

BEFORE THE INDIAN CLAIMS COMMISSION

THE STOCKBRIDGE MUNSEE COMMUNITY,)
THE STOCKBRIDGE TRIBE OF INDIANS AND)
THE MUNSEE TRIBE OF INDIANS BY ARVID E.)
MILLER AND FRED L. ROBINSON,)

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 300-A

Decided: April 28, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Stockbridge Munsee Community, plaintiff, is a tribe of American Indians having a tribal organization recognized by the Secretary of the Interior as having authority to represent the tribe. The Stockbridge Indians, a tribe of the Mahican Confederacy, and the Munsee Tribe, a division of the Delawares, no longer have separate tribal organizations. The said tribes have been amalgamated for many years and are now known as the Stockbridge Munsee Tribe, or the Stockbridge Munsee Community. The Stockbridge Munsee Community is the successor in interest to the Stockbridge Tribe and the Munsee Tribe.

2. Early in the 18th century, the Stockbridge Tribe of Indians lived in the valley of the Housatonic River in Berkshire County, Massachusetts. Following the termination of the French and Indian Wars, pressure from white settlers forced the Stockbridges to seek a new home beyond the limits

of white encroachment. The Oneida Nation offered a tract of land to the Stockbridges, and between 1783 and 1788 the Stockbridges relocated on land in Oneida and Madison Counties, New York.

3. On September 22, 1788, the State of New York and the Oneida Nation entered into a treaty at Fort Schuyler. By the terms of this treaty, the Oneidas ceded their lands to New York. Several tracts were reserved from the Oneida cession. One such reservation was a tract six miles square set aside for the Stockbridges. The treaty declared that the Stockbridges and their posterity were to have enjoyment of the land forever.

On March 29, 1811, New York and the Oneida Nation entered into a treaty, in the nature of a quitclaim, by which the State of New York purchased from the Oneidas whatever right, title, reversion, or claim the latter might have had in the tract of land occupied by the Stockbridge Indians.

In 1813, the New York State Legislature enacted a law which officially named the six mile square tract of the Stockbridges "New Stockbridge," and declared that the tract "be and remain to the said Stockbridge Indians and their posterity forever, but without any power of alienation, or right of leasing or disposing of the same, or any part thereof." (Def. Ex. 3: Law of April 10, 1813, Ch. 93, §9, [1813] N. Y. Laws 153.)

Under both the 1788 Treaty and the 1813 Law, the Stockbridge Indians received a compensable property interest in the six square mile tract known as New Stockbridge.

4. In the early 1790's the United States entered into three treaties which affected the Stockbridges. By the Article of April 23, 1792, 2 Kapp. 1027, the United States agreed to expend \$1500 annually for the benefit of the Senecas, Oneidas, Stockbridges, Tuscaroras, Cayugas, and Onandagas. By the Treaty of December 2, 1794, 7 Stat. 47, the United States acknowledged that the Oneida, Tuscarora, and Stockbridge Indians had adhered faithfully to the United States during the war with Great Britain, and agreed to pay \$5000 to compensate these tribes for losses sustained during the war.

The Treaty of November 11, 1794, 7 Stat. 44, between the United States and the Six Nations, related to the lands of the Stockbridges. Article II of that treaty stated:

The United States acknowledge the lands reserved to the Oneida, Onandaga, and Cayuga Nations, in their respective treaties with the state of New-York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.
(7 Stat.: at 45.)

The Stockbridges being "Indian friends" of the Oneidas, residing within the boundaries of the reservation created by the Treaty of September 22, 1788, with New York, Article II pledged the United States never to disturb them in their free use and enjoyment of New Stockbridge.

5. By a series of "treaties" entered into between 1818 and 1847 the Stockbridge Indians ceded to New York their interests in New Stockbridge. The initial treaty was entered into on July 14, 1818. Under this treaty, New York acquired three tracts of land in New Stockbridge containing a total of 5,529.60 acres. The stated consideration for the cession was an

initial payment of \$5,390.00, an additional payment of \$282.45 to be paid one year after the signing of the treaty, and a perpetual annuity of \$322.80.

New York purchased an additional 300 acres of New Stockbridge by an agreement entered into on March 25, 1820. The document evidencing this transaction states that it was made pursuant to an act of the New York Legislature which stated that if the Stockbridges ceded 300 acres of New Stockbridge to New York it would be lawful for the state treasurer to pay \$600 to one Harvey Durkee, a creditor of the Stockbridges.

An additional 3,125.29 acres of land was acquired by New York in a treaty entered into on February 23, 1822. The consideration for the land as stated in the treaty was an initial payment of \$3,100.00, and an additional payment of \$3,100.00, to be paid on June 1, 1822.

Under the Treaty of August 28, 1822, the state purchased an additional 5,063.44 acres of New Stockbridge. The treaty stated the consideration to be \$2.00 per acre for the land, of which \$6,000 was paid at the execution of the treaty. In a statement dated September 1, 1823, the Surveyor General of New York indicated that New York still owed the Stockbridges an additional \$4,126.88 for this purchase.

The Stockbridges ceded 1,768.81 acres of New Stockbridge to New York by the Treaty of September 16, 1823. The treaty stated that the Stockbridges were to receive \$2.00 per acre for the ceded land, plus an additional \$800 as consideration for their releasing to the state their right, interest or claim in and to all improvements on the lands. The Stockbridges received

\$3,000 at the signing of the treaty with the balance to be paid when the land was surveyed.

By the Treaty of June 21, 1825, the Stockbridges ceded 1,768.93 acres of New Stockbridge to New York for a stated total consideration of \$17,381.99. New York also covenanted to pay the Stockbridges additional moneys if it was later determined that the stated price was unfair. This treaty, as were the next seven treaties, was entered into pursuant to an act of the New York legislature which required that Indians receive a fair price for their lands.

New York acquired 1,658.80 additional acres of New Stockbridge under the Treaty of October 1, 1825. The treaty stated that the Stockbridges were to receive a total of \$14,370.90 as consideration for the lands ceded. New York further agreed to account to the Stockbridges for any additional sums, should it be determined that the stated price was unfair.

Under a treaty entered into on June 29, 1826, the Stockbridges ceded 150 acres of land to New York for a stated consideration of \$1,460.00.

New York purchased 134.58 acres of Stockbridge land for \$972.68, under the Treaty of February 26, 1827.

Under the Treaty of March 21, 1829, New York acquired from the Stockbridges 129.97 acres. In consideration for this acquisition the state was to pay \$773.92 to John W. Newcom and Daniel Fowler at the time of the execution of the treaty, \$50.00 to Jacob P. Seth at the time of the signing of the treaty, and an additional \$366.35 to Jacob Seth to be paid when he moved to Green Bay, Wisconsin.

The Stockbridges ceded to New York 150 acres of New Stockbridge under a treaty entered into on April 25, 1829. The consideration stated in the treaty was \$1,272.00.

An additional 145.48 acres of New Stockbridge was purchased by New York under the Treaty of September 8, 1829. The price stated for this land was \$1,740.80.

By the treaty entered into on April 30, 1830, New York received 91.43 acres of Stockbridge land for a stated consideration of \$925.87.

On July 20, 1842, the State of New York entered into a treaty with the Stockbridge Indians residing at Green Bay in the Territory of Wisconsin. Under the treaty, the Stockbridges ceded to New York the so-called "Remainder of Lot Number Twenty" in New Stockbridge. This parcel contained 59.85 acres. The treaty stipulated that New York would have the land appraised and then sold to the highest bidder with the Stockbridges receiving the proceeds less the cost of the sale. Under the treaty, New York was to pay \$300 at the time of execution in anticipation of the sale.

The final treaty between New York and the Stockbridge Indians was entered into on September 24, 1847. Under this treaty the Stockbridges sold to New York their interest in lot number seven in New Stockbridge, consisting of 53.62 acres. The treaty stated that one Lydia Harden possessed a life estate in lot number seven which she had conveyed by deed to New York on August 14, 1847. In consideration for the receipt of the tribe's interest in lot number seven, New York agreed to have the lot appraised and sold to the highest bidder. The proceeds, less the

cost of the sale, were to go to Lydia Harden. At the execution of the treaty New York paid \$700 in anticipation of the sale.

6. On January 25, 1848, representatives of the Stockbridge Indians petitioned the New York State Legislature for additional compensation for the sale of New Stockbridge. The petition stated that New York had purchased Stockbridge lands at a relatively low cost and had immediately resold them at a considerable profit. The petition requested that New York share this profit with the Stockbridges.

On February 5, 1848, the Assembly of the New York State Legislature passed a resolution instructing the Land Office of the state to investigate the claim of the Stockbridges. The Commissioners of the Land Office examined the treaty book, and the accounts and books of the State Comptroller and Surveyor General and reported the following statement to the Assembly:

STATEMENT

Total amount for which the lands of the Stockbridge Indians were sold by the State,	\$146,346.23	
Estimated Cost of Surveying, appraising and selling the said lands,		\$ 1,538.00
Amount of payments to the Indians, for lands, annuities, &c.,		65,215.82
	\$146,346.23	\$67,215.82
	67,215.82	
Nett Proceeds,		\$ 79,130.41

(Def. Ex. 5: New York State Assembly
Doc. No. 53, February 12, 1848, p. 4.)

The New York State Legislature enacted a law, on April 10, 1848, which appropriated \$10,000.00 for the use and benefit of the Stockbridge Indians. Law of April 10, 1848, ch. 208, §1, [1848] N. Y. Laws 322. The act stated that this money was being appropriated in consideration of the profits realized by the people of New York in the purchase and sale of Stockbridge land. Of this sum, \$6,000.00 was to be retained by the state and the Stockbridge were to receive 6% annually to be applied to the operation of their schools; \$1,000 was to be used to transport the remaining Stockbridge to Wisconsin;^{1/} and the remaining \$3,000.00 was to be paid directly to the tribe.

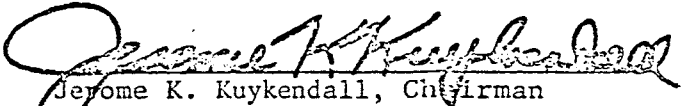
On February 27, 1849, the New York Senate Committee on Indian Affairs issued its report on the Stockbridge petition. The report acknowledged that the State of New York had realized a profit of \$79,130.41 from its transactions involving Stockbridge lands. The committee recommended that the Stockbridge petition be granted to the extent that one half of the realized profit, or \$40,000.00, be given to the Stockbridges. Since \$10,000 had already been appropriated, the report recommended that \$30,000 be appropriated and retained by the State with income being used for the benefit of the Stockbridges.

^{1/} A report of the State Attorney General, filed in 1866, indicates that of this \$1,000, only \$762.75 was actually expended in moving the remaining Stockbridge out of New York

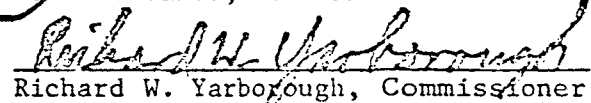
On March 2, 1850, the New York State Legislature passed a law which placed \$30,000 in the New York Treasury to the credit of the Stockbridge Indians. Law of March 2, 1850, ch. 37, §1, [1850] N. Y. Laws 42. The law provided that 6% of the stated sum would be paid annually to the headmen of the tribe.

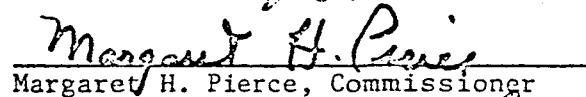
On April 18, 1862, the New York State Legislature appropriated \$10,000 for the Stockbridge Tribe. Law of April 18, 1862, ch. 320, §1, [1862] N. Y. Law 529.

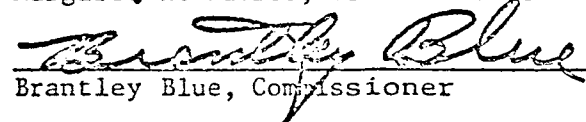
7. The United States did not send a representative to participate in the negotiations or consummation of the treaties by which New York acquired New Stockbridge, nor did it furnish aid, advice or assistance to either New York State or the Stockbridge Indians in the execution of the treaties.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner