BEFORE THE INDIAN CLAIMS COMMISSION

JAMES STRONG, et al.,	)	Docket No. 13-G, consolidated
	)	with Docket Nos. 15-E, 18-M,
Plaintiffs,	)	27-B, 29-C, 40-F, 64, 89, 120,
	)	130, 252, 335 and 338
JAMES STRONG, et al., (Chippewa),	)	Docket No. 13-E, consolidated
	)	with Docket Nos. 18-L, 27-E,
Plaintiffs,	)	29-D, 89, 133-A, 139, 202, 302
	)	and 341-C
JAMES STRONG, et al., (Chippewa),	)	Docket No. 13-F, consolidated
	)	with Docket Nos. 15-I, 18-K,
Plaintiffs,	)	27, 29-G, 64-A, 89, 133-C, 141,
	)	308 and 341-D
POTAWATOMI NATION, et al.,	)	Docket No. 15-N, consolidated
	)	with Docket Nos. 29-L, 128,
Plaintiffs,	)	314-B, 254 and 124-B
SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, et al.,	)	Docket No. 59, consolidated
	)	with Docket Nos. 18-J, 29-E,
	)	133-B and 140
Plaintiffs,	)	
CITIZEN BAND OF POTAWATOMI, et al.,	)	Docket No. 216, consolidated
	)	with Docket Nos. 13-K, 15-L,
Plaintiffs,	)	18-P, 29-I, and 40-I
THE KICKAPOO TRIBE OF KANSAS, et al.,	)	Docket No. 315, consolidated
	)	with Docket Nos. 313, 314-A,
Plaintiffs,	)	306, 311, 15-D, 15-P, 254,
	)	124-H, 29-B and 29-N
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 1, 1972

Appearances:

Robert C. Bell, Jr., Attorney
for Plaintiffs in Dockets
29-B, 29-C, 29-D, 29-E, 29-G, 29-I,
29-L and 29-N

Rodney J. Edwards, Attorney for Plaintiffs in Dockets 18-M, 120, 18-L, 139, 18-K, 141, 18-J, 140, and 18-P

James R. Fitzharris, Attorney for Plaintiffs in Dockets 13-G, 40-F, 64, 13-E, 13-F, 64-A, 59, 13-K, and 40-I

Allan Hull, Attorney for the Ottawa Plaintiffs in Docket 338

Robert S. Johnson, Attorney for Plaintiffs in Dockets 15-D, 15-E, 15-I, 15-L, 15-N, and 15-P

Jack Joseph, Attorney for Plaintiffs in Dockets 313, 314-A, 314-B, 335, and for the Peoria and Shawnee Plaintiffs in Docket 338

David L. Kiley, Attorney for Plaintiffs in Dockets 124-B, 124-H, and 130. Albert C. Harker was on the brief.

Paul G. Reilly, Attorney for Plaintiffs in Dockets 89, 341-C, and 341-D

Louis L. Rochmes, Attorney for Plaintiffs in Dockets 27, 27-B, 27-E, 128, 202, 216, 306, 308, 311, and for the Delaware and Potawatomi Plaintiffs in Docket 338

Edwin A. Rothschild, Attorney for Plaintiffs in Dockets 252 and 254

M. Edward Bander, James E. Clubb, Joseph S. Davies, Jr., and Bernard M. Newburg, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

The defendant has made four motions before the Commission involving the above-captioned series of dockets which have previously been consolidated for trial of title. The motions relate to the adjudication of title to certain of the areas ceded to the United States by the Indian signatories to the Treaty of August 3, 1795, 7 Stat. 49 (hereinafter referred to as the Treaty of Greeneville).

At Greeneville the Indian signatories ceded to the United States their interests in an area which presently constitutes the greater portion of the State of Ohio and a small portion of southeastern Indiana (Royce Area 11). In addition, they ceded to the United States a series of small areas (generally referred to as "enclaves") on the Indian side of the Greeneville Treaty line (the western and northern boundary of Royce Area 11) and granted the United States rights of passage along certain routes described in the treaty connecting certain of these enclaves with the principal area ceded and with each other.

The relevant treaty language is as follows:

Article III.

> The general boundary line between the lands of the United States, and the lands of the said Indian tribes, shall begin at the mouth of Cayahoga river, and run thence up the same to the portage between that and the Tuscarawas branch of the Muskingum; thence down that branch to the crossing place above Fort Lawrence; thence westerly to a fork of that branch of the great Miami river running into the Ohio, at or near which fork stood Loromie's

store, and where commences the portage between the Miami of the Ohio, and St. Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westerly course to Fort Recovery, which stands on a branch of the Wabash; then south-westerly in a direct line to the Ohio, so as to intersect that river opposite the mouth of Kentucke or Cuttawa river. And in consideration of the peace now established; of the goods formerly received from the United States; of those now to be delivered, and of the yearly delivery of goods now stipulated to be made hereafter, and to indemnify the United States for the injuries and expenses they have sustained during the war; the said Indians tribes do hereby cede and relinquish forever, all their claims to the lands lying eastwardly and southwardly of the general boundary line now described; and these lands, or any part of them, shall never hereafter be made a cause or pretence, on the part of the said tribes or any of them, of war or injury to the United States, or any of the people thereof.

And for the same considerations, and as an evidence of the returning friendship of the said Indian tribes, of their confidence in the United States, and desire to provide for their accommodation, and for that convenient intercourse which will be beneficial to both parties, the said Indian tribes do also cede to the United States the following pieces of land; to-wit. (1.) One piece of land six miles square at or near Loromie's store before mentioned. (2.) One piece two miles square at the head of the navigable water or landing on the St. Mary's river near Girty's town. (3.) One piece six miles square at the head of the navigable water of the Au-Glaize river. (4.) One piece six miles square at the confluence of the Au-Glaize and Miami rivers where Fort Defiance now stands. (5.) One piece six miles square at or near the confluence of the rivers St. Mary's and St. Joseph's, where Fort Wayne now stands, or near it. (6.) One piece two miles square on the Wabash river at the end of the portage from the Miami of the lake, and about eight miles westward from Fort Wayne. (7.) One piece six miles square at the Ouatanon or old Weea towns on the Wabash river. (8.) One piece twelve miles square at the British fort on the Miami of the lake at the foot of the rapids. (9.) One piece six miles square at the mouth of the said river where it empties into the Lake. (10.) One piece six miles square upon Sandusky lake, where a fort formerly stood. (11.) One piece two miles square at the lower rapids of Sandusky river. (12.) The post of Detroit and all the land to the north, the west and the south of it, of which the Indian

title has been extinguished by gifts or grants to the French or English governments; and so much more land to be annexed to the district of Detroit as shall be comprehended between the river Rosine on the south, lake St. Clair on the north, and a line, the general course whereof shall be six miles distant from the west end of lake Erie, and Detroit river. (13.) The post of Michillimackinac, and all the land on the island, on which that post stands, and the main land adjacent, of which the Indian title has been extinguished by gifts or grants to the French or English governments; and a piece of land on the main to the north of the island, to measure six miles on lake Huron or the strait between lakes Huron and Michigan, and to extend three miles back from the water of the lake or strait, and also the island De Bois Blanc, being an extra and voluntary gift of the Chipewa nation. (14.) One piece of land six miles square at the mouth of Chikago river, emptying into the south-west end of Lake Michigan, where a fort formerly stood. (15.) One piece twelve miles square at or near the mouth of the Illinois river, emptying into the Mississippi. (16.) One piece six miles square at the old Piorias fort and village, near the south end of the Illinois lake on said Illinois river: And whenever the United States shall think proper to survey and mark the boundaries of the lands hereby ceded to them, they shall give timely notice thereof to the said tribes of Indians, that they may appoint some of their wise chiefs to attend and see that the lines are run according to the terms of this treaty.

And the said Indian tribes will allow to the people of the United States a free passage by land and by water, as one and the other shall be found convenient, through their country, along the chain of posts herein before mentioned; that is to say, from the commencement of the portage aforesaid at or near Loromie's store, thence along said portage to the St. Mary's, and down the same to Fort Wayne, and then down the Miami to lake Erie: again from the commencement of the portage at or near Loromie's store along the portage from thence to the river Au-Glaize, and down the same to its junction with the Miami at Fort Defiance: again from the commencement of the portage aforesaid, to Sandusky river, and down the same to Sandusky bay and lake Erie, and from Sandusky to the post which shall be taken at or near the foot of the rapids of the Miami of the lake: and from thence to Detroit. Again from the mouth of Chikago, to the commencement of the portage, between that river and

the Illinois, and down the Illinois river to the Mississippi, also from Fort Wayne along the portage aforesaid which leads to the Wabash, and then down the Wabash to the Ohio. And the said Indian tribes will also allow to the people of the United States the free use of the harbors and mouths of rivers along the lakes adjoining the Indian lands, for sheltering vessels and boats, and liberty to land their cargoes where necessary for their safety.

Article IV.

In consideration of the peace now established and of the cessions and relinquishments of lands made in the preceding article by the said tribes of Indians, and to manifest the liberality of the United States, as the great means of rendering this peace strong and perpetual; the United States relinquish 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, in the treaty of peace made between them in the year 1783. But from this relinquishment by the United States, the following tracts of land, are explicitly excepted. 1st. The tract of one hundred and fifty thousand acres near the rapids of the river Ohio, which has been assigned to General Clark, for the use of himself and his warriors. 2d. The post of St. Vincennes on the river Wabash, and the lands adjacent, of which the Indian title has been extinguished. 3d. The lands at all other places in possession of the French people and other white settlers among them, of which the Indian title has been extinguished as mentioned in the 3d article: and 4th. The post of fort Massac towards the mouth of the Ohio. To which several parcels of land so excepted, the said tribes relinquish all the title and claim which they or any of them may have.

The enclaves described in the Treaty of Greeneville are the following:

Subsection in Article III	Royce Area	Approximate Acreage
(1)	12 Ohio	23,040
(2)	13 Ohio	2,560
(3)	14 Ohio	23,040
(4)	15 Ohio	23,040
(5)	16 Ind.	23,040
(6)	17 Ind.	2,560
(7)	unnumbered; red line in west-central Indiana (Royce)	23,040
(8)	18 Ohio	92,160
(9)	19 Ohio	23,040
(10)	Ft. Sandusky; unnumbered; dotted black line near Sandusky, Ohio (Royce)	23,040
(11)	20 Ohio	2,560
(12)	Detroit; unnumbered; dotted black line (Royce Michigan, from Saginaw Bay to Lake Erie)	288,000
(13)	21, 22, 23 Michigan	38,817
(14)	24 Ill.	23,040
(15)	unnumbered; dotted black line (Royce Illinois 1)	92,160
(16)	unnumbered; dotted black line (Royce Illinois 1)	23,040

Subsection in Article IV	Royce Area	Approximate Acreage
1st	25 Ind.	150,000
2nd	26 Ind.	1,800,000
3rd	-	-
4th	27 Ill.	-

Docket 13-G, et al., involves claims of title to the areas ceded by the Treaty of Greeneville and other claims within the ceded areas alleged to have arisen by virtue of treaties prior to Greeneville by the Six Nations, et al.,

in Docket 89. Dockets 13-E, et al., 13-F, et al., 59, et al., 15-N, et al., 216, et al., and 315, et al., involve claims to areas on the Indian side of the Greeneville Treaty line which were ceded to the United States in several treaties subsequent to the Treaty of Greeneville and, in the case of the Six Nations, et al., plaintiffs in Docket 89 (which has also been consolidated with Dockets 13-E and 13-F), claims alleged to have arisen by virtue of treaties prior to Greeneville to lands on the Indian side of the Greeneville Treaty line. Trials on title in these consolidated dockets have been held.

The defendant's motions are as follows: (1) To consolidate for judgment Dockets 13-G, et al., 13-E, et al., 13-F, et al., and 59, et al., insofar as these dockets relate to allegedly overlapping claims in said dockets to the areas ceded in Article III, subsections (2), (3), (4), (8), (9), (10), (11), and (12) of the Treaty of Greeneville, and to certain of the "passages" described in the last paragraph of Article III of the treaty; (2) To sever the claims to the area described in subsection (6) of Article III of the Treaty of Greeneville from the claims in Docket 15-N, et al., for the purpose of adjudicating the claims to this area in Docket 13-G, et al.; (3) To sever the claims to the areas described in subsections (14), (15), and (16) of Article III of the Treaty of Greeneville from the claims in Docket 216, et al., for the purpose of adjudicating these claims in Docket 13-G, et al.; and (4) To sever the claims to the areas described in subsections (7), (15), and (16) of Article III and the 4th

subsection of Article IV of the Treaty of Greeneville from the claims in Docket 315, et al., for the purpose of adjudicating these claims in Docket 13-G, et al.

The defendant's stated intention in making these motions is to bring together in one proceeding the adjudication of claims to certain of the enclaves located within the areas ceded in subsequent treaties. These areas are the subject of claims in those dockets, other than Docket 13-G, et al., involved in these motions. The defendant claims there are overlaps between the Greeneville enclaves and the areas ceded in subsequent treaties and has raised the possibility that, if the motions are not granted, the defendant may be required to pay twice for the same lands, citing the decision of the Court of Claims in McGhee v. United States, 194 Ct. Cl. 86, 437 F. 2d 995 (1971) (aff'g in part, rev'g in part, Docket 280, 22 Ind. Cl. Comm. 10 (1969)).

For the reasons hereinafter stated, we are of the opinion that these motions should be denied.

We cannot accept defendant's premise that the enclaves[1/] are included in the claims for the areas ceded in treaties subsequent to

1/ The so-called "passages" described in the last paragraph of Article III of the treaty were not cessions of land but were, at best, grants of rights-of-way (which may, in subsequent proceedings, be found to have value) across lands intended to remain Indian lands. Few of the plaintiffs in Docket 13-G, et al., are making any claims with respect to these passages and those who are do not claim that title was ceded at Greeneville to the lands over which free passage was granted. (See the Hannahville Indian Community's Brief and Proposed Finding as to Reservations in the Treaty of August 3, 1795 at Greeneville, p. 6.) We view these lands as part of subsequent cessions. The remainder of this opinion relates to the enclaves ceded at Greeneville described in the second paragraph of Article III and the first paragraph of Article IV.

Greeneville under Dockets 13-E, et al., 13-F, et al., 59, et al., 15-N, et al., 216, et al., and 315, et al.[2/] Certainly it is true that these enclaves were located on the Indian side of the Greeneville Treaty line surrounded by lands ceded in later treaties. However, the truth of the above does not ipso facto prove the defendant's premise. Nowhere in the records of these dockets do we find the enclaves claimed as part of the lands ceded in the subsequent treaties nor have any of the plaintiffs alleged in these dockets that these enclaves were not ceded at Greeneville.[3/] To the contrary, the plaintiffs in 13-G, et al., (who encompass every plaintiff in each of the other dockets involved here) are expressly claiming (or have disclaimed) title to the enclaves in the proceedings in Docket 13-G, et al. These enclaves are definitely determinable areas of land, the location of which are known. Many of these enclaves were surveyed (as was provided in Article III of the Treaty of Greeneville) before the subsequent treaties. That some were not surveyed was due to the intervention of the subsequent treaties

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2/ The defendant attempts to bolster this premise by citing Miami Tribe v. United States, 2 Ind. Cl. Comm. 617 (1954), aff'd in part, rev'd in part, 146 Ct. Cl. 421 (1959), where the Peoria Tribe on behalf of the Wea Tribe received compensation for an area (Royce Area 99) which included the land described in Article III, subsection (7) of the Greeneville Treaty. This case, however, is distinguishable because this enclave was relinquished by the United States in the Treaty of September 30, 1809, 7 Stat. 113, and was subsequently receded to the United States as part of Royce Area 99.

3/ With the possible exception (not relevant here) of the Six Nations, et al., in Docket 89, whose claims are alleged to have arisen from cessions prior to Greeneville.

which, by ceding the surrounding areas, precluded the necessity of survey. The enclaves were all later delineated by Royce. Since the cession of the enclaves at Greeneville is not in dispute, and, since the enclaves are definitely determinable areas, we fail to see how overlap of the enclaves with areas subsequently ceded is possible.

If title to the enclaves is decided first in Docket 13-G, et al., the claimants in the remaining dockets will obviously be bound since all the parties to each of the other dockets is a party in Docket 13-G. On the other hand, if the extent of title to the areas ceded after Greeneville is decided first in the other dockets, we see no reason why the Commission, taking judicial notice of the unambiguous and undisputed cession of the enclaves in Articles III and IV of the Treaty of Greeneville, may not simply subtract the acreage of any enclave located within an area involved in any of the remaining dockets. Cf. Red Lake Band v. United States, Dockets 18-E and 58, 7 Ind. Cl. Comm. 576, 581-82, 585-86, 604 (1959).

It has been settled that the Treaty of Greeneville (together with the follow-up treaties) was a treaty of recognition wherein the United States relinquished its claims to Indian lands north and west of the Greeneville Treaty line. Miami Tribe v. United States, 146 Ct. Cl. 421, 438-41 (1959). It is within the area recognized at Greeneville that are located the areas claimed in Dockets 13-E, et al., 13-F, et al., 59, et al., 15-N, et al., 216, et al., and 315, et al. In Saginaw Chippewa Indian Tribe v. United States, Docket 57, 22 Ind. Cl. Comm. 504 (1970), the Commission

ruled that while the Treaty of Greeneville recognized the title of the signatory Indian Tribes, such recognition was subject to a later determination of precise boundaries of the lands which had been relinquished to or recognized in the respective Indian tribes. With respect to the Saginaw Chippewas this was accomplished by an 1819 treaty which described by metes and bounds the lands which were then ceded to the United States.

As in Saginaw Chippewa, supra, the plaintiffs in Dockets 13-E, et al., 13-F, et al., 59, et al., 15-N, et al., 216, et al., and 315, et al., are claiming recognition at Greeneville of lands subsequently ceded. Based upon the language of the treaty, we deem it most unlikely that these plaintiffs could, in proceedings under any of these dockets, claim in good faith that the enclaves were not ceded at Greeneville while simultaneously claiming that title to the surrounding areas was recognized at Greeneville.

Finally, we believe that defendant's fear of possible double payment based upon McGhee, supra, is groundless. The McGhee case is distinguishable. In McGhee there was an overlap while here we see none. There the Creeks did not participate in the Seminole proceedings nor were they in privity with either party to those proceedings. Here all the parties in Docket 13-G, et al., are parties in each of the other dockets and most of the parties in the other dockets are parties in Docket 13-G, et al. In McGhee the cession of the lands claimed by both Seminoles and Creeks was in the same treaty. Here, if it could be construed that the enclaves are being claimed

in both Docket 13-G, et al., and in the other dockets as well, such enclaves would still be claimed in the separate dockets based upon different treaties.

We see nothing to be gained by further complicating these already complicated proceedings at this late stage. We are satisfied that a correct result will be reached just as effectively and certainly more expeditiously by continuing with these cases in their present form. We view the claims to the enclaves as distinct from the claims to the surrounding areas and properly to be settled in Docket 13-G, et al., as it presently stands. We have no fear that the defendant may be forced to pay twice for these enclaves. Accordingly, an order will this day be entered denying the defendant's motions.

Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Brantley Blue, Commissioner