

BEFORE THE INDIAN CLAIMS COMMISSION

THE PRAIRIE BAND OF THE POTTAWATOMIE)	
TRIBE OF INDIANS, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 15-C, 18-H,
)	29-A, 71
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

INTERLOCUTORY ORDER

Upon the findings of fact, conclusions of law, and opinion this day entered herein, and which hereby are made a part of this order,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Prairie Band of the Pottawatomi Tribe of Indians, plaintiff in Docket No. 15-C; the Hannahville Indian Community and the Forest County Potawatomi Community, plaintiffs in Docket No. 29-A; and the Citizen Band of Potawatomi Indians of Oklahoma, plaintiff in Docket No. 71, be and hereby are authorized to maintain their claims herein, in a representative capacity for and on behalf of the Potawatomi Tribe or Nation.

2. The claims of the individual plaintiffs in Docket Nos. 15-C and 29-A, be, and the same hereby are denied.

3. Michael B. Williams, John R. Winchester, John Topash, Albert N. Mackety, R. C. Mix, and the Potawatomi Indians of Indiana and Michigan, Inc., are not proper parties plaintiff herein.

4. The petition of July 15, 1965, of the Potawatomi Indians of Indiana and Michigan Inc., to intervene in this proceeding in Docket Nos. 15-C, 29-A, and 71, be, and the same hereby is granted.

5. The petition of the Chippewa plaintiffs herein, i.e., the Red Lake Band, et al., in Docket No. 18-H, be, and the same hereby is dismissed.

6. The defendant's motion to strike all testimony relating to areas other than Royce Area 187 be, and the same hereby is, denied.

7. This case shall now proceed to a determination of:

a. The acreage and fair market value as of February 21, 1835, of the lands ceded by the Potawatomi Tribe under the Treaty of September 26, 27, 1833 (as described in Findings of Fact numbered 13, 17, and 20 and Conclusion of Law No. 6; and

b. The total consideration paid for said lands by the United States, including the fair market value as of February 21, 1835, of the 5,000,000 acres of exchange land described in Finding of Fact No. 14.

Dated at Washington, D. C., this 20th day of September, 1972.

John A. Vance
John A. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Kuykendall, Chairman, concurring in part and dissenting in part:

I concur with the majority except insofar as they maintain or appear to maintain: (1) that beginning with the Treaty of Greenville of August 3, 1795 (7 Stat. 49), and continuing through the times of the Treaty of September 26, and 27, 1833 (7 Stat. 431, 442), there was a single overall Potawatomi political entity known as the Potawatomi Tribe or Nation with an overall ownership interest in all Potawatomi lands; (2) that in its treaties with Potawatomis during that period, the defendant recognized and dealt with Potawatomis as such a single political entity; (3) that during that period, where a certain group or groups of Potawatomis participated in a particular treaty they acted on behalf of the whole tribe; and (4) that the intervenor and the corporate plaintiffs herein have the right and capacity to bring and maintain their claims herein in a representative capacity for and on behalf of the Potawatomi Tribe or Nation.

The above enumerated contentions of the majority are based principally upon the majority's decision in Citizen Band of Potawatomi Indians v. United States, Docket 71, et al., 27 Ind. Cl. Comm. 187 (1972), wherein the first three of these contentions were also made. In my dissent^{1/} to that decision I set forth in detail the reasons why the Commission should have found that from the time of the Treaty of Greenville of August 3, 1795, through the Treaty of September 26 and 27, 1833, the Potawatomi

^{1/} 27 Ind. Cl. Comm. 328-472.

tribe was not a single political entity but rather consisted of a number of politically independent, land-owning bands, with which the United States dealt separately in the majority of the Potawatomi treaties. Accordingly I incorporate herein by reference my dissent ^{2/} in Citizen Band, supra, with particular emphasis on the following pages which relate to treaties involved in this proceeding:

<u>TREATY</u>	<u>Page Reference to Dissent, 27 Ind. Cl. Comm.</u>
Greeneville, August 3, 1795 (7 Stat. 49):	360, n. 75; 374-376; 378-392.
August 24, 1816 (7 Stat. 146):	374-376, 391, 407-408.
August 19, 1825 (7 Stat. 272):	330, n. 3; 351-352; 374-376; 408, n. 174.
September 26, 27, 1833 (7 Stat. 431,442):	331, 332, 339, 349-351, 405, 416-420, 441-447.


In sum, the above cited portions of my dissent in Citizen Band demonstrate that each of five major bands of Potawatomis gained recognized title to its own lands under the Greeneville Treaty of August 3, 1795; that the title so recognized in the United Nation Band of Potawatomis was in part confirmed by the Treaties of August 24, 1816 and August 19, 1825; that the cessions under the Treaty of September 26, 1833 were by the United Nation Band; and that the cessions under the supplemental articles of September 27, 1833 were by the St. Joseph Band and the "Notawasepe Band"^{3/}, which for the purpose of westward removal and as a matter of

2/ Id.

3/ The "Notawasepe Band" was a term used to describe the occupants of the Notawasepe reserve established by the Treaty of August 29, 1821 (7 Stat. 218). The occupants in fact appear to have been members of the St. Joseph Band, the Huron Band, and the Wabash Band. Citizen Band, supra, 27 Ind. Cl. Comm. 187, 403-405 (1972).

administrative convenience, were treated as though they were a part of the United Nation Band under that treaty.

It follows that the plaintiffs and the intervenor must trace descent from bands which participated in the Treaty of September 26 and 27, 1833, and that any recovery should be for and on behalf of those bands.


Jerome K. Kuykendall, Chairman

I concur:


Brantley Blue, Commissioner