

## BEFORE THE INDIAN CLAIMS COMMISSION

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE	)	Docket No. 15-D
BAND OF THE POTTAWATOMIE TRIBE OF INDIANS,	)	
and WILLIAM EVANS, ELLEN NOGAHNKOUK VIEUX,	)	
and LISA (NAGONBA) CLAYBEAR, as individuals-	)	
plaintiff,	)	
	)	
Plaintiffs,	)	
	)	
THE POTTAWATOMIE NATION OF INDIANS, THE PRAIRIE	)	Docket Nos. 15-P
BAND OF THE POTTAWATOMIE NATION OF INDIANS,	)	and 15-Q
and WILLIAM EVANS, ELLEN NOGAHNKOUK VIEUX, and	)	
LISA (NAGONBA) CLAYBEAR, as individuals-	)	
plaintiff,	)	
	)	
Plaintiffs,	)	
	)	
HANNAHVILLE INDIAN COMMUNITY, WILSON, MICHIGAN;	)	Docket Nos. 29-B,
FOREST COUNTY POTAWATOMI COMMUNITY, CRANDON,	)	29-N, and 29-O
WISCONSIN; POTAWATOMI TRIBE OR NATION OF	)	
INDIANS; FRANK WANDAHSEGO, SR., ELIJAH	)	
PETONQUOT, IKE GEORGE and VALENTINE RITCHIE,	)	
	)	
Plaintiffs,	)	
	)	
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA and	)	Docket No. 99
MABEL STATON PARKER on behalf of THE	)	
PIANKESHAW NATION	)	
	)	
IRA SYLVESTER GODFROY, WILLIAM ALLOLA GODFROY,	)	
JOHN A. OWENS, on relation of THE MIAMI INDIAN	)	
TRIBE and MIAMI TRIBE OF INDIANA and each on	)	
behalf of others similarly situated and on	)	Docket No. 124-H
behalf of the MIAMI INDIAN TRIBE and various	)	
bands and groups of them comprising the MIAMI	)	
TRIBE AND NATION,	)	
	)	
Plaintiffs,	)	
	)	
THE MIAMI TRIBE OF OKLAHOMA, also known as THE	)	Docket No. 254
MIAMI TRIBE, and HARLEY T. PALMER, FRANK C.	)	
POOLER and DAVID LEONARD, as representatives	)	
of the MIAMI TRIBE and of all the members	)	
thereof,	)	
	)	
Plaintiffs,	)	

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, ) Docket Nos. 306,  
 and POTAWATOMI NATION, represented by CITIZEN ) 309, and 311  
 BAND OF POTAWATOMI INDIANS OF OKLAHOMA, and )  
 by DAN NADEAU, MAY FAIRCHILD and A. B. PECORE,) )  
 members of such Band and such Nation, and )  
 DAN NADEAU, MAY FAIRCHILD and A. B. PECORE, )  
 on the relation of POTAWATOMI NATION, )

Plaintiffs, )

THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, GUY )  
 FROMAN on behalf of the PEORIA NATION, and ) Docket No. 313  
 FRED ENSWORTH on behalf of the KASKASKIA )  
 NATION, )

Plaintiffs, )

THE PEORIA TRIBE OF INDIANS OF OKLAHOMA and )  
 AMOS ROBINSON SKYE on behalf of the WEA ) Docket No. 314-A  
 NATION, )

Plaintiffs, )

THE KICKAPOO TRIBE OF KANSAS, THE KICKAPOO )  
 TRIBE OF OKLAHOMA, THE KICKAPOO NATION, ) Docket No. 315  
 et al., )

Plaintiffs, )

v. )

UNITED STATES OF AMERICA, )

Defendant. )

Decided: **APR** 4 1973

Appearances:

Robert Stone Johnson, Attorney for  
the Plaintiffs in Docket Nos. 15-D,  
15-P, and 15-Q.

Robert C. Bell, Jr., and James N.  
Berry, Attorneys for Plaintiffs  
in Docket No. 29-B.

Robert C. Bell, Jr., Attorney for  
Plaintiffs in Docket Nos. 29-N  
and 29-O.

Albert C. Harker, Attorney for  
Plaintiffs in Docket No. 124-H.

Edwin A. Rothschild,  
Attorney for Plaintiffs  
in Docket No. 254.

Louis L. Rochmes and Giddings Howd,  
Attorneys for Plaintiffs in Docket  
Nos. 306, 309 and 311.

Jack Joseph, Attorney for Plaintiffs  
in Docket Nos. 313 and 314-A.

Allan Hull, Attorney for Plaintiffs  
in Docket No. 315

Bernard M. Newburg, William H. Lundin,  
and Milton Edward Bander, with whom  
were Assistant Attorneys General Clyde  
O. Martz and Shiro Kashiwa, Attorneys  
for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

The claims in this proceeding are for monetary damages to remedy unconscionable consideration allegedly received by the plaintiff tribes for cessions of land in Illinois and Indiana. The plaintiffs claim to have held "recognized title" to the lands, chiefly under the Treaty of Greeneville of August 3, 1795 (7 Stat. 49), and under the Treaty of Grouseland of August 21, 1805 (7 Stat. 91). The Kickapoo plaintiffs also allege "Indian title."

Because the claims involve overlapping cessions, Docket Nos. 15-D, 15-P, 29-B, 29-N, 99, 306, 311, 313, 314-A, and 315 were consolidated by Commission Order of March 11, 1958, for the purpose of trial to determine the respective interests of the plaintiffs in the lands claimed therein, and Docket Nos. 15-Q, 29-O, 254, and 309 were consolidated with the above dockets for the same purpose but only insofar as their claims overlap the lands claimed in Docket Nos. 314-A and 315. By Commission Order of January 5, 1959, Docket No. 124-H, relating to claims for Royce Area 98, was consolidated with the above cases. The title phase of Docket No. 99, involving Royce Area 63 in Illinois, was decided by the Commission on April 4, 1966, 16 Ind. Cl. Comm. 574, and the value phase on December 5, 1969, 22 Ind. Cl. Comm. 186. By the accompanying Order, Docket No. 99 accordingly is dismissed from this proceeding.

On August 23, 1972, the Peoria plaintiffs in Docket Nos. 313 and 314-A filed a motion to sever and for other relief, conditioned upon the correctness of their belief that this Commission may not have rendered a decision in this proceeding because of the protracted litigation over the political structure of the Potawatomis during treaty times. They suggested alternatively that the Commission at this time:

- a. Decide the title issues without respect to resolution of the Potawatomi political structure,
- b. Sever claims to all areas in which Potawatomis claim an interest, and determine title to the other areas, or

c. Determine all issues, including Potawatomi internal disputes, concerning the title phase of the lands involved in this proceeding.

The Hannahville, et al., plaintiffs in Docket Nos. 29-B and 29-N responded in opposition to the motion. The Prairie Potawatomi plaintiff in Docket Nos. 15-D and 15-P joined with the Citizen Potawatomi plaintiffs in Docket Nos. 306 and 311 in responding with a statement that they did not object to any procedures which would expedite the completion of the Potawatomi cases. The defendant responded in opposition of severance but in support of a present decision of all issues.

The need for determining the correctness of the Peoria plaintiff's belief, upon which their motion for severance was conditioned, has been obviated by:

a. the determination of the Potawatomi political structure by our decision in Docket No. 71 et al., Citizen Band of Potawatomi Indians v. United States, 27 Ind. Cl. Comm. 187 (1972); and

b. our determination herein of all of the title questions in this proceeding.

For these reasons the Peoria's conditional motion for severance and for other relief, is denied by the accompanying order.

In this title phase, the plaintiffs' principal burden is to establish title. They may do this by showing participation in a recognition treaty such as the Treaty of Greeneville of August 3, 1795 (7 Stat. 49), and by

showing the territorial limits of such indefinite recognition, as established by subsequent tribal cessions in "follow-up" treaties.

Where we have found that two or three plaintiffs had recognized title to a particular area, we have credited each with a recognized undivided one-half or one-third interest in that area. This appears to be the most feasible and equitable manner of determining the recognized title interests. We find precedent in our decision in Docket No. 317, et al., Kickapoo Tribe v. United States, 10 Ind. Cl. Comm. 271 (1962), aff'd 174 Ct. Cl. 550 (1966). See James Strong, et al., v. U.S., Dkt. 13-E, et al., this day decided.

The Hannahville, et al., plaintiffs in Docket Nos. 29-B, 29-N, and 29-O urge that Kickapoo Tribe, supra, is an unwarranted and arbitrary departure from the rule of Red Lake, Pembina and White Earth Bands v. United States, 164 Ct. Cl. 389 (1964). We disagree. In Red Lake the court reversed the Commission's undivided award in Docket 18-A, 6 Ind. Cl. Comm. 247 (1958), 9 Ind. Cl. Comm. 315, 457 (1961). The court held in Red Lake, that since the consideration under the treaty involved in that case was distributed two-thirds to the Red Lake Band of Chippewas, and one-third to the Pembina Band of Chippewas, this Commission's remedial award must "likewise be divided". The Hannahville plaintiffs argue from this, that title interests and proportionate shares in any award resulting from this proceeding, should be determined in proportion to the relative amount of consideration received by the initial treaty participants for the lands in this proceeding.

The Red Lake case may be readily distinguished from the case at bar. Red Lake was an Indian title case whereas this case is decided principally on recognized title, as was Kickapoo Tribe, supra. The initial treaty payment in Red Lake was divided between the Chippewa bands which participated in the treaty involved therein, on the basis of the known populations of those bands, as an indication of their respective use and occupancy of the ceded territory. The sums paid to the various tribes under the separate tribal treaties involved in this proceeding were not determined on such a population basis.

Furthermore, we have found that the sketchy and conflicting evidence of tribal populations in this proceeding is an unsatisfactory basis for determining recognized title to the areas in suit. The population figures herein are widely divergent estimates, frequently without reference to point of time or geographic area. For example, the divergent estimates in this proceeding, that the Potawatomi Tribe numbered 3,000 or 7,000 individuals, are of little help in determining how many, if any, Potawatomis used and occupied the lands in question at the times of the treaties involved herein, or to what extent they shared those lands with other tribes. We take judicial notice that the Potawatomi Tribe, from the time of the Treaty of Greeneville of 1795, through the times of the cession treaties involved in these proceedings, was distributed, often along with members of other tribes, across parts of Ohio, Indiana, Illinois,

Michigan and Wisconsin.<sup>1/</sup> Another factor contributing to the inutility of the population figures in this proceeding, is the fact that they are given in such nonreadily equatable units as individuals, warriors, families and cabins of Indians.

Nor does the evidence of use and occupancy in this proceeding form a satisfactory basis for determining the extent of the various tribes' recognized title in the areas of overlapping cessions. While the evidence of use and occupancy is somewhat sketchy and contradictory, it does indicate that the tribes which made overlapping cessions of areas to which they had recognized title, jointly used and occupied those areas without clearcut intertribal boundaries. Such circumstances justify our finding of equal, undivided, recognized title interests in the areas of such overlapping cessions, in the tribes which separately ceded them.<sup>2/</sup>

We have relied on evidence of use and occupancy principally:

a. to establish Indian title or lack of Indian title where a tribe has failed to establish recognized title, as in the case of the Peoria cession of Royce Area 96a in Illinois, and

b. to substantiate the area of recognized title when the recognition treaty and/or the cession treaty were indefinite as to the area included (e.g., the general recognition in the Miamis, Eel River, and Weas to the "country on the Wabash and its waters", under the Grouseland

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<sup>1/</sup> Citizen Band of Potawatomi Indians v. United States, Docket 71, et al., 27 Ind. Cl. Comm. 187 (1972).

<sup>2/</sup> See Kickapoo Tribe, supra.



Treaty of August 21, 1805 (7 Stat. 91); and the indefinite Wea cession under the Treaty of October 2, 1818 (7 Stat. 186), to "all the lands claimed and owned by said tribe within the limits of the states of Indiana, Ohio and Illinois").

Wherever we have been able to sustain the plaintiffs' title claims, it has been on the basis of recognized title rather than Indian title.

The lands involved in this proceeding are limited to Royce Areas 48, 96a, 98, 177, and to parts of Royce Areas 110, and 180, as shown on the Royce Maps of Illinois and Indiana, and on Map Appendices I and II, at pp. 79, 80, infra. On the latter maps, the recognized title interest of each tribe is shown by marginal notations and arrows. For convenience of discussion, the various tracts of land comprising the Royce areas involved in this proceeding also are designated by capital letters on Map Appendices I and II. With the exception of certain exclusions, discussed in more detail subsequently herein, the tracts thus designated, and the title interests of the plaintiffs therein, are described as follows.

Tract A is that part of Royce Area 48 which is not overlapped by Royce Area 110.

Tract A was ceded by the Kaskaskia Tribe (including and representing the remains of the Mitchigamia, Cahokia, and Tamoroi tribes) under the Treaty of August 13, 1803 (7 Stat. 78). Under the Treaty of September 25, 1818 (7 Stat. 181) the Peoria confirmed the Kaskaskia cession, and in effect quitclaimed any interest of their own, in Tract A. No other tribe ceded this territory.

For these reasons, by Finding 7(a), we have determined that the Kaskaskia had exclusive, recognized title to Tract A.

Tract A' is that part of Royce Area 48 which is overlapped by Royce Area 110.

Tract A' was ceded by the Kaskaskia (including and representing the remains of the Mitchigamia, Cahokia and Tamaroi tribes) under the Treaty of August 13, 1803, and by the Kickapoo under the Treaty of July 30, 1819 (7 Stat. 200). Under the Treaty of September 25, 1818 (7 Stat. 181) the Peoria confirmed the Kaskaskia cession, and in effect quitclaimed any interest of their own in Tract A'. No other tribe ceded this area.

For these reasons, by Findings 7(b) and 20(b), we have respectively found that the Kaskaskia and the Kickapoo each had a recognized, undivided, one-half interest in Tract A'.

Tract B is that part of Royce Area 96a which is overlapped only by Royce Area 110.

Tract B was ceded by the Kickapoo under the Treaty of July 30, 1819 (7 Stat. 200). Although the Peoria also ceded Tract B, under the Treaty of September 25, 1818 (7 Stat. 181), they had neither recognized nor Indian title to the area. No other tribe ceded this area.

Accordingly, by Finding 20(a), we have determined that the Kickapoo had exclusive, recognized title to Tract B.

Tract C is that part of Royce Area 110 which is not overlapped by any other Royce Area.

Tract C was ceded by the Kickapoo under the Treaty of July 30, 1819 (7 Stat. 200), and under the Treaty of August 30, 1819 (7 Stat. 202). No other tribe ceded this area.

Accordingly, by Finding 20(a), we have determined that the Kickapoo had exclusive recognized title to Tract C.

Tract D is that part of Royce Area 96a which is overlapped by Royce Areas 110 and 177.

Tract D was ceded by the Kickapoo under the Treaty of July 30, 1819 (7 Stat. 200), and by the Potawatomi under the Treaty of October 20, 1832 (7 Stat. 378). Although the Peoria ceded Tract D under the Treaty of September 25, 1818 (7 Stat. 181), they had neither recognized nor Indian title to the area. No other tribe ceded the area.

Accordingly, by Findings 20(b) and 32(b), we have respectively determined that the Kickapoo and Potawatomi each had a recognized undivided one-half interest in Tract D.

Tract E is that part of Royce Area 177 which is overlapped only by Royce Area 110.

Tract E was ceded by the Kickapoo under the Treaty of July 30, 1819 (7 Stat. 200), and by the Potawatomi under the Treaty of October 20, 1832 (7 Stat. 378). No other tribe ceded Tract E.

Accordingly, by Findings 20(b) and 32(b), we have determined that the Kickapoo and Potawatomi each had a recognized, undivided, one-half interest in Tract E.

Tract F is that part of Royce Area 177 which is not overlapped by any other Royce Area.

Tract F was ceded by the Potawatomi under the Treaty of October 20, 1832 (7 Stat. 378). No other tribe ceded Tract F.

Accordingly, by Finding 32(a), we have determined that the Potawatomi had exclusive recognized title to Tract F.

Tract G is that part of Royce Area 98 lying south and west of Pine Creek, and which is overlapped by Royce Area 110, as indicated by the dashed line on the Royce Map of Indiana.

Tract G was ceded by the Potawatomi under the Potawatomi Treaty of October 2, 1818 (7 Stat. 185); by the Wea under the Wea Treaty of October 2, 1818 (7 Stat. 186); and by the Kickapoo under the

Treaty of July 30, 1819 (7 Stat. 200) and the Treaty of August 30, 1819 (7 Stat. 202). No other tribe ceded this area.

Accordingly, by our Findings 14(a), 20(c), and 32(a), we have respectively found that the Wea, Kickapoo, and Potawatomi each had a recognized, undivided, one-third interest in Tract G.

Tract H is that part of Royce Area 180 which is overlapped by Royce Area 110, as shown on the Royce Map of Indiana.

Tract H was ceded by the Wea under the Treaty of October 2, 1818 (7 Stat. 186); by the Kickapoo under the Treaty of July 30, 1819 (7 Stat. 200), and under the Treaty of August 30, 1819 (7 Stat. 202); and by the Potawatomi under the Treaty of October 26, 1832 (7 Stat. 394). No other tribe ceded this area.

Accordingly, by our Findings 14(c), 20(d), and 36, we have respectively found that the Wea, Kickapoo, and Potawatomi each had a recognized, undivided, one-third interest in Tract H.

Tract I is that part of Royce Area 98 lying east and north of Pine Creek, and which is not overlapped by any other Royce Area.

Tract I was ceded by the Potawatomi under the Potawatomi Treaty of October 2, 1818 (7 Stat. 185); and by the Wea under the Wea Treaty of October 2, 1818 (7 Stat. 186). No other tribe ceded this territory.

Accordingly, by our Findings 28(b) and 14(b) we have respectively found that the Potawatomi and the Wea each had a recognized, undivided, one-half interest in Tract I.

We shall now turn to a Docket by Docket discussion of the plaintiffs and of their claims in this proceeding.

DOCKET NO. 313PEORIA CLAIMS ON BEHALF OF THE PEORIA AND KASKASKIA

The Peoria Tribe of Indians of Oklahoma is duly incorporated and authorized under Sections 2 and 10 of the Indian Claims Commission Act (60 Stat. 1049), to present and maintain this action on behalf of its constituent tribes, the Peoria Nation and the Kaskaskia Nation. Under Section 10<sup>3/</sup> of the Indian Claims Commission Act the individual plaintiffs, however, have no standing to present or maintain this suit.

By its petition, the Peoria plaintiff in Docket No. 313 seeks to invoke clauses (3), (2), and (5) of Section 2 of the Indian Claims Commission Act (60 Stat. 1049). These clauses respectively relate, in part, to claims which would result if treaties were revised on the ground of fraud, duress, and unconscionable consideration under clause (3); claims for alleged breach of trust and for conversions of plaintiffs' property, under clause (2); and claims based upon fair and honorable dealings not recognized by any existing rule of law or equity under clause (5).

The Peoria plaintiff's claim in Docket No. 313 is based in part on alleged recognized title in the Kaskaskia and Peoria nations under the Treaty of Greeneville of August 3, 1795 (7 Stat. 49), and under the Treaty

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<sup>3/</sup> 25 U.S.C. §70K (1963), "Presentation of claim," provides that whenever the Secretary of the Interior recognizes a tribal organization as having authority to represent a tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians.

of September 25, 1818 (7 Stat. 181), to lands in the present State of Illinois. The lands are designated as Royce Areas 48 and 96a on the Royce Map of Indian Land Cessions.<sup>4/</sup> Plaintiff alleges that its ancestral tribes received unconscionable consideration when they ceded these lands to the United States under the Treaty of September 25, 1818, and the Treaty of August 13, 1803 (7 Stat. 78).

The Peoria plaintiff contends inter alia, that the defendant considered the Peoria Nation to be part of and represented by the Kaskaskia Nation at the 1795 Treaty of Greeneville. We have found no basis for this contention. In fact we have found that the Peoria tribe or nation did not participate in the 1795 Treaty of Greeneville, was not represented thereat by any other tribe or nation of Indians, and did not gain recognized title to any land in consequence thereof.

The Peoria and Kaskaskia tribes had been drastically reduced by warfare with surrounding tribes during the century preceding the Treaty of Greeneville of August 3, 1795. Both tribes had abandoned Royce Area 96a in Illinois to other tribes and retreated southward to Royce Area

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<sup>4/</sup> 18th Annual Report of Bureau of American Ethnology, Pt. 2, plat 17 (1896-97), [hereinafter cited as 18 B.A.E. Ann. Rep.]

48, in Illinois. The Kaskaskia made the transition as early as 1700, and the Peoria followed suit more than twenty years before the 1795 Greenville Treaty. Most of the few surviving Peorias continued their flight west of the Mississippi River, and by 1795 were living at St. Genevieve, Missouri, west of the lands in suit.

The defendant contends that the Kickapoo tribe or nation signed the 1795 Treaty of Greenville on behalf of the Kaskaskia tribe and that the latter, not being a signatory, gained no recognized title thereby. We disagree with both contentions.

The Kaskaskia tribe or nation was a participant on its own behalf at the 1795 Treaty of Greenville. Under that treaty the Kaskaskia tribe or nation gained a recognized title interest in Royce Area 48.

Evidence of the Kaskaskia participation in the 1795 Greenville Treaty may be summarized as follows. The Greenville Treaty journal records treaty council speeches of the Miami Chief, Little Turtle, on July 29 and 30, 1795, in which references were made to the Kaskaskia and others being pleased with the words of the United States. On August 7, 1795, General Wayne, on behalf of the United States, addressed the council, instructing the chiefs and warriors to behold the treaty to which the Kaskaskias and other tribes had set their hands and seals. On the same date a roll call of the different nations of Indians present at and parties to the treaty included ten Kickapoos and Kaskaskias. The engrossed caption of the treaty, as ratified by the Senate and proclaimed by President Washington, specifically includes the Kaskaskias. Article

IV of the treaty provides for an annual payment of \$500 to the Kaskaskias. The signature caption specifies "Kickapoos and Kaskaskias", followed by three signatures, the tribal identity of which is not otherwise disclosed. In contrast, the signatures immediately preceding these on the treaty, are captioned "Weas, for themselves and the Piankeshaws", evidencing that the Weas signed on behalf of the Piankeshaws as well as for themselves. The Commission and the Court of Claims have always taken the position that the Kaskaskia were participants in and signatories to the treaty. (Peoria Tribe of Indians v. United States,<sup>5/</sup> Miami Tribe v. United States,<sup>6/</sup> Sac and Fox Tribe of Indians v. United States,<sup>7/</sup> Miami Tribe v. United States).<sup>8/</sup>

Thus, notwithstanding the statement by the Kaskaskia chief, Jean Battees Ducoin, on August 19, 1796, that they had refused to go the 1795 Treaty of Greeneville because they were "too lasey",<sup>9/</sup> we are of the opinion that the Kaskaskia did participate in and sign the treaty on

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<sup>5/</sup> Docket Nos. 99 and 315, 16 Ind. Cl. Comm. 574, 575-576 (1966).

<sup>6/</sup> 146 Ct. Cl. 421, at 428; 175 F. Supp. 926 (1959), aff'g in part, rev'g in part, Docket Nos. 67 and 124, 2 Ind. Cl. Comm. 617 (1954).

<sup>7/</sup> Docket No. 83, 7 Ind. Cl. Comm. 675, 681-684 (1959), aff'd, 161 Ct. Cl. 189, 193-195, 315 F. 2d 896, cert. denied, 375 U.S. 921 (1963).

<sup>8/</sup> Docket No. 253, 5 Ind. Cl. Comm. 180, 186, 187, 213 (1957).

<sup>9/</sup> Defendant's Brief, p. 38, n. 16; Def. Ex. G-29; and 1967 Tr., 650. It is not clear whether Duccin, who spoke for a number of tribes, had reference to the Peoria, Kaskaskia and Cahokia, or to the Piankeshaw.



their own behalf. We further conclude that the Kaskaskia gained a recognized title interest thereby in the portion of the lands included under the treaty, which they then used and occupied. The same result would have been reached even if the Kickapoo had signed on the Kaskaskia's behalf.<sup>10/</sup>

The defendant further contends that Indian title to the lands claimed by the plaintiffs in Docket No. 313 was substantially extinguished prior to the 1795 Treaty of Greeneville

- a. by the French prior to American sovereignty,
- b. by the Northwest Ordinance of July 13, 1787, guaranteeing the possession and titles of the French, Canadian, and other settlers of villages as provided for in the Virginia cession of the Northwest Territory to the United States on March 1, 1784,
- c. by Congress' approval of the Committee Resolution of June 20, 1788, to set aside certain tracts in the vicinity of Kaskaskia, Peoria and Cahokia for the benefit of the inhabitants,
- d. by the Act of March 3, 1791, 1 Stat. 221, enabling Illinois settlers to obtain title to the area claimed by the Kaskaskia except for a small tract of about 350 acres near Kaskaskia, and
- e. by abandonment by the Kaskaskia prior to 1795.

Again we disagree, except in that the Kaskaskia had abandoned Royce Area 96a prior to 1795. In particular we disagree that title was extinguished by the Northwest Ordinance of July 13, 1787. The Treaty of Greeneville of August 3, 1795, was enacted in pursuance of the policy of Article III of the Northwest Ordinance which provides in part:

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<sup>10/</sup> Peoria Tribe, supra, n. 5 at 602.

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. [Note (a), 1 Stat. 51, 52.]

Even if Indian title were partially extinguished by any of the above events, the Government would not have been precluded thereby from granting <sup>11/</sup> recognized title thereafter to such lands.

Most importantly, the Indian participants at the 1795 Treaty of Greeneville, were entitled to rely upon the express provisions of that treaty and cannot be held to have been bound by any exceptions or limitations not set forth therein. By Article III of the Greeneville Treaty the parties established a boundary line between the lands of the United States and the lands thereby recognized as Indian lands. By Article IV of the treaty the United States, with four exceptions, relinquished to the Indians its claims to lands on the Indians' side of the Greeneville boundary line. The first two exceptions involve Royce Areas 25 and 26 and are not germane to this proceeding.

The third and fourth such exceptions were described as:

3d The lands at all other places in possession of the French people and other white settlers among them, of which Indian title has been extinguished as mentioned in the 3rd article; and 4th. The post of fort Massac towards the mouth of the Ohio. [Emphasis added.]

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<sup>11/</sup> Miami Tribe, supra, n. 6, 146 Ct. Cl. at 445, 175 F. Supp. at 939-940.

The 3d exception, supra, appears to refer specifically to items (12) and (13) of the areas ceded by the participating tribes under Article III of the treaty. These items list the posts of Detroit and Michillimackinac and the lands thereabout to which Indian title had been extinguished by gifts or grants to the French or English governments. Neither area is included within the lands claimed in this proceeding.

However, the post at Fort Massac (Royce Area 27), listed as the 4th exception, supra, lies entirely within Royce Area 48, on its southern border, and hence is excepted from the area to which the Kaskaskia tribe had recognized title.<sup>12/</sup>

By the Treaty of August 13, 1803 (7 Stat. 78), the Kaskaskia Tribe, constituting the remains of and representing all the Illinois tribes previously known as the Kaskaskia, Michigamia, Cahokia and Tamaroi,<sup>13/</sup> ceded to the United States, all of its lands in the Illinois territory.

Article 1 of the Treaty of August 13, 1803, reads:

Whereas from a variety of unfortunate circumstances the several tribes of Illinois Indians are reduced to a very small number, the remains of which have been long consolidated and known by the name of the Kaskaskia tribe, and finding themselves unable to occupy the extensive tract of country which of right belongs to them and which was possessed by their ancestors for many generations, the chiefs and warriors

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<sup>12/</sup> James Strong v. United States, Docket 13-G, et al., 27 Ind. Cl. Comm. 59, 66-70 (1972). See Finding 7, infra. (Royce Area 27 is claimed by the Peoria and Kaskaskia in Docket No. 338.)

<sup>13/</sup> By 1797 the Michigamia, Cahokia and Tamaroi had ceased to exist as separate tribes and the majority of the remnants of these tribes had merged with the Kaskaskia. The territory which these three tribes had used and occupied for nearly 100 years prior to 1797 was limited to the southern portion of Royce Area 48, designated as tract A on Map Appendix I (and to a small area west of the Mississippi River which is not the subject of this suit).

of the said tribe being also desirous of procuring the means of improvement in the arts of civilized life, and a more certain and effectual support for their women and children, have, for the considerations hereinafter mentioned, relinquished and by these presents do relinquish and cede to the United States all the lands in the Illinois country, which the said tribe has heretofore possessed, or which they may rightfully claim, reserving to themselves however the tract of about three hundred and fifty acres near the town of Kaskaskia, which they have always held and which was secured to them by the act of Congress of the third day of March, one thousand seven hundred and ninety-one, and also the right of locating one other tract of twelve hundred and eighty acres within the bounds of that now ceded, which two tracts of land shall remain to them forever.

The boundaries of the cession, subsequently designated as Royce Area 48 in Illinois, were established by Article 5 of the 1803 treaty as follows:

And to the end that the United States may be enabled to fix with the other Indian tribes a boundary between their respective claims, the chiefs and head warriors of the said Kaskaskia tribe do hereby declare that their rightful claim is as follows, viz-- Beginning at the confluence of the Ohio and the Mississippi, thence up the Ohio to the mouth of the Saline creek, about twelve miles below the mouth of the Wabash, thence along the dividing ridge between the said creek and the Wabash until it comes to the general dividing ridge between the waters which fall into the Wabash, and those which fall into the Kaskaskia river; and thence along the said ridge until it reaches the waters which fall into the Illinois river, thence in a direct course to the mouth of the Illinois river, and thence down the Mississippi to the beginning.

Royce Area 48 is identified on Map Appendix I, at p. 79, infra, by the numeral 48 and by the symbols A and A'. Excluded from the cession is the tract of about 350 acres near the town of Kaskaskia, reserved to the Kaskaskia by Article 1 of the treaty. Similarly excluded is the otherwise overlapping portion of Item (15) previously ceded by the

Kaskaskia and other tribes under Article III of the Treaty of Greeneville of 1795, being "One piece twelve miles square at or near the mouth of the Illinois river, emptying into the Mississippi."<sup>14/</sup> Also excluded, is Royce Area 47, a small tract of land including the great salt spring on Saline Creek in Royce Area 48, previously ceded by the Kaskaskia and other tribes under the Treaty of Fort Wayne of June 7, 1803 (7 Stat. 74).

Although Article 1 of the Treaty of August 13, 1803, states that the Kaskaskia, the ceding tribe, was unable to occupy the territory ceded, we have found that the Kaskaskia, through that cession and by having participated in the 1795 Greeneville Treaty, had a recognized title interest in Royce Area 48.

By the second cession, made on September 25, 1818 (7 Stat. 181), the Peoria joined the "Kaskaskia, Mitchigamia, Cahokia and Tamarois tribes" in confirming the latter's cession of August 13, 1803, and in extending it to include lands "rightfully claimed" by the Peoria, viz., Royce Area 96a, which is further designated by the symbols B and D on Map Appendix I. Excluded therefrom by virtue of prior cession was "One piece six miles square at the old Peorias fort and village, near the south end of the Illinois lake on said Illinois river" ceded by the Kaskaskia and other tribes as Item (16) under Article III of the Treaty of Greeneville of 1795.<sup>15/</sup> Approximately half of this tract, which is located at the present city of Peoria, lies within Royce Area 96a.

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<sup>14/</sup> James Strong v. United States, supra, n. 12.

<sup>15/</sup> Id.

The Peoria plaintiff contends that the lands ceded as Item (16) under Article III of the 1795 Greeneville Treaty were Peoria lands, and that even though the Peoria were not participants in the Treaty of Greeneville, the proper conclusion to be drawn is that the United States intended the Peoria, as owners of the land, to be bound by that treaty and entitled to its benefits, presumably including recognition of title to all of Royce Area 96a.<sup>16/</sup> The argument is without merit for the reasons that not only were the Peoria not participants in the Treaty of Greeneville, but more than twenty years prior thereto, they had abandoned Royce Area 96a to other Indians, including the Kickapoo, who did participate in the Greeneville Treaty.

The Peoria plaintiffs also contend that the treaty of September 25, 1818, should be considered as an "acknowledgement", i.e., recognition of Peoria title. We do not agree. The Treaty of September 25, 1818, was not a treaty of recognition but merely a treaty of cession. The combined cession thereunder was made for the purpose of avoiding any boundary dispute between the parties. Under that treaty the Peoria confirmed the Kaskaskia's 1803 cession of Royce Area 48, and in effect quitclaimed any

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<sup>16/</sup> A similar argument is made by the Prairie Potawatomi plaintiffs in Docket Nos. 15-D and 15-P, and by the Citizen Potawatomi plaintiffs in Docket Nos. 306 and 311, for Royce Areas 98 and 177, on the premise that Items (15) and (16) were Potawatomi lands. Items (15) and (16) are also claimed by the Peoria and Kaskaskia, the Citizens Band of Potawatomis, the Kickapoo Tribe of Oklahoma and the Kickapoo Tribe of Kansas in Docket No. 338; by the Hannahville Potawatomis in Docket No. 29-C; and by the Prairie Band of Potawatomis in Docket No. 15-E. We held in James Strong v. United States, supra, n. 12, that the enclaves (including Items (15) and (16)) ceded jointly by various tribes, or excluded from the United States' relinquishment of title, at the Treaty of Greeneville of August 3, 1795, do not "overlap" subsequent Indian land cessions and must be excluded therefrom.

claim of the Peoria Tribe to Royce Area 48. The Peoria plaintiff's claim on behalf of the Peoria Nation, to Royce Area 48 fails by virtue of this confirmation and quitclaim. Its claim to Royce Area 96a fails by virtue of the fact that the Peoria never had recognized title thereto, and had abandoned Royce Area 96a to other tribes prior to 1775.

The question remains as to whether the Kaskaskia Tribe actually ceded any land under the 1818 treaty that it had not already ceded under the 1803 treaty, or whether under the 1818 treaty it merely relinquished or quitclaimed and confirmed to the Peoria any interest in the additional lands of Royce Area 96a. Kaskaskia use and occupancy during the century preceding the 1818 treaty, with few exceptions (not here germane), was restricted to Royce Area 48. We conclude that the territory to which the Kaskaskia gained recognized title at the 1795 Treaty of Greeneville and the follow-up treaty of August 13, 1803, was limited to Royce Area 48. By the 1818 treaty, the Kaskaskia did not cede any land that it had not already ceded under the 1803 treaty, but rather relinquished and confirmed to the Peoria any interest in Royce Area 96a. The 1818 treaty appears to be based on a tacit understanding by the parties that neither the Peoria nor the Kaskaskia currently used or occupied Royce Area 96a, but that decades previously the area had been the domain of the once numerous but then decimated Peoria and Kaskaskia tribes.

The corporate plaintiff's claim to Royce Area 96a, on behalf of the Kaskaskia Nation, fails accordingly.

A detailed description of the title or interest which the Kaskaskia tribe or nation held in the claimed lands is set forth in Finding 7.

DOCKET NO. 314-A

PEORIA CLAIMS ON BEHALF OF THE WEA

Our findings 9 through 15, in respect to Docket No. 314-A, are essentially self explanatory and warrant scant comment here.

The corporate plaintiff in Docket No. 314-A, the Peoria Tribe of Indians of Oklahoma, is the same corporate plaintiff as appears in Docket No. 313. In Docket No. 314-A, it seeks to invoke the same clauses of the Indian Claims Commission Act as it did in Docket No. 313.

Under Section 10 of the Indian Claims Commission Act, the individual plaintiff in Docket No. 314-A has no standing to present or maintain this <sup>17/</sup> suit.

The Peoria plaintiff in Docket No. 314-A, alleges that recognized title was conferred upon its constituent tribe, the Wea Nation, under the Treaty of Greeneville of August 3, 1795, and under the Treaty of Grouseland of August 21, 1805 (7 Stat. 91). The area involved is Royce Area 98 in Illinois and Indiana (designated as tracts G and I on Map Appendix I) and a small portion of Royce Area 180 in Indiana (tract H on Map Appendices I and II). The corporate plaintiff further alleges that the Wea Nation received unconscionable consideration for said lands

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<sup>17/</sup> See n. 2, supra.



when subsequently ceded to the defendant under the Treaty of October 2, 1818 (7 Stat. 186).

We have found that the Weas did participate in the Greeneville and Grouseland treaties. By the Treaty of Greeneville of August 3, 1795, the defendant, with certain exceptions, recognized as lands of the twelve participating tribes, a vast territory, including the lands in suit. However, the Greeneville Treaty did not establish intertribal boundaries within the area recognized as Indian lands. Under the Treaty of Grouseland of August 21, 1805 (7 Stat. 91), the Miamis, Eel River, and Weas were recognized as "joint owners of all the country on the Wabash and its waters, above the Vincennes tract [Royce Area 26] which has not been ceded to the United States." The phrase "the Wabash and its waters" means the Wabash watershed, the northern limit of which is indicated by a dashed line on Map Appendix II, at p. 80, infra. Royce Area 98 in Illinois and Indiana, and tract H of Royce Area 180 in Indiana, are within the Wabash watershed. They are thus encompassed within the area "recognized" in the Wea, et al., under the Grouseland Treaty.

The recognition of title under the Treaty of Grouseland was confirmatory of the earlier recognized title in the Wea under the Treaty of Greeneville of 1795.

By the Treaty of October 2, 1818 (7 Stat. 186), the Wea Tribe of Indians ceded to the United States "all the lands claimed and owned by said tribe within the limits of the states of Indiana, Ohio and Illinois."

This indefinite area, which was more specifically covered by cessions of other tribes, encompassed Royce Area 98 in Illinois and Indiana and that portion of the southwest corner of Royce Area 180 in Indiana, designated as tract H on Map Appendix II.

As outlined in Finding 13, infra, the record evidence of Wea use and occupancy is generally confirmatory of the Wea's recognized title interest in, and cession of, Royce Area 98 and tract H of Royce Area 180.

A detailed description of title or interest which the Wea nation or tribe held in the claimed lands is set forth in Finding 14.

DOCKET NO. 315  
KICKAPOO CLAIMS

The Kickapoo Tribe of Kansas, and the Kickapoo Tribe of Oklahoma, hereinafter referred to as the Kickapoo plaintiffs, are authorized under Sections 2 and 10 of the Indian Claims Commission Act, to present and maintain this action on behalf of the Kickapoo Nation. Under Section 10 of the Act, the remaining plaintiff in this docket is not authorized to present or maintain this suit.

The Kickapoo plaintiffs' claim in Docket No. 315 is based in pertinent part upon alleged Indian title, and upon alleged recognized title in the Kickapoo Nation under the Treaty of Greeneville of August 3, 1795, to lands in the present states of Illinois and Indiana, designated as Royce Area 110. They also allege unconscionable consideration when said lands were ceded by their ancestors to the defendant under the Treaties of July 30, 1819 (7 Stat. 200), and August 30, 1819 (7 Stat. 202).

The Kickapoo plaintiffs, like the Peoria plaintiff in Docket Nos. 313 and 314-A, alternatively seek to invoke clauses (3), (2), and (5) of Section 2 of the Indian Claims Commission Act.

The defendant contends that the Kickapoo Nation was composed of two separate and distinct political entities, the Prairie Kickapoo and the Vermillion Kickapoo, and that only the latter participated in the 1795 Treaty of Greeneville and in the cession Treaty of August 30, 1819 (7 Stat. 202), whereas only the former participated in the cession Treaty of July 30, 1819 (7 Stat. 200). The defendant further contends that neither the Prairie Kickapoo nor the Vermillion Kickapoo had Indian title to any portion of Royce Area 110, and that since the Prairie Kickapoo did not participate in the Treaty of Greeneville, they did not have recognized title to the portion of Royce Area 110 which they ceded under the Treaty of July 30, 1819.

The Commission has found in this case (Finding 18) and in Docket Nos. 317 and 314-C, <sup>18/</sup> that in its treaties with the Kickapoo Indians, the defendant dealt with the Vermillion and Prairie Kickapoo as a consolidated Kickapoo tribe. We shall briefly review the aspects of the pertinent treaties which support this determination.

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<sup>18/</sup> Kickapoo Tribe v. United States, Dockets 317, et al., 10 Ind. Cl. Comm. 271, Finding 2 (1962), aff'd, 174 Ct. Cl. 550 (1966).

The engrossed caption of the Treaty of Greeneville of August 3, 1795, lists the "Kickapoos" as one of the twelve tribes participating in that treaty. Article IV of the treaty provides for five hundred dollars payment to the "Kickapoo" tribe, and the signature caption of the treaty reads "Kickapoos and Kaskaskias", followed by three signatures including that of "Keeawhah", a Kickapoo chief. The caption of the treaty minutes or journal also lists the Kickapoo as a participating tribe. The minutes show that on July 29, 1795, The Little Turtle, a Miami chief, addressed the Council expressing the pleasure of the Kickapoos and other tribes over a speech of J. Williams, Agent for the Wyandots. On July 30, 1795, the Kickapoo Chief, "Kee-a-hah" (obviously the same chief who signed the treaty as "Keeawhah", supra) stated:

"I am sent by my nation to hear what the assembled nations should say at this treaty, together with the words of our elder brother. I shall now speak a few words through the Little Turtle." [Emphasis added.]

The Little Turtle then expressed the Kickapoos' and Kaskaskias' happiness in perceiving the United States' humanity toward them. On the same date General Wayne polled the tribes on whether they approved the articles of the treaty and were prepared to sign them. He specifically, queried, "And you, Kickapoos, do you agree"? and received a unanimous answer, "Yes". On August 7, 1795, General Wayne addressed the council instructing them to behold the instruments of writing to which the "Kickapoos" and other tribes had set their hands and seals. On the same date a "[R]eturn of the numbers of the different nations of Indians present at, and parties to, the treaty of Greeneville," listed ten "Kickapoos and Kaskaskias."

From this it appears that the defendant dealt with the Kickapoo participants at the 1795 Treaty of Greeneville as representatives of the Kickapoo Tribe, without distinction as to whether they were of the Prairie or Vermillion bands of Kickapoo.

We conclude that the Kickapoo Tribe gained a recognized title interest under the 1795 Treaty of Greeneville to Royce Area 110 as established by the subsequent treaties of cession.

Recognition of the Kickapoo interest in the portion of Royce Area 110 which they occupied on the Vermillion River was confirmed by the Treaty of Grouseland on August 21, 1805.<sup>19/</sup> The latter treaty was executed between the United States and the "Delawares, Pottawatmies, Miames, Eel River, and Weas." Article IV thereof, which provides that nothing therein, "shall in any manner weaken or destroy any claim which the Kickapoos . . . may have to the country they now occupy on the Vermillion river", has been construed by the Court of Claims as confirming recognized title in the "Kickapoo" to said territory.<sup>20/</sup>

By the Treaty of Vincennes of December 9, 1809 (7 Stat. 117), captioned "A treaty between the United States of America and the Kickapoo tribe of Indians," the sachems and war chiefs of the Kickapoo Tribe, on the part of said tribe, ceded Royce Areas 73 and 74 to the defendant. Although only Vermillion Kickapoo signed the treaty, by its terms, it is, nevertheless, a treaty with the Kickapoo Tribe.

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<sup>19/</sup> Kickapoo Tribe, n. 18, supra, Finding 11, at 277 as modified by Commission Order of March 10, 1964.

<sup>20/</sup> Id.

Article 2 of the Treaty of June 4, 1816 (7 Stat. 145), between the defendant and "the tribes of Indians called the Weas and Kickapoos", provided that said tribes acknowledged the validity of and declared their determination to adhere to the Treaty of Greeneville of 1795, and all subsequent treaties which they respectively had made with the United States. By Article 4, the "chiefs and warriors of the said tribe of the Kickapoos" acknowledged former cessions including that of the Treaty of December 9, 1809, supra. Under the signature caption "Kickapoos", appear the names of a number of Vermillion Kickapoos, and that of Keetahtey, or Little Otter, a Prairie Kickapoo. Keetahtey had been invited to the treaty assembly by the United States Treaty Commissioner because of his known friendship with the Vermillion Kickapoo. The defendant argues that Keetahtey signed only as a friend and not as a Prairie Kickapoo. We do not agree. The 1816 Treaty, through its signatories, links both the Vermillion and Prairie Kickapoos to the 1795 Treaty of Greeneville, and to the recognized title gained thereunder.

The Treaty of July 30, 1819 (7 Stat. 200), was negotiated between the defendant and the "principal Chiefs and Warriors of the Kickapoo Tribe of Indians." The Indian participants and signatories, including Little Otter or "Keetatta", were all Prairie Kickapoo. However, Article 1 refers to "their cession, made by the second article of their treaty at Vincennes, on the 9th December, 1809" [emphasis added], which, as we have shown, supra, was signed only by Vermillion Kickapoo. The defendant was dealing

with the Vermillion and Prairie bands as part of a consolidated Kickapoo tribe. This is further evidenced by still other references in Articles 1 and 4 of this treaty to prior cessions and treaties between "said Kickapoo tribe" and the United States. It is immaterial whether or not such treatment stemmed, as the defendant alleges, from the treaty Commissioners' lack of knowledge of the internal structure of the Kickapoo <sup>21/</sup>Tribe.

The Treaty of August 30, 1819 (7 Stat. 202), between the United States and "the Chiefs, Warriors, and Head Men, of the tribe of Kickapoos of the Vermillion", is the only treaty specifically naming the Vermillion Kickapoo. The fact that this cession substantially overlapped that of the July 30, 1819 treaty, and the two cessions are shown together as one area on the Royce Map of Indian Land Cessions, <sup>22/</sup> is consonant with a finding that the defendant dealt with the two bands as a unified tribe.

Having determined that the Kickapoo Tribe gained a recognized title interest under the Treaty of Greeneville of August 3, 1795, and under the subsequent "follow-up" treaties, we have found it unnecessary to determine whether the Kickapoos had Indian title to any portion of Royce Area 110. The extent of the Kickapoo interest in Royce Area 110 is summarized in Finding 20.

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<sup>21/</sup> Cf. Citizen Band of Potawatomi Indians v. United States, Docket No. 71, et al., 27 Ind. Cl. Comm. 187, 191, 192, 194, 195 (1972).

<sup>22/</sup> 18 B.A.E. Ann. Rep.. pt. 2, plat 18 (1899).

DOCKET NOS. 124-H AND 254  
MIAMI CLAIMS TO ROYCE AREAS 98 AND 180

The suit of the Miami plaintiffs in Docket No. 124-H was for the fair and reasonable value, with interest for the eastern three-fourths of Royce Area 98, and for an accounting from the defendant. They alleged recognized title under various treaties, and cession of said lands to the defendant under the Treaty of October 23, 1826 (7 Stat. 300).

Docket Nos. 254, 15-Q, 29-0, and 309, were included in this consolidation to determine the respective interests of the plaintiffs therein but only insofar as their claims overlap the lands claimed in Docket Nos. 314-A and 315. In pertinent part, the claim in Docket No. 254 was to the portion of Royce Area 180 designated as tract H on Map Appendices I and II.

We have found as a result of a stipulation<sup>23/</sup> by the Miami plaintiffs in Docket Nos. 124-H and 254, that the Miami had no compensable interest in Royce Area 98 nor in the portion of Royce Area 180 designated as tract H. By the accompanying order, the suits of the Miami plaintiffs herein, are dismissed.

DOCKET NOS. 15-O, 15-P, 15-Q, 29-B, 29-N  
29-O, 306, 309, and 311  
POTAWATOMI CLAIMS

Potawatomis' Capacity To Sue Or To Intervene.

The Prairie Band of the Pottawatomí Tribe of Indians (plaintiff in Docket Nos. 15-D, P, and Q); the Hannahville Indian Community, and the

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<sup>23/</sup> Tr. 127-133, Docket No. 315, et al. (1967); and Finding 12, infra.



Forest County Potawatomi Community (plaintiffs in Docket Nos. 29-B, N, and O); and the Citizen Band of Potawatomi Indians of Oklahoma (plaintiff in Docket No. 306, 309 and 311), are identifiable groups of American Indians. They are authorized under Sections 2 and 10 of the Indian Claims Commission Act, to present and maintain these actions in a representative capacity for and on behalf of the Potawatomi tribe or nation, as it existed at the times of the treaties involved in these dockets.<sup>24/</sup>

Under Section 10 of the Indian Claims Commission Act, the individual plaintiffs in Docket Nos. 15-D, 15-P, 15-Q, 306, 309, and 311 have no standing to present or maintain this suit. Frank Wandahsego, Sr., Elijah Petonquot, Ike George and Valentine Ritchie are not parties plaintiff in Docket Nos. 29-B, 29-N, or 29-O, their names having been added to the petitions therein without approval of the Commission when the petitions were reprinted as separate causes of action. On October 14, 1964, the Commission denied an October 17, 1963, motion of the plaintiffs in Docket Nos. 29-B, N, and O, to add the names of the above individuals and of Michael Williams, Albert N. Mackety, and the Potawatomi Indians of Indiana and Michigan, Inc., as parties plaintiff. The efforts by plaintiffs to treat the latter three names, in the brief in Docket No. 29-B, as though they were joined as parties plaintiff, are without legal effect.

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<sup>24/</sup> In Citizen Band of Potawatomi Indians v. United States, Docket No. 71, et al., 27 Ind. Cl. Comm. 187, 194, 323 (1972), we held in effect that during the treaty period from August 3, 1795, when the Treaty of Greenville was negotiated, through the Treaty of September 26, 27, 1833, the Potawatomi political structure was that of a single tribe or nation with an overall ownership interest in all Potawatomi lands. In that decision we also held, in effect, 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.

The Potawatomi Indians of Indiana and Michigan, Inc., is an identifiable group of American Indians residing within the territorial limits of the United States, with the right and legal capacity under the Indian Claims Commission Act, to intervene herein, in a representative capacity, for and on behalf of the Potawatomi tribe or nation.<sup>25/</sup> By the accompanying order, its petition of intervention of July 15, 1965, is granted herein as to Docket Nos. 15-D, 15-P, 15-O, 29-B, 29-N, 29-O, 306, 309, and 311.

#### Jurisdiction

The plaintiffs in Docket Nos. 15-D, 15-P, 15-Q, 29-B, 29-N, and 29-O, have not specified which clause of Section 2 of the Indian Claims Commission Act they seek to invoke. It appears from their petitions that the plaintiffs in Docket Nos. 15-D, 15-Q, 29-N, and 29-O, sought to invoke clauses (1), (3), and (5) of Section 2 of the Indian Claims Commission Act, covering claims in law or equity arising under the Constitution, laws, and treaties of the United States; claims which would result if treaties were revised on the ground of fraud, duress, unconscionable consideration, mistake, or any other ground cognizable by a court of equity; and claims based upon fair and honorable dealings not recognized by any existing rule of law or equity.

From its brief, it appears that the plaintiff in Docket No. 15-D has resolved its claims to one of unconscionable consideration under clause (3).

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<sup>25/</sup> Praire Band of the Potawatomi Tribe of Indians v. United States, Docket Nos. 15-C, et al., Finding 3, 28 Ind. Cl. Comm. 454, 470 (1972).

Similarly, it is apparent from the petition and brief of the plaintiffs in Docket No. 29-B, the Hannahville Indian Community, et al., that they also seek redress under clause (3).

It appears from its petition that the plaintiff in Docket No. 15-P is bringing its suit under clauses (3) and (5) of Section 2 of the Act.

The plaintiff in Docket Nos. 306, 309, and 311, specified in its petitions that it seeks recovery under clauses (1) through (3), and (5) of Section (2) of the Act, covering in addition, other claims in law or equity.

Recognized Title In The Potawatomi Tribe.

In Citizen Band, supra,<sup>26/</sup> the majority of this Commission held that the Potawatomi tribe or nation, as a political entity participated in the Treaty of Greenville on August 3, 1795,<sup>27/</sup> as well as in the subsequent "follow-up" cession treaties involved in the Potawatomi dockets herein.<sup>28/</sup> Through participation in those treaties, the Potawatomi tribe gained a recognized title interest in the lands claimed by the Potawatomi plaintiffs herein.

DOCKET NOS. 15-D, 29-B, AND 311  
POTAWATOMI CLAIMS TO ROYCE AREA 98

The claim of the Potawatomi plaintiffs in Docket Nos. 15-D, 29-B, and 311, is based upon recognized title under the Treaty of Greenville

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<sup>26/</sup> N. 25.

<sup>27/</sup> See Citizen Band Opinion at 27 Ind. Cl. Comm. 194-203, and Findings 20-25 at pp. 267-272.

<sup>28/</sup> See Citizen Band Findings 49 and 53-61 at 27 Ind. Cl. Comm. 289, and 292-297.

of August 3, 1795, to Royce Area 98 in Illinois and Indiana, and upon alleged unconscionable consideration when Royce Area 98 was ceded by their ancestors under the Treaty of October 2, 1818 (7 Stat. 185). The extent of the Potawatomi interest in Royce Area 98, which interest was ceded under the Treaty of October 2, 1818, is summarized in Finding 28, infra.

DOCKET NOS. 15-P, 29-N, AND 306  
POTAWATOMI CLAIMS TO ROYCE AREA 177


The claim of the Potawatomi plaintiffs in Docket Nos. 15-P, 29-N, and 306, is based upon recognized title arising from the Treaty of Greenville of August 3, 1795, to Royce Area 177 in Illinois, and upon alleged unconscionable consideration when Royce Area 177 was ceded by their ancestors under the Treaty of October 20, 1832 (7 Stat. 378). The extent of the Potawatomi interest in Royce Area 177, which interest was ceded under the Treaty of October 20, 1832, is summarized in Finding 32, infra.

DOCKET NOS. 15-Q, 29-O, AND 309  
POTAWATOMI CLAIMS TO PART OF ROYCE AREA 180

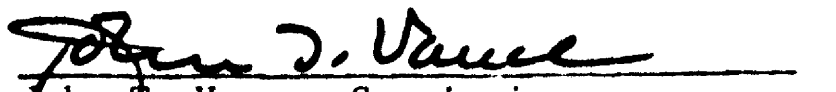
The Potawatomi plaintiffs in Docket Nos. 15-Q, 29-O, and 309 claim an interest in the portion of Royce Area 180 in Indiana, designated as tract H on Map Appendices I and II, at pp. 79, 80, infra. Their claims are based upon recognized title arising from the Treaty of Greenville of August 3, 1795, and upon alleged unconscionable consideration when their ancestors ceded Royce Area 180 under the Treaty of October 26, 1832 (7 Stat. 394). The extent of the Potawatomi interest in the portion of


Royce Area 180 designated as tract H, is summarized in Finding 36, infra.

These cases will now proceed to a determination of acreages, fair market values, <sup>29/</sup> the consideration paid to the several plaintiffs for their interests in the respective lands, and all other matters bearing on the defendant's liability. <sup>30/</sup>

  
Margaret H. Pierce, Commissioner

Concurring:

  
John T. Vance, Commissioner

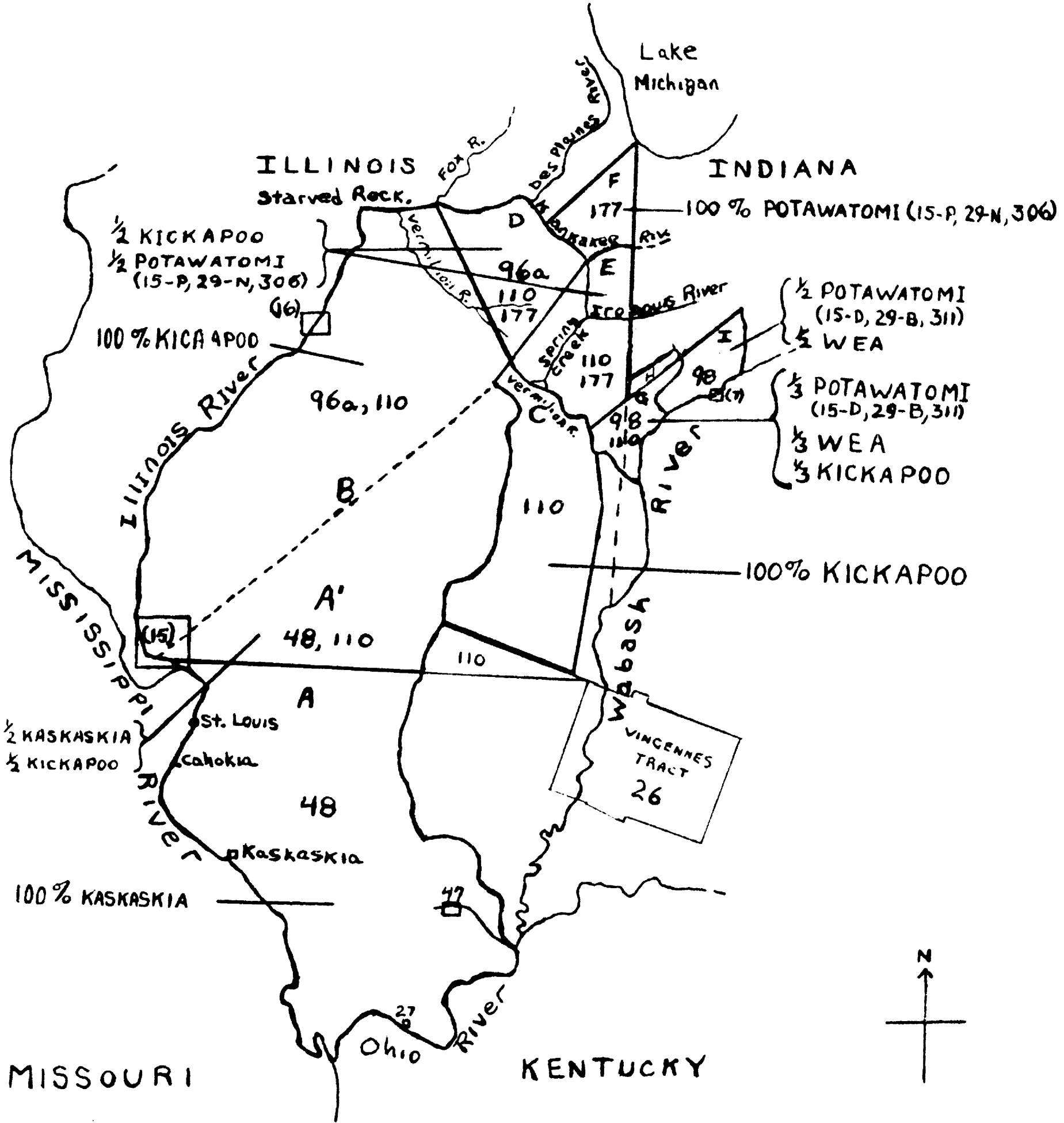
  
Richard W. Yarborough, Commissioner

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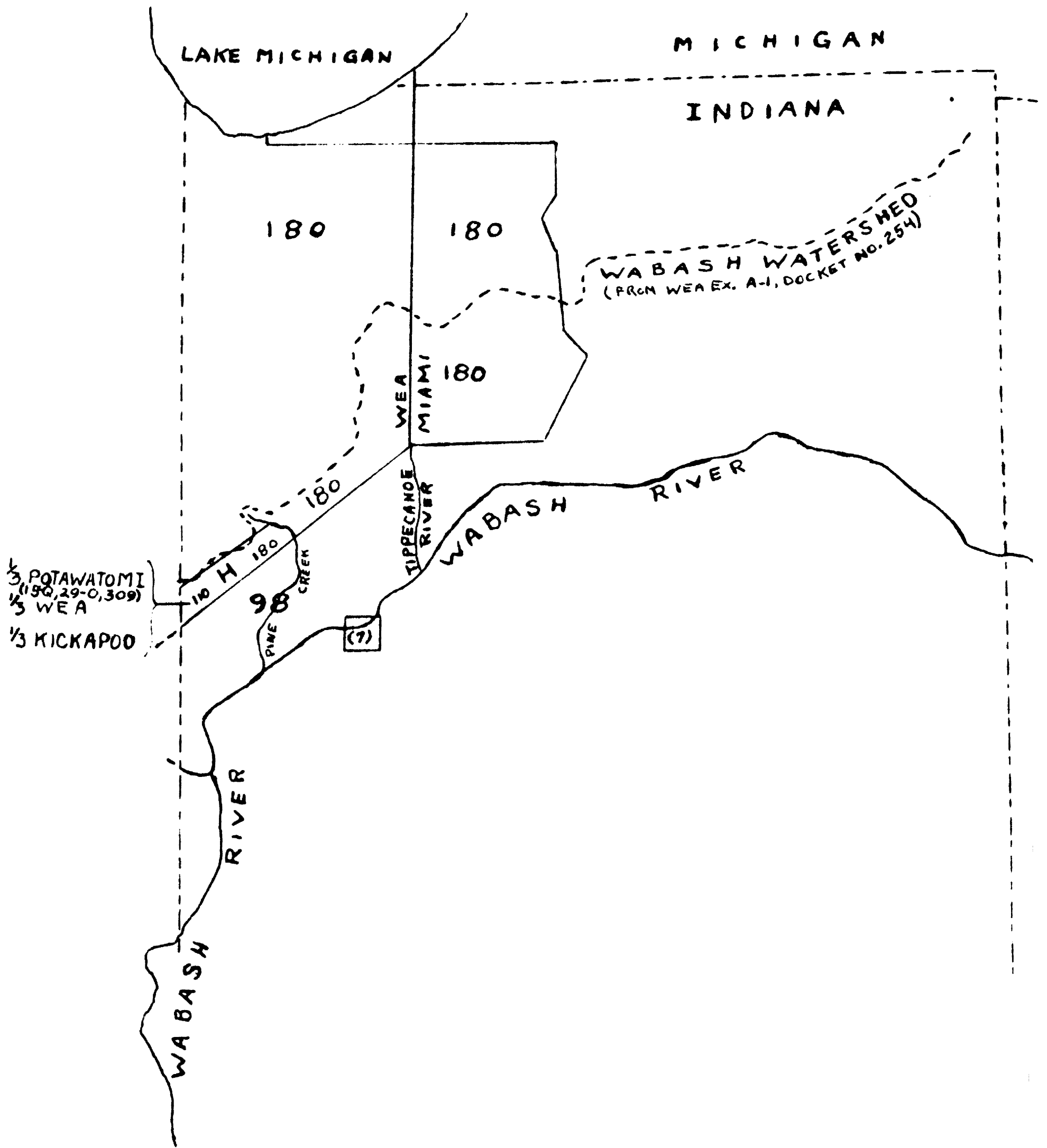
<sup>29/</sup> We are not persuaded by the defendant's argument in this case that, because the United States over the years had taken multiple cessions of the same lands from different tribes, the Commission should value all lands awarded herein as of the earliest cession date. We have already determined that the United States had granted or "recognized" multiple tribal interests in these same lands and it is only proper that each claimant should be permitted to value its respective interest as of the date it was ceded to the United States.

<sup>30/</sup> In each of these consolidated cases the plaintiffs have also alleged fraud, duress, and in some cases, bribery. Inasmuch as the plaintiffs have not submitted evidence in support of these allegations and have proposed no findings of fact thereon, we have entered no findings on these issues.

# MAP APPENDIX I



# MAP APPENDIX II



## APPENDIX III

Table showing by Docket No., the cession treaties, Royce Areas ceded, and Royce areas overlapped in Docket No. 15-D Consolidated.

<u>DOCKETS</u>	<u>TREATIES</u>	<u>ROYCE AREAS CEDED</u>	<u>ROYCE AREAS OVERLAPPED</u>
313	8-13-1803 9-25-1818	48 48, 96a	110 110, 177
15-D, 29-B, 311	10-2-1818 (7 Stat. 185)	98	110
314-A	10-2-1818 (7 Stat. 186)	indefinite	98, 110, 180
315	7-30-1819 8-30-1819	110	48, 96a, 98 177, 180
124-H, 254	10-23-1826	indefinite	98, 110, 180
15-P, 29-N, 306	10-20-1832	177	96a, 110
15-Q, 29-O, 309	10-26-1832	180	110



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 Greeneville of August 3, 1795 (7 Stat. 49), and continuing through the times of the Treaty of October 26, 1832 (7 Stat. 394), 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 <sup>1/</sup> to that decision I set forth in detail the reasons why the Commission should have found that from the time of the Treaty of Greeneville of August 3, 1795, through the Treaty of September 26 and 27, 1833, the Potawatomi Tribe was not a single political entity but rather consisted of a number

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<sup>1/</sup> 27 Ind. Cl. Comm. 328-472.

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 <sup>2/</sup> in Citizen Band, supra, with particular emphasis on the following pages which relate to the 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.
October 2, 1818 (7 Stat. 185):	421, 459-460.
October 20, 1832 (7 Stat. 378):	425-429, 432-441, 458-460.
October 26, 1832 (7 Stat. 394):	330, n. 2; 426, 427, 429, 430; 432-441; 458-460.

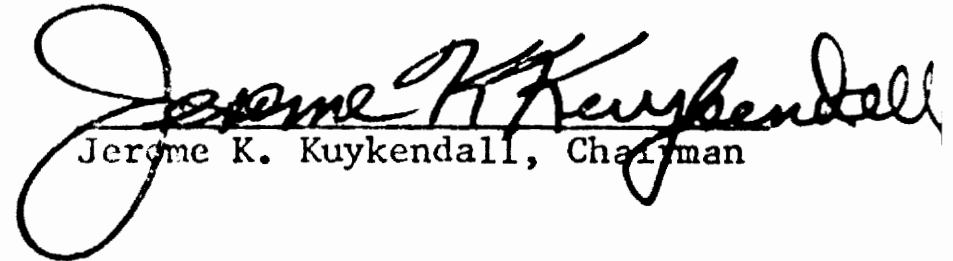
In sum, the above cited portions of my dissent in Citizen Band demonstrate that each of five major bands of Potawatomis gained recognized title to its own lands under the Greeneville Treaty of August 3, 1795; that all five major bands participated in the Treaty of October 2, 1818; that the United Nations Band (including its constituent Prairie and Kankakee Band) was the principal Indian party in interest at the Treaty of October 20, 1832; and that the Wabash Band was the principal Indian party in interest at the Treaty of October 26, 1832.

It follows that as a prerequisite to any recovery, the Potawatomi plaintiffs and intervenor must establish descent from the Potawatomi bands which participated in the several treaties, and that any recovery must be for and on behalf of those bands only.

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2/ Id.

Furthermore, although I agree that the Kickapoos, as a single entity are entitled to recover any deficiency there may be in the consideration paid for the cessions made in the Treaties of July 30 and August 30, 1839, I do not agree with all that is said to support this conclusion.

  
Jerome K. Kuykendall, Chairman

I concur in part and dissent in part.

Except as to the matter of political entity, I fully concur with the majority.

For the purpose of consistency and to adhere to the viewpoint expressed when I joined Chairman Kuykendall in his dissent to the single political entity theory in the case titled Citizen Band v. United States, Dockets 71, et al., 27 Ind. Cl. Comm. 187 (1972), I hereby reaffirm my position as stated in that dissent.

  
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Brantley Blue, Commissioner