

BEFORE THE INDIAN CLAIMS COMMISSION

SAGINAW CHIPPEWA INDIAN TRIBE)	Docket No. 59
OF MICHIGAN, <u>et al.</u> ,)	
)	
RED LAKE BAND, <u>et al.</u> ,)	Docket No. 18-J
)	
HANNAHVILLE INDIAN COMMUNITY, <u>et al.</u> ,)	Docket No. 29-E
)	
THE OTTAWA TRIBE, and GUY JENNISON,)	Docket No. 133-B
<u>et al.</u> , as representatives of THE)	
OTTAWA TRIBE,)	
)	
LAWRENCE ZANE, <u>et al.</u> , <u>ex rel.</u> ,)	Docket No. 140
WYANDOT TRIBE, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
POTAWATOMI INDIANS OF INDIANA)	Docket No. 29-E
AND MICHIGAN, INC.,)	
)	
THE POTAWATOMI OF THE HURON,)	
and ALBERT N. MACKETY, <u>et al.</u> , as)	
Members and Representatives of the)	
HURON POTAWATOMI BAND,)	
)	
Intervenors,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 13, 1973

Appearances:

Robert C. Bell, Jr., Attorney for Plaintiffs
in Docket 29-E, and for the Potawatomi Indians of
Indiana and Michigan, Inc., Intervenors in Docket 29-E.

Rodney J. Edwards, Attorney for Plaintiffs
in Dockets 18-J and 140.

James R. Fitzharris, Attorney for Plaintiffs
in Docket 59.

Allan Hull, Attorney for Plaintiffs
in Docket 133-B.

Paul G. Reilly, Jr., Attorney for the
Potawatomi of the Huron, Intervenors
in Docket 29-E.

James E. Clubb, with whom was Mr.
Assistant Attorney General Kent Frizzell,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner delivered the opinion of the Commission.

I will again point out at the beginning of this opinion that I continue to agree with Chairman Kuykendall's dissenting opinion in the case of Citizen Band v. United States, Dockets 71, et al., 27 Ind. Cl. Comm. 187, 328 (1972), regarding the political structure of the Potawatomi Indians between 1795 and 1833. The conclusions I have reached in this opinion and in the findings of fact which follow are intended to reflect the position of the majority of the Commission with respect to the Potawatomi political structure during this period, as has been determined in the Citizen Band case, supra.

This consolidated proceeding involves the determination of title claims by the various plaintiffs to the area identified as Area 66 on Royce's Maps of Michigan and Ohio in Part II of the 18th Annual Report of the Bureau of American Ethnology, 1896-1897. Representatives of several Indian tribes and bands relinquished their interests in this territory at the Treaty of Detroit, November 17, 1807, 7 Stat. 105.

These dockets were consolidated by the Commission's order of

November 4, 1960, to try the issue of title to this area. After the consolidation, a single hearing was held during which evidence was presented with respect to these consolidated dockets and with respect to two other sets of consolidated dockets (Dockets 13-E, et al., involving claims of title to Royce Areas 53 and 54, Ohio, which were ceded at the Treaty of July 4, 1805, 7 Stat. 87; and Dockets 13-F, et al., involving claims of title to Royce Areas 87 and 88, Ohio, Michigan and Indiana, ceded at the Treaty of September 29, 1817, 7 Stat. 160). The parties have stipulated that any of the evidence in the single 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, and The Potawatomi of the Huron, and Albert N. Mackety, et al., as Members and Representatives of the Huron Potawatomi Band, were permitted to intervene under Docket 29-E.

At the 1795 Greeneville Treaty, the United States and representatives of several Indian tribes and bands agreed to the establishment of a boundary line between the lands of the Indians and the lands of the United States. 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.

In Article IV of the 1795 Greenville Treaty, the United States relinquished, with certain enclaves excepted, its claims to all the Indian lands west and north of the Greenville Treaty Line and, in Article V, conferred upon the Indians participating at the treaty the right permanently to occupy the lands on the Indian side of the Greenville Treaty Line. One of the excepted enclaves was Detroit and the surrounding area identified by a dotted black line on Royce's Map of Michigan, from Saginaw Bay to Lake Erie. The 1795 Greenville Treaty did not, however, establish boundaries among the Indians within their lands.

Among those Indians signing the 1795 Greenville Treaty were representatives of the Wyandot and Potawatomi Tribes and representatives of those bands of Ottawa and Chippewa Indians known, respectively, as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, and the Chippewas of the Saginaw. See Citizen Band v. United States, Dockets 71, et al., 27 Ind. Cl. Comm. 187, 323 (1972); Saginaw Chippewa Indian Tribe v. United States, Dockets 57, et al., 22 Ind. Cl. Comm. 504, 522 (1970); Ottawa Tribe v. United States, Dockets 40-B, et al., 2 Ind. Cl. Comm. 461, 466 (1953).

Royce Area 66 is located in southeastern Michigan and northwestern Ohio. This territory was ceded at the Treaty of Detroit, November 17, 1807, 7 Stat. 105, between the United States and representatives of the "Ottoway, Chippeway, Wyandotte, and Pottawatomie nations of Indians." Under the treaty, these Indians ceded Royce Area 66 to the United

States in return for a consideration of \$10,000.00 in money or goods payable upon ratification of the treaty, to be divided \$3,333.33 each to the Ottawas and Chippewas and \$1,666.66 each to the Potawatomis and Wyandots, plus a perpetual annuity of \$2,400.00 to be divided \$800.00 each to the Ottawas and Chippewas and \$400.00 each to the Wyandots and "such of the Pottawatomies, as now reside on the river Huron of lake Erie, the river Raisin, and in the vicinity of the said rivers." (Id., at 106.) The United States also agreed to furnish the Indians with two blacksmiths for a period of ten years, one to reside with the Chippewas and the other with the Ottawas, and to set aside certain reservations within Royce Area 66 for various groups of the signatory Indians. The treaty became effective upon its proclamation on January 27, 1808.

The Treaty of November 17, 1807, was signed by representatives of the Potawatomi and Wyandot Tribes. Those Ottawa Indians who signed the treaty were the Ottawa bands of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf. See Ottawa Tribe v. United States, supra. Although the 1807 Treaty does not so specify, it is established in later treaties that those Chippewa Indians who executed the 1807 Detroit Treaty were the Saginaw Chippewas, including the Swan Creek and Black River Bands. See Treaty of September 24, 1819, 7 Stat. 203, and Treaty of May 9, 1836, 7 Stat. 503. Therefore, all of the tribes and groups with whom the United States negotiated at the 1807 Detroit Treaty had also been parties to the 1795 Greeneville Treaty.

The legal consequences of the 1795 Greeneville Treaty are settled. In the case of Peoria Tribe v. United States, Docket 289, 19 Ind. Cl. Comm. 107, 120-2 (1968), the Commission described these consequences in the following terms:

. . . Under Article III of the Greeneville Treaty . . . a common boundary was strategically negotiated. To give the new line real meaning the Indians relinquished all tribal claims to those lands situated generally east and south of the Greeneville line, while the United States, with [a] few exceptions . . . relinquished all claims they might have to the Indian tribal lands situated west and north of the 1795 Greeneville line.

By this relinquishment the United States guaranteed to the Indian tribes negotiating the 1795 Greeneville Treaty, more than mere temporary or permissive use and possession of the lands upon which they then were living. As the Commission concluded on a prior occasion, this "relinquishment" was indeed recognition by the United States that permanent ownership of these lands shall be in the occupying tribes. Thus these Indians were accorded legal rights to their homelands, the deprivation of which through governmental action would command just compensation. . . .

. . . The integral follow-up treaties, that is, the post 1795 treaties of cession negotiated with the Greeneville Treaty Indians, not only defined with particularity the intertribal boundaries but also confirmed the previously recognized title. . . .

Upon the basis of the above, we have concluded that those tribes and bands of Indians who participated at the 1795 Greeneville Treaty and who were then using and occupying Royce Area 66 were, by virtue of said treaty, together with the "follow-up"^{1/} treaty of November 17, 1807, granted recognized title to Royce Area 66. By executing and

^{1/} See Sac and Fox Tribe v. United States, 161 Ct. Cl. 189 (1963), cert. denied, 375 U. S. 921 (1963) (aff'g Docket 83, 7 Ind. Cl. Comm. 675 (1959)).

ratifying the Treaty of November 17, 1807, the United States determined and confirmed the boundaries and ownership of the lands relinquished to said Indians under the 1795 Greeneville Treaty. Therefore, those tribes and bands of Indians which had participated at the 1795 Greeneville Treaty and which were then using and occupying Royce Area 66 held rights of recognized title to the territory comprising Royce Area 66 as of January 27, 1808, the effective date of the 1807 Treaty. These tribes and bands were the Potawatomi Tribe and those bands of Ottawa and Chippewa Indians known, respectively, as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, and the Chippewas of the Saginaw. We have been unable to find that the Wyandot Tribe possessed recognized title to any portion of Royce Area 66, despite the fact that the Wyandots were signatories to both the 1795 Greeneville Treaty and the 1807 Detroit Treaty. Our reasons for this conclusion are incorporated in the discussion which follows relative to the division of Indian interests in the territory comprising Royce Area 66.

Consistent with the views expressed in the related consolidated sets of cases enumerated earlier in this opinion as to the division of Indian interests in recognized title areas, we have first considered the language of the 1807 Detroit Treaty to determine what light it sheds on the problem of dividing said interests in Royce Area 66 among the various Indian tribes and groups. The treaty language indicates a joint cession by all of the Indians signatory to the 1807 Detroit Treaty (including the Wyandots) of their interests

in the whole of Royce Area 66 (Article I) in return for monetary consideration divided in proportions of one-third to the Ottawas, one-third to the Chippewas, one-sixth to the Potawatomis and one-sixth to the Wyandots (Article II).

Other portions of the 1807 Treaty do contain indications that a geographical division of Indian interests within Royce Area 66 did exist and that the parties to the 1807 Treaty were aware of such geographical division. In Article II, it is provided that the annual annuity payable to the Potawatomis would be paid ". . . to such of the Pottawatamies, as now reside on the river Huron of lake Erie, the river Raisin, and in the vicinity of the said rivers." In Article IV, the United States agreed to furnish blacksmiths to the Chippewas at Saguina, the Saginaw Chippewa town located a few miles to the north of Royce Area 66, and to the Ottawas on the Maumee, which in the treaty is referred to as the "Miami river of the lakes."

In Article VI of the 1807 Treaty, there were several reservations within Royce Area 66 set aside for the use of the Chippewas, Potawatomis and Ottawas, but not for the Wyandots. These reservations were all ceded to the United States in later, separate treaties. Royce Areas 214, 215, 216^{2/} and 217 were Saginaw Chippewa reservations located in northeastern Royce Area 66 which were ceded to the United States by the Swan Creek and Black River bands of Chippewas residing in Michigan by the Treaty of May 9, 1836, 7 Stat. 503. Royce Area 137, located in

^{2/} Royce Area 216 was located within the area previously ceded to the United States at the 1795 Greeneville Treaty.

the eastern portion of central Royce Area 66, was a Potawatomi reservation and was ceded by the Potawatomis to the United States at the Treaty of September 19, 1827, 7 Stat. 205. Royce Areas 135 and 136, located along the north branch of the River Rouge, south of Pontiac, Michigan, were occupied in 1807 by Chippewa Indians who subsequently merged with Potawatomi bands. These areas were ceded by the Potawatomis at the Treaty of September 19, 1827, 7 Stat. 305. The Saginaw Chippewas subsequently relinquished their interests in these two areas for \$1,000 at the Treaty of January 14, 1837, 7 Stat. 528. Royce Areas 169, 170 and 183 were Ottawa reservations located on the north bank of the Maumee River in southeastern Royce Area 66, and were ceded by the Ottawas to the United States at the Treaties of August 30, 1831, 7 Stat. 359, and February 18, 1833, 7 Stat. 420.

These indications in the 1807 Detroit Treaty of discrete use and occupancy of Royce Area 66 by separate groups of Indians led us to an analysis of the history of Indian use and occupancy of Royce Area 66 up to the 1807 Treaty. The history of Indian use and occupancy of Royce Area 66 at this time confirms that the Wyandots were not using and occupying Royce Area 66 between 1795 and 1807 and that the other signatories to the 1807 Detroit Treaty were using and occupying separate, determinable portions of Royce Area 66 during this time.

The only evidence of Wyandot use and occupancy of eastern Michigan during the relevant period relates to the Wyandot villages located near present-day Wyandotte and Gibraltar, Michigan. These two villages were,

however, located within the area surrounding Detroit ceded by the Indians to the United States at the 1795 Greenville Treaty. Hull's letter of November 18, 1807, forwarding the treaty to Secretary Dearborn (finding of fact 6, infra) indicates that the Wyandots were permitted by the other parties to the 1807 Treaty to share in the consideration for Royce Area 66 because they were "an old and respectable Nation." The letter indicates that the Wyandots living near Detroit were considered by the other parties as one with the Sandusky Wyandots, and that none of the Wyandots were considered to have rights of ownership within Royce Area 66. Furthermore, as stated above, the 1807 Treaty did not provide for any reservations for the Wyandots within Royce Area 66, while reservations were set aside for all the other signatory Indians. This was because, as shown by the evidence, no Wyandots were using and occupying interior Michigan. For all these reasons, we have concluded that the Wyandots were not using and occupying Royce Area 66 during the period between 1795 and 1807 and, therefore, the recognized title to Royce Area 66 granted at the 1795 Greenville Treaty and confirmed by the 1807 Detroit Treaty was not intended to, and did not in fact, extend to the Wyandots.

The representatives of those Indians who held recognized title to Royce Area 66 differ in their contentions as to how their interests should be divided. The Ottawa plaintiffs and the Chippewa plaintiffs claim conflicting portions of Royce Area 66 on the basis of use and occupancy by their predecessors. The

Potawatomi plaintiffs contend that the interests in Royce Area 66 should be divided in accordance with the division of the original consideration, but, in the alternative, they offer a geographical division which conflicts with those offered by the Ottawas and Chippewas. We believe that the 1807 Treaty contains language (which we have referred to earlier in this opinion) reflecting an existing geographical division of Indian use and occupancy of Royce Area 66. Our analysis of the history of such use and occupancy supports such a geographical division. We, therefore, believe that such a division should be made and that such a division reflects the fairest and most equitable result in this proceeding.

Our division of Royce Area 66 among the Chippewas, Potawatomis and Ottawas differs somewhat from the proposed boundaries offered by the various plaintiffs. To begin with, we have found no basis for the contention of the Ottawa plaintiffs that the entire central portion of Royce Area 66 was Ottawa territory. The record in this proceeding contains no evidence of Ottawa use and occupancy of the area claimed in central Royce Area 66. Ottawa use and occupancy of Royce Area 66 during the late 18th and early 19th centuries was confined to the southern portion along the Maumee River. There are numerous references to the Ottawas from the mouth of the Maumee to Fort Defiance, which is at the southwestern corner of Royce Area 66. Although other Indians were present in this region at the time, the evidence indicates that the Ottawas were the only Indians who were signatories to both the

1795 Greeneville Treaty and the 1807 Detroit Treaty who were then using and occupying the area north of the Maumee River within Royce Area 66. The northern limit of Ottawa use and occupancy coincides quite closely with the present-day border between Michigan and Ohio.

In the Michigan portion of Royce Area 66, the Saginaw Chippewas used and occupied the northern portion, while the Potawatomis were located to the south of them. The representatives of these Indians do not dispute this. Their disagreement is limited to the determination of the proper boundary within Royce Area 66 between the two. The Saginaw Chippewas assert that the proper dividing line is the watershed between the River Rouge and the River Huron. This would give the Chippewas approximately the northern two-thirds of Royce Area 66. The Chippewa plaintiffs assert that this boundary line is supported by the evidence in this proceeding that all village sites north of this line were Chippewa and that this boundary is consistent with prior Commission decisions. See Saginaw Chippewa Indian Tribe v. United States, Dockets 57, et al., 22 Ind. Cl. Comm. 504 (1970), where the Commission held that the Saginaw Chippewas held recognized title to Royce Area 111, Michigan, the southern boundary of which is very nearly a westward extension of the boundary line proposed by the Chippewa plaintiffs in this case, and Citizen Band v. United States, Dockets 146, et al., 6 Ind. Cl. Comm. 414 (1958), where the Commission held that the northern boundary of Potawatomi territory within Royce Area 117 in central and western Michigan was approximately the same line.

The Potawatomi plaintiffs, on the other hand, argue that the proper boundary is somewhere northerly of the watershed between the River Rouge and the Clinton River. Such a line would divide the Michigan portion of Royce Area 66 approximately in half. The Potawatomi plaintiffs urge that this boundary is supported by evidence that Potawatomis hunted along the River Rouge and had deeded lands along this river to white settlers. The Potawatomi plaintiffs further contend that the occupants of Seginswin's Village (Royce Area 135) and Tonquish's Village (Royce Area 136), although Chippewa Indians in 1807, later became politically affiliated with the Potawatomis, as is shown by the fact that Tonquish signed the Treaty of September 27, 1817, 7 Stat. 160, as a Potawatomi and that Royce Areas 135 and 136 were ceded by the Potawatomis in the Treaty of September 19, 1827, 7 Stat. 305.

On the basis of the evidence of Indian use and occupancy which can be extracted from the 1807 Treaty itself, together with the historical references to such use and occupancy which are evidence in this proceeding, we believe that there is conclusive proof that the Saginaw Chippewas were exclusively using and occupying northern Royce Area 66 during the period under consideration here and that the Potawatomi Indians were exclusively using and occupying the interior Michigan portion of southern Royce Area 66.

The tribal identity of those Indians occupying Royce Areas 135 and 136 in 1807 cannot be conclusively determined. Although Tonquish signed the 1807 Treaty as a Chippewa, he signed the Treaty of September 29, 1817, supra, as a Potawatomi. Furthermore it is apparent that both groups continued to claim interests in these areas, since both ceded them in the subsequent treaties cited above.

These villages were, however, located along the north branch of the River Rouge, which the evidence shows to have been a popular Potawatomi hunting area. On the other hand, the evidence shows that the Chippewas tended to concentrate on the rivers emptying into Saginaw Bay, and the streams emptying into the St. Clair River and Lake St. Clair, as far south as the Clinton River. On the basis of this evidence, we believe that a reasonable boundary must reflect the historical Potawatomi identification with the River Rouge. The boundary line we have drawn begins at the point on the Clinton River where it intersects the line dividing Royce Area 66 from the area surrounding Detroit which was ceded at the 1795 Greeneville Treaty. Following the south bank of the Clinton River as far west as the present-day town of Sylvan Lake, the line then follows a straight line in a southwesterly direction to the southeastern corner of the area (Royce Area 111) ceded to the United States by the Saginaw Chippewas at the Treaty of September 24, 1819, 7 Stat. 203.

We have therefore concluded that on January 27, 1808, the bands of Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de

Boeuf, represented here by the plaintiffs in Docket 133-B, held recognized title to that portion of Royce Area 66 south and east of a line beginning at a point where the River Raisin empties into Lake Erie, thence west 6 miles to the southwestern corner of the area surrounding Detroit which was ceded to the United States at the 1795 Greenville Treaty, thence south along a line six miles west of the western shore of Lake Erie as far as the Michigan-Ohio boundary, and thence west along said border to the western boundary of Royce Area 66. We have further concluded that the Potawatomi Tribe, represented here by the plaintiff and intervenors in Docket 29-E, held recognized title to that portion of Royce Area 66 north and west of the line described above and south of a line following the south bank of the Clinton River westward as far as present-day Sylvan Lake, Michigan, on the south branch of said river and then turning southwesterly in a straight line to the point where said line intersects the southeastern corner of Royce Area 111; and that the Chippewa plaintiffs, represented here by the plaintiffs in Docket 59, held recognized title to all of Royce Area 66 north of the latter line described above. The area surrounding Detroit which was ceded to the United States at the 1795 Greenville Treaty is excluded from the boundaries described above.^{3/}

This case may now proceed to a determination of the acreage of the ceded lands (including the exclusion therefrom of any valid land grants to white settlers), the fair market value as of

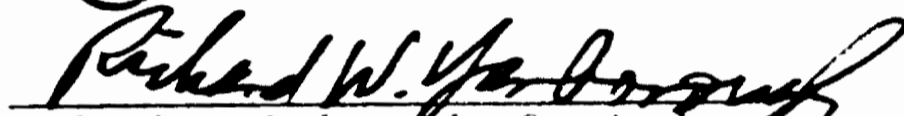
^{3/} Also excluded are those portions of Royce Areas 15, 18 and 19, Ohio, north of the Maumee River which were ceded to the United States under clauses (4), (8) and (9) of the second paragraph of Article III of the 1795 Greenville Treaty.

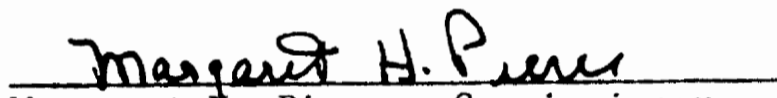
January 27, 1808, the consideration given for the cessions, and all other matters bearing upon the defendant's liability to the separate plaintiffs and intervenors.


Brantley Blue, Commissioner

We concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner

Kuykendall, Chairman, concurring.

The issue of the political structure of the Potawatomis was considered by the Commission in Citizen Band of Potawatomis Indians v. United States, Dockets 71, et al., 27 Ind. Cl. Comm. 187 (1972). In my opinion there was no Potawatomis Tribe or Nation during the material period. My view that the Potawatomis "tribe" was composed of politically autonomous landowning bands, is set forth in the dissent in that case. Id. at 328-471. However, the majority having found that any ultimate award to the Potawatomis plaintiffs herein should be on behalf of the Potawatomis Tribe or Nation, I recognize that I am now bound thereby and, accordingly, I concur.


Jerome K. Kuykendall, Chairman