

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: October 10, 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 Winnibigoshish 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, Ontonogon 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 July 29, 1837 (7 Stat. 536). Those lands are shown as area 242 by Charles C. Royce on his Minnesota 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 242.

3. This case is now before the Commission on petitioners' motion for summary judgment "that the Chippewas of Lake Superior, or the Chippewas of the Mississippi, or the Pillager Chippewas, or other Chippewa bands included as parties plaintiff, or some combination of the

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.

same, were owners by recognized title of the land (Area 242) ceded by them to the United States by the Treaty of July 29, 1837." 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 Millawaukee 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...."

7. The Prairie du Chien Treaty did not settle with finality all of the boundary lines between competing tribes. By Article 11 specific provisions were made for subsequent council, including one in 1826 with the "Yancton band of the Sioux." And by Article 12 there was set forth an agreement with the Chippewa tribe to meet in 1826 at Lake Superior to obtain the assent of the Chippewas in that area.

The anticipated council with the Yankton Sioux did not occur that next year, but a council did convene in 1826 at Fond du Lac, Wisconsin, near Duluth, with twelve bands of Chippewas. Lewis Cass and Thomas L. McKenney, Commissioner of Indian Affairs, were appointed treaty Commissioners.

Governor Cass opened the council with an explanation of the 1825 Treaty of Prairie du Chien and its objectives and the reason for the 1826 council "in the middle of your own country". He stated:

*** Your Great Father, being very desirous to terminate this War, called together, last year, at Prairie du Chien, the Chippewas, Sioux, Sacs and Foxes, Iowas, Menominies and Winnebagoes, and after sometime, the Tomahawk was buried, and all the Tribes became friends and shook hands together. In order to prevent any difficulty hereafter, a boundary line was agreed upon, to divide your country from that of the Sioux, ***.

"But Prairie du Chien was a long distance from your country, and many of your people were unwilling to go there. Your Great Father has therefore sent us here to state to all your people in the middle of your own country, what was transacted at the Prairie, and to express his wish that it may be faithfully adhered to, on your part. ***

"We also wish that you would allow Great Father to look through the Country and take such copper as he may find. ***" (Pet. Ex. 19, p. 1)

A treaty was concluded binding the Chippewas to the Chippewa boundary lines fixed in the 1825 Treaty and stipulating that those lines should be carried out in 1827 with the Menominee and Winnebago. The following bands were parties to the treaty: La Pointe, Ontonogan, Lac du Flambeau, Fond du Lac, St. Croix River, Snake River, Sault St. Marie, Ottoway Lake, Vermillion Lake, Rainy Lake, Crow River and Sandy Lake.

By Article 3 of the 1826 Treaty "The Chippewa tribe grant[ed] to the government of the United States the right to search for, and carry away, any metals or minerals from any part of the country. But this grant is not to affect the title of the land, nor the existing jurisdiction over it."

And in Article 4 "the Chippewa tribe grant[ed] to each of the persons described in the schedule [t]hereunto annexed, being half-breeds and Chippewas by descent six hundred and forty acres"

8. The second treaty supplemental to the Prairie du Chien Treaty was negotiated at Butte des Morts, Wisconsin, in 1827. The same men who concluded the 1826 treaty, Lewis Cass and Thomas L. McKenney, were the treaty commissioners. The treaty settled the southern boundary of "the Chippeway country" between the Menominee and Winnebago. In Article I the treaty stated "Whereas, the southern boundary of the Chippewa country, from the Plover Portage of the Wisconsin easterly, was left undefined by the treaty concluded at Prairie du Chien....

"Therefore, in pursuance of the said provisions, it is agreed between the Chippewas, Menominies, and Winebagoes, that the southern boundary of the Chippeway country shall run as follows...."

In their report on the 1827 Treaty, the treaty commissioners wrote, "The first article requires no explanation. It provides for a final determination of the Chippeway boundary, and so far as regards that tribe, it carries into full effect the principles of the Treaty of Prairie du Chien." (Pet. Ex. 26, p. 1)

9. In 1837 treaty commissioners were appointed and instructed to hold a treaty with the Chippewa Indians of the Mississippi. The instructions stated that, "the tract which it is considered desirable to procure from these Indians, is that part of their country which lies east of the Mississippi River, and south of the 46th meridian of longitude. It is understood, that this tract is valuable for the pine woods which cover it, but is unfit for cultivation..."

On June 5, 1837, Governor Dodge forwarded written instructions to the subagent for the Chippewa Indians to send messengers to the Chippewas in specified localities notifying them of the time and place of the treaty. The instructions said "...it is a subject of great importance that the different bands of the Chippewas should be represented to prevent discontent among those who may not attend. It will satisfy these Indians that the Government is disposed to do justice to all." The council was held near Fort Snelling and there were chiefs from 13 localities.

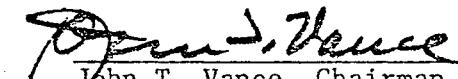
According to the Journal of the Proceedings of the Council, Governor Dodge told the Indians in his opening statement that he had been sent by the President to propose to them the purchase of some of their lands east of the Mississippi. Governor Dodge stated, "...I have before made a proposition to you ... for the purchase of a portion of your territory ... and will show you a map, explaining which part of your country it is, that I wish to buy." (Pet. Ex. 69, p. 17) He called particularly for those chiefs "from that part of the country which I think to purchase, to wit: Lake De Flambeau and Coutereille, and the Chippewa, St. Croix, and Rum

Rivers, etc., to come forward and examine [the map]."

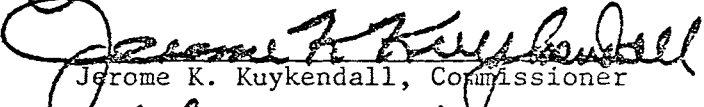
The treaty was signed on July 29, 1837, by chiefs and warriors from the Mississippi bands, from the Lake Superior bands and from the Pillager bands.

10. The Commission finds that by action of the Congress of the United States in ratifying the Prairie du Chien Treaty of August 19, 1825, and the further Congressional action in ratifying the Treaties in 1826 and 1827 (all of which have been set forth herein), the United States did recognize title in the Chippewa Indians to all of the claimed lands, as described in Article I of the Treaty of July 29, 1837, and designated as Royce Area 242.

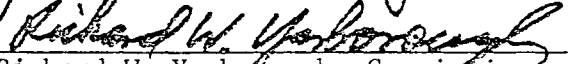
11. The Commission further finds that said lands were ceded to the United States by the Treaty of July 29, 1837. Article 6 of the treaty provided that it should become obligatory upon the parties when ratified by the President and the Senate of the United States. However, in the absence of the recorded ratification date, the proclamation date of June 15, 1838, will suffice as the date of taking of the lands involved.



John T. Vance, Chairman



Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner

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Petitioners,)	
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v.)	Docket No. 18-C
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 10, 1968

Appearances:

Jay H. Hoag, with whom was
Marvin J. Sonosky,
Attorneys for Petitioners.

David M. Marshall, with whom was
Mr. Assistant Attorney General Clyde O. Martz,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Chairman, delivered the opinion of the Commission.

This case is now before the Commission on petitioners' motion for summary judgment by which they seek a determination that the "Chippewas of Lake Superior, or the Chippewas of the Mississippi, or the Pillager Chippewas, or other Chippewa bands included as parties plaintiff, or some combination of the same" were the owners by "recognized title" of the lands which were ceded to the United States by the Treaty of July 29, 1837 (7 Stat. 536). The petitioners assert that the United States recognized title in the Chippewas by the Prairie du Chien Treaty of August 19, 1825 (7 Stat. 272), and the subsequent course of dealings and series of treaties between the United States and the Chippewas. The lands involved in the 1837 cession are referred to as Royce Area 242.

This case is similar to the claims presented by the Minnesota Chippewas and others in Docket Nos. 18-S and 18-T. The Commission has entered its decisions on petitioners' motions in those cases (Docket No. 18-S, decided August 13, 1968 (19 Ind. Cl. Comm. 319); Docket No. 18-T, decided August 20, 1968 (19 Ind. Cl. Comm. 341)). In determining that the Prairie du Chien Treaty and the supplementary treaties in 1826 and 1827 were Congressional Acts which granted recognized title to Chippewas, we set forth in the opinions in those cases our reasons for our holdings. Those same reasons lead us to the conclusion that petitioners' motion for summary judgment should likewise be granted in the subject matter. We see no reason to reiterate our views in detail in this opinion. What the Commission stated in the opinions in Docket Nos. 18-S and 18-T is adopted as our reasons for the findings and determination made herein.

However, in the subject case defendant has presented an additional argument in opposition to the granting of petitioners' motion. This issue, which was not involved in either the Docket Nos. 18-S or 18-T cases, concerns the Menominee Indians. Defendant has set forth a detailed presentation of Menominee problems including alleged "gross overreaching" of the Menominees by the sophisticated New York Indians when the latter received a land cession from the Menominee in 1822; inadequate representation of the Menominee at the 1825 Prairie du Chien Treaty; poor representation of the Menominee at the 1827 Treaty when they were characterized as "a flock of geese without a leader"; alleged unjust fixing of Menominee boundaries at the Prairie du Chien Treaty and supplementary 1827 Treaty; and

subsequent claims of the Menominee to lands which overlap Royce Area 242 and a discussion of the basis and alleged validity of such claims.

The matters which defendant raises concerning the Menominee are not pertinent to this case. The history of Menominee dealings with the United States and other Indians and the merits of Menominee land claims are related to issues which were involved in the claims of the Menominee against the United States. Those claims were presented before the Court of Claims in seven separate suits. An overall settlement was embodied in a Court of Claims judgment of July 13, 1951, for \$8,500,000.00. On April 24, 1952, Indian Claims Commission Docket No. 129 was, upon motion of the petitioner, dismissed with prejudice for the reason that all matters set forth therein had been compromised and settled in the Court of Claims judgment. As petitioners' counsel states in his brief, the government seeks to convert an issue of law into a trial on Menominee use and occupancy in which the government assumes the role of advocate for the Menominee.

But even if there were merit to the defendant's assertion that Royce Area 242 encroached on the Menominee aboriginal land holdings, that would not be a basis for denying the claim in this case based on recognized title. As we have set forth in more detail in our opinions in the Dockets 18-S and 18-T cases, recognized title is the granting to the Indians by Congress of a permanent right of occupancy in lands. And there need be no actual use or occupation or even the presence of Indians in an area to sustain recognized title. The lands to which an Indian tribe has been granted recognized title may be all or part of the lands formerly held by them under mere

aboriginal title or may be lands they never previously occupied. The Miami Tribe of Oklahoma, et al., v. The United States, 146 C. Cls. 421, 445 (1959). The presence, or even a prior exclusive use and occupation of an area by other Indians would not defeat a Congressional granting of recognized title.

The area in question in this case was a part of the area to which Congress granted recognized title in the Chippewas. By the 1825 Prairie du Chien Treaty and the 1827 Treaty clear, unambiguous boundaries were described which fixed the areas of the respective tribes. There is no basis for the contention that this Commission is free to substitute other boundaries to adjust for some supposed inequities among the various tribes which participated in the treaties.

It has also been determined that the 1825 and 1827 treaties recognized title in the Menominee. This Commission found in Emigrant New York Indians v. United States, 5 Ind. Cl. Comm. 560, 628, "... And petitioners [New York Indians] limit their claim to the area which was recognized in the Treaty of Prairie du Chien in 1825 and the Treaty of Butte des Morts in 1827 when the Menominee boundaries were finally established." In affirming this Commission the Court of Claims stated, "By the Treaties of Prairie du Chien and Butte des Morts in 1825 and 1827, and by supplemental treaties, the United States recognized the title of the Menominees to the area in question in this case." United States v. Emigrant New York Indians, 177 C. Cls. 263, 278 (1966). The Menominee lines as determined by the 1825 and 1827 Treaties do not extend into or in any way overlap Royce Area 242.

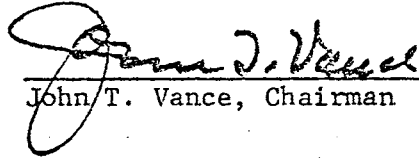
In the subject case petitioners contend that the area of recognized Chippewa country is bounded by the Canadian international line on the north; on the east by the 1827 Butte des Morts Treaty line which terminated in Lake Michigan; on the south by the Article 5 and Article 6 Prairie du Chien boundaries; and on the west the Article 5 line which terminated at the Red River fixed the boundary from that point up to the mouth of the Goose River on the North Dakota side. From the Goose River to the Canadian border and west into North Dakota has already been found to have been Chippewa country, occupied by Pembina Chippewas. Red Lake, Pembina Bands, et al., v. United States, 6 Ind. Cl. Comm. 247. The Commission is satisfied that these are the bounds of recognized title in the Chippewas as established by the 1825 Prairie du Chien Treaty and the supplementary treaties in 1826 and 1827.

We have, therefore, concluded that petitioners' motion for summary judgment should be granted. By Congressional action the United States granted recognized title in the Chippewa Indians to all of the claimed lands (Royce Area 242). The lands were ceded to the United States by the Treaty of July 29, 1837, which was proclaimed on June 15, 1838.

Having ruled favorably on petitioners' title claim to Royce Area 242, we shall reserve further judgment until proof has been offered as to the consideration paid for the cession, the acreage involved, and the fair market value of the area as of June 15, 1838.

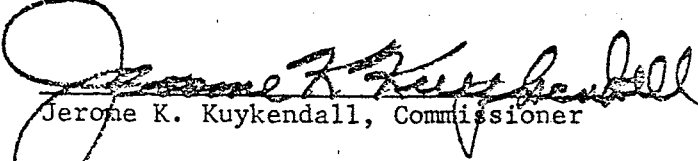
Further, the Commission will consider at that time the matter of a precise definition of the entity or entities to be entitled to participate

in any prospective award, should there be one. Accordingly, the parties are directed to include in the next proceedings and briefings their respective contentions on this issue.



John T. Vance, Chairman

We concur:



Jerone K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner

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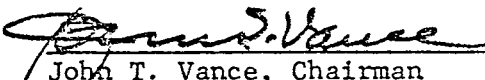
ORDER GRANTING PETITIONERS' MOTION
FOR SUMMARY JUDGMENT

Upon consideration of petitioners' motion for summary judgment, filed December 6, 1965, and defendant's response thereto, and further upon the findings of fact and opinion this day entered herein, which are hereby made a part of this order, the Commission concludes as a matter of law that the United States did recognize title in the Chippewa Indians to all of the claimed lands (Royce Area 242) and that said lands were ceded to the United States by the Treaty of July 29, 1837.

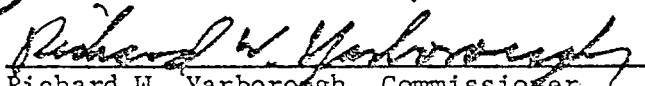
IT IS THEREFORE ORDERED that the motion for summary judgment be and the same is hereby granted, and

IT IS FURTHER ORDERED that this case proceed to a determination of the acreage and fair market value of Royce Area 242 as of June 15, 1838, and also to a determination of the value of the consideration given by defendant for the cession.

Dated at Washington, D. C., this 10th day of October, 1968.


John T. Vance, Chairman


Jerome K. Kuykendall, Commissioner


Richard W. Yarborough, Commissioner