

1. Parties. Each of the tribal plaintiffs 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-K, 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.

2. The 1795 Treaty of Greeneville. The Treaty of Greeneville, August 3, 1795, 7 Stat. 49, between the United States and representatives of several tribes and bands of Indians established a general boundary line between the lands of the United States and the lands of the signatory Indians. This boundary, which is generally referred to as 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.

Under Article III of the 1795 Greeneville Treaty the signatory Indians ceded and relinquished all claims to lands east and south of the Greeneville Treaty Line, and in consideration of these cessions the United States, under Article IV of the treaty, relinquished (with certain areas excepted) claims to all the Indian lands situated west and north of the Greeneville Treaty Line.

Among the excepted areas were the following, which are described in the second paragraph of Article III of the 1795 Greeneville Treaty:

*** (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. *** (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 *** (11.) One piece two miles square at the lower rapids of Sandusky river. [7 Stat. at 50.] 1/

Article V of the 1795 Greeneville Treaty defined the meaning of the United States' relinquishment of the lands north and west of the Greeneville Treaty Line as follows:

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

1/ These areas are identified as follows on Royce's Map of Ohio:

<u>Subsection in Article III</u>	<u>Royce Area</u>	<u>Approximate Acreage</u>
(2.)	13 Ohio	2,500
(3.)	14 Ohio	23,040
(4.)	15 Ohio	23,040
(8.)	18 Ohio	92,160
(9.)	19 Ohio	23,040
(11.)	20 Ohio	2,560

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 pertinent to this proceeding, representatives of the Wyandot, Delaware, Shawnee and Potawatomi Tribes signed the 1795 Greenville 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."

Under the 1795 Greenville Treaty, the United States relinquished its claims 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 Greenville Treaty Line without interference. The 1795 Greenville Treaty therefore granted general recognition of the title of those Indian tribes and bands which were parties to the treaty to the lands being used and occupied by them on the Indian side of the Greenville Treaty Line. While the 1795 Treaty of Greenville 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" treaties^{2/} with those Indians signatory to the 1795 Greeneville Treaty, including the Treaty of September 29, 1817, 7 Stat. 160.

3. The Treaty of November 25, 1808. As early as 1807, the United States attempted to acquire the Indian rights to the territory comprising Royce Area 87. In January 1807 Governor William Hull of Michigan was commissioned to treat with the interested tribes for the cession of a substantial portion of Royce Area 87. However, at the Treaty of Detroit, November 17, 1807, 7 Stat. 105, the Ottawas opposed the sale of lands south of the Maumee River and Hull was therefore unable to obtain such a cession in 1807.

However, the next year at the Treaty of Brownstown, November 25, 1808, 7 Stat. 112, representatives of the Chippewas, Ottawas, Potawatomis, Wyandots and Shawnees did agree to cede to the United States a 120 feet wide strip for a roadway--along with a one mile wide strip on each side of the roadway--from the rapids of the Maumee River on the northwestern border of Royce Area 87, across Royce Area 87 to the eastern boundary thereof. There was also ceded a roadway 120 feet wide from Lower Sandusky (present-day Fremont, Ohio) south to the Greeneville Treaty Line.

4. Indian Participation in the War of 1812. Indian loyalties were divided during the War of 1812. The great majority of Ottawas, Chippewas and Potawatomis sided with the British while nearly all of the Wyandots, Senecas, Delawares and Shawnees remained loyal to the Americans. At the

^{2/} See Sac and Fox Tribe v. United States, 161 Ct. Cl. 189, 194 (1963), cert. denied, 375 U. S. 921 (1963).

Treaty of Spring Wells, September 8, 1815, 7 Stat. 131, the United States made peace with the Ottawas, Chippewas and Potawatomis and, in consideration of the ". . . fidelity to the United States which has been manifested by the Wyandot, Delaware, Seneca, and Shawanoe, tribes, throughout the late war," pardoned those few members of the latter tribes who had joined the British side.

5. Royce Areas 87 and 88. Royce Area 87 is located in northwestern Ohio, with a small triangular extension into northeastern Indiana as far west as Fort Wayne. This area is bounded on the northeast by Lake Erie, on the east by the western boundary of Royce Areas 53 and 54 (ceded at the Treaty of Fort Industry, July 4, 1805, 7 Stat. 87), on the south by the Greeneville Treaty Line, on the southwest by the St. Mary's River, and on the northwest by the Maumee River. Royce Area 88 is a rectangular tract located in northwestern Ohio and south-central Michigan. The southern boundary of Royce Area 88 is the Maumee River, thus making Royce Areas 87 and 88 contiguous.

The territory comprising Royce Areas 87 and 88, excluding those enclaves within Royce Area 87 which were 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. Therefore, this territory was a 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 and bands which were using and occupying those lands.

6. The Treaty of September 29, 1817. The Treaty of September 29, 1817, 7 Stat. 160, was concluded between the United States, represented by Lewis Cass and Duncan McArthur, and "the sachems, chiefs, and warriors, of the Wyandot, Seneca, Delaware, Shawanese, Potawatomees, Ottawas, and Chippeway, tribes of Indians." Under Article 1 of the treaty, the Wyandot Tribe ceded to the United States the territory comprising Royce Area 87. In Article 2, the "Potawatomy, Ottawas, and Chippeway, tribes of Indians" ceded to the United States the territory comprising Royce Area 88. In Article 3, the "Wyandot, Seneca, Delaware, Shawnese, Potawatomy, Ottawas, and Chippeway tribes" acceded to the cessions described in Articles 1 and 2. Article 4 provided the following consideration to the signatory tribes and bands: a perpetual annuity of \$4,000.00 to the Wyandots; a perpetual annuity of \$500.00 to the Senecas; a perpetual annuity of \$2,000.00 to the Shawnees; \$1,300.00 per year for 15 years to the Potawatomis; \$1,000.00 per year for 15 years to the Ottawas; \$1,000.00 per year for 15 years to the Chippewas; and a single payment of \$500.00 to the Delawares.

In Articles 5 and 6 of the treaty, the United States granted several tracts within Royce Area 87 to the Wyandots, Shawnees and Senecas for the use of numerous individual Indians named in a schedule annexed to the treaty. These grants consisted of Royce Areas 211, 212 and 259 to the Wyandots; Royce Areas 165 and 166 to the Shawnees; Royce Area 163 to the Senecas; and Royce Area 164 jointly to the Shawnees and Senecas. In the same Article there were two reserves (Royce Areas 167 and 168) set aside

for the use of the Ottawas. Article 8 contained a series of fee simple grants to individual whites and Indians.

Article 9 provided for the appointment of an agent for the Wyandots, Senecas and Delawares in the Sandusky River region. Article 12 provided for the payment of certain amounts to the Wyandots, Senecas, Shawnees and Delawares as damages arising from participation on the American side during the War of 1812.

Article 19 contained a grant to the Delaware Indians (Royce Area 150) for the use of persons named in the schedule annexed to the treaty. Article 20 contained a grant by patent to the chiefs of the Ottawa Tribe for the use of the tribe with the proviso that the tract granted would be held by the tribe "upon the usual conditions of Indian reservations, as though no patent were issued." Article 21 provided that the treaty would become effective as soon as the same shall have been ratified by the President of the United States, by and with the advice and consent of the Senate thereof."

Representatives of the Potawatomi, Wyandot, Delaware and Shawnee tribes signed the treaty, as did representatives of those bands of Ottawas and Chippewas known, respectively, as the Ottawas of the Maumee, Blanchard's Fork, Auglaize and Roche de Boeuf, and the Chippewas of the Saginaw. The treaty was also signed by a group of Seneca Indians (Mingoes) who resided within Royce Area 87.

The treaty was proclaimed by President Monroe on January 4, 1819, on which date it became effective. The effect of the 1817 treaty was to confirm the general recognition of title granted at the 1795 Greeneville Treaty to those tribes and bands signatory to the latter treaty who were using and occupying Royce Areas 87 and 88.

7. The Supplementary Treaty of September 17, 1818. Neither the United States nor the Indians were satisfied with the 1817 Treaty. The Indians wanted additional lands set aside for them. The United States Congress wanted the fee simple provisions contained in the grants to the Wyandots, Shawnees, Delawares and Senecas changed to the usual provision for Indian reservations, restricting alienation to sale with the approval of the United States, and the grant to the Ottawas under Article 20 of the 1817 Treaty changed in the same manner. By the supplementary treaty of September 17, 1818, 7 Stat. 178, between the United States and representatives of the "Wyandot, Seneca, Shawnees, and Ottawas, tribes of Indians" these ends were achieved. Under Article 1 of the supplementary treaty, it was agreed that all areas granted in fee under the 1817 Treaty "shall not be thus granted, but shall be excepted from the cession made by the said tribes to the United States, reserved for the use of the said Indians, and held by them in the same manner as Indian reservations have been heretofore held."

Under Article 2, the boundaries of Royce Areas 211 and 259 were expanded as additional territory for the use of the Wyandots, and Royce

Areas 171 and 213 were also reserved for the use of the Wyandots. The boundaries of Royce Areas 165 and 164 were expanded as additional territory respectively, for the use of the Shawnees, and of the Shawnees and Senecas, jointly. In addition, Royce Area 213 was expanded as additional territory for the use of the Senecas.

Under Article 4 the Wyandots were granted a perpetual annuity of \$500.00 in addition to the annuity granted them under the 1817 Treaty; the Shawnees and Senecas residing together at Lewistown were granted an "additional" perpetual annuity of \$1,000.00;^{3/} the Senecas were granted an additional perpetual annuity of \$500.00; and the Ottawas were granted an additional perpetual annuity of \$1,500.00.

The supplementary treaty was proclaimed on January 4, 1819, together with the Treaty of September 29, 1817.

8. Use and Occupancy of Royce Areas 87 and 88. During the treaty period (from 1795 to 1817) and for several years prior thereto, Royce Area 87 was used and occupied by several different Indian groups. Wyandot use and occupancy of the Sandusky River region in eastern Royce Area 87 had commenced before 1750 and continued, except for one brief hiatus in the mid-18th century, until after the treaty period. Ottawa use and occupancy of the lower Maumee River region in north-western Royce Area 87 began at least as early as 1763 and continued

^{3/} The 1817 Treaty did not recite the payment of an annuity jointly to the Shawnees and Senecas residing at Lewistown.

without interruption until after the treaty period. However, during the fifteen year period immediately preceding the 1795 Greeneville Treaty, several other Indian groups used and occupied the regions on the Sandusky and lower Maumee Rivers. For at least a part of the period between the 1795 Greeneville Treaty and the 1817 Treaty, these same groups continued to use and occupy these regions. In addition, use and occupancy of the remaining, greater portions of Royce Area 87 was mixed during the treaty period and for some years before.

This influx of different Indian groups into Royce Area 87 prior to the 1795 Greeneville Treaty was precipitated by the American Revolution and by the subsequent Indian wars in Ohio. The Indian wars culminated in 1794 with the Battle of Fallen Timbers, when General Anthony Wayne finally defeated the combined Indian tribes and bands.

During the American Revolution, American forces attacked the settlements within Royce Area 11, in Ohio, of those Indians who had sided with the British. As a result these Indians were forced to flee to the north and west, and many of them moved into Royce Area 87 in the early 1780's. Delaware Indians from the Muskingum River region of Royce Area 11 and groups of Mingoies settled along the Sandusky River. At about the same time the Shawnees, who were forced from the Scioto and the Great and Little Miami River regions of Royce Area 11, fled north into Royce Area 87 and west into Indiana. In the years following the American Revolution, various Indians came together within western Royce Area 87 incident to the continuing warfare against the Americans.

The study prepared by defendant's expert witness, Dr. Voeglin, which is Defendant's Exhibit B-402, lists 21 Wyandot sites within Royce Area 87 between the years 1754 and 1819, with 12 of these sites being on or near the Sandusky River. There are also listed 24 Ottawa locations within Royce Area 87 between 1757 and 1819, half of them along the Maumee River. But there are a greater number of references to Indians other than the Ottawas and Wyandots in these areas, particularly to Shawnees, Delawares, Munsees and Mingoes after 1780. In central and southern Royce Area 87 there are substantially fewer references to Indian sites, but those listed show that several of these Indian groups had sites there after 1780 in close proximity to one another. The relative number of sites in central and southern Royce Area 87 do not indicate that any one group was predominant there.

For several years before the 1795 Greenville Treaty and throughout the treaty period no extensive portion of Royce Area 87 was used and occupied by any one tribe or band of Indians to the exclusion of others. The record herein establishes that the Wyandots and Ottawas were the two predominant Indian groups within Royce Area 87 during the period under consideration, both because of their long-time use and occupancy of portions thereof, and because they used and occupied Royce Area 87 more extensively than did other Indians during the period of mixed use and occupancy, which began about 1780 and continued throughout the treaty period. The Delawares and Shawnees came into Royce Area 87 at a later date, and their use and occupancy of this area was more limited than that of the Wyandots and Ottawas.

There is very little evidence of Indian use and occupancy of Royce Area 88 during the entire period under consideration. We know that Ottawas used and occupied the southern portion of Royce Area 88 along the Maumee River. There are a few contemporary statements reporting Potawatomi, Chippewa and Ottawa use and occupancy of Royce Area 88 north of the Maumee region.

CONCLUSIONS OF LAW

1. The claims to Royce Areas 87 and 88 in the petitions of The Red Lake Band, et al., in Docket 18-K, and The Six Nations, et al., in Docket 89, are not supported by any evidence. Therefore, the claims in Docket 18-K 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-D, were not signatories to the 1795 Greenville Treaty and acquired no rights thereunder. Furthermore, these Indians did not possess aboriginal title to any portion of Royce Area 87 as of January 4, 1819. Therefore the claims in Docket 341-D should be dismissed.

3. As of January 4, 1819, the effective date of the Treaty of September 29, 1817, recognized title to all of Royce Area 87, except those areas (delineated in finding of fact No. 2, supra) ceded to the United States at the 1795 Greenville Treaty and those areas (delineated in finding of fact No. 3, supra) ceded to the United States at the 1808 Brownstown Treaty, was held by the Indian entities enumerated below in the following proportions:

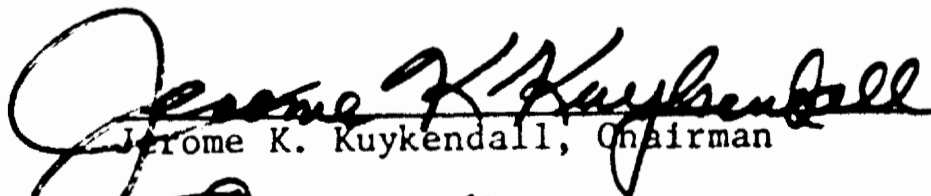
A) An undivided one-half interest, by the Wyandot Tribe, represented in these proceedings by the plaintiffs in Docket 141;

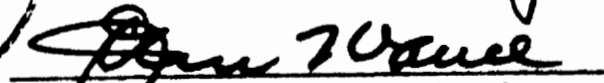
B) An undivided three-tenths interest, by the bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented in these proceedings by the plaintiffs in Docket 133-C;

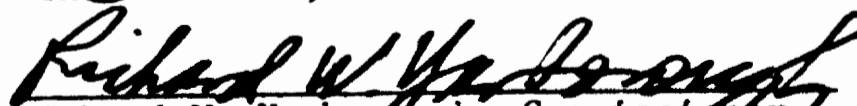
C) An undivided one-tenth interest, by the Delaware Tribe, represented in these proceedings by the plaintiff in Docket 27; and

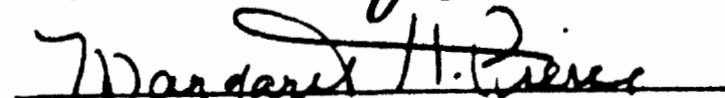
D) An undivided one-tenth interest, by the Shawnee Tribe, represented in these proceedings by the plaintiffs in Docket 64-A.

4. As of January 4, 1819, the effective date of the Treaty of September 29, 1817, the band of Chippewa Indians known as the Chippewas of the Saginaw, represented in these proceedings by the plaintiffs in Docket 13-F; 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 Docket 133-C; and the Potawatomi Tribe, represented in these proceedings by the plaintiffs in Dockets 15-I, 29-G and 308, each held recognized title to an undivided one-third interest in Royce Area 88.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner