and these tribes hunted (see Def. Ex. 51 (107)).
By 1824 it appears that the Osage had extended war depredations to Red River (see Def. Ex. 52 (107)).

The hunting territory of the Osage was not the same each year and the territory that the Osage moved within also varied. Although the Osage were supposedly in control of the area around Fort Osage in 1808, other tribes traded at the Government factory there and raids by northern tribes caused the Osage to abandon their villages near the fort within a few years (see Def. Ex. 4 (107), pp. 43, 47, 48, 73, 112-113, 115, 123).

The Edward Browne Map of 1822 shows the "Fighting ground between the Osages and Pawnees" and "Severe Battle with Pawnee's and Osages 1817" in the salt plains and between the branches of a stream (probably the Ninnescah Fork and the Arkansas River) west of the Arkansas River and west of Wichita, Kansas and south of Hutchison, Kansas. The "Salt Rock" on Browne's Map is probably the "Salt March" almost due west of Hutchison, Kansas shown on a modern map. This probably represents the western extent of usual penetration of Osage war parties in "no man's land" of the time (see Def. Ex. 8 (107)). To the south, the junction of the Neosho and Verdigris with the Arkansas was an area used by several different tribes. Jacob Bright in this general area for example was attacked, along with some Osages, by a band of Indians thought to be Choctaw (see Def. Ex. 10 (107), pp. 17-21). At that time Bright recorded that the Arkansas River was being hunted over by several other tribes. (Ibid. at p. 11)

In 1811 George Sibley made a trip to Osage hunting country and described it in a letter to his father, a copy of which he retained in
a notebook (see Def. Ex. 15 (107)). He noted that much of the area
traversed by the Little Osage was also being hunted in by the Kansas.
In order to reach the rock saline it was necessary to go with an armed
war party due to the fact that this country west of the Arkansas was used
by other tribes hostile to the Osage.

On July 20, 1813, William Lovely, Indian agent to the Cherokees, gave
notice to the Cherokees that the following boundaries of Cherokee lands
be observed:

* * * Beginning On White river where the line intersects said
river that was agreed on between General Clarke and the Osage
Nation from thence down the middle of said river, to the junc-
tion with little red river up said little red river to the
mouth of Cedar Creek from thence up to the source of said
Creek from thence a direct line to Budwells Old place—upon
the Arkansas river at the Mouth of point remove byo Thence
a south westerly Course so as to include The waters of Pete,
John Byo to a point Claimed by Other Tribes that is to say
the line between the Territory of Missouri and State of
Louisiana, thence a westerly Course till it intercepts the
affore said Osage boundary ***. [See Def. Ex. 20 (107),
pp. 721-722.]

These are apparently lands considered as Cherokee at the time by Lovely
and thus outside any officially known Osage lands.

Nuttall reported in 1819 that the Osages traveled far on their
hunting expeditions, but that they needed the support of their friends
in Kansas in order to make such a hunt so far from their home villages.

He says:

* * * the Osages had now returned to their village from a
tallow hunt, in which they had travelled not less than 300
miles up the Arkansa, and had crossed the Saline plains,
situated betwixt that river and the Canadian. In this hunt,
they say, that 10 villages of themselves and friends (as
the Kansas, who speak nearly the same language) joined for
common safety. They were, however, attacked by a small
scout of the Pawnees, and lost one of their young men who
was much esteemed * * *.

They say, the country through which they passed is so destitute of timber, that they had to carry along their tent poles, and to make fire of the bison ordure. [See Def. Ex. 22 (107), p. 246.]

The use of the hunting territory west of the Arkansas River in the present States of Kansas and Oklahoma was by Comanches and Otoes as well as other tribes according to James who in 1819 noted meeting a war party of Comanches that were on their way to attack the Osage and who were in turn attacked by the Otoes (see Def. Ex. 23 (107), p. 233). James also mentions the Pawnees, Arraphahoes, Kaskaias, Kiaways, Ietans (Comanche) and Shiennes as being at war with the Osage (see Def. Ex. 24 (107), pp. 153-156).

The Cherokees and Osage were fighting from time to time and hunting in some of the same territory (see Def. Ex. 26 (107), pp. 55-62, 136-137, 151-156, 237-242, 255-256 and 437). Other Indians to the east of the Osage, the Delaware, Shawnee, Piankashaw, Potawatomie, Kickapoo, Seneca as well as the Cherokee were hunting in the area to the west and fighting with the Osage after 1821 (see Def. Ex. 26 (107), pp. 526, 546-549 and 591-592).

The Osage often left their permanent village locations in a body, leaving the village totally unprotected and the country surrounding it open to the use of others. For example, Jacob Fowler in October of 1821 passed by the Clermont village on the Verdigris without seeing a soul and did not meet the Osages of the Clermont village until he reached a point about the present Kansas-Oklahoma border between Ponca City, Oklahoma and Arkansas City, Kansas. (See Def. Ex. 27 (107), pp. 6-16).
Arbuckle noted in a letter to Gaines a similar situation when the Clermont villagers went the opposite direction, in December 1823, as follows:

*** I have this day recd information that Clarmore, the principal chief of the Osage nation, with a few others, have arrived at their town, where they will remain but a few days before the [sic] proceed on a hunt towards the source of the White River; and that the whole of the Osages are now proceeding in that direction to hunt, and do not expect to return to their towns, until about the last of the present month. *** [See Def. Ex. 26 (107), pp. 572-573.]

According to Sibley in 1820 the Big Osages on the Osage and Neosho and the Little Osage hunted primarily on the headwaters of the Gasconade, Osage and Neosho Rivers and the Little Osage hunted on the headwaters of the Kansas River also. The Osage on the Verdigris hunted on the Arkansas and White Rivers and their waters. (See Def. Ex. 28 (107), p. 203). War parties wandered farther afield as is indicated by a report of the Osage on the Blue Water branch of Red River in 1824. (See Def. Ex. 52 (107)).

The overall area hunted and traveled in by the Osage from time to time during the period 1808 to 1825 is extensive. The northern border is approximately the ridge dividing the waters of the Kansas River and the Arkansas and the Osage Rivers and across to the Missouri State line. The eastern border extends as far as the headwaters of the Gasconade River and branches of the White River as far east as Beaver Creek. The southern boundary extends from the headwaters of White River in Arkansas to the Canadian River in Oklahoma and then up the Canadian for an undetermined distance. The western extent is also indeterminate. (See Def. Exs. 50, 50-A, 53, 54, 55, 56, 57, and 75 (107)). The general area intermittently
traveled over by the Osage changed fairly rapidly to a more westerly one after 1813. Hunting in the State of Missouri continued at least until 1818. In turn the extent of travel to the west had been increased both in distance and frequency. This was especially true after the tribes such as the Kickapoo, Delaware and Shawnee were given reservations in the State of Missouri and the Cherokee had gained a solid foothold in the headwaters of the White River in Arkansas Territory. This shift to the west and southwest by the Osage was a part of the general movement of Indians to the lands in Indian Territory. (Def. Ex. 83 (107), p. 35).

28. Based upon the evidence and entire record in this case, the Commission concludes that on September 25, 1818 and January 7, 1819, the date of conclusion and ratification of the treaty ceding Lovely's Purchase to the United States, the Osage Tribe of Indians had exclusively used and occupied since at least 1750 all of the land ceded in said treaty, described as follows:

Beginning at the Arkansas River where the Osage Cession Line of 1808 strikes said River, then up the Arkansas and the Verdigris Rivers to the falls of the Verdigris, then north-easterly, to a point on the Cession Line of 1808 sixty miles north of the Arkansas River, then southerly along said Cession Line to the point of origin.

29. Based upon the evidence and entire record in this case, the Commission concludes that on June 2, 1825 and on December 30, 1825, the dates of conclusion and ratification of the treaty in question in docket number 107, the Osage Tribe of Indians had exclusively used and occupied since at least 1750 a tract of land included in said treaty, described as follows:
Commencing at the junction of the northern boundary of Cass County, Missouri, and the cession line of 1808, running south along the cession line to the cession line of 1818; thence southwest along the latter cession line to the Verdigris River; thence down the Verdigris to the Arkansas River; thence up the Arkansas to the Kansas-Oklahoma border; thence eastward along the Kansas border; thence north and then westward along the boundary of Royce Area 123 to the 97th meridian; thence north along the 97th meridian to a point due west of Florence, Kansas; thence due east to and eastward along the Cottonwood River to a point due south of Emporia, Kansas; thence due north to the boundary of Royce Area 123; thence easterly along the boundary of Royce Area 123 to the Missouri border; thence north to the northern boundary of Cass County, Missouri; thence eastward along the northern boundary of Cass County, Missouri, to the point of origin.

In 1825 the Osage Tribe had not had exclusive use and occupancy for a long time or from time immemorial of any other tract of land which the Treaty of June 2, 1825, might be construed as including.

John T. Vance, Chairman

Jerome K. Kuykendall, Commissioner

Richard W. Yarborough, Commissioner