

## BEFORE THE INDIAN CLAIMS COMMISSION

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| JAMES STRONG, <u>et al.</u> , as the representatives<br>and on behalf of all members by blood of the<br>CHIPPEWA TRIBE OF INDIANS, | ) | Docket No. 13-E  |
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| RED LAKE BAND, <u>et al.</u> ,   | ) | Docket No. 18-L  |
|  | ) |                  |
| THE DELAWARE TRIBE OF INDIANS,   | ) | Docket No. 27-E  |
|  | ) |                  |
| HANNAHVILLE INDIAN COMMUNITY, <u>et al.</u> ,  | ) | Docket No. 29-D  |
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| THE SIX NATIONS, <u>et al.</u> ,   | ) | Docket No. 89    |
|  | ) |                  |
| THE OTTAWA TRIBE, and GUY JENNISON,<br><u>et al.</u> , as representatives of THE<br>OTTAWA TRIBE,                                  | ) | Docket No. 133-A |
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| LAWRENCE ZANE, <u>et al.</u> , <u>ex rel.</u> ,<br>WYANDOT TRIBE, <u>et al.</u> ,  | ) | Docket No. 139   |
|  | ) |                  |
| ABSENTEE DELAWARE TRIBE OF OKLAHOMA,<br>DELAWARE NATION, <u>ex rel.</u> , W. E. EXENDINE<br>and MYRTLE HOLDER,                     | ) | Docket No. 202   |
|  | ) |                  |
| THE OTTAWA TRIBE, and GUY JENNISON, <u>et al.</u> ,<br>as representatives of THE OTTAWA TRIBE,                                     | ) | Docket No. 302   |
|  | ) |                  |
| THE SENECA-CAYUGA TRIBE OF OKLAHOMA,<br>and PETER BUCK, <u>et al.</u> , members and<br>representatives of members thereof,         | ) | Docket No. 341-C |
|  | ) |                  |
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| Plaintiffs,  | ) |                  |
|  | ) |                  |
| POTAWATOMI INDIANS OF INDIANA AND<br>MICHIGAN, INC.,   | ) | Docket No. 29-D  |
|  | ) |                  |
| Intervenor,  | ) |                  |
|  | ) |                  |
| v.   | ) |                  |
|  | ) |                  |
| THE UNITED STATES OF AMERICA,  | ) |                  |
|  | ) |                  |
| Defendant.   | ) |                  |

Decided: April 4, 1973

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. History of Claims. Petitions were consolidated in the above-captioned proceedings by the Commission's order of November 4, 1960,

for the purpose of trying the issues relating to the title claims of the respective plaintiffs to Areas 53 and 54 on Royce's Map of Ohio in Part II of the 18th Annual Report of the Bureau of American Ethnology, 1896-1897. Indian interests in Royce Areas 53 and 54 were relinquished at the Treaty of Fort Industry, July 4, 1805 (7 Stat. 87).

Subsequent to the consolidation of these claims, one continuous hearing was held during which evidence was presented with respect to this consolidated proceeding and with respect to two other consolidated proceedings, Dockets 13-F, et al., consolidated, involving claims of title to Royce Areas 87 and 88, Ohio, Michigan and Indiana, which were ceded at the Treaty of September 29, 1817 (7 Stat. 160), and Dockets 59, et al., consolidated, involving claims of title to Royce Area 66, Michigan and Ohio, ceded at the Treaty of November 17, 1807 (7 Stat. 105). It was stipulated among the parties that any of the evidence in the continuous hearing might be used and would be applicable to any or all of the three sets of consolidated claims.

By the Commission's order of March 28, 1972, 27 Ind. Cl. Comm. 325, 326, the Potawatomi Indians of Indiana and Michigan, Inc., a Michigan corporation, were permitted to intervene under Docket 29-D.

2. Parties. Each of the tribal plaintiffs and the intervenor herein has the right and capacity under section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050) to bring and maintain these actions before the Indian Claims Commission on behalf of their respective predecessors.

The claims of the plaintiffs in Docket 18-L, the Red Lake Band, et al., and in Docket 89, The Six Nations, et al., are not supported by any evidence. Accordingly, we find these plaintiffs have no interests in the matters at issue here.

3. The 1795 Treaty of Greeneville. Under the provisions of the Treaty of Greeneville, August 3, 1795, 7 Stat. 49, the United States and the representatives of the tribes signatory thereto agreed to the establishment of a general boundary line between the lands of the United States and the lands of the Indian tribes. The Greeneville Treaty Line began at a point where Cleveland, Ohio, is now located, ran south about 70 miles, then almost due west across central Ohio to a point midway on the Ohio-Indiana border near Fort Recovery, and then south-southwest in Indiana to the Ohio River.

By Article III of the 1795 Greeneville Treaty the signatory Indian tribes ceded and relinquished all claims east and south of the Greeneville Treaty Line, and in consideration of these tribal cessions, the United States, under Article IV of the treaty, relinquished, with certain small areas excepted, claims to all the Indian lands situated west and north of the Greeneville Treaty Line. One of these excepted areas was defined in the second paragraph of Article III of the Treaty as: "One piece six miles square upon Sandusky lake, where a fort formerly stood," 7 Stat. at 50.<sup>1/</sup>

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<sup>1/</sup> This area is identified by a dotted black line in the northwestern corner of Royce Area 53 on Royce's Map of Ohio.

The effect of this relinquishment by the United States is more precisely defined under Article V of the 1795 Greeneville Treaty wherein it is stated:

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. [7 Stat. at 52.]

Insofar as here pertinent, representatives of the Wyandot, Delaware, Shawnee and Potawatomi Tribes signed the 1795 Greeneville Treaty. Representatives of those bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf also signed the treaty, as did those bands of Chippewa Indians known as Chippewas of the Saginaw. Among those who signed with the Delawares was one Indian referred to as "of the Six Nations, living at Sandusky."

By the terms of the 1795 Greeneville Treaty, the United States relinquished its claim to the Indian lands within a defined area. That relinquishment was intended to confer on the Indian participants using and occupying that area the right permanently to occupy the lands on the Indian side of the Greeneville Treaty Line without interference. The 1795 Greeneville Treaty was, therefore, one in which the United States

granted general recognition of the title of those Indians who were parties to the treaty to the lands being used and occupied by them on the Indian side of the Greeneville Treaty Line. While the 1795 Treaty of Greeneville did not fix boundaries between the tribes, the United States intended and led the tribal representatives to believe that such boundaries would be established through future negotiations. These boundaries were subsequently defined in several "follow-up"<sup>2/</sup> treaties with those Indians signatory to the 1795 Greeneville Treaty including the Fort Industry Treaty.

4. Royce Areas 53 and 54. The 1805 Fort Industry Treaty changed the boundary line between the United States and the Indians which had been established at the 1795 Treaty of Greeneville by including within the lands of the United States the territory bounded on the west by a line 120 miles due west of the western boundary of the State of Pennsylvania, on the north by the Canadian border, i.e., Lake Erie, and on the east and south by the Greeneville Treaty Line. This territory is designated on Royce's Map of Ohio as two tracts, Areas 53 and 54, encompassing a total of approximately 3,000,000 acres of land. These two tracts are divided by the line of 41° north latitude.

Area 53, north of that line, constituted a portion of the Connecticut Western Reserve. The colonial charter of Connecticut embraced all the lands between 41° and 42°2' from the Atlantic to the Pacific Oceans. By deed dated September 14, 1786, Connecticut relinquished to the United States all title and jurisdiction to her western claims except for a

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<sup>2/</sup> See Sac and Fox Tribe v. United States, 161 Ct. Cl. 189, 194 (1963), cert. denied, 375 U. S. 921 (1963) (aff'g Docket 83, 7 Ind. Cl. Comm. 675 (1959)).

tract north of 41° and east of a line 120 miles west and parallel to the western boundary of the State of Pennsylvania. In 1792, the Connecticut legislature granted 500,000 acres at the western end of the Reserve to such of her citizens as had suffered by the depredations of the British during the Revolutionary War. This tract became known as "Sufferers' Land." Connecticut granted the area between the Sufferers' Land and the Cuyahoga River to the Connecticut land company in 1795 and 1796. In 1800, the Connecticut legislature granted to the United States the right of political jurisdiction over the above areas reserving, however, to herself and her grantees the right to the soil.

The territory comprising Royce Areas 53 and 54, excluding the six mile square enclave in northwestern Royce Area 53 ceded to the United States at the 1795 Greeneville Treaty, was included within the lands which the United States relinquished to the Indians under the terms of the 1795 Greeneville Treaty and was, therefore, part of the lands in which the United States at said treaty, together with the "follow-up" treaties, recognized the title of the signatory Indian tribes who were using and occupying the lands.

5. Background of the 1805 Fort Industry Treaty. In late 1804 and early 1805, officials of the two land companies which had been granted lands by Connecticut within Royce Area 53 requested of President Thomas Jefferson:

\*\*\*liberty to hold a treaty with the Indian tribes, claiming a native title to \*\*\* the Connecticut reservation, \*\*\* and that power and authority may be granted them to extinguish the native claim and title to said tract of land, and that a commission may be, by the President of the United States, appointed to hold a treaty with said Indian tribes, claiming the native right to those lands, and vested with power to accomplish the object prayed for. (Ottawa Ex. 276; American State Papers, Indian Affairs, Vol. I, at 702.)

On April 2, 1805, Secretary of War Dearborn notified Charles Jouett that the President had appointed Jouett to hold a treaty with those Indians claiming rights within Royce Areas 53 and 54. Id. Dearborn's letter to Jouett then states:

The object of the proposed treaty being principally that of affording the Connecticut land companies, (who hold the pre-emptive right, under the State of Connecticut, to a certain part of the land above described) an opportunity to purchase the Indian title to the lands claimed by the said companies, your duties will chiefly consist, in notifying the chiefs of the several nations, who are interested, of the time and place of holding said treaty; and in presiding thereat, for the purpose of seeing that any bargain, which the agents of the said companies may enter into with the proper representatives of the Indian nations, shall be fair and just, and well understood by the parties.

You will use your influence to induce the Indians to make a cession of the lands claimed by the Connecticut companies, on reasonable terms, such as they, and their respective nations, will, or ought to be satisfied with.

The agents of those companies will produce their authorities for entering into, and complying with, any stipulations that shall be agreed upon with your consent, as commissioner on the part of the United States. \*\*\*

If the Indian chiefs shall appear disposed to cede, not only the lands claimed by the Connecticut companies, but any part, or the whole of their lands, lying between the lands, claimed by the said companies, and the present boundary, as established at the treaty of Greeneville, and since run and marked by the United States, you are authorized to negotiate with them for so much of the same as they will consent to cede, on terms not exceeding two cents per acre. (Id., at 703.)

6. The 1805 Fort Industry Treaty. Pursuant to these instructions, Jouett concluded a treaty with "the sachems, chiefs, and warriors of the Wyandot, Ottawa, Chipawa, Munsee and Delaware, Shawanee, and Pottawatima nations" at Fort Industry on July 4, 1805. Article II of the treaty established the boundary line between the United States and the Indians as the western boundary of Royce Areas 53 and 54 from Lake Erie on the north, south to the Greeneville Treaty Line. Article III recites the cession of Royce Area 54 by the signatory tribes to the United States for a consideration (as stated in Article IV) of \$825.00 payable annually "forever" to the "Wyandot, Munsee and Delaware nations, and those of the Shawanee and Seneca nations who reside with the Wyandots".<sup>3/</sup> Simultaneously, the signatory Indians quitclaimed their interests in Royce Area 53 to the two land companies for a consideration of \$18,916.67. Articles IV and V recite this transaction.<sup>4/</sup>

In Article V it is stated that the sum of \$4000.00 had been received from the two land companies by "the Ottawa and Chipawa nations, and such of the Pottawatima nation as reside on the river Huron of lake Erie, and in the neighbourhood thereof," and that the two land companies had further "secured to the President of the United States in trust for these same Indians the sum of \$12,000.00, payable to them in six annual instalments of \$2,000.00 each."

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<sup>3/</sup> Jouett reported that this annuity represented the legal interest on \$13,750.00. See finding of fact No. 7, infra.

<sup>4/</sup> A separate treaty between the United States, acting as agent for the land companies, and the same Indians, was concluded the same day and incorporated by reference in the Fort Industry Treaty. See Def. Ex. A-252, Amer. St. Pap., Ind. Aff. Vol. 1, at 696.



In Article IV it is stated that the two land companies had secured to the President in trust for the "Wyandot, Munsee, and Delaware nations, and those of the Shawanee and Seneca nations who reside with the Wyandots," an annual annuity of \$175.00. The treaty recites in Article V that the proportions of the payments to "the Ottawa and Chipawa nations, and such of the Pottawatima nation as reside on the river Huron of lake Erie, and in the neighbourhood thereof" had been "agreed on and concluded by the whole of said nation in their general council," and Article IV states that the annuity payments to "the Wyandot, Munsee, and Delaware nations, and those of the Shawanee and Seneca Nations who reside with the Wyandots" would be "divided between said nations, from time to time, in such proportions as said nations, with the approbation of the President shall agree."<sup>5/</sup>

<sup>5/</sup> In 1807 and, again, in 1810, Governor Hull of the Michigan Territory reported that these nations "have agreed that the division, shall be made according to the numbers of the respective Nations \*\*\*". (Ottawa Ex. 302; Mich. Hist. Coll., Documents Relating to Detroit and Vicinity, 1805-1813 (Lansing, 1929), Vol. 40, at 310.) There is a reference in Article 13 of the Treaty of September 29, 1817, 7 Stat. 160, 165, with the "Wyandot, Seneca, Delaware, Shawanese, Potawatamees, Ottawas, and Chippeway, tribes of Indians." to the fact that the United States had paid the Shawnees the sum of \$2,500.00 "being one half of five years' annuities due by the treaty of Fort Industry." The Wyandots contended (and the United States commissioners agreed) that the annuity should have been paid to them "and a few persons of the Shawanese and Senecas tribes" living with them and the commissioners engaged that the United States would pay this \$2500.00 to the Wyandots. There is nothing to substantiate the claim of certain of the plaintiffs that this reference involved any change in the agreed upon population basis for distribution. The Fort Industry treaty provided that the total \$1,000.00 annuity would be proportioned among "the Wyandot, Munsee, and Delaware nations, and those of the Shawanee and Seneca nations who reside with the Wyandots." The controversy, resolved in Article 13 of the Treaty of September 29, 1817, seemingly involved only the question of who should be the recipient of the share of "those of the Shawanee and Seneca nations who reside with the Wyandots."

Representatives of the Delaware, Shawnee, Wyandot and Potawatomi Tribes signed the 1805 Fort Industry Treaty. The treaty was also signed by representatives of those bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, and by representatives of those bands of Chippewa Indians known as Chippewas of the Saginaw.

The 1805 Treaty of Fort Industry confirmed the general recognition of title granted at the 1795 Greenville Treaty to those tribes and groups signatory to the latter treaty who were using and occupying Royce Areas 53 and 54.

7. Contemporaneous Interpretation of the 1805 Fort Industry Treaty.

On July 4, 1805, the date the treaty was signed, Jouett forwarded the treaty to Secretary Dearborn with the following letter of explanation:

I have the honor to lay before you a treaty, this day concluded with the Wyandot, Ottawa, Chippewa, Munsee, Delaware, Shawanee, and part of the Pottawatamy nation of Indians; wherein, they convey to the United States all that tract of country lying south of the Connecticut reserve, and north of the boundary line established by the treaty of Greenville, and west of the Pennsylvania line, one hundred and twenty miles; the cession containing by estimation, twelve hundred thousand acres. The treaty requires not a dollar of the United States in advance, but simply an annuity of eight hundred and twenty-five dollars, the legal interest on thirteen thousand seven hundred and fifty dollars; bringing the purchase to rather more than one cent per acre. The Connecticut companies have also obtained a cession of their lands, for eighteen thousand nine hundred and sixteen dollars and sixty-seven cents; four thousand dollars they paid the Indians in cash, twelve to be paid in six equal annual instalments (sic), and two thousand nine hundred and sixteen dollars and sixty-seven cents into the hands of the President, in six percent

stock, and such other security as he may require, for producing an annuity of one hundred and seventy-five dollars, creating an annual sum to be paid to the Indians, at one thousand dollars per year; the several sums are to be secured to the President of the United States, in such manner as he may think proper to direct. You will see by those treaties, that an annuity is to be paid, of one thousand dollars, to the Wyandot, Delaware, and such of the Seneca and Shawanee nations that reside with the Wyandots; and an instalment of two thousand dollars per year, for six years, to the Ottawa, Chippewa, and such of the Pattawatamies, as reside on the river Huron of lake Erie; which several sums constitute the full amount of all the moneys given for the several tracts of land purchased. (Ottawa Ex. 276; Amer. St. Pap., Ind. Aff., Vol. I, at 703.)

8. Use and Occupancy of Royce Areas 53 and 54. From 1750 until 1805, the territory comprising Royce Areas 53 and 54 (excluding the six mile square enclave in the northwestern corner of Royce Area 53 ceded to the United States at the 1795 Greeneville Treaty) was the scene of joint use and occupancy by several Indian tribes and groups.<sup>6/</sup> There are reports of Wyandots, Ottawas, Delawares, Munsees, Chippewas, Potawatomis, Mohawks and Moravian Christian Indians settled or hunting in western Royce Area 53, particularly along the Huron River, at various dates during this period. In eastern Royce Area 53 we have documentation of Mingoes, Ottawas, Chippewas, Wyandots, Delawares, Munsees, and Moravian Christian Indians, mostly observed settled or hunting along the Cuyahoga River (the eastern boundary of Royce Area 53). Over the entire period, there are reports of Mingoes, Mohawks, Delawares, Munsees, Wyandots, Ottawas and Moravian Christian Indians scattered

<sup>6/</sup> The six mile square enclave in the northwestern corner of Royce Area 53 was for a long time prior to 1795 an area used and occupied by the Wyandots. This area was the northeastern extremity of the large area of Wyandot use and occupancy extending from this enclave south-southwest along the waters of the Sandusky River.

across Royce Area 54. The picture that emerges is one of small pockets of the various tribes and groups interspersed throughout these areas with conglomerations of these small concentrations along the waterways within the two areas.<sup>7/</sup> There were no large regions used and occupied by any particular tribe or group to the exclusion of others.

Except the references in the 1805 Fort Industry Treaty to Shawnees residing with the Wyandots and later reference in the Treaty of September 29, 1817, 7 Stat. 160,165, to "a few \*\*\* Shawanese" living with the Wyandots, there is no documentation of Shawnee use and occupancy of Royce Areas 53 and 54 during this period.

#### CONCLUSIONS OF LAW

1. The claims to Royce Areas 53 and 54 in the petitions of The Red Lake Band, et al., in Docket 18-L, and The Six Nations, et al., in Docket 89, are not supported by any evidence. Therefore, the claims in Docket 18-L should be dismissed and the claims in Docket 89 severed from any further part in these consolidated proceedings.

2. The predecessors of The Seneca-Cayuga Tribe of Oklahoma, et al., plaintiffs in Docket 341-C, were not signatories to the 1795 Treaty of Greeneville and acquired no rights of thereunder. Furthermore, these Indians did not possess aboriginal title to any portions of Royce Areas 53 and 54 as of July 4, 1805. Accordingly the claim in Docket 341-C should be dismissed.

3. As of July 4, 1805, the effective date of the Fort Industry Treaty, the Delaware Tribe, represented in these proceedings by the

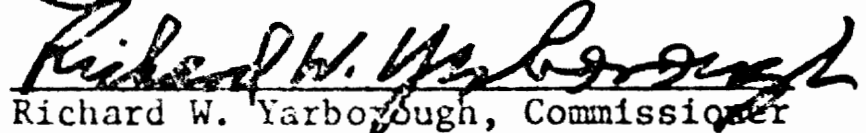
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<sup>7/</sup> See Ottawa Ex. 511c, Dockets 133-A and 302, and Def. Ex. A323.

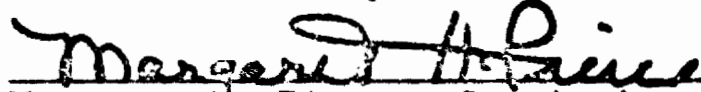
plaintiffs in Dockets 27-E and 202; the Wyandot Tribe, represented in these proceedings by the plaintiffs in Docket 139; the Potawatomi Tribe, represented in these proceedings by the plaintiffs and intervenor in Docket 29-D; the bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented in these proceedings by the plaintiffs in Dockets 133-A and 302; and the Chippewa Indians known as the Chippewas of the Saginaw, represented in these proceedings by the plaintiffs in Docket 13-E, each had recognized title to an undivided one-fifth interest in Royce Areas 53 and 54, excluding the six mile square enclave in northwestern Royce Area 53 ceded to the United States at the 1795 Treaty of Greeneville.



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner