

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, also)
 known as THE MIAMI TRIBE, ET AL.,) Docket No. 253
)
 Plaintiffs,)

IRA SYLVESTER GODFROY, WILLIAM ALLOLLA)
 GODFROY, JOHN A. OWENS, on relation of)
 THE MIAMI INDIAN TRIBE and MIAMI TRIBE)
 OF INDIANA, and each on behalf of) Docket No. 131
 others similarly situated and on behalf)
 of THE MIAMI INDIAN TRIBE and various)
 bands and groups of each of them,)
 comprising the MIAMI TRIBE AND NATION,)
)
 Plaintiffs,)

THE PEORIA TRIBE OF INDIANS OF OKLAHOMA)
 and AMOS ROBINSON SKYE on behalf of the) Docket No. 314-D
 WEA NATION,)
)
 Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: March 18, 1970

Appearances:

Edwin A. Rothschild, Louis L.
 Rochmes, Attorneys for Plaintiffs
 in Docket No. 253

Jack Joseph, Attorney for
 Plaintiffs in Docket No. 314-D

Walter H. Maloney, David L.
 Kiley, Albert C. Harker and
 Robert C. Bell, Jr., Attorneys
 for Plaintiffs in Docket No. 131

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

ON MOTION FOR SEVERANCE AND RECONSIDERATIONOPINION OF THE COMMISSION

Commissioner Pierce delivered the Opinion of the Commission.

On December 30, 1969, the Miami Tribe of Oklahoma, plaintiff in Docket No. 253, and the Miami Tribe of Indiana, plaintiff in Docket No. 131, moved for a separation or severance of the award for Royce Area 56 to the Peoria Tribe on behalf of the Wea Nation, plaintiff in Docket No. 314-D, and moved also for a reconsideration of the award for Area 56 in the Commission's decision of November 26, 1969, in the above-captioned proceeding. Plaintiff in Docket No. 314-D opposes the motions for severance and reconsideration and the defendant opposes the motion for severance. There was oral argument on the motions on February 27, 1970.

We note at the outset that the amount of the award for Area 56 was amended by order of the Commission of January 8, 1970, making the award to the plaintiff in Docket 314-D \$531,000 for its interest in the area.

In substance, plaintiffs in Dockets 253 and 131 contend that they are entitled to the whole award for Area 56, that the plaintiff in 314-D either has no interest in Area 56, or, alternatively, a lesser interest than the Commission has determined.

The decision of November 26, 1969, in this case included in Finding 14 the determination that the Miami, Eel River, and Wea Tribes owned Area 56 at the time of its cession to the United States in 1805.

The Finding was based on the 1805 Treaty of Grouseland (7 Stat. 91) ceding Area 56 and on related Findings in the title decision in this case (Miami Tribe of Oklahoma, et al. v. United States of America, 5 Ind. Cl. Comm. 180 (1957)). The title proceeding involved no proof of actual use and occupancy but depended on recognized title through a determination that by the Treaty of Grouseland, the United States confirmed the boundaries of land (including Area 56), the title to which had been recognized as belonging to the Miami, Eel River, and Wea Tribes by the Treaty of Greeneville (7 Stat. 49; 5 Ind. Cl. Comm. 195, 197).

Findings in the title decision herein upon which our conclusions as to the distribution of the award for Area 56 were based, were cited and used in our November 26 decision (22 Ind. Cl. Comm. 93-97 (1969)). These included the portion of Finding 1 in the title decision that the Wea Tribe was originally a part of the Miami Tribe but after 1805 separated from the Miami (5 Ind. Cl. Comm. 180, 181). This conclusion is based in part on the express recitation in Article IV of the 1805 Treaty of Grouseland that "the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still consider themselves one nation," and partially on evidentiary material of the relationship between the Weas and the Miamis in support of Finding No. 2 in Docket No. 67 (Consolidated), The Miami Tribe of Oklahoma v. The United States of America, 2 Ind. Cl. Comm. 617, 618-628 (1954).^{1/}

^{1/} In Miami Tribe of Oklahoma, et al. v. The United States, 146 Ct. Cl. 421 (1959), the Commission's decision in 2 Ind. Cl. Comm. 617 (1954) was affirmed in part here relevant but was remanded on the question of value.

The Commission there concluded that the separation of the Weas from the Miami Nation occurred after 1805 and before 1818.

Finding 9 in the title decision in this case incorporates the portion of Article II of the Treaty of Grouseland under which the Miami, Eel River, and Wea tribes cede and relinquish to the United States forever all of the tract depicted on Royce's map of Indiana as Area 56. The cession and relinquishment of Area 56 required of the Weas along with the Miami and Eel River Tribes by the Treaty of Grouseland is evidence that all three were then considered owners of the area by the United States (5 Ind. Cl. Comm. 193, 194).

Further, in connection with the motion for reconsideration, Article IV of the Treaty of Grouseland is important. In Article IV, the United States agreed to consider the Miami, Eel River, and Wea Tribes as joint owners of all the country on the Wabash and its waters above the Vincennes tract, not ceded to the United States by this or any former treaty. The United States agreed also that it would not purchase any of this country without the consent of each of the said tribes, indicating that the lands were held in common and not divided among the three tribes.

A proposed stipulation, urged in support of the motion for reconsideration by plaintiffs in Docket No. 131, apparently agreed to by attorneys for the plaintiffs in July 1955, was filed in this proceeding in 1966. It includes a disclaimer by attorney for plaintiff

in Docket 314 (not 314-D) as against plaintiffs in Dockets 131 and 253 to any right of recovery by reason of the cessions of Area 56 or the eastern portion of Area 71. We found no evidence in support of the apparent disclaimer in 1955 of a Wea claim to Area 56. The disclaimer as to Area 56 was completely inconsistent with the filing on March 10, 1958, of the petition in this proceeding by plaintiff in 314-D which reasserted the claim to Area 56 on behalf of the Weas. Moreover, the Weas' claim to Area 56 had been asserted consistently by plaintiff in 314 in the title proceeding in this case. This was tantamount to a retraction by counsel in 314 of the proposed stipulation. The 1955 stipulation is not in accord with the Treaty of Grouseland or with the above-discussed Findings or with the pleadings in the title phase of this proceeding. It was not adopted by the Commission after considering pleadings and oral argument on November 7, 1968. Although the Commission incorporated in Finding 12 of the title decision the location and quantity of Wea lands in Area 71 as agreed to by attorneys for all of the parties in a stipulation of November 17, 1954, the Finding refers only to Area 71, and contains nothing regarding the interests of the respective parties in Area 56 (5 Ind. Cl. Comm. 196, 197). That stipulation, unlike the one here contended for, was supported by evidence in the record other than the agreement of counsel for the parties.

In further support of the motions for severance and reconsideration, the plaintiffs in Dockets 253 and 131 assert that the Weas' interest in

Area 56 should not be a one-third interest which the Commission used in the award of November 26, 1969, as amended, because the annuity to the Weas for Area 56 under Article III of the Treaty of Grouseland was less than that to the Miamis. It is noted that the annuity to the Eel River Tribe for its interest in Area 56 under the Treaty of Grouseland was also less than that to the Miamis. For the reasons discussed below we do not consider the difference in annuity alone a persuasive basis for holding that in 1805 the Weas did not have the same interest in Area 56 as did the Miami and Eel River Tribes.

The Findings and evidence in the title decision in this case, in the related decision by the Commission in Miami Tribe of Oklahoma v. The United States, Docket 67, supra, and the provisions of the Treaty of Grouseland in Article IV which refer to the plaintiffs' property holding as joint must be considered in addition to and together with the treaty provision on consideration in determining the ownership interests of the plaintiffs herein.

In the title decision in this proceeding and the related proceeding in Docket 67, we find reports to the Secretary of War defining the interests of plaintiffs in the subject area and adjacent lands made by William Henry Harrison, Governor of Indiana Territory and Commissioner for the United States in treaty negotiations with northwestern Indian tribes, which explain Harrison's determination in the negotiations

