

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: June 13, 1973

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Parties. Each of the tribal plaintiffs and intervenors 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 Dockets 18-J, the Red Lake Band, et al., are not supported by any evidence. Accordingly, we find these plaintiffs have no interest 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 areas excepted was Detroit and the surrounding territory, described in the second paragraph of Article III of the 1795 Greeneville Treaty as:

(12.) The post of Detroit and all the land to the north, the west and the south of it, of which the Indian title has been extinguished by gifts or grants to the French or English governments: and so much more land to be annexed to the district of Detroit as shall be comprehended between the river Rosine on the south, lake St. Clair on the north, and a line, the general course whereof shall be six miles distant from the west end of lake Erie, and Detroit river. [7 Stat. at 50.]

Article V of the 1795 Greenville Treaty defined the meaning of the United States' relinquishment of the lands north and west of the Greenville 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 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 case, the signers of the 1795 Greenville Treaty included representatives of the Wyandot and Potawatomi Tribes, representatives of those bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, and representatives of those bands of Chippewa Indians known as the Chippewas of the Saginaw.

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 upon 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 Greeneville Treaty Line. While the 1795 Treaty of Greeneville did not fix boundaries between the tribes, the United States intended and led the tribal representatives to believe that such boundaries would be established through future negotiations. These boundaries were subsequently defined in several "follow-up"^{1/} treaties with those Indians signatory to the 1795 Greeneville Treaty, including the Treaty of November 17, 1807, 7 Stat. 105.

3. Royce Area 66. Royce Area 66 encompasses the southeastern portion of the present state of Michigan, together with a smaller portion of northwestern Ohio. Royce Area 66 is bounded on the south by the Maumee River and on the east by Lakes Erie and Huron and the waters connecting these two lakes.^{2/} It is bounded on the north and northwest by Royce Area 111, Michigan, which was ceded to the United States by the Chippewas of the Saginaw in the Treaty of September 24, 1819, 7 Stat. 203. It is also bounded on the southwest by Royce Area 117, Michigan, ceded to the United States by the Ottawas, Chippewas and Potawatomis in the Treaty of August 29, 1821, 7 Stat. 218, and by Royce Area 88, Ohio and Michigan, which was ceded to the United States by the Ottawas, Chippewas and Potawatomis in the Treaty of September 29, 1817, 7 Stat. 160.

^{1/} See Sac and Fox Tribe v. United States, 161 Ct. Cl. 189, 194 (1963), cert. denied, 375 U. S. 921 (1963) (aff'g Docket 83, 7 Ind. Cl. Comm. 675 (1959)).

^{2/} The eastern portion of Royce Area 66 contains the 6 mile wide area, extending from Lake St. Clair to the River Raisin, which had been previously ceded to the United States at the 1795 Greeneville Treaty. Royce Areas 15, 18 and 19 on the Maumee River were also so ceded. These three areas are outside the boundaries of Royce Area 66.

4. The Treaty of November 17, 1807. The Treaty at Detroit, November 17, 1807, 7 Stat. 105, was concluded between the United States, represented by William Hull, Governor of the Michigan Territory, and "the sachems, chiefs, and warriors of the Ottoway, Chippeway, Wyandotte, and Pottawatomie nations of Indians." In Article I of the treaty, the representatives of these Indians ceded to the United States the territory comprising Royce Area 66. Article II provided consideration to the signatory tribes and bands 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, together with 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.) In Article IV, 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. In Article VI, several reservations within Royce Area 66 were set aside for the use of the Potawatomis, Chippewas, and Ottawas.

Representatives of the Wyandot and Potawatomi Tribes signed the 1807 Detroit Treaty. The treaty was also signed by representatives of those bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, and by representatives of those bands of Chippewa Indians known as the Chippewas of the

Saginaw. The Saginaw Chippewas included the Swan Creek and Black River Chippewa Bands.

The treaty was proclaimed on January 27, 1808, on which date it became effective. The 1807 Detroit Treaty confirmed the general recognition of title granted at the 1795 Greeneville Treaty to those tribes and groups signatory to the latter treaty which were then using and occupying Royce Area 66.

5. Reservations within Royce Area 66. In Article VI of the 1807 Treaty, a total of ten reservations were set aside for the separate use of the Potawatomis, Chippewas and Ottawas. None were set aside for the use of the Wyandots. Royce Areas 214, 215, 216^{3/} and 217 were located on the northeastern boundary of Royce Area 66 along Lake St. Clair and the St. Clair River. These were reserved for the use of the Saginaw Chippewas, and were subsequently ceded to the United States by the Swan Creek and Black River bands of Chippewas residing in Michigan, at the Treaty of May 9, 1836, 7 Stat. 503. Royce Area 137 was located on the River Raisin in the eastern portion of central Royce Area 66. This area was reserved for the use of the Potawatomis, and was ceded by the Potawatomis 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 reserved for the use of the Chippewa Indians then occupying these areas. At some time after 1807, some, if not all, of these Chippewas merged into Potawatomi

^{3/} Royce Area 216 was located on Lake St. Clair within the area ceded to the United States at the 1795 Greeneville Treaty.

bands. Royce Areas 135 and 136 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 located on the north bank of the Maumee River in southeastern Royce Area 66. These were Ottawa reservations, subsequently ceded by the Ottawas at the Treaties of August 30, 1831, 7 Stat. 359, and February 18, 1833, 7 Stat. 420.

6. Contemporaneous Interpretation of the 1807 Treaty. The day after the treaty was signed, Governor Hull forwarded the treaty to Secretary of War Dearborn with the following letter of explanation:

I have the honor to enclose a Treaty, which I have concluded with the Ottawa, Chippewa, Pottawatamie, and Wyandot Nations, in conformity to a Commission I have received from the President of the United States.

By the most accurate estimate, which can at present be made, the lands ceded by this Treaty will amount to five Millions of Acres, exclusive of the reservation and prior cessions - The lands are generally of a good quality, and well situated for improvement - The Treaty has been conducted on such principles, and the whole subject has been so fully explained, that I presume, no difficulties will hereafter arise - The Indians have not in any degree been pressed into the measure. [sic] but it has been the result of their own deliberate act - I did not send for the Chiefs of the Wyandots at Sanduskey - They live out of the tract and that Nation do not claim any interest in the Lands ceded - Being an old and respectable Nation, the other Nations have generously agreed that they shall receive a part of the consideration, and the Chiefs in this neighbourhood have signed the Treaty - [Def. Ex. C-255; Mich. Hist. Coll., Vol. XL, Documents Relating to Detroit and Vicinity, 1805-1813, at 219-20.]

7. Use and Occupancy of Royce Area 66. The French established the post of Detroit in 1701. In the next few years, Cadillac invited several different Indian groups to settle near Detroit. During the period 1710 to 1720, four tribes had settlements around the post of Detroit: Chippewas, Potawatomis, Ottawas and Wyandots.

The Chippewas, however, did not permanently settle near Detroit. During the 18th century, there are occasional references to Chippewas around Detroit but Chippewa activity during this time was centered in the northeastern portion of the southern peninsula of Michigan, particularly around Saginaw Bay and the waters emptying into the Bay. Northern Royce Area 66 was within the territory of Chippewa use and occupancy during the 18th century. In the eastern portion of Royce Area 66, the Chippewas used and occupied the area as far south as the Clinton River. Several historical references verify this use and occupancy. There are references to Chippewas around Lake St. Clair and the St. Clair River during the latter half of the 18th century and the early years of the 19th. Several Chippewa settlements are noted in this area. The Chippewas also granted several tracts of land to white settlers in this area during the late 18th century. Moravian Indians who settled for a short time on the Clinton River in the 1780's asked permission of the Chippewas to settle there. Finally, the 1807 Treaty set aside four reservations for the Chippewas near Lake St. Clair.

Farther to the west the Chippewas hunted extensively in the area north of present-day Pontiac, Michigan. Royce, on his Map of Michigan 1,

notes Indian villages in northwestern Royce Area 66 on rivers emptying into Saginaw Bay. Although not identifiable as to tribal affiliation, these villages are presumed to have been Chippewa locations due to their close proximity to the several Chippewa settlements within Royce Area 111 nearer Saginaw Bay. Furthermore, 12 years after the 1807 Detroit Treaty, the United States accepted a cession from the Saginaw Chippewas of Royce Area 111, which borders northwestern Royce Area 66.

The Potawatomis had continuously occupied a village site near Detroit from 1710 until approximately 1764, when they moved west into the interior region of Royce Area 66, where they remained throughout the remainder of the 18th and into the 19th century. The 1807 Treaty states that the Potawatomis were settled along the Huron River and the River Raisin. Under this treaty the Potawatomis were given a reservation on the Raisin River. In addition, the Potawatomis made several grants to white settlers on the River Rouge, River Ecorse, the Huron River and the River Raisin. The Potawatomis are also known to have hunted on the upper River Rouge, south of Pontiac, Michigan. The Commission has previously determined that the Potawatomis aboriginally owned the area of south-central Michigan west of the southern Michigan portion of Royce Area 66. See Citizen Band v. United States, Docket Nos. 146, et al., 6 Ind. Cl. Comm. 414, 440-41 (1958).

The Ottawas occupied a village at Detroit until 1763 when, after the failure of Pontiac's seige of Detroit, they moved south into the Maumee River region of Ohio. In the late 18th and early 19th centuries,

the Ottawas occupied several sites along the northern bank of the Maumee River as far west as Fort Defiance, which is at the southwestern corner of Royce Area 66. For several years during this period they had a village at the mouth of Tenmile Creek, which runs roughly along the present-day Michigan-Ohio border. There are also references to Ottawas in the extreme southeastern corner of Michigan, along Lake Erie in the late 18th century. There is no evidence of Ottawa use and occupancy of any other portion of Royce Area 66.

The Wyandots maintained a settlement near Detroit almost continuously from about 1705 until 1742, when they moved across the Detroit River into Ontario. At about the same time many Wyandots moved into Ohio around the Sandusky River, where they remained into the 19th century. The Wyandots in Ontario returned in 1777 and formed settlements at present Wyandotte and Gibraltar, Michigan, both of which are located within the area ceded to the United States at the 1795 Greenville Treaty. There is no evidence that Wyandots were using and occupying Royce Area 66 in the late 18th and early 19th centuries.

CONCLUSIONS OF LAW

1. The claims to Royce Area 66 in the petitions of The Red Lake Band, et al., in Docket 18-J, and Lawrence Zane, et al., ex rel., Wyandot Tribe, et al., in Docket 140, are not supported by any evidence. Therefore, the claims in Dockets 18-J and 140 should be dismissed.

2. As of January 27, 1808, the effective date of the 1807 Treaty of Detroit, the Ottawa bands of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented in these proceedings 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 Greeneville Treaty, thence south along a line six miles west of the western shore of Lake Erie as far south as the Michigan-Ohio boundary, and thence west along said border to the western boundary of Royce Area 66.

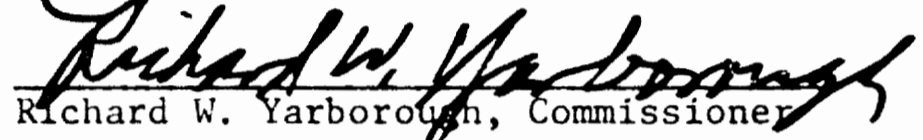
3. As of January 27, 1808, the Saginaw Chippewa Band of Indians, represented in these proceedings by the plaintiffs in Docket 59, held recognized title to that portion of Royce Area 66 north of a line beginning at the point on the south bank of the Clinton River where it intersects the line dividing Royce Area 66 from the area surrounding Detroit which was ceded at the 1795 Greeneville Treaty, thence up the south bank of the Clinton River to the present town of Sylvan Lake, Michigan, on the south branch of said river, and thence in a straight line southwest to the southeastern corner of Royce Area 111, ceded to the United States by the Saginaw Chippewas at the Treaty of September 24, 1819, 7 Stat. 203.

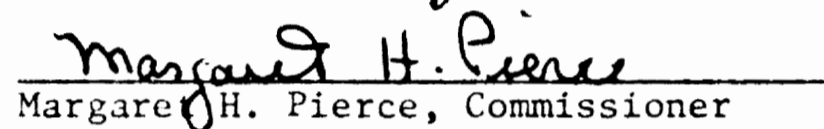
4. As of January 27, 1808, the Potawatomi Tribe, represented here by the plaintiff and intervenors in Docket 29-E, held recognized

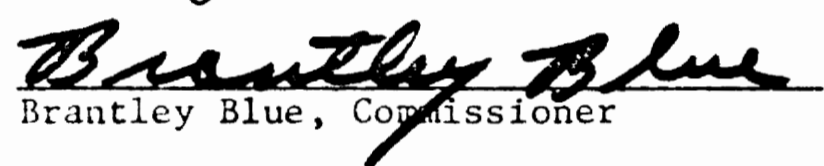
title to all of Royce Area 66 between the line described in Conclusion of Law 2, supra, and Conclusion of Law 3, supra, exclusive of the lands ceded to the United States under clause (12.) of the second paragraph of Article III of the 1795 Greeneville Treaty.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner