BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, ET AL., Plaintiffs,	)	Docket Nos. 128, 309, 310
THE POTAWATOMIE NATION OF INDIANS, THE PRAIRIE BAND, ET AL., Plaintiff,	)	Docket Nos. 15-N, 15-O, 15-Q, 15-R
THE HANNAHVILLE INDIAN COMMUNITY, ET AL., Plaintiffs,	)	Docket Nos. 29-L, 29-M, 29-O, 29-P
POTAWATOMI INDIANS OF INDIANA AND MICHIGAN, INCORPORATED, Intervenors,	)	Docket Nos. 128, 309, 310, 15-N, 15-O, Q, R, 29-L, M, O, P
IRA SYLVESTER GODFROY, ET AL., on relation of THE MIAMI TRIBE OF INDIANA, Plaintiffs,	)	Docket No. 124-B
THE MIAMI TRIBE OF OKLAHOMA, ET AL., Plaintiffs,	)	Docket No. 254
THE PEORIA TRIBE OF OKLAHOMA, Plaintiffs,	)	Docket No. 314-B
v.	)	
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: December 28, 1973

Appearances:

Robert Stone Johnson, Attorney
for the Plaintiffs in Docket Nos.
15-N, O, Q & R.

Robert C. Bell, Jr., Attorney for Plaintiffs in Docket Nos. 29-L, 29-M, O & P.

David L. Kiley, Attorney for Plaintiffs in Docket No. 124-B.

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

Louis L. Rochmes, Attorney for Plaintiffs in Docket Nos. 128, 309, 310.

Jack Joseph, Attorney for Plaintiffs in Docket No. 314-B.

Milton Edward Bander with whom was Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

The above-captioned dockets were consolidated by orders of the Commission of January 9, 1958, and January 5, 1959, for trial on the rights of the respective plaintiffs to compensation under Section 2, Clause (3) of the Indian Claims Commission Act (60 Stat. 1049) for the cessions of Royce Areas 132, 133, 146, 180, and 181 in northern Indiana, and 145 in Michigan.[1/] Each of the plaintiffs has capacity to bring suit

1/ The numbered Royce areas are those shown by Charles C. Royce on his maps in the 18th Annual Report of the Bureau of American Ethnology, Part 2, Indian Land Cessions (1896-1897).

A small part of Area 180 in the southwest is no longer in issue in this case. This portion is designated Tract H, and it is that part of Area 180 which is overlapped by Area 110, Royce map Illinois 2. The Commission has already determined that the Wea, Kickapoo, and Potawatomi each had a recognized, undivided, one-third interest in Tract H. 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 the Treaty of August 30, 1819 (7 Stat. 202), and by the Potawatomi under the Treaty of October 26, 1832 (7 Stat. 394). Pottawatomie Tribe of Indians v. United States, Docket 15-D, et al., 30 Ind. Cl. Comm. 42, 53 (1973). While it appears that the Wea claim to Tract H

under the Indian Claims Commission Act (60 Stat. 1049) as representative of one of the tribes which ceded the lands.[2/]

In an opinion of October 14, 1964, 14 Ind. Cl. Comm. 204 (1964), on motion of the defendant to dismiss petitions of the Hannahville, et al., plaintiffs in Dockets 29-D and 29-E, the Commission observed that the Potawatomi Indians of Indiana and Michigan, Inc., representing individual plaintiffs who had not filed original complaints on time might be entitled to intervene in certain proceedings.[3/] The basis of the suggestion was the assumption that the organization included individuals able to prove ancestral connections with the Potawatomi Indians who ceded the lands

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1/ (cont'd) was included in the petition in subdocket B of original Docket 314 (which claims are now before us), the matter was submitted by the parties and decided in the subdocket A portion of Docket 314 (which were the claims involved in the Pottawatomie Tribe of Indians, Docket 15-D decision). Accordingly, that portion of the Wea claim to Tract H of Area 180 is not before us in this proceeding.

2/ The Miami Tribe of Indiana, Docket 124-B, and the Miami Tribe of Oklahoma, Docket 254, are qualified to represent the Miami Tribe which ceded land under the Treaty of October 23, 1826 (7 Stat. 200). Miami Tribe v. United States, Docket 67, et al., 2 Ind. Cl. Comm. 617 (1954), aff'd in part and remanded, 146 Ct. Cls. 421 (1959).

The Peoria Tribe of Oklahoma, representative of the Wea Nation in Docket 314-B, may sue under the Indian Claims Commission Act. Peoria Tribe of Indians v. United States, Docket 65, et al., 4 Ind. Cl. Comm. 223 (1956), rev'd on other grounds, Peoria Tribe of Indians v. United States, 390 U.S. 468 (1968).

Each of the Potawatomi plaintiffs may sue under the Act, Citizen Band of Potawatomi Indians v. United States, Docket 146, et al., 6 Ind. Cl. Comm. 415 (1958).

3/ Sec. 10 of the Indian Claims Commission Act (60 Stat. 1049, 1052), provides that any claim within the Act may be presented by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all of its members, but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown.

which were the subject matter of pending dockets. On July 15, 1965, the Potawatomi Indians of Indiana and Michigan, Inc., a membership corporation under the laws of the State of Michigan, filed a petition to intervene in all of the above-listed dockets, alleging, among other matters, a right as against the defendant to share in any compensation due the Potawatomi Tribe as a whole for the cession of lands in Ohio, Indiana, Illinois, Michigan, or Wisconsin. The petition indicates that all members of the Potawatomi Indians of Michigan and Indiana are descendants of the Potawatomis who did not move west of the Mississippi after the Treaty of September 26, 1833 (7 Stat. 431), or who, after a sojourn west of the Mississippi or in Canada, returned to live near their former lands. The petition of the Potawatomis of Michigan and Indiana to intervene in several of the Docket No. 29 proceedings was allowed by order of the Commission dated March 28, 1972, in the Potawatomi entity proceeding (Citizen Band of Potawatomi Indians v. United States, Docket 71, et al., 27 Ind. Cl. Comm. 187, 326 (1972). It appears that the intervenors have an interest in the subject claims in common with the Potawatomi plaintiffs in this proceeding and that their petition to intervene should be allowed. See Blackfeet and Gros Ventre Tribes of Indians v. United States, 162 Ct. Cls. 136 (1963).

3/ (cont'd) Tribal lands are common property in which the individual members have no separate interest which can pass to their descendants who are no longer members of the group. Awards under the Indian Claims Commission Act are to be made, not to individual descendants of tribal members at the time of taking, but to the tribal entity or entities today. Minnesota Chippewa Tribe v. The United States, 161 Ct. Cl. 258, 315 F. 2d 906 (1963).

The claims of the Miami plaintiffs are based upon the cession, under the Treaty of October 23, 1826 (7 Stat. 300), by the Miami Tribe of Indians of its claim to land in Indiana north and west of the Wabash and Miami Rivers and north and west of the cession of Royce Area 99 by the Treaty of October 6, 1818 (7 Stat. 189).

The Peoria plaintiffs, representing the Wea Tribe, base their claim on the cession under the Treaty of October 2, 1818 (7 Stat. 186), of all of the lands which the Wea Tribe claimed and owned in the States of Indiana, Ohio, and Illinois.

The claims of the Potawatomi plaintiffs are based upon the Treaty of October 16, 1826 (7 Stat. 295), for the cession of Royce Areas 132 and 133 by the Potawatomi Tribe; the Treaty of September 20, 1828 (7 Stat. 317), under which the Potawatomi Tribe ceded Royce Areas 145 and 146; the Treaty of October 26, 1832 (7 Stat. 394), by which the Potawatomi Indians ceded Royce Area 180; and the Treaty of October 27, 1832 (7 Stat. 399), by which the Chiefs and Warriors of the Potawatomis of Indiana and Michigan Territory ceded Royce Area 181. The Commission has found that the land ceded by the Potawatomis under these treaties was considered by the United States as having been ceded by or for the Potawatomi Tribe. Citizen Band of Potawatomi Indians, Docket 71, et al., supra.

The lands here involved, a small area in southwestern Michigan and several larger tracts north and west of the Wabash River in northern Indiana, were within the area relinquished in 1795 by the United States to the Indian tribes which were parties to the Treaty of Greeneville

(7 Stat. 49). At the times of the treaties involved in this proceeding, the subject lands were virtually the only lands remaining in Indiana which had not been acquired from the Indians. White settlers moved into the area in increasing numbers before the lands were ceded. Instructions to treaty commissioners and other official correspondence relating to the negotiations to obtain these cessions emphasized the purpose of removing all Indians to lands west of the Mississippi. That the United States sometimes took cessions from more than one tribe for the subject lands reflects the moving together into smaller areas of a number of Indian tribes which, in earlier times, had been more widely dispersed through the Northwest Territory. Thus, the cession of southern Michigan lands by the Potawatomis led to an increase in the numbers of Potawatomis in northern Indiana. About the same time, the Miamis, including the Eel River and Wea Indians, were moving in increasing numbers toward northern Indiana after ceding their lands in southern and central Indiana. The Miami and Potawatomi Tribes had used some of the lands north of the Wabash within the Wabash watershed in common as allies since before Greeneville Treaty times, but the use of the area by these tribes intensified as lands east, north, and south were ceded.

Consequently, the United States took cessions from the several plaintiff tribes using and claiming the area, acknowledging the use in common of some of the land here under consideration. As explained more fully hereafter, the treaties by which the Miamis and Weas ceded their

lands contained general land descriptions, whereas the treaties with the Potawatomis, with one exception, contained metes and bounds descriptions. The description of Indiana lands to which the Weas, Miamis, and Eel River Indians had recognized title under a treaty antedating the subject treaties, considered along with related treaty provisions, makes possible the identification and delineation of the land described in general terms in the Miami and Wea treaties here involved and indicates the extent of the conflict in this proceeding.

The Potawatomi plaintiffs are the sole claimants for compensation for Royce Area 145 in southwestern Michigan and Area 133 in northwestern Indiana. Likewise, the Potawatomi plaintiffs are the sole claimants to the portions of the remaining Royce Areas, namely 132, 146, 180, and 181 which lie north and west of the northern boundary line of the Wabash watershed. The Wea plaintiffs in Docket 314-B claim only a portion of Royce Area 180. The plaintiffs other than the Weas assert a right to prosecute claims for compensation for Areas 132, 146, 180 (see note 1), and 181 to the extent that they are south of the northern limit of the Wabash watershed.[4/] Apparently the parties have agreed as to the

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4/ A part of Royce Area 132 is east and outside of the Wabash watershed but west of the Maumee River, which was also called the Miami of Lake Erie. We regard this part of Area 132 as having been ceded by the Miami Tribe under the Treaty of October 23, 1826, since it was within the area west of the Miami or Maumee River. As noted above, the Miamis ceded all their land in Indiana north and west of the Wabash and Miami rivers under this treaty. See note 2, Finding 8.)

Area 132 was, of course, defined by the metes and bounds description of the first tract ceded by the Potawatomis under the Treaty of October 16, 1826.

location of the northern boundary line of the Wabash watershed, that being the portion of the watershed boundary which is of concern in this proceeding. (Pls. Ex. A-1, Dkts. 254, 314-B' Def's. Ex. 9; Tr. pp. 12-18, Hearing in Dkt. 254 et al., May 6, 1963.) Lands involved in this proceeding which are south of the northern line of the watershed are a part of the "country on the Wabash and its waters, above the Vincennes tract" which the United States recognized in the Treaty of Grouseland (7 Stat. 91), as belonging jointly to the Miami, the Eel River, and the Wea Indians.[5/]

We noted above that all of the lands involved in this proceeding are within the territory relinquished to the Indians under the Treaty of Greeneville of August 3, 1795 (7 Stat. 49). Each of the plaintiff tribes was a participant in and signatory of the treaty. Each of the plaintiffs has recognized title since, under the cession treaties here involved, the United States identified and confirmed the boundaries of lands (Areas 132, 133, 146, 180, and 181 in Indiana and 145 in Michigan) which had been recognized by the Treaty of Greeneville as belonging to the plaintiff tribes who ceded the lands under these treaties. The Miami Tribe v. United States, 146 Ct. Cls. 421 (1959), aff'g in part, rev'g in part, Docket 67, et al., 5 Ind. Cl. Comm. 494 (1957); Citizen Band of Potawatomi Indians of Oklahoma, Docket 71, et al., supra. Consequently, proof of actual use and occupancy is unnecessary to establish title, and the question of the division of lands among the plaintiffs is the basic matter to be resolved in this proceeding.

5/ See Appendix A for map of area.

First, however, several positions taken by the defendant require consideration. As noted above, in Article IV of the Treaty of Grouseland (7 Stat. 91), the United States observed that the Miamis, Eel River, and Wea Indians, considering themselves one nation, had determined that the lands which they held in common would not be disposed of without the consent of the others. The United States agreed in Article IV to consider the three tribes joint owners of all the country on the Wabash and its waters above the Vincennes tract which had not been ceded to the United States as of the time of the treaty, and agreed not to purchase any part of that country without the consent of each of the said tribes.

It has already been mentioned that by Treaty of October 2, 1818 (7 Stat. 186), the Weas ceded to the United States all the lands which they claimed and owned within the states of Indiana, Ohio, and Illinois. Royce Area 114 (Indiana) was, however, reserved from the cession. We have previously also noted that by Treaty of October 23, 1826 (7 Stat. 300), between the United States and the Miami Tribe, the Miamis ceded all their lands north and west of the Wabash and Miami Rivers, and north and west of the cession made by the Treaty at St. Mary's of October 6, 1818 (7 Stat. 189), under which Royce Area 99, constituting almost all of central Indiana, was ceded.

In Miami Tribe, Docket 67, et al., 2 Ind. Cl. Comm. 626-28, 644, the Commission held that the common ownership of the Miamis and Eel Rivers and Weas, recognized by the Treaty of Grouseland, was modified as to Royce Area 99 by what amounted to an agreement of the

tribes that the Weas were to be considered as having exclusively occupied and controlled the western portion of the area. The territory which the Weas exclusively occupied, as agreed to by the parties in that proceeding is shown as west of the blue line on the map identified as plaintiffs' exhibit 109 in Docket 67 (Miami Tribe, Id. at 628-30).

On June 19, 1967, counsel in Dockets 254, 124-B, and 314-B stipulated to the line which separates the Wea claim in this proceeding from that of the Miamis with respect to lands north and west of the Wabash River. Those lands were ceded by the Miami Nation by Treaty of October 23, 1826 (7 Stat. 300), and by the Weas by Treaty of October 2, 1818 (7 Stat. 186). The other plaintiffs herein have not objected to the division. (See Findings 3 & 4) By stipulation, the area of Wea title was bounded by a continuation of the division line referred to above, and approved by the Commission in Docket 67 proceedings. The plaintiffs have agreed that the line separating the Miami from the Wea interest extends from the northern boundary of Area 99 on the Wabash River at the mouth of the Tippecanoe River, north along the Tippecanoe River to the northeastern corner of Royce Area 98, and then due north to Lake Michigan. However, only lands within the northern limit of the Wabash watershed in Royce Area 180 are involved in the Wea-Miami stipulation in this proceeding. The plaintiffs have further agreed that the right of the Wea Nation in and to the lands north and west of the Wabash River before October 1818 was confined to the lands lying north and west

of the Wabash located within the northern limit of the watershed and west of the above-described line. The right of the Miami Nation in the same area before October 23, 1826, was confined to lands lying east of that division line. The stipulation limits the interest of the Weas to land in the southwestern portion of Area 180. (See Map, Appendix A, tracts AB and H, Area 180.)

The defendant contends that the Weas were not recognized title holders of lands in northern Indiana because the indefinite cession under the Treaty of October 2, 1818 (7 Stat. 186), by which the Weas ceded all their lands within the states of Indiana, Ohio, and Illinois did not identify the ceded lands. But, as the plaintiffs in Docket 314-B point out, the interests in the area of the Weas as part of the Miami Tribe, were initially determined by the Treaty of Grouseland of August 21, 1805 (7 Stat. 91), which acknowledged in Article IV the interests of the Miamis including the Weas and the Eel River Indians in "all the country on the Wabash and its waters, above the Vincennes tract", whichhad not been ceded to the United States by this or any former treaty. Moreover, the interests of the Miamis and Weas, respectively, in the lands in northern Indiana here under consideration have been agreed to by stipulation of the parties, which stipulation has been recognized by the Commission in dividing interests in nearby lands in several proceedings involving Miami-Wea claims. (2 Ind. Cl. Comm. 617, 628-63 (1954); 5 Ind. Cl. Comm. 180, 196-197 (1957); 22 Ind. Cl. Comm. 97-98 (1969)).

The description in the Treaty of Grouseland of the lands which the Miami, Eel River, and Wea Indians held in common, considered together with the Indiana lands which these tribes ceded by treaties ratified after 1805, when compared with the area referred to above, which was stipulated to as belonging to the Weas, makes possible the identification of the Wea interest in the lands in northern Indiana which are here under consideration.

The Indiana land in subject dockets which the Weas ceded by the Treaty of October 2, 1818, is that portion of Area 180 within the northern limit of the Wabash watershed, as agreed to by the parties herein, which is west of the stipulated line dividing the area of Wea-Miami occupancy, and is identified as tracts AB, and H, within Area 180 on the map, Appendix A. (See Pls. Ex. A-1, Dkts. 254 and 314-B, and transcript of hearing in Docket 254 et al., May 6, 1963, 12-18.)

We note that the treaty negotiations in 1809 for the cession of Area 71 in Indiana, south of subject tracts, contain independent evidence in support of the stipulation dividing between the Miamis and the Weas the country on the Wabash and its waters above the Vincennes tract, which the United States recognized as belonging to them in the Treaty of Grouseland. The treaty proceedings for Areas 71 and 72 show that the Miamis refused to discuss with the United States the cession of land along the Wabash in western Indiana (part of Area 71) because the Weas were not present at the proceedings. The Miamis were thus indicating that the Weas had the predominant interest in that area.

(See Pls. Ex. 31, Dkt. 314-C, Journal of the Proceedings at the Indian Treaty at Fort Wayne and Vincennes, September 1 to October 27, 1809.) The United States met the Miamis' refusal by the provision in the Treaty of Fort Wayne of September 30, 1809 (7 Stat. 113, 114), that Wea consent to the cession of the first tract (Area 71) was necessary to complete transfer of the title to the land. Wea approval thereto was obtained in a Convention of October 26, 1809 (7 Stat. 116), under which the United States paid the Weas a separate consideration. In view of these considerations, we see no objection to the stipulation herein continuing the line dividing the Miami from the Wea interests which was adopted in Miami Tribe, Docket 67, et al., supra. The Commission's approval of a comparable agreement under similar circumstances was expressly approved by the Court of Claims in United States v. Kickapoo Tribe, 174 Ct. Cls. 550 (1966), aff'g Docket 317, 10 Ind. Cl. Comm. 271 (1962), as amended by order of March 1, 1964.

In the cited Kickapoo case, the two interested tribes agreed that there was no evidence of the division of ceded lands which the two held under recognized title at the time of cession. The Court approved the suggestion made on behalf of the tribes that each be considered entitled to an undivided one-half interest in the lands. The Commission has recently followed that decision in similar circumstances. (Pottawatomie Tribe of Indians, Docket 15-D, et al., supra.)

The defendant argues also that the claim of the Miami plaintiffs based upon the cession under the Treaty of October 23, 1826 (7 Stat. 300),

of all of its land in Indiana north and west of the Miami and Wabash Rivers and of Royce Area 99 ceded by the Treaty of October 6, 1818 (7 Stat. 189), must fail since the treaty does not contain an exact description of the lands ceded. We do not agree with the contention because, as with the Indiana land ceded by the Weas in 1818, the land ceded by the Miamis under the Treaty of October 23, 1826, can be identified. It is that part of the area described by the Treaty of Grouseland (7 Stat. 91), namely, the country on the Wabash and its waters above the Vincennes tract, which the United States recognized as belonging to the Miami, Eel River, and Wea Indians in 1805, and which was not ceded before October 23, 1826. The Miami land ceded by the Treaty of October 23, 1826, is identifiable, for purposes of this proceeding, by comparing the Royce areas here involved with the land not yet ceded on October 23, 1826, between the Wabash River and the northern limit of the Wabash watershed and east of a line extending north from the northeast corner of Royce Area 98 (lands west of that line within the Wabash watershed were ceded by the Weas in 1818). The lands claimed by the Miamis are Royce Area 132 and parts of Royce Areas 146, 180, and 181 (labeled Y-2, Y-3, and Y-4 on the Map, Appendix A), which are south of the northern boundary of the Wabash watershed as agreed on by the parties hereto, and east of the Wea-Miami line extending north from the northeast corner of Royce Area 98.

The defendant's argument that neither the Weas, the Miamis, nor the Potawatomis can claim recognized title to the lands in northern

Indiana within the northern limit of the Wabash watershed is also incorrect. Notwithstanding the defendant's suggestion to the contrary, there is no requirement that where more than one tribe uses an area, a division of interest must be made by treaty in order to claim the benefits of recognized title. (See Miami Tribe, Docket 67, et al., supra, and United States v. Kickapoo Tribe, Docket 317, supra.) All of the plaintiff tribes in this proceeding were parties in 1795 to the Treaty of Greeneville (7 Stat. 49). Thereafter, the Weas, the Miamis, and the Potawatomis each ceded lands in northern Indiana, which were either described in the cession treaties or were capable of being identified through the description of a larger tract of land acknowledged as belonging to these Indians, specifically the 1805 Treaty of Grouseland which antedated the cession treaties herein. Accordingly, by the Treaty of October 2, 1818, with the Weas; the Treaty of October 23, 1826, with the Miamis; and the Treaties of October 16, 1826, September 20, 1828, October 26, 1832, and October 27, 1832, with the Potawatomis, the United States confirmed the interests of these tribes in identifiable lands in northern Indiana and southern Michigan within the area recognized as belonging to the various tribes which were parties to the Treaty of Greeneville. Therefore, each of the plaintiff tribes had recognized title in the areas which it ceded under these treaties, the case being governed by the rule as to recognized title which we enunciated in Miami Tribe, supra, and which was affirmed by the Court of Claims, 146 Ct. Cl. 421.

Findings herein summarize and quote from reports of treaty proceedings and other executive correspondence referring to the cession of these lands indicating that the United States knew of the interests of the respective plaintiffs in these areas and specifically of the common interest of the Miamis and Potawatomis north of the Wabash. (See findings 7 and 8 herein; John Tipton Papers, Vol. I, p. 599, Pls. Ex. 75, Dkts. 128, 309, 310.) In the negotiations for the cessions under the treaties of October 16 and 23, 1826, Lewis Cass, one of the treaty commissioners, suggested to the Miamis that they settle any differences they might have with the Potawatomis over their claims to the land north of the Wabash, with the understanding that if they did not decide the matter the treaty commissioners would do so. (Pls. Ex. 57, p. 5, Dkts. 128, 309, 310) The subsequent report of the treaty commissioners to the Secretary of War indicates that the matter was concluded by adjusting the consideration paid to the Miamis and the Potawatomis according to the value of their respective lands.[6/] (Pls. Ex. 75, p. 599, Dkts. 128, 309, 310) (See Finding 8.)

Claims of the Potawatomis

The question whether a landowning entity existed which participated in the cession of Potawatomi lands under the treaties involved in Dockets 29-D, E, J, and K, remanded by the Court of Claims in Hannahville Indian Community v. United States, 180 Ct. Cl. 477 (1967), has been

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6/ A comparison of the amount of consideration which the Miamis received under the Treaty of October 23, 1826, with the amount which the Potawatomis received under the Treaty of October 16, 1826, must take into account the fact that the Miamis ceded a larger amount of land than did the Potawatomis.

resolved by the Commission in Citizen Band of Potawatomi Indians, Docket 71, et al., supra. The defendant asserts that the lands under consideration in this proceeding were ceded by autonomous bands of Potawatomis, an assertion which the Commission has rejected. Citizen Band of Potawatomi Indians, Docket 71, et al., supra. The findings and opinion in the entity proceeding need not be repeated here. The defendant's assertions provide no basis for modifying our conclusions on the entity question. However certain treaty provisions and related matters not fully discussed in the entity decision which concern the particular lands here under consideration will be mentioned briefly.

Treaties of 1832 Ceding Potawatomi Lands

The Treaties of Tippecanoe of October 20, 1832 (7 Stat. 378), ceding Royce Area 177 in Illinois (not involved in this proceeding); of October 26, 1832 (7 Stat. 394), ceding Royce Area 180 in Indiana; and of October 27, 1832 (7 Stat. 399), ceding Royce Area 181 in Indiana, were all made at the same place, during a continuous assemblage of the Indians over a 3-week period, by the same commissioners on the part of the United States. The commissioners were instructed to completely extinguish Indian title to lands in Indiana and to the lands of the Potawatomis in Illinois and the Territory of Michigan, and to arrange for the removal west of the Mississippi of the tribes occupying these lands. (Findings 14 and 15; Pls. Ex. 64, Dkts. 128, 309, 310; Pls. Ex. 130-A, Dkts. 29-L, et al.)

In a report about the treaties, the commissioners explained that negotiations with the Potawatomis indicated that local bands claimed an interest in the lands which seemingly could not be adjusted except by separate treaties. (Pls. Ex. 70, Dkts. 128, 309, 310.) However, the ceding clauses as well as the provisions governing consideration under the Treaty of October 26th indicate that the Potawatomi Tribe, or all Potawatomis, not merely local bands thereof, were the grantors ceding the land to the United States and the recipients of the consideration for the cession.

Chiefs, headmen, and warriors of the Potawatomi Indians agreed to cede their title and interest to Area 180, under the Treaty of October 26, 1832, for which the United States agreed to pay the Potawatomi Indians an annuity and other consideration including goods. These and similar provisions as well as executive correspondence relating to the October 1832 treaties with the Potawatomis indicate that the United States acquired the title of the entire Potawatomi Tribe and not merely that of the local bands. (See findings 14, 15.)

The Treaty of October 27 named the Chiefs and Warriors of the Potawatomis of the State of Indiana and Michigan Territory as the parties ceding their title and interest to lands in the states of Indiana, Illinois, and in the Territory of Michigan south of Grand River. In commenting on the treaty, the commissioners stated that it was made with the St. Joseph, Cold Water, Wabash, and Elkhart Potawatomis for "their right of soil" in the states of Indiana and Illinois and the

Territory of Michigan south of Grand River. In 1832, Michigan Territory included all of Michigan and all of Wisconsin. Consequently, virtually all Potawatomis who were using unceded Potawatomi lands were represented by the Potawatomi Chiefs and Warriors of the State of Indiana and Michigan Territory who ceded their title and interest in the lands.

The defendant asserts that the Treaty of October 27, 1832 (7 Stat. 399), ceding the Potawatomi title and interest to lands in Indiana, Illinois and the Territory of Michigan, will not support a claim to recognized title because the area ceded was not described in the treaty. Only Area 181 in north-central Indiana, as shown on Royce's map of Indiana, was actually ceded by the Treaty of October 27, 1832. An area identical with that covered by Royce's Area 181 is delineated on a map dated October 30, 1835, prepared by the General Land Office, showing the land included in the cession under the Treaty of October 27, 1832, along with lands included in the Potawatomi cessions of October 20 and 26, 1832. (Pls. Ex. M-6, Dkts. 128, 309, 310.) The 1835 map, almost contemporaneous with the cession in 1832, is positive, undisputed evidence of the identity of the area which the United States believed was ceded by the Potawatomis on October 27, 1832. Where, as here, an official map of the United States delineated the area ceded by the treaty three years after the conclusion of the treaty, the

defendant's objection that the area ceded was not described in the treaty is not a basis for defeating the claim.[7/]

As consideration for Area 181, the United States agreed to pay $15,000 annually for twelve years in addition to supplying $32,000 in goods after the treaty was signed and $10,000 in goods the following spring at Nottawasipa "to be paid to that band" and to pay their just debts amounting to $20,721. The provisions for the special benefit of the Indians at Nottawisipa in southern Michigan were an acknowledgment by the United States of a particular interest which the Potawatomi Indians in Michigan south of the Grand River claimed in Indiana lands ceded under the October 27th treaty (Area 181), though the ceded Indiana lands were separated from the Michigan reserves by a large tract which had been ceded some years earlier by the Potawatomi nation or tribe. This is one of the treaty provisions which reinforces the Commission's conclusion that Potawatomis who were not living on lands ceded in 1832 (in this instance, Potawatomis living in Michigan) were nevertheless recognized by the United States as having an ownership interest in Potawatomi lands in another state (here, Indiana). Similarly, the cession in this treaty by the Potawatomi chiefs and warriors of Indiana and Michigan Territory of their title and interest to lands

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7/ The Commission has held that the boundary lines of lands claimed were not required to be defined as accurately as a surveyor would like, but that the general boundary lines of the occupied territory must be shown. Muckleshoot Tribe of Indians v. United States, Docket 98, 3 Ind. Cl. Comm. 658, 677 (1955); Nooksack Tribe of Indians v. United States, Docket 46, 3 Ind. Cl. Comm. 479, 497 (1955).

in Illinois, in addition to their interest in Indiana and Michigan lands, indicates that the United States understood that these Indiana and Michigan chiefs might have an interest in lands in Illinois on which they were not living. Otherwise, there would have been no point in mentioning Illinois lands in the cession. See decision in the Potawatomi entity proceeding, Citizen Band of Potawatomi Indians, Docket 71, et al., supra, at 239-40, 292-97.)

In view of the fact that the United States construed these treaties as a single transaction, that officials who negotiated the treaties considered that all Potawatomis had agreed to the 1832 cessions, and that thereafter, the United States distributed the annuities under the treaties to all Potawatomis rather than to local groups only, our findings reinforce the Commission's conclusion in the entity proceeding that the treaties of October 26 and 27, 1832, ceded the interest of the Potawatomi Tribe to land in which all Potawatomis had an overall interest in addition to the special interest of local groups in Areas 180 and 181, Indiana.

Claims to Indiana Lands Within the Wabash Watershed.

We now turn to the conflicting claims of the plaintiffs to portions of Areas 146, 180, and 181 south of the northern boundary of the Wabash watershed. The maps of all parties indicate that parts of Areas 132, 146, 180, and 181 are south and within, and parts are north or east and outside, of that boundary. All parties apparently agree that the northern line of the Wabash watershed (shown on Exhibit A-1 of Dockets 254 and 314-B and modified slightly at the hearing in Docket 254, et al., on May 6, 1963,

Tr. pp. 12-17), is the northern boundary of the area, described in the Treaty of Grouseland as 'the country on the Wabash and its waters above the Vincennes tract', which the United States regarded as belonging jointly to the Miamis, the Eel River, and the Wea Indians. (See note 4, supra, regarding the portion of Area 132 east of the Wabash watershed area.)

All plaintiffs apparently agree as to the area of the Wea-Miami claims herein which resulted in the stipulation of June 19, 1967, referred to previously. (See Findings 3 and 4.)

Relative Interests of Conflicting Claimants

The plaintiffs, other than the Miami Tribe of Indiana and the Hannahville and Forest County Potawatomis, proposed that the interests of the Potawatomi plaintiffs and the Miami plaintiffs (or the Weas with respect to the portion of Royce Area 180 which by stipulation referred to above was regarded as being owned exclusively by the Weas) be acknowledged to be owners of equal undivided interests in the land south of the Wabash watershed line in Royce Areas 132, 146, 180, and 181.

The Miami of Indiana and the Hannahville plaintiffs object to the division proposed by the rest of the plaintiffs for the areas here involved south of the Wabash watershed line, and urge instead that any awards resulting from these proceedings should be divided between the claimants in the same proportion as the original treaty consideration was divided between the ceding parties.

Red Lake, Pembina and White Earth Bands v. The United States, 164 Ct. Cl. 389 (1964), was a case involving a treaty (13 Stat. 689) in which the only requirement regarding the distribution of consideration between two bands was a provision that two-thirds of the consideration be paid one band and one-third be paid the other. The Court held in that case that the same division must be followed in an award under the Indian Claims Commission Act (60 Stat. 1049) remedying the insufficiency of the original consideration.

The Commission has distinguished the Red Lake case from situations in which treaties or related material describe the interests of several tribes in property being ceded as being something different from that indicated by the award of consideration to the treaty participants. (Miami Tribe v. United States, Docket 253, et al., 22 Ind. Cl. Comm. 469, 474-477 (1970), followed in Pottawatomie Tribe of Indians, Docket 15-D, et al., supra. Where matters other than ownership entered into the granting of treaty consideration, the situation may be distinguishable from the Red Lake case, supra. Also the fact that the cessions were taken from the different tribes under separate treaties, rather than under the same treaty as in the Red Lake case, might provide a basis for distinguishing this situation from the Red Lake case.

After considering the matter carefully, we conclude that the Red Lake rule should be followed here only as to Area 132 where conflicting claims of the Potawatomi and the Miami were ceded under separate treaties which were completed within a week's time of each other in 1826. As the

Court of Claims pointed out in the Red Lake opinion, that proceeding was brought to remedy the insufficiency of the original consideration, and the difference in treaty consideration was the only language in the treaty and related documents regarding the distribution of consideration between the two bands having an interest in the award. The reasons for the rule in the Red Lake case and the circumstances of that case apply only to the cession of Area 132 in this proceeding.

In negotiating for the cession of northern Indiana lands, treaty commissioners for the United States recognized the intermingling of the Miamis and the Potawatomis in the area and their common use of much of the land north of the Wabash River. It was thus difficult to describe any boundary between them. The commissioners who negotiated the 1826 treaties consider that both the Potawatomis and the Miamis had a common and undefined interest in the country, which fact occasioned the negotiation of separate treaties with the two tribes for cessions of the land. As a consequence, under the Treaty of October 16, 1826, the Potawatomis ceded Royce Areas 132 and 133 north of the Wabash and land for a road from Lake Michigan to the Ohio River. A week later, the Miamis ceded "all their claim to land in the State of Indiana, north and west of the Wabash and Miami rivers, and of the cession made by the said tribe to the United States, by treaty concluded at St. Mary's October 6, 1818". (In describing the area embraced in this cession, Royce referred to the first claim of the Potawatomi cession of October 16, i.e. to Royce Area 132, as being the area ceded by the Miamis on October 23. See

18th Annual Report of the Bureau of American Ethnology (1896-97), Part 2, at 716-717.) The Potawatomi cession of October 16 included a substantially smaller quantity of land than did the Miami cession of October 23.

In a report of October 23, 1826, to the Secretary of War, the treaty commissioners remarked that the Potawatomi "title to the most valuable section of the country was not as valid as that of the Miamis", and therefore the consideration paid to the Potawatomis was much less than that paid to the Miamis. (See Finding 8.) The report indicates that the Commissioners considered the two treaties as part of a single transaction by which the United States acquired the interest of these two tribes in certain Indiana lands north of the Wabash River. In the circumstances, where treaties were made only a week apart with two different tribes for part of the same land, and treaty documents show that the difference in consideration under the two treaties which the United States paid was intended to reflect the proportionate interest of the two tribes in the area which they both claimed, we conclude, following the Red Lake case, supra, that compensation to which the conflicting plaintiffs may be entitled for Royce Area 132 should be distributed in the same ratio as provided in the treaties of October 16 and 23. (The determination will, of course, require that consideration paid under the treaty of October 16 with the Potawatomis which is attributable to Royce Area 133, and consideration to the Miamis under the Treaty of October 23 for lands other than Area 132 within the

northern limit of the Wabash watershed (portions of 180, 181, and 146) be eliminated before finding the consideration which the United States paid to each of the tribes for Area 132 under the two treaties.)

The plaintiff in Docket 314-B mentioned the difference in the dates of treaties ceding the several tracts here involved as a reason for rejecting the recommendation of counsel for Hannahville plaintiffs that the rule in the Red Lake case, supra, making treaty consideration the basis of dividing any awards for lands ceded by more than one tribe. The treaties ceding the subject areas other than Area 132 were made by different tribes at intervals separated by more than a year. For example, the Weas ceded part of Area 180 in 1818, the Miamis ceded part of Area 180 in 1826, and the Potawatomis ceded all of Area 180 in 1832. In addition, a very small portion of Area 180 was ceded by the Kickapoos in 1819, as noted above. (See note 1.) As only one treaty distributing to two groups a different proportion of the consideration for the cession of the same tract was involved in the Red Lake case, we conclude that the rule there stated regarding the distribution of consideration to different groups under the same treaty is not applicable to the groups which ceded Area 180 or to the comparable cessions of Areas 181 and 146 involving separate treaties negotiated at different times by different tribes.

We have already noted that evidence of use and occupancy of the several plaintiffs in this proceeding is not here in issue because each of them had recognized title to the land. Moreover, their use of

the subject lands was not simultaneous. Consequently, relative use of the lands by the respective plaintiffs is neither an appropriate nor a feasible way of dividing the interests here involved.[8/]

To the extent that the plaintiffs herein have not agreed to a division of their conflicting claims in Areas 146, 180, and 181, involving cessions under different treaties at different times, often called multiple or overlapping cessions, the Commission must decide the matter. In the circumstances of this proceeding, where all plaintiffs have recognized title to the subject lands, and, except for Area 132, there is no indication in treaty negotiations, treaty provisions, or related statutes requiring some other distribution, the Commission concludes that the fairest way of apportioning compensation is to regard each Indian tribe which ceded the land under a separate treaty as having had an undivided equal interest with each of the other tribes which ceded the land. For the reasons discussed by the Court of Claims

8/ The circumstances here are to be distinguished also from those in the decision, Blackfeet and Gros Ventre Tribes of Indians v. United States, Docket 279-A, 18 Ind. Cl. Comm. 241, 319-322 (1967), in which the interest in lands added to the 1855 treaty lands of the Blackfeet Nation was divided in accordance with the relative populations of the respective tribes on May 1, 1888, the date of cession. The three tribes were using parts of the land there involved at the time of cession, and the interests of all three were ceded under agreements made at about the same time. Since the land was used on a subsistence basis, the Commission held that the fairest way to apportion the interests of the three in the land in question was in accordance with the population, there being no statutory or other indication of the particular share of each.

In considering the question of the division of interests in this proceeding we also noted, but did not accept, the recommendation of the defendant in Dockets 315, 254, et al. (dockets which are closely related to overlapping cessions in this proceeding), that the first date on which the United States acquired an Indian interest in lands involving multiple cessions be used as the date the lands were ceded.

in the Kickapoo case, supra, we think that the tribes which ceded the land may be regarded as having had an undivided and equal ownership interest in the areas subject to overlapping cession, in the absence of evidence of a different ownership interest. As already mentioned, the rule in the Kickapoo case has been followed recently by the Commission. To avoid a requirement that the United States pay compensation for the entire interest in the same land again and again, where a tract, or parts thereof, were ceded by two or more tribes, each of which had recognized title, we believe that each overlapping cession should be considered as having granted the fractional interest which each of the ceding tribes held with the other tribes from whom cessions were taken. The multiplicity of treaties to acquire the land demonstrates that in the view of the United States, neither the Miamis, the Weas, nor the Potawatomis had an exclusive claim to Royce Areas 132, 146, 180, and 181. Except for Areas 132, 133, and 145, considered previously, we conclude that each of the successive treaties ceding land for which the United States took more than one cession is to be regarded as amounting, in effect, to a partition of the interest of the separate tribe ceding under the treaty. This is necessary in order to determine the conscionability of the separate amounts paid to each of the tribes ceding the land. The number of tribes which held recognized title to an area determines the number of fractional interests in that particular area. Unless otherwise indicated, each of the fractional interests is equal. Thus, if the same land had been ceded under separate treaties by three

tribes, each having recognized title, each of the tribes might claim a one-third interest in the land. Each separate interest is to be valued as of the date the tribe ceded that interest. Our conclusion that consecutive cessions of the same land amounted to the partition of successive fractional interests in the land will be considered first in relation to the several cessions of parts of Royce Area 180.

All of Area 180 was ceded by the Potawatomis by Treaty of October 26, 1832 (7 Stat. 394). The Potawatomis had recognized title to approximately three fourths of Area 180, being that portion which is north of the northern boundary of the watershed of the Wabash River. 9/

Most of the southeast quarter of Royce Area 180 is south of the northern limit of the Wabash watershed and east of the stipulated dividing line between the interests of the Miamis and the Weas. The Miamis claim this portion of Area 180 under their treaty of October 23, 1826, and the Potawatomis claim this portion of Area 180 under their Treaty of October 26, 1832. (We note that the lands in Area 180 are considerably farther from the Wabash River than those in Area 132 where the treaty commissioners believed that the interests of the Miamis in the land were more valuable than those of the Potawatomis.) We conclude that by taking separate cessions of this portion of Area 180 from the

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9/ The approximate fractions used herein in discussing parts of Areas 146, 180, and 181 within the northern boundary of the Wabash watershed are general estimates only, intended to aid in the discussion about the division of interests of the plaintiffs herein.

Miamis in 1826 and the Potawatomis in October 1832, the United States, in effect, partitioned into two equal parts lands which the Miamis and Potawatomis had used in common.[10/]

The remainder of Area 180 is in the southwest and lies between the southern boundary of the tract and the northern limit of the Wabash watershed. These lands are west of the stipulated line dividing the lands of the Weas from those of the Miamis. A small portion of this remainder is an area which is overlapped by Royce Area 110 (Illinois 2), and this overlap has been designated as Tract H.[11/] The part of the remaining area now under consideration is designated AB on the Appendix A map. The Weas ceded their interest in this area under the 1818 treaty and the Potawatomis ceded their interest under the 1832 treaty. The Weas and the Potawatomis each had recognized title to a one-half interest in this land.

The manner of dividing the interests of the plaintiffs in Area 180 is applicable to the determination of the respective interests in Area 181 and 146. All of Area 181 was ceded by the Potawatomis by Treaty of October 27, 1832 (7 Stat. 399). The Potawatomis had recognized title to all of that portion of Area 181 which is north of the Wabash River watershed.

10/ The treaty commissioners' report of October 23, 1826, pointed out that the cession by the Miamis of their whole right to the country north of the Wabash with the exception of a few small reservations gave the United States a joint interest with the Potawatomis in an extensive area of land north of the Wabash River. (See Finding 8.)

11/ This tract is not involved in this case, the Commission having already determined the title issues with respect to Tract H in Pottawatomie Tribe of Indians, Docket 15-D, et al. supra.

The remainder of Area 181 was also ceded to the United States by the Miamis under the Treaty of October 23, 1826 (7 Stat. 300). Accordingly, the Potawatomis and Miamis each had recognized title to a one-half interest in that portion of Area 181 which is within the northern limit of the Wabash River watershed.

All of Area 146 was ceded by the Potawatomis by the Treaty of September 20, 1828 (7 Stat. 317). The Potawatomis had recognized title to all of that portion of Area 146 which is north of the northern boundary of the Wabash River watershed. The remainder of Area 146 was also ceded by the Miamis under the Treaty of October 23, 1826. Accordingly, the Potawatomis and Miamis each had recognized title to a one-half interest in that portion of Area 146 which is within the northern limit of the Wabash River watershed.

The valuation date for the interest of the Weas in lands in Royce Area 180 is October 2, 1818. The valuation date of the Miami interests in lands in Royce Areas 146, 180, and 181 is January 24, 1827, the date of proclamation of their Treaty of October 23, 1826. The valuation date of the latter treaty is the date on which it was proclaimed rather than the date of signing because the treaty provided that it would become obligatory upon its ratification.

On a similar basis, the valuation dates for the Potawatomi cessions in this proceeding are as follows: Under the Treaty of October 16, 1826, ceding Royce Areas 132 and 133, the valuation date is February 7, 1827,[12/] the date of proclamation of the treaty; and under the Treaty of

12/ This valuation date will be used for Royce Area 132 even though the effective date of the Miami cession was January 24, 1827.

September 20, 1828, ceding Royce Areas 145 and 146, the valuation date is January 7, 1829, the date of proclamation. The valuation date for the cession of the Potawatomi interest in Area 180 is October 26, 1832, the date of the treaty; and under the Treaty of October 27, 1832, ceding Royce Area 181, the valuation date is January 21, 1833, the date of proclamation of the treaty.

Our determinations concerning the respective interest of each of the plaintiffs in the various areas are set forth in Finding 18. Also we have determined the valuation dates with respect to the cessions of each such interest. In summary our determinations are as follows:

	Tribe	Interest	Valuation Date
Royce Area 132 (Tract Y[1]) 13/	Miami, Potawatomi	joint	February 7, 1827
Royce Area 133 (Tract *[1])	Potawatomi	all	February 7, 1827
Royce Area 145 (Tract *[2])	Potawatomi	all	January 7, 1829
Royce Area 146 (Area north of northern boundary of Wabash watershed) (Tract *[3])	Potawatomi	all	January 7, 1829

13/ See Map, Appendix A for individual tracts.

	Tribe	Interest	Valuation Date
(Area within northern boundary of watershed of Wabash) (Tract Y^4)			
	Potawatomi	one-half	January 7, 1829
	Miami	one-half	January 24, 1827
Royce Area 180 (Tract AB)			
	Wea	one-half	October 2, 1818
	Potawatomi	one-half	October 26, 1832
(Area north of northern boundary of Wabash watershed) (Tract $*^4$)			
	Potawatomi	all	October 26, 1832
(Area within northern limit of watershed of Wabash, and east of Wea-Miami line) (Tract Y^2)			
	Miami	one-half	January 24, 1827
	Potawatomi	one-half	October 26, 1832
Royce Area 181 (Area north of northern boundary of Wabash watershed) (Tract $*^5$)			
	Potawatomi	all	January 21, 1833
(Area within northern limit of watershed of Wabash) (Tract Y^3)			
	Miami	one-half	January 24, 1827
	Potawatomi	one-half	January 21, 1833

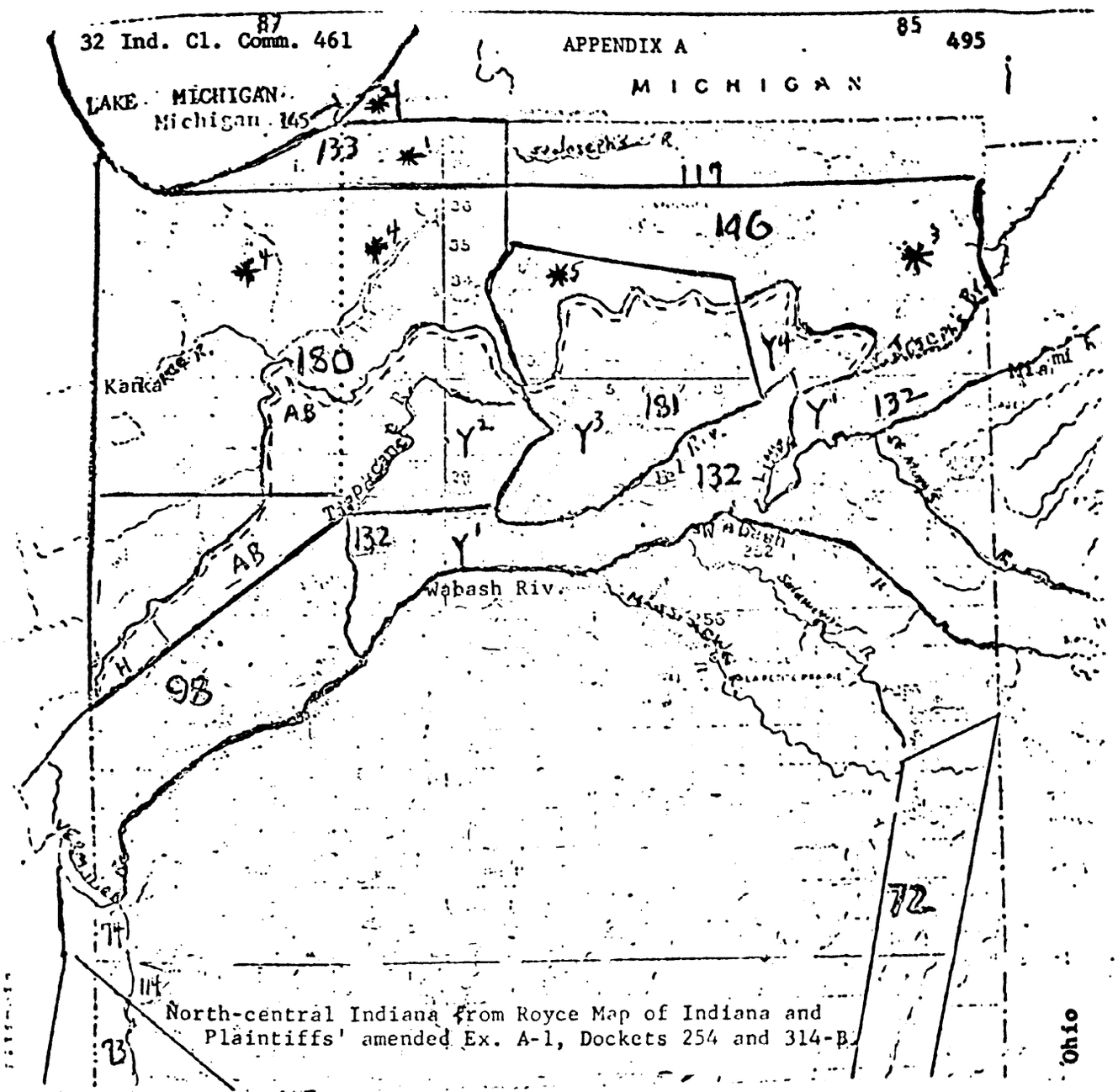
Margaret H. Pierce

Margaret H. Pierce, Commissioner

We Concur:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner



North-central Indiana from Royce Map of Indiana and Plaintiffs' amended Ex. A-1, Dockets 254 and 314-B.

Legend:

Large numerals indicate numbered Royce Areas.

!- Miami-Wea line

_____ - Northern limit of the Wabash River watershed.

Y^1 - Area of Miami-Potawatomi interest in Royce Area 132.

Y^2- Area of Miami-Potawatomi interest in Royce Area 180.

Y^3- Area of Miami-Potawatomi interest in Royce Area 181.

Y^4- Area of Miami-Potawatomi interest in Royce Area 146.

$*^1$- Area of sole Potawatomi interest in Royce Area 133.

$*^2$- Area of sole Potawatomi interest in Royce Area 145.

$*^3$- Area of sole Potawatomi interest in Royce Area 146.

$*^4$- Area of sole Potawatomi interest in Royce Area 180

$*^5$- Area of sole Potawatomi interest in Royce Area 181

AB - Area of Wea-Potawatomi interest in Royce Area 180.

Kuykendall, Chairman, and Blue, Commissioner, concurring:

This is another in a series of claims asserted on behalf of the "Potawatomi Tribe or Nation". Our views concerning the political structure of the Potawatomis during the relevant treaty periods, to wit, there was never any such overall landowning "Potawatomi Tribe or Nation", were set forth in the dissent filed in Citizen Band of Potawatomi Indians v. United States, Dockets 71, et al., 27 Ind. Cl. Comm. 187 (1972). Since we are bound by the rule in this case that any award to plaintiffs herein should be on behalf of the "Potawatomi Tribe or Nation", we concur.

Jerome K. Kuykendall, Chairman

Brantley Blue, Commissioner