

1. Treaties in Subject Proceeding.

Royce Areas 132 and 133 (Indiana)^{1/} were ceded by Treaty of October 16, 1826 (7 Stat. 295), by the Potawatomi Tribe of Indians.

Royce Areas 145 (Michigan) and 146 (Indiana) were ceded by the Treaty of September 20, 1828 (7 Stat. 317), by the Potawatomi Tribe of Indians.

Royce Area 180 (Indiana) was ceded by the Treaty of October 26, 1832 (7 Stat. 394), by the Potawatomi Indians.

Royce Area 181 (Indiana) was ceded by the Treaty of October 27, 1832 (7 Stat. 399), by the Potawatomis of the State of Indiana and Michigan Territory, who ceded their title and interest to lands in the State of Indiana and Michigan Territory south of Grand River. Only Indiana land (Royce Area 181) was ceded under this treaty.

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

By Treaty of October 23, 1826 (7 Stat. 300), the Miami Tribe of Indians ceded to the United States 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 said tribe to the United States by the Treaty of St. Mary's of October 6, 1818 (7 Stat. 189) (Royce Area 99, Indiana).

^{1/} The numbered Royce areas herein are those shown on Royce's maps in the 18th Annual Report of the Bureau of American Ethnology (Part 2), Indian Land Cessions (1896-1897).

The tracts ceded under the treaties of October 2, 1818, and October 23, 1826, can be identified for purposes of this proceeding from descriptions in earlier treaties under which the United States recognized and took cessions of Miami, Eel River, and Wea lands in Indiana.

2. Treaty of Greeneville.

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), and each of the plaintiff tribes participated in and was a signatory to the treaty.

3. The Treaty of Grouseland.

By the Treaty of Grouseland of August 21, 1805 (7 Stat. 91), between the United States and the Delaware~~s~~, Potawatomis, Miamis, Eel River, and Weas, the parties agreed in Article IV that

As the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still consider themselves as one nation, and as they have determined that neither of these tribes shall dispose of any part of the country which they hold in common; in order to quiet their minds on that head, the United States do hereby engage to consider them as joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty; and they do farther engage that they will not purchase any part of the said country without the consent of each of the said tribes. Provided always, That nothing in this section contained, shall in any manner weaken or destroy any claim which the Kickapoos, who are not represented at this treaty, may have to the country they now occupy on the Vermillion river.

In Miami Tribe v. United States, Docket 67, et al., 2 Ind. Cl. Comm. 617, 628 (1954), the Commission held that the ownership of the Miamis and Eel Rivers and Weas recognized by the Treaty of Grouseland was modified by what amounted to agreement between the tribes by which the Weas exclusively occupied and controlled the western portion of the area, being roughly the western quarter of Royce Area 99.

In Miami Tribe, id. at 629-630, in Docket 67, the Commission held:

The territory which the Weas exclusively occupied is outlined in blue on the map introduced as Petitioners' Exhibit 109

With respect to the lands north and west of the Wabash River ceded by the Miami Nation on October 23, 1826 (7 Stat. 300), and by the Weas by Treaty of October 3, 1818 (7 Stat. 186), the area of Wea occupancy was agreed to by plaintiffs herein and described as a continuation of the aforesaid blue line along the Wabash River to the mouth of the Tippecanoe River and north along the Tippecanoe River to the northeast corner of Royce Area 98, and then due north to Lake Michigan. The right of the Wea Nation in and to the lands north and west of the Wabash River on and prior to October 2, 1818, was confined to that area lying north and west of the Wabash River that lies west of the above-described line; and the right, title, and interest of the Miami Nation in and to the lands north and west of the Wabash River on and prior to October 23, 1826, is deemed confined to that area lying north and west of the Wabash which is east of the above-described line.

4. Stipulation of Interest of Weas and Miamis in Lands North of the Wabash River, Northern Indiana.

The stipulation, dated June 19, 1967, and filed on June 20, 1967, by counsel for plaintiffs in Docket Nos. 254, 124-B and 314-B, provides as follows:

S T I P U L A T I O N

IT IS HEREBY STIPULATED AND AGREED by and between the petitioners in each of the above-captioned cases (hereinafter referred to by docket number) as follows:

1. In and by a certain treaty dated August 21, 1805 (7 Stat. 91) between the United States and the tribes of Indians called the Delawares, Potawatomis, Miamis, Eel River and Weas, the parties thereto stipulated as follows:

As the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still consider themselves as one nation, and as they have determined that neither of these tribes shall dispose of any part of the country which they hold in common; in order to quiet their minds on that head, the United States do hereby engage to consider them as joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty; and they do farther engage that they will not purchase any part of the said country without the consent of each of the said tribes.

2. In and by a certain treaty dated October 2, 1818 (7 Stat. 186) between the United States and the Wea Tribe of Indians, said Wea Tribe ceded to the United States "all the lands claimed and owned by the said tribe within the limits of the States of Indiana, Ohio and Illinois", reserving therefrom a reservation which was subsequently ceded to the United States.

3. In and by a certain treaty dated October 23, 1826 (7 Stat. 300) between the United States and the Miami Tribe, said Miami Tribe ceded to the United States all their lands "north and west of the Wabash and Miami Rivers", subject to certain reservations.

4. In the Miami Tribe of Oklahoma, et al v. The United States, Docket No. 67 (consolidated), this Commission held that the Wea Tribe as a 'joint owner' with the other constituent tribes of the Miami Nation, as recognized by the Treaty of August 21, 1805, had been modified by subsequent developments so that the recognized interest of the Weas consisted of a right of exclusive occupancy to that portion of the recognized Miami lands which the Weas occupied.

5. Subsequent to 1805 the Weas had separated from the Miami Nation and the Weas and Miamis thereafter disposed of their respective lands without requiring the mutual consent provided in the 1805 Treaty. (2 Ind. Cl. Comm. 617 at 627-8).

6. The Commission then held:

These developments indicate that by 1818 the lands recognized at Grouseland to have been within the 'joint ownership' of the tribes constituting the Miami Nation had undergone a process similar to that of a partition proceeding, with the result that the Wea interest was that of an exclusive occupancy right to the territory occupied or controlled by the Weas, while the balance of the Miami lands belonged exclusively to the tribes still remaining in the Miami Nation. (2 Ind. Cl. Comm. 617, at p. 628)

7. The Commission further held in said Docket 67:

The territory which the Weas exclusively occupied is outlined in blue on the map introduced as Petitioners' Exhibit 109 ***.
(2 Ind. Cl. Comm. 617, at pp. 629-30)

8. With respect to the lands north and west of the Wabash River ceded by the Miami Nation on October 23, 1826 (7 Stat. 300) and by the Weas by Treaty of October 3, 1818 (7 Stat. 186), the area of Wea occupancy was bounded by a continuation of the aforesaid blue line northwest along the Wabash River to the mouth of the Tippecanoe River and north along the Tippecanoe River to the northeast corner of Royce Area 98, and thence due north to Lake Michigan.

9. Accordingly the right, title and interest of the Wea Nation in and to the lands north and west of the Wabash River on and prior to October 2, 1818, shall be deemed to have been confined to that area lying north and west of the Wabash River that lies west of the line hereinabove described.

10. Accordingly, the right, title, and interest of the Miami Nation in and to the lands north and west of the Wabash River on and prior to October 23, 1826, shall be deemed to have been confined to that area lying north and west of the Wabash River that lies east of the line hereinabove described.

Dated this 19th day of June, 1967.

Petitioners in Docket No. 254

By: /s/ Edwin A. Rothschild
Edwin A. Rothschild
Attorney of Record

Petitioners in Dockets 124-B and 125-H

By: /s/ David L. Kiley
David L. Kiley
Attorney of Record

Petitioners in Dockets 314-A and 314-B

By: /s/ Jack Joseph
Jack Joseph
Attorney of Record

The effect of the stipulation is to limit the interest in this proceeding of the Peorias, on behalf of the Weas (i.e. the plaintiffs in Docket No. 314-B), to the area in the Wabash watershed west of the Tippecanoe River and west of the above-described line extending north from the northeast corner of Royce Area 98. The interest of the Miamis is confined to the lands within the Wabash watershed east of the above-described dividing line.

5. Cession of Wea Land by Treaty of October 2, 1818.

Under the Treaty of October 2, 1818 (7 Stat. 186), the Weas ceded all the lands which they claimed and owned within the limits of the States of Indiana, Ohio, and Illinois. The consideration which the United States paid to the Weas under this treaty, including consideration for the Weas giving up any claim to Royce Area 74, not here involved, ceded by the Kickapoos under the Treaty of December 9, 1809 (7 Stat. 117), was a small reservation (Indiana Area 114) and an annual annuity of \$1,850.

The Indiana lands which the Weas ceded under the Treaty of October 2, 1818, included lands in the southwestern portion of Royce Area 180 for which the Peorias on behalf of the Weas claim compensation under Docket 314-B.

Paragraph 8 in the stipulation quoted in Finding 4, regarding the lands north and west of the Wabash ceded by the Miami Nation on October 23, 1826 (7 Stat. 300), and by the Weas by Treaty of October 2, 1818 (7 Stat. 186), describes the area of Wea occupancy in Indiana. It is identified as tract AB on the map, Appendix A. A portion of this tract designated tract "H" in the southwestern corner of Area 180 was included in the adjudication of Docket 15-D consolidated. (See note 1 of the opinion herein.)

6. Cession by the Miamis Under Treaty of October 23, 1826.

By Treaty of October 23, 1826 (7 Stat. 300), the Miami Tribe of Indians ceded to the United States 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 Miami Tribe to the United States by the Treaty of St. Mary's of October 6, 1818 (7 Stat. 199), ceding Royce Area 99 in Indiana and Ohio. Lands were reserved from the cession for a number of villages and restricted grants were made to a number of individuals. In consideration for the cession, the United States agreed to pay a permanent annuity of \$25,000, and to deliver goods and services to the tribe and to individual members.

The right of hunting on the ceded land was allowed to the Miami Tribe as long as the land remained the property of the United States.

Article IX of the treaty provided that it would become binding on the United States after ratification. The proclamation date of the treaty was January 24, 1827.

7. Relations Between the Miamis and Potawatomis in Northern Indiana.

In 1822 in a Report to the Secretary of War on Indian Affairs, the Potawatomis, in reply to a question about the extent of their territory, said that they lived on a large tract of country, west of Detroit extending to the Mississippi, and explained that hunting was their chief occupation. [Pl. Ex. 45, Dkts. 128, 309, 310]

Treaty proceedings in 1809 and 1826 with the Potawatomis, inter alia, indicate that the Miamis and the Potawatomis were allies in the northern area of Indiana in the vicinity of Royce Areas 181, 132, and 146. That this relationship antedated the Greenville Treaty is

evidenced by the request which the Potawatomis made of the United States in November 1809 asking that the Miamis be paid an annuity of \$500 on the ground that the United States had not paid a sufficient amount for the cession under the Treaty of Detroit (Treaty of November 17, 1807 (7 Stat. 105), ceding Royce Area 66). The Potawatomis explained that it would not be appropriate for them to share their annuity under that treaty with the Miamis because the Miamis had no claim to the lands ceded by the Treaty of Detroit. However, according to the Potawatomí chief, Wynmac, the Miamis, who came from the Illinois country about the time the French first came, had settled, with the consent of the Chippewas, Ottawas, and Potawatomis, in the area of the Wabash and the upper branches of the Miami, had intermarried with and become close allies of the Potawatomí. The Potawatomis pleaded that the Miamis were poor and destitute and requested that the United States grant to the Miamis a perpetual annuity of \$500, as a further consideration for the lands which were ceded by the Treaty of Detroit.

The discussion presumably relates to the settlement of Detroit by some Miamis who, along with a number of Potawatomis, Chippewas, and Ottawas, accepted the invitation of Cadillac to live in the region at the time the French established a permanent settlement there, about 1701. The Miami, unlike the Pottawatomis, did not form lasting settlements in the Detroit area, but returned to northern Indiana after spending a few years in the region of Detroit. (See Citizen Band of Potawatomí Indians, Docket 71, et al., supra, at 205.)

Dr. Nancy Lurie, anthropologist, ethno-historian, and professor at the University of Michigan and the University of Wisconsin, who has done extensive research and teaching of American Indian studies, including particular work on the tribes in the Great Lakes region, and who has a special knowledge of the Potawtomis, was an expert witness for the Hannahville Potawtomis at the hearing May 6-10, 1963, in Docket Nos. 254, 29-L, M, O, and P, et al.

Dr. Lurie testifies that relations between the Miamis and the Potawtomis in the vicinity of the upper Wabash River in northern Indiana were friendly; that the tribes shared hunting grounds and lived harmoniously in an increasingly dwindling area during the years here under consideration.

Other evidence indicates that the northern Indiana areas ceded under these treaties which are within the country "on the Wabash and its waters, above the Vincennes tract," and not ceded to the United States as described in the Treaty of Grouseland of August 21, 1805 (7 Stat. 91), were generally shared peaceably by the Miami and Potawatomi Tribes. However, the proceedings of the 1826 treaties with the Miamis and Potawtomis indicate that the treaty commissioners understood there was some difference of opinion between the two tribes regarding their claim to the land which difference the commissioners urged the Indians to settle between themselves, adding that the commissioners would do so if the Indians did not. (Pls. Ex. No. 57, Dkts. 128, 309, 310, p. 5.)

8. Negotiations for the Cession of Areas 132 and 133, Northern Indiana.

Treaty proceedings were carried on between September 20 and October 23, 1826, at first with the Miamis, then with the Potawatomis, at Camp Paradise Spring on the Wabash, for the cession of northern Indiana lands. The Miamis refused completely for the first three weeks of these negotiations to sell their lands. The Commissioners then called a council with the Potawatomis to obtain from them a cession of Areas 132 and 133 Indiana.

The Potawatomis were willing to sell their lands but objected that the United States had paid insufficient annuities in the past. The attempts to obtain better terms for all Potawatomis than were offered by the United States were evident in the treaty proceedings. The cession of Areas 132 and 133 and land for roads between Lake Michigan and the Ohio River was agreed to by the Potawatomi Tribe by the Treaty of October 16, 1826 (7 Stat. 295), for a consideration of a \$2,000 annuity for 22 years and other goods and services. The United States also permitted the Potawatomis to hunt on any part of the ceded land as long as it remained the property of the United States. The treaty provided that it would be binding on the United States after ratification. The proclamation date of the treaty was February 7, 1827.

The Commissioners who conducted negotiations for the Treaty of October 16, 1826 (7 Stat. 295), by which the Potawatomi Tribe ceded Areas 132 and 133 in Indiana, and for the Treaty of October 23, 1826

(7 Stat. 300), by which the Miamis ceded to the United States their land in Indiana north and west of the Wabash and the Miami Rivers and of the cession made by the Miamis under the Treaty of October 6, 1818 (7 Stat. 189), sent a report of October 23, 1826, to the Secretary of War, transmitting the treaties and discussing the negotiations. The report stated in part:

Accompanying this, we have the honor to transmit to you the treaty which was concluded with the Pattawatamies on the 16th instant, and that which was concluded with the Miamies on this day.

These treaties have been the result of a long, tedious negotiation, in which every exertion was used to procure a cession upon the most reasonable terms for the United States; and we are confident in the opinion that the object could not be obtained without assenting to the stipulations which are found in these instruments.

It is difficult to ascertain the precise boundary of Indian claims. The lines of demarcation between the different tribes are not distinctly established, and, in fact, their title rests more upon possession than prescription. The tribes are frequently intermingled, and each has sometimes a common interest in the same district of country. North of the Wabash, the Miamies and Pattawatamies are in this condition. At the treaty of Grouseland, in August, 1805, the right of the former tribe to the country upon the Wabash and its tributaries was recognized, but time and subsequent circumstances have materially affected this arrangement. At the treaty of St. Mary's, in 1818 [7 Stat. 189], it was considered important to procure a cession from the Pattawatamies of the country south of the Wabash, and the entire cession from the Vermilion to the Tippecanoe was made by that tribe; and it seemed to be generally admitted by both of these tribes that there was a common and undefined interest in the country north of the Wabash. These circumstances rendered it proper to treat with the Miamies and Pattawatamies for the whole tract to be purchased, in order as well to do justice by them, as to prevent a resort to hostilities, the usual arbiter of Indian disputes.

In treating, however, with the Pattawatamies, we were sensible that their title to the most valuable section of the country was not as valid as that of the Miamies, and therefore the consideration paid to them is much less than that paid to the others. * * * [From The John Tipton Papers (Gates ed.) Vol. I, p. 598 ff. (1942). Pls. Ex. 75, Dkt. 128, 309, 310. (Emphasis added.)]

The same report pointed out that by the Treaty of October 23, 1826, the Miamis ceded their whole right to the country north of the Wabash, with the exception of a few small reservations. The Commissioners added that by this cession the United States acquired a joint interest with the Potawatomis to an extensive district of country, and that a just regard for public opinion as well as the situation of the Indians would probably prevent the United States from taking the area without the formal consent of the Potawatomis. However, they noted that the extinguishment of the Miami claim would permit negotiation with more efficiency when the time came for the purchase of the Potawatomi country.

As to the cession by the Miamis, the commissioners remarked that the Miamis were better organized than the Potawatomis and that their reduced numbers enabled them to act with more unanimity. The commissioners commented further that as earlier annuities had been high and the Miamis knew of the importance to the United States of acquiring the land, it was necessary to pay the Miamis more than the Potawatomis.^{2/}

^{2/} The commissioners' report stated in relevant part as follows:

But our principal difficulty has been with the Miamies. The country which they occupy is much more valuable than that occupied by the Pattawatamies. It is immediately upon the Wabash, and commands the great avenue of communication between the Ohio and the lakes. Eel river, the northern boundary of the Pattawatamie cession, is incorrectly represented upon the maps. In its general course, it is much

As agricultural settlements of the whites extended and advanced from the east and south into the Northwest Territory, the Indians lost

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further from the Wabash than it appears to be upon them; and, from the best calculation we can make, the whole extent of the cession is not less than 2,000,000 of acres, and perhaps amounts to 3,000,000. The tract upon Lake Michigan is essential to the interests of Indiana; for, without it, her citizens can have no access to that important outlet. The district embraced in the Miami cession is probably equal in value to any other tract of similar extent in the western country; and its acquisition was highly important to the State of Indiana, as it interrupts the continuity of her settlements, and prevents her from entering upon that system of internal improvements to which she is invited by nature, policy, and interest. The right conveyed by the Miamies is also more extensive than that conveyed by the Pattawatamies. The latter have ceded their right to the country within specific bounds. To the largest and much the most important of the three cessions made by them, the Miami claim is the most valid. But the Miamies have also ceded their whole right to the country north of the Wabash, with the exception of a few small reservations. The United States, by this cession, have acquired a joint interest with the Pattawatamies to an extensive district of country; and although a just regard to public opinion, as well as to the situation of the Indians, will probably prevent them from taking possession of any part of it without the formal consent of the Pattawatamies, still the extinguishment of the Miami claim will enable us to negotiate with more efficiency, when the proper time arrives for the purchase of the Pattawatamie country, or for the establishment of another boundary between them and the United States. The extent of this Miami claim we do not know, and it must be left to the Government hereafter to ascertain it, when such a measure becomes necessary. The Miamies are also better organized in their government than the Pattawatamies, and their reduced numbers enable them to act with more unanimity. The preceding annuities due to them were considerable, and they were aware that the possession of the country was highly important to us. Under these circumstances, it was necessary to give them much more for the relinquishment they made, than was given to the Pattawatamies:

their hunting grounds, were forced to live closer together than formerly, and were forced also to find other means of sustenance than trapping and hunting. During the years when the subject lands were ceded, Indian settlements in the area were moved westward with a view of moving all Indians to lands west of the Mississippi. Although the commissioners indicated in their report of October 23, 1826, that neither the Potawatomis nor the Miamis would agree to move west of the Mississippi, the commissioners believed that this would change with time, the destruction of the game, and the approach of white settlements. The commissioners advocated that the Indians should be separated into bands by the intervention of white settlements as an inducement to the Indians to move west. The commissioners were unable to purchase any particular district near the center of the Potawatomi

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and, without troubling you with the details of a semi-barbarous negotiation, which occupied us many days, it is enough to say that the treaty exhibits the most advantageous arrangement which could be made.

The annuities due by former treaties to the Miamies amount to \$18,400; consequently, the permanent annuity given by this treaty will be \$6,600; but we have procured the insertion of a provision, applicable to preceding annuities, as well as to this, by which their duration will depend on the existence of the tribe. The Miamies are greatly reduced in numbers, and, like all the tribes in this quarter, they are in a state of rapid declension. . .

country, but the report of October 23, 1826, stated that the Potawatomi freely consented to give land for the road described in the treaty and for the settlement along it.^{3/} The commissioners apparently believed that the road might be useful to the Indians in traveling and would result in furnishing them with a market for their game.

9. Cession of Areas 145 and 146.

By the Treaty of September 20, 1828 (7 Stat. 317), Michigan Area 145 and Indiana Area 146 were ceded by the Potawatomi Tribe for a permanent annuity of \$2,000 and a further annuity of \$1,000 for 20 years. The United States also agreed to additional consideration in the form of goods and services.

^{3/} The treaty commissioners' report of October 23, 1826, was reprinted in The John Tipton Papers (Gates ed.) Vol. I, 598 ff. (1942) with a number of notes commenting on and explaining statements in the report. Note 98, at 602 of The John Tipton Papers makes the following observations about the Potawatomi gift of land for the road:

The Potawatomi ceded 'a strip of land, commencing at Lake Michigan, and running thence to the Wabash river, one hundred feet wide, for a road, and also, one section of good land contiguous to the said road, for each mile of the same, and also for each mile of a road from the termination thereof, through Indianapolis to the Ohio river, for the purpose of making a road aforesaid from Lake Michigan, by way of Indianapolis, to some convenient point on the Ohio river.' The selection from their lands of a section for each mile of road south of the Wabash was later bitterly opposed by the Indians, who claimed they had not understood this provision of the treaty. The road as finally built extended from Michigan City to Madison

[Pls. Ex. 75, Dkts. 128, 309, 310.]

The treaty provided that it would be obligatory after ratification. The date of proclamation was January 7, 1829.

10. Pre-1832 Potawatomi Territory.

The United States recognized in 1821 that the Potawatomis claimed an ownership interest in a large domain east of the Mississippi River that included the St. Joseph, Wabash, and Kankakee River areas in Michigan, Indiana, and Illinois, as well as lands in the Illinois River valley west to the Mississippi River and lands along the western shore of Lake Michigan, from the Chicago-Milwaukee area north through Sheboygan and Manitowoc, Wisconsin. At the negotiations for the Treaty of Chicago of August 29, 1821 (7 Stat. 218), ceding Royce Area 117 in Michigan and Indiana, not involved in this proceeding, Commissioner Lewis Cass described the extent of the Potawatomi territory as follows:

When I look around me, I see very few Pottowattomies, and their tents are thinly scattered over a very great extent of country, a great proportion of which, they cannot occupy, and do not want. Their country on the south embraces both banks of the Illinois, including all its rich tributaries -- on the north it reaches along the western shore of Lake Michigan, to the lands of the Menomonies of Millwacky, and to those of the Winnebagoes of Green Bay -- on the east they have all the country south of the Grand river to the head waters of the Maumee and the Wabash, and on the west, their territories extend to the banks of the Mississippi. You also still occupy the tracts of land sold by the treaties of St. Mary and St. Louis, and will long retain possession of the country now proposed to be purchased. I am surprised that with such ample territories, you should utter one word about the smallness of your country. [Pls. Ex. 42, Dkt. 128, 309, 310]

In a letter of April 5, 1831, to the Secretary of War, Indian Agent John Tipton, Fort Wayne, stated that the Potawatomis who were more numerous than the Miami, owned nearly three million acres in the northwest part of Indiana, that they lived in Illinois and in the Michigan territory as well as in Indiana, and "any arrangement with this tribe should be made with all the Potawatomis of Indiana, Illinois, and Michigan territory." (Pls. Ex. 129, Dkt. 29)

11. Negotiations With the Potawatomis for October 1832 Treaties of the Tippecanoe.

By instructions of July 14, 1832, to the treaty commissioners for the 1832 Potawatomi treaties, Lewis Cass, Secretary of War, explained that it was the purpose of the United States to extinguish, inter alia, the Potawatomi title to lands in Indiana, Illinois, and the Territory of Michigan, and to remove the tribes then occupying them to lands west of the Mississippi.

Cass acknowledged that it might not be practicable to complete arrangements during 1832, in which event the commissioners were to limit expenditures and reserve a fund with which another effort might be made the next season when the Indians might possibly be more inclined to negotiate and move west of the Mississippi.

The treaty commissioners for the 1832 Potawatomi treaties had been unsuccessful in negotiations to obtain the Miamis' interests in Indiana lands. The negotiations for Areas 177 in Illinois and 180 and 181 in Indiana were complicated and drawn out. The Journal of the Proceedings

of the treaty negotiations for the October 1832 treaties with the Potawatomis closes with a remark of Commissioner Jennings that they all wished to go home, and the commissioners' report at the conclusion of the three October treaties at camp on the Tippecanoe River, dated October 1832, includes the following observations:

We found those people destitute of clothing necessary to shield them from the inclemency of the approaching winter, and the necessary ammunition to enable them, by the chase, to procure subsistence for their families. At their request, we purchased and delivered, in part payment of the cessions aforesaid, merchandise and horses to the value of one hundred and fifty-eight thousand one hundred and seventy-five dollars and thirteen cents.

Vouchers and bills of parcels are forwarded, accompanying the treaties. Having no funds at our command to pay the amount, we have drawn drafts upon you in favor of those of whom the purchases were made, payable after the ratification of the treaties and the necessary appropriations by Congress.

There not being a sufficient quantity of merchandise at the treaty ground, to be had at fair prices, to meet our engagements with those Indians, therefore we requested General Marshall, Indian agent at Eel river, to purchase and deliver, this autumn, according to stipulation in said treaties, merchandise to the value of eighteen thousand eight hundred and one dollars and twelve cents, which we request may be paid according to his drafts. (Pls. Ex. 130-B, Dkts. 29-L, M, O, P; from H.R. Doc. No. 231, 25th Cong., 3d Sess. 10 (1839).)

The report states further that because a very large number of persons attended the treaties, it was necessary to exceed amounts appropriated for the expenses of treaty negotiations.

A frequently quoted paragraph from the report of October 1832, by the treaty commissioners who negotiated the October 1832 treaties with the Potawatomis, to the Secretary of War, states that negotiations with the Potawatomis required a number of separate treaties because of local interests claimed by different bands. The report describes, generally, the lands ceded under the separate treaties but states that one was dated the 25th of last month and the other two the 26th and 27th (ult.) of the previous month. No mention was made of a Treaty of October 20, 1832, though the lands ceded by that treaty are described. The report may very well have been completed in November which would explain the references to last month.

There is no treaty dated the 25th of October, and the paragraph in the report is sometimes cited to indicate that the treaty commissioners were confused about the dates of the treaties.

An examination of a copy of the handwritten report shows that the apparent inconsistency between the now accepted treaty dates and those given in this report may have resulted from the difficulty of reading the handwritten numerals in the original report.

A letter of August 24, 1833, from the Indian agent at Chicago to Indian Commissioner Herring in the War Department also referred to the Treaty of Tippecanoe of the 25th of October, 1832, in discussing provisions in what is now known as the Treaty of October 20, 1832 (7 Stat. 378). This emphasizes the possibility of mistake in attributing, without further inquiry, any special significance to the inconsistency

between the treaty date given in the printed version of the treaty commissioner's October 1832 report and the date of the treaty used in the published statutes.

The treaty commissioners' report and other evidence of the treaty proceedings indicate that the commissioners tried to obtain the consent to the cession under the treaties of October 26 and 27, 1832, of the Potawatomi who claimed an interest in the lands which were being ceded in the negotiations.

12. Cession of Areas 180 and 181 by Treaties of October 26 and 27, 1832.

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 negotiated in continuous proceedings carried on over a 3-week period under instructions to the treaty commissioners to completely extinguish Indian title to lands in Indiana and to the lands of the Potawatomi in Illinois and the Territory of Michigan and to arrange for the removal west of the Mississippi of the tribes occupying these lands (Pls. Ex. 64, Dkts. 128, 309, 310; Pls. Ex. 130-A, Dkts. 29-J, L, M, O, P).

By the Treaty of October 26, 1832 (7 Stat. 394), with the Potawatomi Indians, Royce Area 180 was ceded to the United States. Reservations were made for the bands of a number of chiefs. By Article III of the treaty, the United States agreed to pay the Potawatomi Indians an annuity and to furnish other goods and services.

By the Treaty of October 27, 1832 (7 Stat. 399), the chiefs and warriors of the Potawatomis of the State of Indiana and Michigan Territory ceded to the United States their title and interest to lands in the States of Indiana and Illinois and in the Territory of Michigan south of Grand River. Reservations from the cession were made for a number of chiefs and their bands including Pocagan's village for his band, the village of the Potawatomis living at Nottawesipa, and two sections to include the Potawatomi mills on the Tippecanoe. Individual tracts were granted to a number of persons.

Of the lands described as Potawatomi country by Lewis Cass during the proceedings of the Treaty of August 29, 1821 (7 Stat. 218), at Chicago, ceding Area 117 referred to above, those remaining unceded on October 27, 1832, were, excepting a tract in northern Illinois, located entirely within the State of Indiana or Michigan Territory, which then included the lands now within the States of Michigan and Wisconsin. Virtually all Potawatomis on lands not yet ceded on October 27, 1832, were represented at the Treaty of Tippecanoe of that date at which the chiefs and warriors of the Potawatomis of the State of Indiana and Michigan Territory ceded their interest and title to lands in the States of Indiana and Illinois, and in the Territory of Michigan south of the Grand River.

Topenebee, principal chief of all Potawatomis and Billy Caldwell [Sa-gue-na-nah], principal chief of the Potawatomis living in the Chicago-

Milwaukee area, signed the Treaty of October 27, 1832, and received special consideration in the form of individual land grants under the treaty. Caldwell had been granted a special life annuity of \$600 under the Treaty of October 20, 1832, ceding Royce Area 177 in eastern Illinois just south of Chicago.

13. Identity of Area Ceded by Potawatomis Under Treaties of October 26 and 27, 1832.

A copy of a map dated October 30, 1835, from the General Land Office files, which was submitted in evidence, shows the lands ceded by the Potawatomi Indians by the Treaty of October 26, 1832 (7 Stat. 394), and described by metes and bounds in the treaty as being Royce Area 180 in Indiana. [Pls. Ex. M-6, Dkts. 128, 309, 310]

The same map of October 30, 1835, from the General Land Office files shows the land ceded by the chiefs and warriors of the Potawatomis of the State of Indiana and Michigan Territory under the Treaty of October 27, 1832 (7 Stat. 399), to be that delineated as Royce Area 181, Indiana. (Ex. M-6. Dkts. 128, 309, 310.)

14. Contemporaneous Administrative Interpretations of the Treaties of October 1832 with the Potawatomis.

In a ruling of January 26, 1836, the Attorney General, replying to an inquiry by the Secretary of War describing the circumstances affecting the treaties, held that the three Tippecanoe treaties in October 1832 were properly construed as one transaction, thus authorizing the selection, by grantees of special land grants under the treaties, of lands from any of the three areas ceded, except as otherwise specially provided (Pls. Ex. 61, Dkts. 29-L, et al.).

H. R. Doc. 231, 25th Cong., 3d Sess. (1832), reprints official correspondence relating to the October 1832 treaties with the Potawatomis. Excerpts from H. R. Doc. 231, supra, are included in Pls. Ex. 130-b, Dkts. 29-L, M, O, P; (see Citizen Band of Potawatomi Indians, Dkt. 71, et al., supra, at 294). These include official correspondence which refers to the several negotiations made with the "Pottawatomic nation". These descriptions, made contemporaneously with and referring to the October 1832 treaties by administrative officers acting for the United States in obtaining the cessions, are firm evidence that these officers of the United States believed that they obtained the cession of these tracts from the Potawatomis, that is, from the Potawatomi Tribe.

The chiefs and leaders who signed the three treaties and received special land grants under them represented Potawatomis from the Illinois, Wisconsin, Indiana, and Michigan settlements whether or not they lived in the area being ceded. Thus, Saugana, or Billy Caldwell, a leader of the Chicago-Wisconsin Potawatomis, received a \$600 annuity for life under the Treaty of October 20, 1832, ceding Area 177 in Illinois, and he and his daughter received special land grants under the Treaty of October 27, 1832, ceding Area 181 in Indiana, which treaty he also signed. One Indiana chief (Pierish, or Louison) signed all three treaties.

H. R. Ex. Doc. No. 61, 40th Cong., 3d Sess. (1868), summarizes payments by the United States under treaties with the Potawatomis. It describes the annuities under all three of the October 1832 treaties as amounts which the United States allowed to, or agreed to pay to, the Potawatomi Tribe. The schedules showing payments under these treaties, prepared in the

Second Auditor's office, Department of the Treasury, show, for the first few years after ratification, that annuity payments under the October 26th treaty were disbursed through the Indiana agency, and payments under the October 27th treaty were distributed primarily through the Chicago agency, but one-half of the annuity for 1835 and 1836 was distributed through the Indiana agency. Between 1837 and 1846, official records generally refer to annuities under these treaties as annuities of the Potawatomis or of the Potawatomi Tribe. The fact that annuity payments under the October 27, 1832, treaty were disbursed principally through the Chicago agency, which served Illinois and Wisconsin Potawatomis for the most part, and not Michigan and Indiana Potawatomis in the area of St. Joseph's River, evidences that the United States did not consider Indiana and Michigan Potawatomis alone as entitled to annuity payments under that treaty.

15. Other Administrative Interpretations of October 1832 Potawatomi Treaties.

The administration and interpretation of annuity provisions of the October 1832 treaties were entrusted by Congress to the War Department, and, later, to the Department of the Interior. The reports of the responsible executive agencies to Congress over a period of more than 50 years show that annuities under the three October 1832 treaties were regarded as owing to the Potawatomi Tribe or nation prior to 1846. To summarize, executive correspondence regarding the treaties of the Tippecanoe of October 1832 with

the Potawatomis directed that the whole Potawatomi interest in the lands was to be acquired. Part of the consideration in each of the treaties was granted for the benefit of the Potawatomis, in addition to particular provisions benefiting the local groups using the land. The treaty commissioners intended to acquire the entire interest of the Potawatomis in the lands ceded under the October 1832 treaties.

The treaties were all made at the same place, during a continuous assemblage of the Indians, by the same commissioners on the part of the United States. The chiefs and leaders who signed the three treaties and received special land grants under them represented Potawatomis from the Illinois, Wisconsin, Indiana, and Michigan settlements whether or not they lived in the area being ceded. Saugana, a leader of the Chicago-Wisconsin Potawatomis, received a \$600 annuity for life under the Treaty of October 20, 1832, ceding Area 177 in Illinois, and he and his daughter received special land grants under the Treaty of October 27 ceding Area 181 in Indiana, which treaty he also signed. One Indiana chief (Pierish, or Louison) signed all three treaties.

Administrative officials of the United States who were responsible for annuity payments regarded the Potawatomi Tribe, and not bands thereof, as entitled to payments under these treaties, even though specific bands were named as grantees under the October 1832 treaties in some early appropriation acts.

The Commission found in the entity proceeding that annuity payments under the treaties with the Potawatomis involved in this proceeding were regarded as payments due the Potawatomi Tribe and not primarily to particular sub groups thereof. Citizen Band of Potawatomi Indians v. United States, Docket 71, et al., supra, at 290-1, 294, 305-310.

16. Overlapping Cessions

In the First Annual Report of the Bureau of American Ethnology (1881), at 249-262, Charles C. Royce lists many overlapping cessions in Indiana and Illinois under treaties which the United States negotiated in purchasing Indian lands east of the Mississippi River. In discussing the policy of the United States generally with regard to Indian title and land cessions, he made the following observations:

Another and most perplexing question has been the adjustment of the conflicting claims of different tribes of Indians to the same territory. In the earlier days of the Federal period, when the entire country west of the Alleghanies was occupied or controlled by numerous contiguous tribes, whose methods of subsistence involved more or less of nomadic habit, and who possessed large tracts of country then of no greater value than merely to supply the immediate physical wants of the hunter and fisherman, it was not essential to such tribes that a careful line of demarkation should define the limits of their respective territorial claims and jurisdiction. When, however, by reason of treaty negotiations with the United States, with a view to the sale to the latter of a specific area of territory within clearly-defined boundaries, it became essential for the tribe with whom the treaty was being negotiated to make assertion and exhibit satisfactory proof of its possessory title to the country it proposed to sell, much controversy often arose with other adjoining tribes, who claimed all or a portion of the proposed cession. These conflicting claims

were sometimes based upon ancient and immemorial occupancy, sometimes upon early or more recent conquest, and sometimes upon a sort of wholesale squatter-sovereignty title whereby a whole tribe, in the course of a sudden and perhaps forced migration, would settle down upon an unoccupied portion of the territory of some less numerous tribe, and by sheer intimidation maintain such occupancy.

In its various purchases from the Indians, the Government of the United States, in seeking to quiet these conflicting territorial claims, have not unfrequently been compelled to accept from two, and even three, different tribes separate relinquishments of their respective rights, titles, and claims to the same section of country. [p. 254]

* * * *

[I]t will be seen that almost the entire country comprising the present State of Illinois was the subject of controversy in the matter of original ownership, and that the United States, in order fully to extinguish the Indian claim thereto, actually bought it twice, and some portions of it three times. It is proper, however, to add in this connection that where the government at the date of a purchase from one tribe was aware of an existing claim to the same region by another tribe, it had the effect of diminishing the price paid. [p. 256]

17. Ultimate Facts

Under the Treaty of October 16, 1826 (7 Stat. 295), ceding Royce Areas 132 and 133, described in the treaty by metes and bounds, the United States confirmed the boundaries of lands which had been recognized by the Treaty of Greeneville as belonging to the Potawatomi tribe. Similarly, by the Treaty of September 20, 1828 (7 Stat. 317), ceding Royce Areas 145 and 146, described in the treaty by metes and bounds; the Treaty of October 26, 1832 (7 Stat. 394), ceding Royce Area 180, described in the treaty by metes and bounds; and the Treaty of October 27, 1832 (7 Stat. 399), ceding Royce Area 181, as delineated on official maps of the United States,

the United States confirmed the boundaries of lands which had been recognized by the Treaty of Greeneville as belonging to the Potawatomi Tribe.

The Treaty of Grouseland of August 21, 1805 (7 Stat. 91), described the lands in Indiana which the United States recognized as belonging jointly to the Miami, Eel River, and Wea Indians as the country on the Wabash and its waters above the Vincennes tract not ceded to the United States. A comparison of this area with cessions of Indiana land before October 2, 1818, by the Weas, and before October 23, 1826, by the Miamis (including the Eel River Indians), permits delineation for purposes of this proceeding of the boundaries of the cession by the Weas in the Treaty of October 2, 1818 (7 Stat. 186), and by the Miamis in the Treaty of October 23, 1826 (7 Stat. 300). These treaties confirmed the title of the Miamis and Weas to parts of the land recognized by the Treaty of Grouseland, and that treaty may be regarded as having confirmed title recognized by the Treaty of Greeneville.

Inasmuch as some provisions of each of the three treaties of the Tippecanoe of October 1832 with the Potawatomis ceding land in Illinois and Indiana granted consideration to the Potawatomi Tribe as well as to local bands living on the ceded land; as the treaties were intended to cede the entire interest of the Potawatomis and were described by officials of the War Department and the treaty commissioners as treaties with the Potawatomi nation in correspondence with Congress and within the executive branch; as all three treaties were held by the Attorney General of the

United States to constitute a single transaction; and as annuities under each of the three treaties were paid to the entire Potawatomi Tribe, in addition to special treaty consideration for the particular groups using the ceded land, the Commission finds no basis for modifying the conclusion in the entity decision that these treaties were regarded by the United States as treaties for the entire Potawatomi Tribe.

18. Conclusion as to Interests of Plaintiffs in Subject Tracts.

On the basis of the findings, the opinion, and the entire record in this proceeding, the Commission concludes that the several plaintiffs in this proceeding have interests in the subject lands as follows:

For Royce Area 132: The Miami plaintiffs in Dockets 124-B and 254 and the Potawatomi plaintiffs and intervenors in Dockets 15-N, O, Q and R, 29-L, M, O, P, 128, 309 and 310 had joint recognized title to Royce Area 132. Their respective interests were ceded to the United States under Treaty of October 23, 1826 (7 Stat. 300), for the Miami, and under Treaty of October 16, 1826 (7 Stat. 295), for the Potawatomi. The valuation date for Royce Area 132 is February 7, 1827.

For Royce Area 133: The Potawatomi plaintiffs and intervenors in the dockets listed above had recognized title to Royce Area 133, which title was ceded to the United States under the Treaty of October 16, 1826 (7 Stat. 295). The valuation date is February 7, 1827.

For Royce Area 145: The Potawatomi plaintiffs and intervenors in the dockets listed above had recognized title to Area 145, which title was ceded to the United States under the Treaty of September 20, 1828 (7 Stat. 317). The valuation date is January 7, 1829.

For Royce Area 146: The Potawatomi plaintiffs and intervenors in the dockets listed above had recognized title to the portion of Area 146 north of the northern boundary of the Wabash watershed and recognized title to a one-half interest in the rest of Area 146. The land was ceded to the United States under the Treaty of September 20, 1828 (7 Stat. 317). The valuation date is January 7, 1829.

The Miami plaintiffs in the dockets listed above had recognized title to a one-half interest in the portion of Area 146 within the northern limit of the Wabash watershed ceded to the United States under the Treaty of October 23, 1826. The valuation date is January 24, 1827.

For Royce Area 180: The Weas in Docket 314-B had recognized title to a one-half interest in the portion of Area 180 which is west of the Wea-Miami dividing line, as stipulated June 19, 1967, and within the northern boundary of the Wabash watershed, labeled tract AB within Area 180 on the map, Appendix A. These lands were among those ceded by the Weas to the United States by the Treaty of October 2, 1818 (7 Stat. 186). The valuation date is October 2, 1818.

The Miami plaintiffs in the dockets listed above had recognized title to a one-half interest in the portion of Royce Area 180 which is

east of the Wea-Miami dividing line as stipulated on June 19, 1967, and within the northern limit of the Wabash watershed. These lands were ceded by the Miami Tribe to the United States under the Treaty of October 23, 1826. The valuation date is January 24, 1827.

The Potawatomi plaintiffs and intervenors in the dockets listed above had recognized title to the portion of Area 180 outside the northern limit of the Wabash watershed, and they had a one-half interest in the rest of Area 180 except the small piece in the southwest corner of Area 180 labeled 'H' on the map, Appendix A, in which they had a one-third interest which has already been adjudicated. (See note 1 of opinion herein.) The valuation date of the Potawatomi interests in all of Area 180 is October 26, 1832, the date on which the Potawatomis ceded these lands to the United States. (7 Stat. 394.)

For Royce Area 181: The Miami plaintiffs in the above-listed dockets had recognized title to a one-half interest in the portion of Area 181 within the northern limit of the Wabash watershed, which interest was ceded to the United States under the Treaty of October 23, 1826 (7 Stat. 300). The valuation date is January 24, 1827.

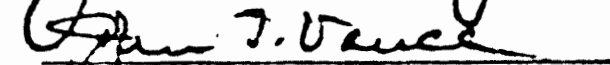
The Potawatomi plaintiffs and intervenors in the dockets listed above had recognized title to the portion of Royce Area 181 which is outside the northern limit of the Wabash watershed, and had recognized title to a one-half interest in the rest of Area 181. The land was ceded

to the United States under the Treaty of October 27, 1832 (7 Stat. 399).

The valuation date is January 21, 1833.



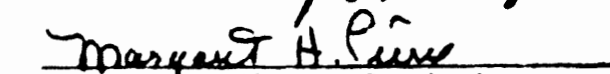
Jerome K. Kuykendall, Chairman



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner