

BEFORE THE INDIAN CLAIMS COMMISSION

SAGINAW CHIPPEWA INDIAN TRIBE OF)	
MICHIGAN, A FEDERAL CORPORATION,)	
JAMES STRONG, ELMER B. SIMONDS,)	
AND ISAAC McCOONSE, AS REPRESENTA-)	Docket No. 57
TIVES OF THE SAGINAW, SWAN CREEK)	
AND BLACK RIVER GROUP OR BANDS OF)	
CHIPPEWA INDIANS,)	
)	
Plaintiffs,)	
)	
and)	
)	
RED LAKE BAND, ET AL.,)	Docket No. 18-G
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 1, 1970

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The claim presented herein relates to the lands which were ceded to the United States by the Treaty of September 24, 1819 (7 Stat. 203). Those lands are referred to as Royce Area 111.
2. The plaintiffs in Docket No. 57 are the Saginaw Chippewa Indian Tribe of Michigan, comprising the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians, and James Strong, Elmer B. Simonds and Isaac McCoonse, members of said bands. The Saginaw Chippewa Indian Tribe of Michigan is incorporated under provisions of the Wheeler-Howard Act

of June 18, 1934 (48 Stat. 984), and has authority to maintain this action under the provisions of the Indian Claims Commission Act (60 Stat. 1049).

3. The plaintiffs in Docket No. 18-G include the following bands of Chippewa Indians:

1. Red Lake Band
2. Pembina Band
3. Minnesota Chippewa Tribe
4. White Earth, Leech Lake and Mille Lac Bands
5. Mississippi Bands
6. Bois Forte, Fond du Lac, Grand Portage, Red Cliff, Bad River (La Pointe), Lac Court Oreilles, St. Croix and Mole Lake Bands
7. Keweenaw Bay Indian Community
8. L'Anse, Lac Vieux Desert and Ontonagon Bands
9. Lake Superior Bands of Chippewa Indians
10. Bay Mills Indian Community, Saulte St. Marie

Also included are a number of individuals who are members of various of the named bands.

The plaintiffs in Docket No. 18-G have not submitted any evidence in support of the claim in this matter. Counsel for the plaintiffs in Docket No. 18-G stated at the hearing on this consolidated case that the proper plaintiffs are the Saginaw Chippewas and nothing has been offered to suggest any interest of Docket No. 18-G plaintiffs in the subject matter of this claim.

The Docket No. 18-G plaintiffs have not been and are not now in any way affiliated with the Saginaw Chippewas. The Docket No. 18-G plaintiffs were not parties to the cession of Royce Area 111 by the Treaty of September 24, 1819 supra. The Docket No. 18-G plaintiffs have no interest in the subject claim.

4. On August 3, 1795, a treaty was executed at Greeneville (7 Stat. 49) with the Wyandots, Delawares, Shawnees, Ottawas, Chippewas, Potawatamies, Miamis, Eel-River, Weas, Kickapoos, Piankishaws and the Kaskaskias. The purposes of the treaty were to put an end to destructive warfare, to settle all controversies between the treaty parties, and to restore harmony and free intercourse between the Indian tribes and the United States.

In Article III of the Treaty of Greeneville a general boundary line was described between the lands agreed to be owned by the United States and the lands agreed to be owned by the Indians. This line, known as the Greeneville line of 1795, began at the mouth of the Cayahoga River on Lake Erie (where Cleveland is now situated), running across Ohio to what is now Indiana, then southwest to the Ohio River on the border between Indiana and Kentucky to a point about 25 miles west of the Ohio line. The Indian tribes ceded and relinquished all of their claims east and south of that line. In addition to this large cession the tribes ceded to the United States some 16 small tracts, including the post of Michillimackinac and some adjacent lands and also the island

De Bois Blanc, which was described as an extra and voluntary gift of the Chippewa Nation.

By Article IV the United States relinquished "their claims to all other Indian lands northward of the river Ohio, eastward of the Mississippi, and westward and southward of the Great Lakes and the waters uniting them, according to the boundary line agreed on by the United States and the king of Great Britain, . . ." There were four tracts of land reserved by the United States from the relinquishment.

In Article V it was declared:

To prevent any misunderstanding about the Indian lands relinquished by the United States in the fourth article, it is now explicitly declared, that the meaning of that relinquishment is this: The Indian tribes who have a right to those lands, are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; but when those tribes, or any of them, shall be disposed to sell their lands, or any part of them, they are to be sold only to the United States; and until such sale, the United States will protect all the said Indian tribes in the quiet enjoyment of their lands against all citizens of the United States, and against all other white persons who intrude upon the same. And the said Indian tribes again acknowledge themselves to be under the protection of the said United States and no other power whatever.

Royce Area 111 is located within the area relinquished by the United States.

In consideration for the establishment of peace and the cessions and relinquishments by the Indians the United States further agreed, in Article IV, to deliver annually \$9,500.00 worth of useful goods to be divided as set forth therein, including "6th. To the Chippewas, the amount of one thousand dollars."

By Article VII of the treaty the Indians were given the right to hunt within the lands which they had ceded so long as they conducted themselves peaceably.

There were forty-six Chippewa Indians present at the Greenville Treaty negotiations and eleven of the Indians who signed the treaty were designated as Chippewas.

5. By the Treaty of September 24, 1819 (7 Stat. 203), the Chippewa Nation of Indians ceded to the United States the lands in Michigan which have been designated as Royce Area 111. While the treaty used the term "Chippewa Nation", it was, in fact, negotiated with and executed by those Chippewa Indians known as the Saginaw Chippewas or Chippewas of Saginaw. Those Saginaw Chippewas were the ancestors of the Indians who are now members of the plaintiff Saginaw Chippewa Indian Tribe of Michigan. The Saginaw Chippewa of 1819 also included the Swan Creek and Black River Bands.

In Articles 2 and 3 of the treaty there were a number of reservations set aside for the use of the "Chippewa Nation" and some 16 sections for the use of named individuals, described as "Indians by descent."

In consideration for the cession the United States agreed, in Article 4, to pay annually, for ever, the sum of one thousand dollars in silver. And it was further agreed that all annuities due by any former treaty to the "said tribe" should also be paid in silver. In Article 8 the United States also agreed to provide and support a

blacksmith for the Indians, at Saginaw, so long as the President might think proper, and to furnish such farming utensils and cattle, and to employ persons to aid the Indians in agriculture.

Article 5 of the 1819 Treaty provided:

The stipulation contained in the treaty of Greenville, relative to the right of the Indians to hunt upon the land ceded, while it continues the property of the United States, shall apply to this treaty; and the Indians shall, for the same term, enjoy the privilege of making sugar upon the same land, committing no unnecessary waste upon the trees.

Article 9 of the treaty stipulated that it should become effective upon ratification. However, in the absence of a recorded ratification date we find the effective date of the treaty to have been its proclamation date of March 25, 1820.

6. On May 23, 1927, the Saginaw, Swan Creek and Black River Band of Chippewas filed a petition (H-211) in the Court of Claims, under the authority of the Act of June 25, 1910 (36 Stat. 829), as amended by the Act of May 24, 1924 (43 Stat. 137). The plaintiffs sought, among other things, an accounting for sums allegedly due them under various Chippewa treaties with the United States including the 1795 Greenville Treaty. In response thereto a report was prepared by the General Accounting Office, and it was transmitted to the Attorney General of the United States on December 26, 1933. Portions of that report, which have been made a part of the record in this case as Commission Exhibit 1, deal with the disbursements made by the United States to fulfill its Greenville treaty obligations to the Chippewa,

Ottawa and Pottawatomie Indians. In the introductory statement of the General Accounting Office the purposes of the report were set forth. In referring to the petition of the Saginaw, Swan Creek, and Black River Band of Chippewa Indians that introduction stated:

* * *

The plaintiffs, on pages 3 and 4 of their amended petition, allege that:

'***Prior to the year 1795, and for many years thereafter, plaintiffs, as members of a tribal confederacy, commonly known to the Indians as the Three Fires, and treated with by the United States under the designation of Chippewa, Ottawa and Potawatomi Nations, or by similar name, were the owners, and entitled to the possession, of vast areas of land lying within the limits of the United States, in what are now the States of Ohio, Michigan, Indiana, Illinois, Wisconsin, Iowa and Missouri, cessions of which lands in the several states mentioned, were made to the United States by plaintiffs and those allied Indian tribes who were co-owners thereof with them, under treaties executed, from time to time between the years 1795 and 1833, ***.

* * *

'At the respective dates of the foregoing treaties the Saginaw, Swan Creek and Black River Band, plaintiffs herein, constituted the Chippewa portion of the so-called Chippewa, Ottawa and Potawatomi Nations, so ceding lands to the United States; and the treaties thus made are signed by chiefs and headmen of the three bands.'

By reason of the foregoing allegation, and in order to show as completely as possible to what extent the United States has fulfilled its financial obligation to the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians; Grand River, Blanchard's Fork and Roche de Boeuf

Bands of Ottawa Indians; Sault Ste. Marie, Grand River, Grand Traverse, Little Traverse, and Mackinac Bands of Ottawa and Chippewa Indians; Pottawatomie Tribe and Nation of Indians, and the Chippewa, Ottawa, and Pottawatomie United Tribes of Indians, an accounting under all treaties, agreements, and acts of Congress made with or relating to said bands, tribes, and nation of Indians has been incorporated in this report. (Commission Exhibit No. 1, pp. 2, 3)

The report reflects that during the period from January 1, 1812, to June 30, 1856, a total of \$44,000.00 was disbursed for the benefit of the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians in fulfillment of the United States obligations under the 1795 Greenville Treaty. The report stated that it was not possible from the available records to disclose the amounts disbursed in the purchase of annuity goods during the 1796-1811 period. However, there was included a statement of the value of goods forwarded to "Chippewa" for the years from 1797 to 1811.

The report of the General Accounting Office was made a part of the record in the Saginaw (H-211) case. Upon the plaintiffs' motion the case was dismissed on December 6, 1943, for nonprosecution (100 Ct. Cl. 570).

7. On April 1, 1940, the Mole Lake Band and five other Chippewa bands filed a petition in the Court of Claims No. 45162 under the authority of the Act of August 30, 1935 (49 Stat. 1049). There was also an intervenors' petition filed by three additional Chippewa bands. The Saginaw, Swan River and Black River Bands were not parties to that action. Among the causes of action involved in that case were alleged

unpaid balances due as consideration for the 1795 Greeneville Treaty. The defendant filed the same General Accounting Office Report which had been submitted in the Saginaw, Swan Creek and Black River Band of Chippewa case, H-211.

The Court of Claims in Mole Lake Band et al. v. United States, 126 Ct. Cl. 596, 612 (1953) found that it had not been established by the evidence that any of the obligations of the United States contained in the 1795 Greeneville Treaty ran to any of the plaintiff or intervenor bands therein. In a footnote to the findings in the case, the Court stated that the records of payments of the 1795 Greeneville annuity were not available for the years prior to 1812. But during the period from January 1, 1812, to June 30, 1856 according to the records of the General Accounting Office, a total of \$44,000.00 was disbursed by the United States in annuity payments for the benefit of the Saginaw Bands of Chippewa Indians.

8. In another consolidated case before this Commission, Red Lake Band, et al., (Docket No. 18-E) and Ottawa and Chippewa Indians of Michigan, et al., (Docket No. 58), the question of recognized title to the tract adjoining Royce Area 111 to the west was in issue. That case also involved the identity of the signers of the Greeneville Treaty. In that case the defendant maintained that the Chippewas of the Saginaw were in fact parties to the Greeneville Treaty. The Commission has made the "Defendant's Requested Findings of Fact, objections to Petitioners' Proposed Findings, and Brief", filed October 21, 1958, in Docket Nos. 18-E

and 58, a part of the record in this case as Commission Exhibit No. 2.

In its requested findings the defendant proposed:

Finding No. 4

* * *

Thus, it clearly appears that the Ottawa and Chippewa nations of Indians of Michigan, as such, were not a party to the Treaty of August 3, 1795 at Greenville, although both Masass, a Chippewa Chief from Michilimackinac, the Mashipinashiwish or Bad Bird, an Ottawa-Chippewa chief from L'Arbre Croche, did actually sign this treaty as individual Indians.

Of the various autonomous groups of Ottawas and Chippewas, only the Ottawas of Grand River and the Maumee and the Chippewas of the Saginaw were parties to the Treaty of August 3, 1795 at Greenville. (Emphasis supplied) (Commission Exhibit 2, pp. 19, 20)

9. The Commission finds that the Saginaw Chippewas did receive a substantial portion of the annuity payments disbursed by the United States in fulfillment of its Greenville Treaty obligations to the "Chippewas." The United States has maintained that all payments of annuity funds under the Greenville Treaty were made to the Chippewa Indians who were in fact parties to that treaty. This includes the annuity payments which were disbursed to the Saginaw Chippewas.

10. It is established by the record in this case that the Saginaw Chippewa Indians participated in the Greenville Treaty and were entitled to and received the benefits accorded the participating Indians to that treaty.

11. By the terms of the Greenville Treaty the United States relinquished "their claims" to the Indian lands within a defined area.

That relinquishment was intended to confer on the Indian participants the right to permanently, i.e., "as long as they please", occupy the land without interference. Accordingly, the Greeneville Treaty was one of "recognition" whereby the United States recognized the title of those Indians who were parties to the treaty. However, such recognition was subject to a later determination of the precise boundaries of the lands which had been "relinquished to" or recognized in the respective Indian tribes. By the Treaty of September 24, 1819, supra, the boundaries were described and the "recognition" was completed with respect to the Saginaw Chippewas.

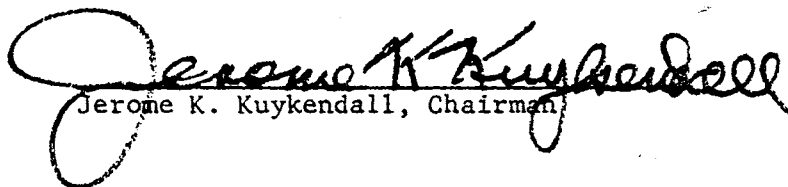
CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact the Commission concludes as a matter of law that:

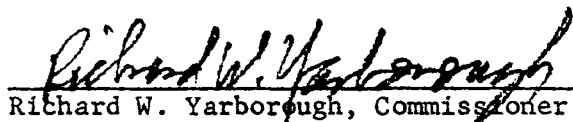
1. The plaintiffs in Docket No. 18-G do not have any interest in the subject matter of this suit, and they are not proper parties herein. The claim presented in Docket No. 18-G should be dismissed.

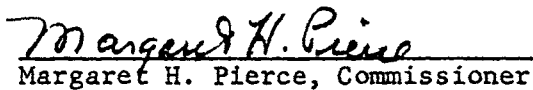
2. The plaintiffs in Docket No. 57, the Saginaw Chippewa Indian Tribe of Michigan and the Saginaw, Swan Creek and Black River Group or Bands of Chippewa Indians, are the proper parties plaintiff to prosecute the claim herein presented.

3. The Saginaw Chippewa Indians held recognized title to the lands which they ceded to the United States by the Treaty of September 24, 1819 (7 Stat. 203), which treaty became effective on March 25, 1820.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner